



Commonwealth of Kentucky CONTRACT

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PON2	129	2100000918		

Document Description:	Lower Pitman Creek Watershed Plan
Cited Authority:	PL319 Federal Clean Water Act
Reason for Modification:	

Issuer Contact:	
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E-mail:	Mike.Reed@ky.gov

Vendor Name: CITY OF SOMERSET General Fund 306 East Mt. Vernon St. Somerset KY 42501	Vendor No.: KY0033681 Vendor Contact: Name: Mike Broyles Phone: 606-679-6366 Email: MBroyles@cityofsomerset.com
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Effective From: 2021-06-15 **Effective To:** 2024-09-30

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0.00000		Lower Pitman Creek Watershed Plan	\$0.000000	\$103,495.00	\$103,495.00

Extended Description:
The Commonwealth and the City of Somerset have a mutual interest in improving and protecting the quality of the Commonwealth's resources for present and future generations. This project seeks to establish an agreement for the implementation of the Lower Pitman Creek Watershed Plan. The goal of this project is to create a watershed plan for the Lower Pitman Creek Watershed which, when implemented, reduce pollutants in the waterways. Objectives include identifying what pollutants are present and determining where they are manifesting throughout the watershed, identifying what Best Management Practices (BMPs) will be most effective in helping decrease sediment and stormwater runoff into waterways and major sinkholes, improving stream habitat to promote a healthy aquatic ecosystem, and increasing public awareness of the impacts of development on runoff pollution.

Shipping Information: Division of Water 300 Sower Blvd, 3rd Floor Frankfort KY 40601	Billing Information: Division of Water 300 Sower Blvd, 3rd Floor Frankfort KY 40601
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TOTAL CONTRACT AMOUNT:	\$103,495.00
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	Document Description	Page 2
2100000918	Lower Pitman Creek Watershed Plan	

Memorandum of Agreement Terms and Conditions
Revised October 2020

This Memorandum of Agreement (MOA) is entered into, by and between the Commonwealth of Kentucky, Energy and Environment Cabinet, Department for Environmental Protection, Division of Water (“the Commonwealth”) and the City of Somerset (“the Contractor”) to establish an agreement for the implementation of the Lower Pitman Creek Watershed Plan. The goal of this project is to create a watershed plan for the Lower Pitman Creek Watershed which, when implemented, reduce pollutants in the waterways. Objectives include identifying what pollutants are present and determining where they are manifesting throughout the watershed, identifying what Best Management Practices (BMPs) will be most effective in helping decrease sediment and stormwater runoff into waterways and major sinkholes, improving stream habitat to promote a healthy aquatic ecosystem, and increasing public awareness of the impacts of development on runoff pollution. The initial MOA is effective from June 15, 2021 through September 30, 2024.

I. Scope of Services:

The City of Somerset shall complete the following goals, objectives and activities.

Goal: Conduct Water Quality Monitoring in the project study area.

Objective: Have Water Quality Monitoring conducted in the Lower Pitman Creek Watershed and have an assessment done on this data.

Activities:

Collaborate with the Division of Water to assist with the water quality monitoring data. Assess the collected data and incorporate into the watershed plan.

Objective: Conduct Groundwater Quality study in the Lower Pitman Watershed.

Activities:

Collaborate with the Division of Water to assist with the groundwater quality monitoring data, including spring sampling data. Assess the collected data and incorporate into the watershed plan.

Goal: Improve water quality in the Lower Pitman Creek Watershed by developing an approved watershed plan that meets Environmental Protection Agency (EPA) A-I criteria.

Objective: Compile available background information about the Lower Pitman Creek watershed and develop an approved watershed plan.

	Document Description	Page 3
2100000918	Lower Pitman Creek Watershed Plan	

Activities:

Compile available information and data including monitoring assessment.
 Gather existing water quality data from relevant sources. Analyze and interpret historical data.
 Prepare a draft watershed plan that follows the outline in Environmental Protection Agency and Division of Water Guidance.
 Meet with Division of Water to review the draft watershed plan.
 Prepare the final watershed plan.

