



# Commonwealth of Kentucky

## CONTRACT

**IMPORTANT**

Show Doc ID number on all packages, invoices and correspondence.

<b>Doc Description:</b> FEMA DR-4239 Hazard Mitigation Grant Program (HMGP)	
<b>Doc ID No:</b> PON2 095 1700001334 1	<b>Procurement Folder:</b> 4460202
<b>Procurement Type:</b> Grant	<b>Record Date:</b> 03/22/2017
<b>Issued By:</b> Larry Clarke	<b>Cited Authority:</b> KRS39A.030
<b>Telephone:</b> 502-607-5767	

<b>C O N T R A C T O R</b>	Multiple Provider
	702 Capitol Avenue
	OMPS
	Frankfort KY 40601
	US

**Effective From:** 04/01/2017      **Effective To:** 06/30/2018

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	FEMA DR-4239 Hazard Mitigation Grant Program (HMG)		0.00		0.00000	4,261,253.33	4,261,253.33

**Extended Description**

1. FAIN# 4239DRKYP000005
2. Federal Award Date – December 14, 2016
3. Description - The Hazard Mitigation Grant Program, as appropriated to the Department of Homeland Security each Fiscal year, provides funding to States, Territories, federally-recognized tribes and local communities in their efforts to reduce the risk of future damage, loss of life and property in any area affected by a major disaster. This program is authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, and 42 U.S.C 5170c under the guidance of 2 CFR 200. The Commonwealth acts as the Grantee for this grant program and the communities/entities are the SUB- grantee. These funds will be reimbursed to eligible sub-grantees in all 120 counties for eligible work completed on behalf of any approved projects.
4. Name of Federal awarding agency FEMA Region IV - Jacky Bell, Chief, Hazard Mitigation Assistance Branch or Jean Neptune (770) 220-5474; Pass-through entity - Kentucky Emergency Management
5. CFDA# and Name - 97.039 Pre Disaster Mitigation, amount available under award 12 month lock-in letter dated 08/16/2016- \$4,261,253.33

<b>B I L L T O</b>	1572	<b>S H I P T O</b>	Lexington-Fayette Urban County Government
	DMA DIV OF ADMIN SERVICES		Division of Grants and Special Programs
	100 MINUTEMAN PARKWAY		200 East Main Street, 6th Floor
	FRANKFORT KY 40601		Lexington, KY 40507
US			Project#: DR4239-020

**Total Order Amount:** 4,261,253.33

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**Approvals**

This agreement is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this agreement and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

1st Party:

\_\_\_\_\_  
Signature            Title

\_\_\_\_\_  
Printed Name            Date

2nd Party:

\_\_\_\_\_  
Signature            Title            Mayor

\_\_\_\_\_  
Printed Name            Date            Jim Gray

Other Party

\_\_\_\_\_  
Signature            Title

\_\_\_\_\_  
Printed Name            Date

Approved as to form and legality:

\_\_\_\_\_  
Attorney

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## **Memorandum of Agreement Terms and Conditions**

Revised May 2016

This Memorandum of Agreement (MOA) is entered into, by and between the Commonwealth of Kentucky, Department of Military Affairs, Division of Emergency Management (“the Commonwealth”) and DR-4239 subrecipients (“the Contractor”) to establish an agreement to implement the elements of the Hazard Mitigation Program authorized by Presidential declaration of a major disaster for the Commonwealth. The initial MOA is effective from April 1, 2017 through June 30, 2018.

### **Scope of Services**

This funding was made available through the Hazard Mitigation Grant Program from Disaster 4239. All eligible sub-applicants will conform to the regulations specified in 44CFR Section 206 for the Hazard Mitigation Grant Program. The second party shall file for this reimbursement grant only in the manner and locations approved in the Second Party’s application to the Federal Emergency Management Agency.

