

EXHIBIT C:

GRANT AGREEMENT



Commonwealth of Kentucky

CONTRACT MODIFICATION

DOC ID NUMBER:

PON2 112 1900004353

Version: 2

Record Date: 09/25/20

Document Description: Breathitt Co Waterline Extension Project
19A-002Cited Authority: KRS147A.002
Community Block Grant Program

Reason for Modification: Modification One (1)

Original Contract Amount - \$750,000
Amount of Increase - \$750,000
New Contract Amount - \$1,500,000

The Grant Agreement (GA), by and between the Commonwealth of Kentucky, Department for Local Government (DLG) and Breathitt County Water District, is being amended as follows:

Appalachian Regional Commission (ARC) has awarded Breathitt County Water District an additional \$750,000 in funds to add an additional 18,897 L.F. of waterline to serve an additional 28 households.

Issuer Contact:Name: Jennifer Peters
Phone: 502-573-2686
E-mail: Jennifer.Peters@ky.gov**Vendor Name:**
BREATHITT COUNTY WATER DISTRICT

1137 MAIN STREET, SUITE 305

JACKSON KY 41339**Vendor No.** KY0033453
Vendor Contact
Name: SHANNON MOORE
Phone: 606-666-3800
Email:**Effective From:** 2019-05-31**Effective To:** 2022-07-31

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0.00000		Breathitt Co Waterline Extension Project 19A-002	\$0.000000	\$1,500,000.00	\$1,500,000.00

Extended Description:

Modification to add an additional 18,897 L.F. of waterline to serve an additional 28 households.

Increase in budget: to add an additional \$750,000 in ARC funds.

Original Contract Amount - \$750,000
Amount of Increase/Decrease - \$750,000
New Contract Amount - \$1,500,000

The Recipient shall design and construct approximately 16,013 linear feet of waterline along War Shoal Road, Old Bailey Hollow, Robinson Fork Road, and Road Fork Road, replace water telemetry equipment at 10 monitoring locations, inspect 19 water tanks, repair one water tank, replace one 6-inch waterline

river crossing, and install four generator-accessible connections at four pump stations. The river crossing requires the installation of 600 L.F. of waterline at the KY 3193 bridge near Hounshell Road. The new waterlines will provide water service to 32 households currently without access to public water service, and improve service for 1,836 households and 25 businesses currently served by the water district.

Shipping Information:	Billing Information:
Department for Local Government - Office of Grants 100 Airport Rd, 3rd Fl	Department for Local Government - Office of Grants 100 Airport Rd, 3rd Fl
Frankfort KY 40601	Frankfort KY 40601

TOTAL CONTRACT AMOUNT:	\$1,500,000.00
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	Document Description	Page 3
1900004353	Breathitt Co Waterline Extension Project 19A-002	

Modification History
PON2 112 1900004353-2
Modification One (1)
September 1, 2020

Original Contract Amount - \$750,000
Amount of Increase - \$750,000
New Contract Amount - \$1,500,000

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All other terms and conditions of GA, except as modified above or by prior amendments, if any, are hereby ratified and confirmed. This Amendment shall be approved by the Secretary of the Finance and Administration Cabinet prior to it taking effect.

	Document Description	Page 3
1900004353	Breathitt Co Waterline Extension Project 19A-002	

Modification History
 PON2 112 1900004353-2
 Modification One (1)
 September 1, 2020

Original Contract Amount - \$750,000
 Amount of Increase - \$750,000
 New Contract Amount - \$1,500,000

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	Document Description	Page 4
1900004353	Breathitt Co Waterline Extension Project 19A-002	

GRANT INFORMATION AND IDENTIFICATION

Implementation Agreement Number: 19A-002

ARC Contract Number: KY-19554-302-19

Grantee: Breathitt County Water District

Project Name: Breathitt County Waterline Extension Project

Federal Agency: Appalachian Regional Commission

Basic Federal Agency: Kentucky Department for Local Government

CFDA Title: Appalachian Regional Development

CFDA Number: 23.002

Award Year: 2019

	Document Description	Page 5
1900004353	Breathitt Co Waterline Extension Project 19A-002	

	Document Description	Page 6
1900004353	Breathitt Co Waterline Extension Project 19A-002	

IMPLEMENTATION / FISCAL AGENT AGREEMENT

This Agreement is made and entered into this 24th day of May, 2019, by and between the Breathitt County Water District, Kentucky, hereinafter referred to as the Recipient and the Commonwealth of Kentucky, Department for Local Government (DLG), hereinafter referred to as the Commonwealth.