Goal: Create greater opportunity for community members to become involved in the watershed improvement efforts and solutions.

Objective: Create a local watershed planning committee to help with watershed improvement efforts and solutions.

Activities:

Advertise through local media the formation of a watershed committee.
 Collect public thoughts and concerns regarding the current status of the watershed and how to improve it.
 Identify potential stakeholders.
 Host stakeholder meetings throughout the Lower Pitman Creek watershed.
 Provide public updates for the watershed through local media.

Goal: Hire a watershed coordinator.

Objective: Create a new position within the City of Somerset for a watershed coordinator to manage work and improve water quality in the Lower Pitman watershed by reducing and eliminating nonpoint source pollution.

Activities:

Provide community outreach, environmental education and public meetings.
 Work hand in hand with the watershed committee.
 Work with the Division of Water to provide updates on the watershed.

Plan of Work

The Lower Pitman Creek Watershed encompasses approximately 50 square miles of densely urban and rural lands. The majority of Somerset City limits are encompassed inside this watershed. The watershed discharges into the upper end of Lake Cumberland. Back in 2012, a section of Pitman Creek was monitored and assessed. Results exhibited readings of *E.coli* in the creek, indicating that this section of the creek only partially supports primary contact designated uses. The City of Somerset would like to investigate this further and create a plan to reduce pollutants in its waterways.

	Document Description	Page 4
2100000918	Lower Pitman Creek Watershed Plan	

The development of a detailed watershed plan will identify what pollutants are present and determine where they are manifesting throughout the watershed, help decrease sediment and stormwater runoff into waterways and major sinkholes, improve stream habitat to promote a healthy aquatic ecosystem, and increase public awareness of the impacts of development on runoff quantity and quality.

The watershed plan will identify what bacteria, focusing on *E.coli* and Fecal Coliforms, are present in the watershed and where they are manifested. The results of the monitoring phase will dictate what BMP will be needed. One possible objective of the plan is to educate and encourage the public on proper maintenance of septic systems and reduce bacteria by identifying areas with failing septic systems. The plan will also identify areas, if any, of public sewer systems in need of repair or replacement.

The plan will decrease sediment and stormwater runoff to waterways and major sinkholes within the watershed through redefining and reestablishing natural channels, implementing green infrastructure and reducing impervious surfaces. Simultaneously, the plan will improve the stream habitat to promote a flourishing and healthy aquatic ecosystem. This will be achieved by expanding riparian buffer areas, stabilizing eroding stream banks and routine trash clean ups.

To maximize the efforts of the watershed plan, public awareness will be a focus. A local watershed planning committee will be established to help drive the plan. Throughout the area, educational programs and outreach will be implemented to inform the public on the impacts of development and/or land use on runoff quantity and quality.

A study in 2012 indicated that a section of Pitman Creek contains *E.coli* bacteria. Outside of this assessment, there is little to no data available on the condition of the remaining waterways within the Lower Pitman Creek Watershed. Currently it is not practical to establish a pollution control plan without knowing what kind of pathogens are in the waterways and where they originate. The City of Somerset will use the data assessed during the monitoring phase of the watershed plan to shape how it tackles each pollutant. Consequently, the data will drive which BMPs are selected and where they will be the most effective.

Quality Assurance Project Plan (QAPP)

This section is only applicable if monitoring or sampling occurs during this project.

The City of Somerset will develop and submit to the Cabinet for review and approval, a QAPP for the environmental monitoring activities associated with the project described in this Agreement. No project monitoring activities will occur until the QAPP has been reviewed and approved by the Cabinet. The City of Somerset will ensure that all environmental monitoring activities in this Agreement will be conducted in accordance

	Document Description	Page 5
2100000918	Lower Pitman Creek Watershed Plan	

with the approved QAPP. The approved QAPP will be incorporated into this Agreement by reference.