### **Pricing**

The total contract amount is \$4,261,253.33. There are multiple sub-grantees, and the total contract includes multiple subproject awards. Payment from the contract will be made through the reimbursement process, whereby the Second Party provides backup documentation for expenditures and is reimbursed after review by the First Party

The Second Party fees and expenses relative to the performance of the scope of services outlined in this Contract and in the detailed attachment(s) to this contract shall not exceed the Total Order Amount as set forth on signature page of this Contract. The subject services and functions are to be performed during the term of this contract as set forth on page 1. It is understood that this contract is not effective and binding until approved by the Secretary of the Finance and Administration Cabinet and/or Legislative Research Commission’s Government Contract Review Committee per KRS 45A.705.

Payment by the First Party to the Second Party shall be made only after receipt of appropriate, acceptable and timely invoice, as so described in this Contract, and as submitted in written or electronic format to the First Party by the Second Party. The preferred method of payment will be through electronic funds transfer.

(a) The contractor shall be reimbursed for no other expenses than those, which have been expressly detailed in this Contract. All direct charges shall be documented to support the direct charging of the expense.

(b) Where applicable:

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(i) Invoicing for fee: The contractor's fee shall be original invoice(s) and shall be documented by the contractor. The invoice(s) must conform to the method prescribed in the specifications of this contract.

(ii) Invoicing for travel expenses: The contractor must follow instructions prescribed in the specifications of this contract. Either original or certified copies of receipts must be submitted for airline tickets, motel bills, restaurant charges, rental car charges, and other miscellaneous expenses.

(iii) Invoicing for miscellaneous expenses: The contractor must follow instructions prescribed in the specifications of this contract. Expenses submitted shall be documented by original or certified copies.

The contractor shall be paid no travel expense unless and except as specifically authorized under the specifications of this contract. Unless otherwise indicated, travel reimbursement shall be in accordance with 200 KAR 2:006. No travel time nor travel expenses will be included in the Second Party's or any subcontractor's hourly rates.

### **Cancellation clause**

Either party may cancel the agreement at any time for cause or may cancel without cause on 30 days' written notice.

### **Funding Out Provision**

The state agency may terminate this agreement if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the agreement. The state agency shall provide the Contractor thirty (30) calendar days written notice of termination of the agreement due to lack of available funding.

### **Reduction in Contract Worker Hours**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the agreement will be reduced by the amount specified in that document.

### **Access to Records**

The state agency certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly

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pertinent to the contract." The Contractor, as defined in KRS 45A.030(8) and (10), agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this agreement for the purpose of financial audit or program review. The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

### **Effective Date**

All Memorandum of Agreements are not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the agreement and until the agreement has been submitted to the government contract review committee. However, in accordance with KRS 45A.700, memoranda of agreement in aggregate amounts of \$50,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes.

KRS 45A.695(7) provides that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

### **Violation of tax and employment laws**

KRS 45A.485 requires the Contractor and all subcontractors performing work under the agreement to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the Contractor and all subcontractors performing work under the agreement shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

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KRS 45A.485 also provides that, for the duration of any contract, the Contractor and all subcontractors performing work under the agreement shall be in continuous compliance with the provisions of those statutes, which apply to their operations, and that their failure to reveal a final determination as described above, or failure to comply with the above statutes for the duration of the agreement shall be grounds for the Commonwealth's cancellation of the agreement and their disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

\_\_\_\_\_ The Contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

\_\_\_\_\_ The Contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). Attached is a list of such determination(s) , which includes the KRS violated, the date of the final determination, and the state agency which issued the final determination.

**Discrimination:**

This section applies only to agreements disbursing federal funds, in whole or part, when the terms for receiving those funds mandate its inclusion. Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this agreement, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will, state that all qualified applicants will receive consideration

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for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

3. The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this agreement or with any of the said rules, regulations or orders, this agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

7. The Contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **Agency Standard Terms and Conditions**

### **General**

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(a) The Federal government mandates that all Federal awards are used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award. The Federal government requires that the Department of Military Affairs, as the pass through entity for such awards, monitor the performance of the subrecipient under a Federal award and impose all necessary requirements on the subrecipient in order for the Department to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports.