The purpose of this Agreement is to set forth the terms and conditions under which the Commonwealth agrees to distribute the sum of ~~\$750,000~~ \$1,500,000 in federal funds to the Recipient. The Appalachian Regional Commission (ARC) distributes construction grants funds for local projects. The Appalachian Regional Development Act of 1965 (40 U.S.C. §§ 14101-14526, as amended) (the "Act"), authorizes other agencies to assist ARC with the administration of construction grants by becoming a Registered State Basic Agency ("RSBA") and serving as a fiscal agent (the "Fiscal Agent"). DLG, as the Fiscal Agent, will administer the construction grant pursuant to a Program Design Proposal, dated December 16, 2016 and a Registered State Basic Agency Memorandum of Understanding by and between ARC and DLG, dated December 16, 2016 (the "MOU"). The MOU is subject to the ARC Manual For State Basic Agency Grant Administration, dated December 2018 (the "ARC Manual"). ARC has agreed to provide grant funding to Recipient pursuant to a grant agreement, dated April 10, 2019. This Agreement is subject to and shall be governed in accordance with the provisions of the Act, the MOU, the Program Design, the ARC Manual, and the ARC Grant Agreement. As the Fiscal Agent, DLG will distribute and administer ARC grant funds to Recipient to effectuate the project set forth below.

Recipient desires to use the funds for the Breathitt Waterline Extension Project, which shall be completed by July 31, 2022.

	Document Description	Page 7
1900004353	Breathitt Co Waterline Extension Project 19A-002	

IMPLEMENTATION / FISCAL AGENT AGREEMENT

1. GENERAL PROVISIONS

A. Contents of Agreement

This Implementation/Fiscal Agent Agreement, hereinafter called the "Agreement," shall consist of the following documents which are incorporated by reference as if fully set out herein: (1) the ARC Grant Agreement dated 4/10/19 and all exhibits to which that Grant Agreement refers; (2) the Application submitted to ARC on February 25, 2019 and assigned Application ID: KY-19554 (3) the Memorandum of Understanding (MOU) between DLG and ARC, executed on December 16, 2016; (4) all State and Federal Law requirements to which the Application and this Agreement refer or apply; (5) the Kentucky Community Development Block Grant Handbook currently in effect, plus any advisories; (6) any applicable administrative regulations; and (7) any amendments or modifications to any of the above referenced requirements.

B. General Definitions

Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement:

(1)"Act" means the Housing and Community Development Act of 1974, Pub. L. No. 93-383, as amended and/or Section 302 of the Appalachian Regional Development Act of 1965 (ARDA), as amended, (40 USC 14321).

(2)"Application" means the ARC Application, and such other submittals, as are specified in Exhibit A of this Agreement.

(3)"ARC" means the Appalachian Regional Commission.

	Document Description	Page 8
1900004353	Breathitt Co Waterline Extension Project 19A-002	

(4)"CDBG" means a grant guided by Title I of the Housing and Community Development Act of 1974, as amended and those regulations set forth in 24 CFR Part 570, Subpart I, as may be amended from time to time and all other applicable Federal and State regulations and laws and assurances signed by Recipient at the time the Recipient's Application was submitted.

(5)"Commonwealth" when not used to designate the territory of the Commonwealth of Kentucky shall mean the Department for Local Government, its Commissioner, or any other person to whom the Commissioner has delegated authority to act with respect to matters covered by this Agreement.

(6)"Default" means any default set forth in Section 6-A to this Agreement.