The Kentucky Division of Water (DOW) requires submittal of a data package after each sampling period, which should include Chain-of-Custody forms, field notes, calibration records of all instrumentation, and a raw data file as submitted from the laboratory. The package will also include relevant notes from field work identifying issues encountered, action needed or changes made to the sampling plan or QAPP. All issues or changes must also be communicated to DOW nonpoint source staff as soon as possible.

A final summary of overall project quality assurance will be submitted at the end of the project. The final Quality Assurance (QA) report should explain and detail the quality processes and controls used in sampling, both by the laboratory and in the field. Examples of QA report content are listed below. The report should summarize the sampling results and outline any and all deficiencies or discrepancies in the data collection and analysis process.

Examples of a QA report content are:

Types and results of quality control samples; field blanks, field splits, field duplicates. Discussion of how the Quality Control (QC) samples met the precision, accuracy, completeness, bias data quality objectives from the QAPP. Explanation of data qualifiers and how it affected the data results (data that is flagged by the laboratory). Corrective action taken for any data quality issues.

Best Management Practices Implementation Plan

The City of Somerset shall develop and submit to the Cabinet for review and approval, a BMP Implementation Plan for all BMP implementation activities associated with the project described in this Agreement. No BMP implementation activities shall occur until the BMP Implementation Plan has been approved by the Cabinet. The City of Somerset shall ensure that all BMP implementation activities in this Agreement shall be conducted in accordance with the approved BMP Implementation Plan. The approved BMP Implementation Plan shall be incorporated into this Agreement by reference.

The BMP Implementation Plan shall include: (1) a list of BMP technologies to be installed; (2) a description of the technology selection process, to include the estimated cost, relative treatment efficiency, and the minimum operation and maintenance required for the BMP to operate efficiently; (3) a description of how BMPs shall be targeted to specific locations and if locations are known, a map(s) clearly showing the location where the BMP technologies shall be demonstrated; (4) a means of notifying the Division of Water, Nonpoint Point Source (NPS) Section prior to BMP implementation; (5) a financial plan of action, which describes how financial assistance shall be provided for technology demonstration; (6) the type of maintenance agreement to be made with the landowner; and (7) a statement that ensures that all agricultural or forestry BMPs will be consistent with the Kentucky Agriculture Water Quality Act and/or the Forest Conservation Act.

	Document Description	Page 6
2100000918	Lower Pitman Creek Watershed Plan	

Education Materials

The City of Somerset shall ensure that all materials to be used in school-based education shall conform to the Kentucky Education Reform Act of 1990, Core Content for Assessment. When materials are submitted, the corresponding section of the Core Content must be cited.

The City of Somerset shall ensure that all outreach materials conform to the North American Association for Environmental Education’s (NAAEE) *Environmental Education Materials: Guidelines for Excellence* (NAAEE 1998, 1999) (www.NAAEE.org).

Geographic Information System (GIS) Activities

The City of Somerset shall ensure that all geospatial data created shall be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards shall be obtained from the web site “www.fgdc.gov” under the topics of “standards” and “publications”.

Animal Feeding Operation (AFO) Activities

The City of Somerset shall ensure that any AFO receiving financial assistance from 319(h) funds will implement a nutrient management plan. An AFO is defined as any lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and where crops, vegetation forage growth, or post-harvest residues are not sustained over any portion of the lot or facility in the normal growing season.

Training

All personnel involved in monitoring activities that are performed by the City of Somerset or sub-contractor will be provided (or required to develop) standard operating procedures (SOPs), and will be trained in sampling techniques by DOW staff. This training will be a part of the NPS project conditions, and will not incur any additional cost to the vendor.

Measures of Success

Goal 1

Establishing a baseline within the watershed of pollutants of concern during the monitoring phase and identifying BMPs that will help reduce the pollutants.

Goal 2

Completing and establishing an approved EPA watershed plan for the Lower Pitman Creek watershed.

Goal 3

Creating an independent watershed council for the Lower Pitman Creek watershed.