These mandates and requirements are set forth in Title 2 (Grants and Agreements) of the Code of Federal Regulations under Part 200 (Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards). This set of regulations is more commonly referred to as 2 CFR 200.

(b) The Kentucky Division of Emergency Management, in the exercise of its lawful duties, has determined that the functions outlined in this Contract are necessary for the performance of the statutory and regulatory requirements of the Division of Emergency Management, Department of Military Affairs, General Government Cabinet.

(c) Per 2 CFR § 200.501, subrecipients of federal grant money disbursed under this Contract that have expended more than \$750,000 in total federal grant money during the subrecipient's fiscal year, beginning with fiscal year end 2016, must have a single or program specific audit conducted for that year. All subrecipients that are signatories to this Contract must ensure that any such required annual audit is performed within nine (9) months of closing of the subrecipient's fiscal year. A copy of the annual audit must be provided to the First Party no later than 30 days after receipt of the final report therefore within (10) ten months of closing of the subrecipient's fiscal year.

(d) Per 2 CFR § 200.112, subrecipients must disclose in writing any real or potential conflict of interest, as defined by Federal, state, or local statutes or regulations or the subrecipients' own existing policies, that may arise during the administration of the federal award. Subrecipients must disclose any real or potential conflicts to the applicable First Party program manager within five (5) days of learning of the conflict of interest.

(e) Per 2 CFR §200.338, subrecipients must within thirty (30) days disclose, in writing to the Federal grantor listed in the extended description of the contract and the First Party, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 CFR § 200.338 Remedies for Noncompliance, including Suspension or Debarment.

(f) This Contract implements elements of a federal grant program for the United States Department of Homeland Security, Catalog of Federal Domestic Assistance number 97.039, Hazard Mitigation Grant Program for which the Kentucky Division of Emergency management is the grantee within the Commonwealth of Kentucky.



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## **Subcontractor Requirement**

The Second Parties agree that all requirements of this contract shall also be applicable and binding on any subcontractor (subject to First Party approval) the Second Parties contract with to meet the statement of work, method of payment, and deliverables of this contract.

## **Certification of Lobbying**

(a) No state funds appropriated to the Second Parties pursuant to this contract shall be used to influence, either directly or indirectly, the introduction or modification of any federal or state legislation, or the outcomes of any federal, state or local election, referendum, or initiative.

(b) In addition, for any payment involving federal funds, the Second Parties certify to the best of their knowledge and belief, that for the receding contract period, if any, and for this current contract period:

No federal appropriated funds have been paid or will be paid, by or on behalf of the Second Parties, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative contract.

(c) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative contract, the Second Party shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying", in accordance with its instructions.

(d) The Second Parties shall require that the language of this certification be included in the award documents for all subawards at all tiers, including subcontractors, subgrants, and contracts under grants, loans, and cooperative contracts, and that all subrecipients shall certify and disclose accordingly.

(e) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

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### **Extensions and Amendments to this Contract**

The terms and conditions of this contract may be extended or amended according to the provisions of KRS Chapter 45A, and are subject to the approval of the Secretary of the Finance and Administration Cabinet and/or the Legislative Research Commission's Government Contracts Review Committee.

### **Choice of Law and Forum Provision**

The laws of the Commonwealth shall govern all questions as to the execution, validity, interpretation and performance of this contract. Furthermore, the parties hereto agree that any legal action that is brought on the basis of this contract shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky. However, see Applicable Law for exception regarding United States.

### **Sole Benefit**

This Contract is intended for the sole benefit of the First Party, the Second Party, and, if implementing a federal grant program element, the United States Government and is not intended to create any other beneficiaries.