(7)"Eligible Costs" means costs for the activities specified in Exhibit B of this Agreement for which grant funds are budgeted as specified in Exhibit C of this Agreement, provided that such costs (i) are incurred in connection with any activity which is eligible under Section 105A of Title I of the Act, and (ii) conform to the requirements of 2 CFR 200 (Cost Principles Applicable to Grants and Contracts with State and Local Government), as may be amended from time to time. For purposes of determining the conformity of costs to said Attachment B, all costs set forth in Section C thereof may be considered eligible without prior approval of the Commonwealth.

(8)"Environmental Conditions" means the condition imposed by law, particularly 24 CFR Part 58, and the provisions of the Agreement which prohibit or limit the commitment and use of grant funds until certain procedural requirements have been completed.

(9)"Environmental Requirements" means the requirements described in 24 CFR Part 58.

(10)"Environmental Studies" means all eligible activities necessary to produce an "environmental document", as that term is defined at Section 1508.10 of 40 CFR Part 1508, or to comply with the requirements of 24 CFR Part 58.

(11)"Grant Funds" means those ARC funds to be provided by the Commonwealth to Recipient pursuant to the terms of this Agreement, as specified in Exhibit A of this Agreement.

	Document Description	Page 9
1900004353	Breathitt Co Waterline Extension Project 19A-002	

(12)"HUD" means the United States Department of Housing and Urban Development.

(13)"Program Income" means the CDBG portion of: (i) any income earned by Recipient, or an agent or agency of Recipient, from the disposition of real or personal property acquired in whole or in part with grant funds; (ii) the repayment proceeds (including principal and interest) of any loan made in whole or part with grant funds; (iii) any other revenues defined as program income in 24 CFR Part 570, Subpart J. The "ARC portion" means an amount computed by applying the percentage of participation of ARC funds (i) in the acquisition cost of the property to the total income from the disposition of such property, (ii) in the amount of the loan to the total repayment proceeds of such loan, or, (iii) in the cost of an activity to the total income from such activity.

(14)"Project" means the activities described in the Application and in Exhibits B and C of this Agreement, which are to be carried out to meet the objectives of the ARC Program.

(15)"Recipient" means the entity receiving grant funds pursuant to this Agreement, as more particularly identified on the cover page of this Agreement, as well as "contractor" as defined in KRS 45A.030.

(16)"Recipient Activities" means those activities of the Project to be carried out by the Recipient, its agent or agency, which activities are described in Exhibit B of this Agreement and further defined in the Application.

2. AMOUNT AND AUTHORIZED USES OF GRANT FUNDS

A. Grant Assistance Provided

In consideration of the various obligations undertaken by the Recipient pursuant to this Agreement, as represented by the Recipient in the Application, the Commonwealth agrees, subject to the terms and conditions set forth herein, to provide the Recipient with grant funds in the amount specified in Exhibit A of this Agreement.

B. Authorized Uses of Grant Funds

	Document Description	Page 10
1900004353	Breathitt Co Waterline Extension Project 19A-002	

The grant funds provided to the Recipient pursuant to this Agreement shall be used only for the specific purposes described in Exhibit B of this Agreement and in the amounts budgeted in Exhibit C of this Agreement, subject to the project amendments provisions of the ARC program as administered by the Commonwealth.

C. Adjustments to Grant Funds

(1)The amount of grant funds which ARC has agreed to provide to the Recipient under their Grant Agreement and to be carried out by the Commonwealth under this Agreement has been determined in reliance upon the cost estimates of the Recipient with respect to the activities set forth in the Application. The Commonwealth reserves the right to reduce the grant amount (i) to conform to any revision to which the Commonwealth and ARC agree with respect to Exhibits B or C of this Agreement, (ii) if the actual costs for activities are lower than those set forth in Exhibits B or C of this Agreement, or (iii) subject to the availability of funds from the ARC.

(2)The parties understand that funding pursuant to this Agreement may be discontinued by ARC in subsequent budgets.

D. Recipient's Use of Program Income

(1)All Program Income which is received by the Grantee, prior to completion of all Grantee Activities shall be used prior to, and in place of, any draw of grant funds to the extent adequate to pay costs so incurred.

(2)Unless otherwise specifically stated in Exhibit B of this Agreement, all Program Income received by the Recipient, after completion of all Recipient Activities shall be used by the Recipient, for community or economic development activities eligible for assistance under the Act.