	Document Description	Page 7
2100000918	Lower Pitman Creek Watershed Plan	

Reports

The City of Somerset shall:

Provide a quarterly programmatic report. The report shall cover progress to date, any problems encountered and actions taken and any anticipated activity and work products expected during the next month as outlined in the Project Status Report Template below.

Provide a final report detailing activities and deliverables completed during the agreement period. The final report is due 30 days after the end of the project.

All reports shall be submitted electronically to the Commonwealth within specified timeframes listed above and in the format included in the Project Status Report Template.

Project Status Report Template

Grant Recipient Name: The City of Somerset

Project Name: Lower Pitman Creek Watershed Plan

Principal Investigator/Project Manager: Reggie Chaney

Date Submitted:

Reporting Period: (month & year)

Accomplishments, publicity, news:

(Provide an update on project activities, any publicity on the project, including links to articles)

Performance outcome data/metrics:

(Provide updates on specific activity targets, project timelines and/or metrics from the grant agreement)

	Document Description	Page 8
2100000918	Lower Pitman Creek Watershed Plan	

Problems, issues, variances from plan:

(Provide updates on any problems with project activities, timelines, any variances from the original work plan)

Project Status Report Template

Section 319(h) Nonpoint Source Project Progress Report

Reporting Period:--/--/-- to --/--/--/ Grant: PPG –BG-00D21420 State: Kentucky

Project Name: Lower Pitman Creek Watershed Plan

Contractor: City of Somerset

Federal amount: \$103,495

Budget Period Start Date: 6/15/21 End Date: 9/30/24 Total Project Cost: \$172,492

Expended this Period: \$ _____ Total Expenditures to Date: \$ _____

Waterbody/Watershed Identification: Upper Cumberland River Basin

NPS Category: Pathogens/Bacteria

Purpose Statement: The goal of this project is to develop the Lower Pitman Creek Watershed Based Implementation Plan. The Lower Pitman Creek Watershed Based Plan will develop a series of steps to characterize existing conditions, identify and prioritize concerns, define objectives/goals, and develop protection or remediation strategies. The focus will emphasize working with project partners and stakeholders to eventually identify and reduce the nonpoint sources of pollution, form a watershed council and hire a watershed coordinator.

City of Somerset's Milestones

All milestones will begin on June 15, 2021 and end on September 30, 2024.

	Document Description	Page 9
2100000918	Lower Pitman Creek Watershed Plan	

Submit advanced written notice workshops, demonstrations, and/or field days to the Cabinet. Duration of Contract

Submit quarterly or monthly invoices reflective of the work performed for the project and milestones worked on during the period being invoiced for. Duration of Contract

Submit draft news articles, brochures, newsletter articles and other educational outreach materials to NPS Program staff for approval - includes drafts of flyers and postcards inviting public to meetings and events. Duration of Contract

Submit an Annual Report to NPS program staff if requested by Division of Water by December each year. Duration of Contract

Hire a watershed coordinator. June 2021 – June 2024

Build local working relationships, begin gathering community input, start planning community engagements, potentially host initial community information meeting. July 2021 – July 2022

Develop a public involvement plan. July 2021 – July 2022

Convene all project partners and establish a watershed council. July 2022 – July 2022

Conduct quarterly watershed council meetings. Duration of Contract

Work with Division of Water to develop a project study plan. September 2021 – January 2022

Water Quality Monitoring. December 2021 – December 2022

Gather background information and compose Chapters 1 – 2. January 2022 – July 2022

Analyze and interpret historical data from previous water quality monitoring and compose Chapter 3. July 2022 – January 2023

Analyze and interpret new data from water quality monitoring and compose Chapter 4. May 2023 – May 2024

Hold community meetings to discuss the watershed plan, water quality and potential BMP solutions. April 2023 – April 2024

Develop (or edit from existing) and distribute handouts, online information, public service announcements as needed. Duration of Contract

	Document Description	Page 10
2100000918	Lower Pitman Creek Watershed Plan	

Develop BMP Implementation Plan, Chapters 5 – 6. April 2023 – April 2024

Develop measurable milestones and evaluation criteria for determining the long-term success of watershed planning and implementation Chapter 7. April 2023 – April 2024

Finalize watershed plan and submit to Division of Water for approval. April 2024 – May 2024

Finalize watershed plan, develop and submit the Final Report. April 2024 – September 2024

- 1.
- 2.
- 3.
-
- 20.