### **Successors and Assigns**

This Contract may not be assigned by a party without the express written consent of the other party. All covenants made under this Contract shall bind and inure to the benefit of any successors and assigns of the parties whether or not expressly assumed or acknowledged by such successors or assigns.

### **Entire Contract**

This Contract forms the entire contract between the parties as to scope and subject matter of this Contract. All prior discussions and understandings concerning the scope and subject matter are superseded and incorporated by this Contract.

### **Severability**

If any provision of this Contract is held judicially invalid, the remainder of the Contract shall continue in force and effect to the extent not inconsistent with such holding.

### **Breach of Contract**

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(a) If a party waives enforcement of any provision of this Contract upon any event of breach by the other party, the waiver shall not automatically extend to any other or future events of breach.

(b) Breach or violation of Terms and Conditions shall be cause for termination of contract.

### **Data Collection/Analysis Limitations**

No data collected and provided by the First Party shall be used for any other purpose other than those expressly authorized in this Contract.

### **Campaign Finance**

The contractor certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The contractor further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

### **Change of Circumstances**

Each party shall promptly notify the other party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect the party's ability to carry out any of its obligations under this Contract.

### **Liability and Indemnity**

Nothing in this Contract shall be construed as an indemnification by one party of the other for liabilities of a party or third persons for property loss or damage or death or personal injury arising out of and during the performance of this Contract. Any liabilities or claims for property loss or damage or for death or personal injury by a party or its agents, employees, contractors or assigns or by third persons, arising out of and during the performance of this Contract shall be determined according to applicable law.

### **Financial Management System**

(a) Applicable only to contracts where reimbursement is based upon actual, allowable costs.

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(b) The Second Parties agree to establish and/or maintain a financial management system which shall provide for:

(i) Accurate, current, and complete disclosure of the financial results of the functions/ services performed under this contract in accordance with the reporting requirements as set forth in this Contract and attachment(s) thereto;

(ii) Records that identify the source and application of funds for activities/functions/ services performed pursuant to this contract. These records shall contain information pertaining to federal and/or state funds received, obligations, unobligated balances, if applicable, assets, liabilities, expenditures and income;

(iii) Effective control over and accountability for all funds, property, and other assets. The Second Parties shall safeguard all such assets and shall assure that they are used solely for authorized purposes in the provision of functions/services under this contract;

(iv) Procedures for determining reasonableness, and allow ability of costs in accordance with the terms and conditions of this Contract and any attachment(s) thereto; and

(v) Accounting records that are supported by source documentation.

### **Lobbying**

(a) The Second Parties agree that they will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative contract; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative contract.

(b) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

### **Drug-Free Work Place**

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(a) The Second Parties agree that they will comply with the provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free workplace.

(b) The Final Rule, Government-Wide Requirements for Drug-Free Workplace (Grants), issued by the United States Office of Management and Budget is incorporated by reference and the Second Party covenants and agrees to comply with all the provision thereof, including any amendments to the Final Rule that may hereafter be issued.

### **Environmental Standards**

(a) The Second Parties agree that their performance under this contract shall comply with: the requirements of Section 114 of the Clean Air Act (42 U.S.C. 7401-7671q) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), that relate generally to inspection, monitoring, entry reports and information, and with all regulations and guidelines issued thereunder; the Resources Conservation and Recovery Act (RCRA); the Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA); the National Environmental Policy Act (NEPA); and any applicable Federal, State, or Local environmental regulation.

(b) The Second Parties shall insure that no facility used in their performance under this contract is listed on the Environmental Protection Agency (EPA) list of violating facilities pursuant to 40 CFR Part 15 without the concurrence of the First Party. The Second Parties shall notify the First Party of the receipt of any communication from EPA indicating that a facility to be or being used in its performance under this Contract is under consideration for listing on the EPA list of violating facilities.

### **Preference for U.S. Flag Carriers**

The Second Parties agree to comply with 46 U.S.C. 1241(b) and regulations issued thereunder (46 CFR Part 381) concerning the use of privately-owned United States flag commercial vessels.