3. DISBURSEMENT OF GRANT FUNDS

A. Authorization

(1)Promptly after the Commonwealth has received from the Recipient two (2) fully executed copies of this Agreement and has approved evidentiary materials required by Exhibit D of this Agreement that would allow a draw of grant funds pursuant to the terms of Exhibits B and C of this Agreement, the Commonwealth shall authorize the amount of grant funds specified in Exhibit A of this Agreement.

	Document Description	Page 11
1900004353	Breathitt Co Waterline Extension Project 19A-002	

(2)The Recipient is authorized to draw grant funds only in accordance with the provisions of this Agreement and the procedures established by the Commonwealth. No payment by the Commonwealth of an improper or unauthorized draw to the Recipient shall constitute a waiver of the right of the Commonwealth to challenge the validity of said draw, to enforce all rights and remedies set forth in the Agreement, or take corrective or remedial administrative action, which action may include, without limitation, suspension or termination of the Recipient's funding under this Agreement.

(3)The disposition of any grant funds that remain available following completion of the Project, termination of this Agreement by the Commonwealth, or termination of the Project for any cause, shall be in accordance with closeout procedures then in effect or established by the Commonwealth including provisions of 2 CFR 200 and the Recipient shall not have any rights to such grant funds.

B. Incurring Costs for Project Activities

(1)The use of grant funds is conditioned upon the Recipient incurring costs to be paid in accordance with this Agreement or as otherwise approved by the Commonwealth in writing. Except as permitted by 24 CFR Part 58, no costs to be paid out of project funds may be incurred by the Recipient until all Environmental Conditions of 24 CFR Part 58 have been fully satisfied and the Commonwealth has issued the environmental clearance required by 24 CFR Part 58.

(2)The authorization to incur costs in subsection (1) above is not an authorization to reimburse those costs and does not mean or imply that such costs will be reimbursed out of grant funds. The Recipient may voluntarily, at his or her own risk, and upon his or her own credit and expense, incur costs as authorized in subsection (1) above, but his or her authority to reimburse or to be reimbursed out of grant funds shall be governed by the provisions of this Agreement applicable to the payment of costs and the release of funds by the Commonwealth.

(3)Prior to the issuance by the Commonwealth of the environmental releases required by 24 CFR Part 58, the Recipient may not use any funds, including local funds, to take any action with respect to the Project where such action might have an adverse environmental effect, would limit choices among competing alternatives, or might alter the environmental premises on which the pending clearance is based in such a fashion that the validity of the conclusions to be reached would be affected.

	Document Description	Page 12
1900004353	Breathitt Co Waterline Extension Project 19A-002	

C. Authorization by the Commonwealth for the Recipient to Draw Grant Funds

Recipient's draw of grant funds can occur only after the following has occurred:

(1)The Commonwealth has issued the environmental clearance required by 24 CFR Part 58,

(2)The Commonwealth has approved the required evidentiary materials specified in Exhibit D of the Agreement,

(3)The Commonwealth has authorized, per the executed Notice of Approval of Evidentiary Materials and Release of Funds, the Recipient's ability to draw grant funds,

(4)Recipient shall have submitted all certifications and materials required as conditions precedent to Recipient's authority to pay costs out of grant funds,

(5)If authorized by Exhibit D herein and if the Commonwealth finds Recipient has timely and acceptably submitted the evidentiary materials in Exhibit D herein, approved same, and if no default has occurred, as defined in Section 6-A herein, and

(6)Recipient has not been served by the Commonwealth with notice of Recipient's suspension of authority to so draw the grant funds nor is in breach of its obligation to report a default.

4. REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS

A. Recipient's Representations and Warranties

The Recipient has, by and through consultations among all appropriate members of the Recipient's governing body and its officers, examined each of the following and by its execution of this Agreement the Recipient does, upon information and belief, represent and warrant to the Commonwealth that:

(1)The Recipient is duly organized and validly existing under the laws of the Commonwealth, and has all the requisite power and authority to enter into this Agreement and to assume the responsibilities for compliance with all Federal and State laws and regulations.