Signature Date _____

Notifications

All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing and sent to the following:

City of Somerset
 Attn: Reggie Chaney
 306 East Mt. Vernon Road
 Somerset, Kentucky 42501
 606-679-6366
 rchaney@cityofsomerset.com
 Vendor DUN's Number: 074049016

Division of Water
 Attn: Mike Reed
 300 Sower Blvd., Third Floor NW/29
 Frankfort, Kentucky 40601
 502-782-7046
mike.reed@ky.gov

	Document Description	Page 11
2100000918	Lower Pitman Creek Watershed Plan	

II. Pricing:

The Commonwealth shall reimburse the City of Somerset up to \$103,495.00 for services and activities as outlined in the Program Budget table below.

Program Budget

Categories	The Commonwealth	Cost Share/ In-kind Match	Total
Personnel	\$53,495.00	\$63,997.00	\$117,492.00
Fringe Benefits	\$0.00	\$0.00	\$0.00
Travel	\$0.00	\$0.00	\$0.00
Equipment	\$0.00	\$0.00	\$0.00
Supplies	\$0.00	\$5,000.00	\$5,000.00
Construction	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Total Direct Charges	\$53,495.00	\$68,997.00	\$122,492.00
Indirect Charges (up to 10% of the Commonwealth's Total Direct Charges) **	\$0.00	\$0.00	\$0.00
Contractual	\$50,000.00	\$0.00	\$50,000.00
Total	\$103,495.00	\$68,997.00	\$172,492.00
Program Income	\$0.00	\$0.00	\$0.00

A detailed budget template provided by the Commonwealth shall be completed and submitted to DOW prior to the start of the project and before the start of each fiscal year

** RECIPIENT INDIRECT:

If the recipient is receiving state funds the recipient may not charge indirect costs in excess of ten (10) percent of total direct costs. An indirect rate **shall not** be charged on contractual expenditures. Indirect charges exceeding the ten (10) percent shall be considered as cost share provided by the recipient.

If the recipient is receiving federal funds the recipient shall use the indirect rate corresponding with the agreement the recipient has with the federal entity or ten (10) percent. The recipient shall provide a copy of the indirect agreement prior to the federal funds being awarded.

**TRAVEL:

If travel was budgeted, please select which travel policy should be followed:

	Document Description	Page 12
2100000918	Lower Pitman Creek Watershed Plan	

 X Kentucky Finance and Administration Cabinet

 Federal Travel Regulations. (Federal rate can only be used if the contractor is a federal entity)

Note: Per GCRC Policy #98-1 if the hourly rate is paid for travel time, travel expenses shall not be allowed, except for overnight lodging when at the convenience of the agency.

III. Invoicing

The City of Somerset shall:

Invoice the Commonwealth quarterly for authorized expenditures by budget line item.

The invoice must indicate:

1. The Document ID number, which can be found at the top of the MOA/PSC. The Document ID number can be recognized by the beginning letters "PON2" or "SC".
2. Invoice number
3. Invoice date
4. Dates of service covered
5. Current expenditures with each item listed separately
6. Cumulative expenditures to date
7. Current cost share or match, if identified in the Program Budget
8. Cumulative cost share or match
9. Include a copy of the transaction detail report if available and/or receipt

Backup documentation must be maintained for each invoice, as required by the record retention schedule in Kentucky's Administrative Regulation 725 KAR 1:0612 and/ or CFR 200.333 through 200.337. The backup documentation can either be submitted with the invoice or kept for inspection by the Commonwealth, if or when requested.

Examples of backup documentation may include:

1. Personnel – payroll spreadsheet showing time worked within the invoice period. Spreadsheet shall contain salary information, name of employee or some identifiable number, percent of time applied to grant, along with the number of hours and fringe benefits per person.
2. Fringe – include in payroll spreadsheet.