### **Debarment and Suspension**

(a) The Second Parties shall not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension".

(b) The Final Rule, Government-Wide Debarment and Suspension (Non-procurement), issued by the United States Office of Management and Budget is incorporated by reference and the Second Party covenants and agrees to comply with all the provision thereof, including any amendments to the Final Rule that may hereafter be issued.

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### **Hatch Act**

The Second Parties agree to comply with the Hatch Act (5 U.S.C. 1501 -1508 and 7324 - 7328), as implemented by the United States Office of Personnel Management at 5 CFR Part 151, which limits political activity of employees or officer of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

### **Buy American Act**

The Second Parties agree that they will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10). The Buy American Act gives preference to domestic end products and domestic construction materials. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Contract (NAFTA), provide the EC and NAFTA end products and construction materials are exempted from application of The Buy American Act.

### **Copeland “Anti-Kickback” Act**

The Second Parties agree that they will comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145) as supplemented in United States Department of Labor (29 CFR Part 3). As applied to this contract, the Copeland “Anti-Kickback” Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, finance in whole or in part by the United States, to give up nay part of the compensation to which that person is entitled under a contract of employment.

### **Purchasing and Specifications**

The Second Parties certify that he/they will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he/they attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph, “He” is construed to mean “They” if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then “He” is construed to mean any person with an interest therein.

### **Confidentiality**

The Second Parties agree that any employee or agent acting in its behalf will abide by the state and federal rules and regulations governing access to and use of information provided to the second party by the First Party in the administration of this contract.

### **Audit Requirements and Required Monitoring**

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## Subrecipient Audit Requirements

If the Second Party is a governmental entity, an institution of higher learning, or other nonprofit institution, the Second Party shall procure an audit in accordance with the 2 CFR 200, Subpart F-Audit Requirements. The Second Party must ensure that any such required annual audit is performed within nine (9) months of closing of the Second Party's fiscal year. A copy of the annual audit must be provided to the First Party no later than 30 days after receipt of the final report therefore within (10) ten months of closing of the subrecipient's fiscal year.

## Subrecipient Monitoring Required Risk Assessment

2 CFR §200.331(b) requires that the First Party evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring, which may include consideration of such factors as:

- (a) The subrecipient's prior experience with the same or similar subawards;
- (b) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;
- (c) Whether the subrecipient has new personnel or new or substantially changed systems; and
- (d) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

## Monitoring of Subrecipient

2 CFR §200.331(d) requires that the First Party, as the pass through entity, monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. In accordance with 2 CFR §200.331(d) First Party monitoring of the subrecipient must include:

- (a) Reviewing financial and performance reports required by the First Party.
- (b) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the First Party detected through audits, on-site reviews, and other means.
- (c) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the First Party as required by 2 CFR §200.521 Management decision.

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## Monitoring Tools

Depending upon the First Party's assessment of risk posed by the subrecipient (as described in Required Risk Assessment); monitoring tools may be utilized to ensure proper accountability and compliance with program requirements and achievement of performance goals. Monitoring tools include but are not limited to:

- (a) Providing subrecipients with training and technical assistance on program-related matters; and
- (b) Performing on-site reviews of the subrecipient's program operations;
- (c) Arranging for agreed-upon-procedures engagements as described in 2 CFR §200.425 Audit services.

## Imposition Of Specific Subaward Conditions

2 CFR §200.331(c) requires that the First Party consider the imposition of specific subaward conditions upon a subrecipient as needed under the following circumstances stated in 2 CFR §200.207 (*Specific Conditions*):

- (a) Based on criteria set forth in 2 CFR §200.205, Federal awarding agency review of risk posed by applicants;
- (b) When an applicant or recipient has a history of failure to comply with the general or specific terms and conditions of a Federal award;
- (c) When an applicant or recipient fails to meet expected performance goals as described in 2 CFR §200.210 Information contained in a Federal award; or
- (d) When an applicant or recipient is not otherwise responsible.