(2)A resolution, motion, order or ordinance has been duly adopted, passed or enacted

	Document Description	Page 13
1900004353	Breathitt Co Waterline Extension Project 19A-002	

as an official act of the Recipient's governing body, authorizing the execution and delivery of this Agreement by the Recipient and authorizing and directing the person executing this Agreement to do so for and on behalf of the Recipient, said acts being done in such manner and form as to comply with all applicable laws to make this Agreement the valid and legally binding act and agreement of the Recipient.

(3)There is no action, proceeding, or investigation now pending, nor any basis therefore, known or believed by the Recipient to exist, which (i) questions the validity of this Agreement, or any action taken or to be taken under it, or (ii) is likely to result in any material adverse changes in the authorities, properties, assets, liabilities, or conditions (financial or otherwise) of the Recipient which would materially and substantially impair the Recipient's ability to perform any of the obligations imposed upon the Recipient by this Agreement.

(4)The representations, statements, and other matters contained in the Application were true and complete in all material respects as of the date of filing. The Recipient is aware of no event which would require any amendment to the Application (other than an amendment which has been filed with and approved by the Commonwealth) which would make such representations, statements, and other matters true and complete in all material respects and not misleading in any material respect. The Recipient is aware of no event or other fact, which should have been, and has not been, reported in the Application as material information.

(5)The Recipient has obtained or has reasonable assurances that it will obtain all Federal, State and local government approvals and reviews required by law to be obtained by the Recipient for the Project.

(6)Insofar as the capacity of the Recipient to carry out any obligation under this Agreement is concerned, (i) the Recipient is not in material violation of its Charter, or any mortgage, indenture, agreement, instrument, judgment, decree, order, statute, rule or regulation and (ii) the execution and performance of this Agreement will not result in any such violation.

(7)Except for approved eligible administrative and personnel costs, none of the recipient's designees, agents, members, officers, employees, consultants or members of its governing body in which the program is situated, and no other public official of the recipients of such locality or localities who exercises or who has exercised any functions or responsibilities with respect to the project during his or her tenure, or who is in a position to participate in a decision-making process or gain inside information with regard to the project, has or shall have any interest, direct or

	Document Description	Page 14
1900004353	Breathitt Co Waterline Extension Project 19A-002	

indirect, in any contract or subcontract or the proceeds thereof for work performed in connection with the project or in any activity, or benefit there from, which is part of this project at anytime during or after such person's tenure unless all procedures for an exception have been documented and submitted in writing to the Department for Local Government and the Department for Local Government has approved such exception.

(8)Anti-Lobbying – The recipient certifies that;

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) 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 agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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 by 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 each such failure.

(9)Conflicts of Interest - The procedures for requesting, documenting, and submitting a request for an exception from the Conflict of Interest provisions shall include the applicable procedures delineated in 24 CFR 570.489(h)(4); KRS 99.350(8); KRS 61.252(1); KRS 65.003; and the local community ethics code. This Conflict of Interest provision shall be in addition to the requirements in the "Common Rule," 24 CFR Part 85, 24 CFR 570.489(h), A-110, KRS 45A.340, KRS 61.210, KRS 61.220 and KRS 61.250 et. seq.

	Document Description	Page 15
1900004353	Breathitt Co Waterline Extension Project 19A-002	

B. Obligation to Complete Recipient Activities as Scheduled

(1)The Recipient shall use its best efforts to assure the completion of the Recipient Activities described in Exhibit B of the Agreement and further defined in the Application.

(2)The Recipient agrees that the foregoing undertaking and assurance means that Recipient shall, to the maximum extent permitted by law, use and apply all of its governmental and proprietary powers for such completion, including but not limited to those powers governing taxes, other revenues, credit, eminent domain and appropriations, if necessary, for the purpose of providing any shortfall between funds available under the grant and funds necessary to complete all of the Recipient Activities described in Exhibit B of this Agreement.

C. Commonwealth Approval of Amendments

The Commonwealth will consider program amendments initiated by the Recipient or by the Commonwealth. The Commonwealth defines a program amendment as a request for change in an approved program which (i) is a new activity in the program, (ii) significantly alters the scope, location, or objective of the approved activities or beneficiaries, and/or (iii) results in a change or cumulative changes of the approved budget. Any amendments will be made in accordance with the procedures set forth in the Kentucky Community Development Block Grant Handbook established by the Commonwealth and approved by ARC.