	Document Description	Page 13
2100000918	Lower Pitman Creek Watershed Plan	

3. Travel – travel voucher or invoices showing airfare, hotel expenses, etc. Mileage will be paid based on rate established through a travel policy by the recipient. If no rate has been established, the recipient may use the state or federal mileage rate.

4. Equipment – receipt marked paid (an invoice shall be submitted after equipment is paid for).

5. Supplies – receipt marked paid (an invoice shall be submitted after supplies are paid for).

6. Contractual – invoice and documentation that item has been paid (recipient shall verify invoice).

7. Construction – invoices, receipts marked paid and any other documents that properly verify expenses.

8. Indirect costs – will be verified not to exceed the allowable rate established in the MOA.

9. Other – invoice and documentation that item has been paid (recipient shall verify invoice).

In the event that the City of Somerset incurs no expenses within a reporting timeframe, the City of Somerset shall submit an invoice for zero (0) dollars or provide a “notice of no expenses,” based on the Commonwealth’s requirements.

Final Invoice: The final invoice should be clearly marked as “FINAL INVOICE” to indicate that all funds that will be expended, have been expended.

Where to submit invoices:

All invoices shall be submitted via email to:

Division of Water
 Attn: Mike Reed
 300 Sower Blvd., Third Floor NW/29
 Frankfort, Kentucky 40601
 502-782-7046
 mike.reed@ky.gov

In the subject line of the email list:

Project Number 20-07, Invoice #

	Document Description	Page 14
2100000918	Lower Pitman Creek Watershed Plan	

IV. Assurances:

Award Number: FFY-2020 Performance Partnership Grant–PPG BG - 00D21420, CFDA 66.605.

The parties shall abide by all terms of the award:

The City of Somerset agrees to comply with the current EPA general terms and conditions available at

<https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2019-or-later>

The following is a list of statutory, regulatory, and Executive Order requirements for subrecipients on EPA funded projects per 2 CFR 200.331(a) (2). As a subrecipient of EPA funding, you must agree to abide by the applicable requirements listed below.

1. Nondiscrimination Laws and Social Policies

Most EPA financial assistance recipients are subject to the laws and policies described below. This list of nondiscrimination and social policy requirements is for informational purposes only and is not intended to provide guidance on compliance in the context of a particular EPA assistance agreement.

Disadvantaged Business Enterprises

EPA regulations at 40 CFR Part 33, “Participation by Disadvantaged Business Enterprises in U.S. Environmental Protection Agency Programs” set forth requirements for making good faith efforts to ensure that Disadvantaged Business Enterprises, including Minority Business Enterprises and Women’s Business Enterprises receive a fair share of contracts awarded with funds provided by EPA financial assistance agreements. These requirements apply to subrecipients in accordance with 40 CFR 33.102 and the definition of “Recipient” in 40 CFR 33.103.

2. Financial Management Policies

These policies apply to transactions financed by EPA financial assistance funds and apply to both pass-through entities and subrecipients on the basis of either regulatory requirement or the General Terms and Conditions (T&C) of the pass-through entity’s agreement with EPA.

Federal Funding Accountability and Transparency Act

As set forth in the General Condition of the pass-through entity’s agreement with EPA entitled “Reporting Subawards and Executive Compensation” the pass-through

	Document Description	Page 15
2100000918	Lower Pitman Creek Watershed Plan	

entity must ensure that subrecipients comply with Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

Suspension and Debarment

The pass-through entities responsibilities are described at 2 CFR Part 180, Subpart C and the “Debarment and Suspension” T&C of the pass-through entity’s agreement with EPA. These requirements, which include checking SAM to ensure that potential contractors, subrecipients and their principals and agents are not suspended, debarred or otherwise ineligible to participate in Federal assistance programs also apply to subrecipients. It is important to note that in addition to being precluded from all first tier contracts and all contracts requiring EPA approval in accordance with 2 CFR 180.220 under 2 CFR 1532.220 suspended or debarred parties may not receive EPA funded contracts in excess of \$25,000 at any tier. Also, at 2 CFR 1532.995 EPA has identified activities that suspended or debarred parties may not perform as a “Principal” in EPA financial assistance agreements and subawards.