These additional Federal award conditions may include items such as the following:

- (a) Requiring payments as reimbursements rather than advance payments;
- (b) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- (c) Requiring additional, more detailed financial reports;
- (d) Requiring additional project monitoring;
- (e) Requiring the non-Federal entity to obtain technical or management assistance; or
- (f) Establishing additional prior approvals.

The First Party must notify the subrecipient as to:

- (a) The nature of the additional requirements;
- (b) The reason why the additional requirements are being imposed;
- (c) The nature of the action needed to remove the additional requirement, if applicable;
- (d) The time allowed for completing the actions if applicable, and



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(e) The method for requesting reconsideration of the additional requirements imposed.

Any specific conditions shall be promptly removed once the conditions that prompted them have been corrected.

#### Remedies For Noncompliant Subrecipients

2 CFR §200.331(h) requires that the First Party consider taking enforcement action against subrecipients who fail to comply with Federal statutes, regulations or the terms and conditions of a Federal award when the First Party determines that noncompliance cannot be remedied by imposing additional conditions as described under Imposition of Specific Subaward Conditions. In accordance with §200.338 (Remedies for noncompliance) the First Party may take one or more of the following actions, as appropriate in the circumstances:

- (a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate the Federal award.
- (d) Recommend to the Federal awarding agency to initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency.
- (e) Withhold further Federal awards for the project or program.
- (f) Take other remedies that may be legally available.

#### Applicable Law

This Contract is incidental to the implementation of a federal grant program. Accordingly, this Contract shall be governed by and construed according to Federal law as it may affect the right, remedies, and obligations of the United States.

#### Governing Regulations

To the extent not inconsistent with the express terms of this Contract, the provisions of 49 CFR 18, Uniform Administrative Requirements for Grants and Cooperative Contracts and 2 CFR 200, Subpart E, Cost Principles, which are hereby incorporated by reference as if fully set forth herein, shall govern this Contract.

#### Procurement

The acquisitions of goods and services by the Contractor in performance of the Contract shall be according to applicable Commonwealth of Kentucky contracting procedures and the applicable federal standards and procedures to include, but not limited to, 2 CFR 200, 44 CFR, 49 CFR, and 32 CFR.

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## **Environmental Requirements**

The contractor is encouraged to integrate National Environmental Policy Act compliance and related legislation as implemented under 44 CFR and 2 CFR 200 in the execution and administration of this contract.

## **Uniform Administrative Requirements**

The contractor will follow the administrative requirements under 2 CFR Part 200, and 49 CFR.

## **Cost Principles**

Allowability of costs for reimbursement will be determined as outlined in 2 CFR 200 Subpart E-Cost Principles.

## **Contract Work Hours and Safety Standards Act**

Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S. C. 3701 - 3708) as supplemented by Department of Labor Regulation.

## **Patent Rights**

This standard Patent Right Clause found at 37 CFR 401.12 is hereby incorporated by reference which governs rights to inventions made by non-profit organizations and small business firms under Government grants, contracts, and cooperative contracts.

## **Davis-Bacon Act**

As amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as

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supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

### **Procurement of Recovered Materials**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **Discrimination**

This section applies only to agreements disbursing federal funds, in whole or part, when the terms for receiving those funds mandate its inclusion. Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

(a) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places,

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available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

(d) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

(g) The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor

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may request the United States to enter into such litigation to protect the interests of the United States.

- (i) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
- (ii) Executive Order 11246 and Department of Labor regulations issued thereunder (41 CFR Part 60);
- (iii) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
- (iv) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

### **Access to Records**

The subrecipient, as defined by 2 CFR §200.93, is required to permit the First Party and auditors to have access to its records and financial statements as necessary for the First Party to meet the requirements of 2 CFR §200.331 (a)(5) and the appropriate terms and conditions concerning closeout of the subaward.