New Restriction on Lobbying, 40 CFR Part 34

Subrecipients must submit certification and disclosure forms required by 40 CFR 34.110 and the “Lobbying and Litigation” T&C for subawards in excess of \$100,000.

Uniform Grant Guidance Requirements (UGG)

Subrecipients must comply with 2 CFR Part 200 requirements when they award procurement contracts, make subawards, and incur other costs borne by EPA financial assistance.

3. Environmental Authorities

These requirements typically apply when an EPA funded project involves construction, remediation of contamination in water, soil, or buildings, and similar activities which alter the physical environment. Other environmental laws may apply to a project independent of EPA funding. Financial assistance for research, training, technical assistance and related outreach, environmental education, program operations, or installation of pollution control equipment on vehicles or vessels, are generally not affected by these requirements. Note that this list of environmental authorities is for informational purposes only and is not intended to provide guidance on compliance in the context of a particular EPA assistance agreement.

Clean Air Act and Clean Water Act

Section 306 of the Clean Air Act (CAA) and section 508 of the Clean Water Act (CWA), as implemented by Executive Order 11738 (1973), prohibit performance of Federal assistance agreements at facilities disqualified due to certain violations of the CAA or CWA. Disqualified facilities are listed in the System for Award Management. Subrecipients are required to check SAM, to determine if facilities that will be used to perform contracts or subawards are listed in SAM.

	Document Description	Page 16
2100000918	Lower Pitman Creek Watershed Plan	

National Environmental Policy Act

Where applicable, the National Environmental Policy Act (NEPA) requires federal agencies to conduct an environmental review of their proposed actions, with a view toward ensuring informed decision-making and public input. EPA's NEPA regulations are at 40 CFR Part 6, and note that certain EPA actions are exempt from NEPA. Pass-through entities and subrecipients may be required to assist EPA with NEPA compliance, where appropriate.

National Historic Preservation Act

Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. Under the ACHP's regulations, consultations generally occur in the first instance with state and/or tribal historic preservation officials, with direct ACHP involvement in certain cases. EPA funded projects with the potential to affect historic properties – i.e., properties listed in or eligible for listing in the National Register of Historic Places – may implicate this statute. This may include, for instance, EPA-funded projects that involve alteration of structures (e.g., asbestos abatement) that are historic properties or construction/remediation on culturally sensitive lands. Pass-through entities should work with their Project Officer to ensure that subrecipients are available to work with EPA on any required consultation process with the State or Tribal Historic Preservation Office prior to commencing the project to ensure compliance with section 106 of the NHPA.

Protection of Wetlands, Executive Order 11990 (1973), as amended

EPA funded projects involving new construction in wetlands may implicate this Executive Order. The terms and conditions of the EPA assistance agreement may require pass-through entities to ensure that subrecipients assist EPA in determining whether a proposed project will be located in (or affect) a wetland, and if so, evaluating practicable alternative locations for the project or other mitigation.

Coastal Zone Management Act

This statute requires EPA to ensure that Agency funded activities in coastal areas are consistent with state coastal zone management plans that have been approved by the Department of Commerce. Pass-through entities and subrecipients should consult directly with the state Coastal Zone Management agency during the planning stages to ensure that the EPA funded project will be consistent with the state's coastal zone management plan.

Coastal Barriers Resources Act

This statute restricts federal financial assistance that would encourage development in the Coastal Barriers Resources System, a collection of undeveloped and ecologically sensitive barrier formations along the Atlantic and Gulf Coasts of the United States, and the shore areas of the Great Lakes, and adjacent wetlands, marshes, estuaries,

	Document Description	Page 17
2100000918	Lower Pitman Creek Watershed Plan	

inlets, and near-shore waters. During the planning phase of a proposed project located in the Coastal Barriers Resources System, pass-through entities and subrecipients should consult with the state Coastal Zone Management agency to determine whether a proposed project will have an effect on the system, and if so, the alternative sites or mitigating measures that must be incorporated in the project's design.

Wild and Scenic Rivers Act

This statute prohibits federal assistance for water resource projects that would have direct and adverse effects on, invade, or unreasonably diminish, the special values of a congressionally designated wild and scenic river. Pass-through entities and subrecipients should consult with appropriate state or federal (National Park Service or Bureau of Land Management) agency to determine whether the project or any alternatives under consideration may affect a designated river.

Endangered Species Act (ESA)

This statute requires Federal agencies to ensure that their activities are not likely to jeopardize endangered species, adversely modify designated critical habitats, or incidentally take (injure or kill) endangered animals without authorization, in consultation with the appropriate federal wildlife agency (the U.S. Fish and Wildlife Service or National Marine Fisheries Service) as described in 50 CFR Part 402. The ESA consultation process is triggered when an action "may affect" ESA-protected species or critical habitat. Pass-through entities and subrecipients should coordinate with EPA to ensure consultation occurs where appropriate."

Safe Drinking Water Act

Precludes the use of EPA financial assistance for projects that would contaminate sole source aquifers. Pass-through entities and subrecipients must contact state officials to determine whether a sole source aquifer is in the vicinity of the proposed project. If a sole source aquifer is in the project planning area, then the assistance recipient, in consultation with state ground water officials, must conduct investigations to determine if the aquifer could be contaminated by the project. If the project could potentially affect ground water supplies, the assistance recipient, in consultation with ground water officials, must elect an alternative site or devise adequate mitigating measures.

	Document Description	Page 18
2100000918	Lower Pitman Creek Watershed Plan	

**Memorandum of Agreement Standard Terms and Conditions
Revised December 2019**

1.00 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.

2.00 EEO Requirements

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The contractor shall comply with all terms and conditions of the Act.

3.00 Cancellation clause:

Both parties shall have the right to terminate and cancel this contract at any time not to exceed thirty (30) days' written notice served on the other party by registered or certified mail.

4.00 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 day's written notice of termination of the agreement due to lack of available funding.

5.00 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

	Document Description	Page 19
2100000918	Lower Pitman Creek Watershed Plan	

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. If the contract funding is reduced, then the scope of work related to the contract may also be reduced commensurate with the reduction in funding. This reduction of the scope shall be agreeable to both parties and shall not be considered a breach of contract.

6.00 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 pertinent to the contract." The Contractor, as defined in KRS 45A.030, 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).

7.00 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 corporate and utility tax, sales and use 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.

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

	Document Description	Page 20
2100000918	Lower Pitman Creek Watershed Plan	

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.

[Check box section below need only be included for Contractors that are quasi-governmental entities or 501(c)3 non-profit entities.]

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.

8.00 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:

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,

	Document Description	Page 21
2100000918	Lower Pitman Creek Watershed Plan	

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

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

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.

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.

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.

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.

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

	Document Description	Page 22
2100000918	Lower Pitman Creek Watershed Plan	

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.

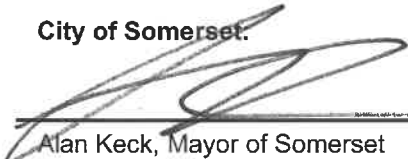
	Document Description	Page 23
2100000918	Lower Pitman Creek Watershed Plan	

Approvals

This contract is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this contract 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 contract 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 contract.

AGREED TO BY:

City of Somerset.



Alan Keck, Mayor of Somerset

5/24/2021

Date

DEPT. FOR ENVIRONMENTAL PROTECTION:

Anthony R. Hatton, Commissioner

Date

ENERGY AND ENVIRONMENT CABINET:

Rebecca W. Goodman, Secretary

Date

APPROVED AS TO FORM AND LEGALITY:

Elizabeth U. Natter, Executive Director
Office of Legal Services

Date