D. Notification and Action upon Default

(1)The Recipient shall promptly give written notice to the Commonwealth upon the discovery by the Recipient of any default involving any Participating Party or Subrecipient, as defined in Section 6-A of this Agreement.

(2)Promptly, upon the discovery of any default involving any Participating Party or Subrecipient, the Recipient shall vigorously pursue, to the fullest extent possible, all remedies available to Recipient to remove or cure such default, or to seek redress or relief from its effects, including reimbursement for any grant funds expended on the Project, and to prevent or mitigate any adverse effects on the Project. Recipient shall keep the Commonwealth fully informed as to the status of such actions.

	Document Description	Page 16
1900004353	Breathitt Co Waterline Extension Project 19A-002	

5. INSPECTION AND REVIEW

A. Duty to Maintain and Rights to Inspect and Copy, Books, Records and Documents

(1)The Recipient shall keep and maintain such books, records and other documents as shall be required under rules and regulations now or hereafter applicable to grants made under the CDBG and ARC Programs, and as may be reasonably necessary to reflect and fully disclose the amount and disposition of the grant funds, the total cost of the activities paid for in whole or in part with grant funds, and the amount and nature of all investments relative to such activities which are supplied or to be supplied by other sources.

(2)All such books, records and other documents shall be available at the office of the Recipient for inspection, copying, audit and examination at all reasonable times by any duly authorized representative of the Commonwealth, ARC, the General Accounting Office and the Inspector General of the United States.

B. Site Visits

Any duly authorized representative of the Commonwealth or ARC shall, at all reasonable times, have access to all portions of the Project until completion of all closeout procedures and final settlement and conclusion of all issues arising from this grant.

C. Reports

The Recipient shall promptly furnish to the Commonwealth all reports required to be filed in accordance with any directives of the Commonwealth or any statute, rule or regulation of HUD or the ARC Agreement.

6. DEFAULTS AND REMEDIES

A. Defaults

A default shall consist of any use of grant funds for any purpose other than as authorized in Exhibits B and C of this Agreement; or any breach of any covenant, agreement, provision, or warranty (i) the Recipient made in the Agreement; (ii) the Recipient made in any agreement entered into between the Recipient and any Participating Party or Subrecipient, relating to the Project; (iii) any Participating

	Document Description	Page 17
1900004353	Breathitt Co Waterline Extension Project 19A-002	

Party or Subrecipient, made in any agreement specified in Exhibit D of this Agreement, or; (iv) of the time frame specified in Exhibit B of the Agreement.

B. Remedies Upon Default

(1) Upon occurrence of any default as described in Section 6-A, the Commonwealth may suspend the Recipient's authority to draw grant funds at any time by notice to the Recipient and ARC. If a default is not cured within thirty (30) consecutive days from notice of such default by the Commonwealth to the Recipient, the Commonwealth may continue such suspension or by delivery of notice terminate this Agreement. In the event of a termination, the Recipient's authority to draw funds shall have terminated at the date of the notice of termination and the Recipient shall have no right, title or interest in or to any grant funds remaining except as determined by ARC.

(2) In addition to any other rights or remedies, if a default consists of the Recipient's failure to submit the evidentiary materials described in Exhibit D of this Agreement or in other official written notification, the Commonwealth shall have the right to terminate this Agreement and the award of grant funds to which this Agreement relates by delivery of written notice to the Recipient. Upon such termination, all obligations of the Commonwealth pursuant to this Agreement and such award shall cease and the Recipient shall neither have nor retain any rights whatsoever with respect to the grant funds provided under this Agreement except as determined by ARC.

(3) The rights and remedies of the Commonwealth shall be deemed to be cumulative and shall be in addition to all those rights afforded the Commonwealth by law or equity. Any election of any right or remedy shall not be deemed to be an election of that right or remedy to the exclusion of any other right or remedy.

(4) The rights and remedies available to the Commonwealth in the event of a suspension or termination of the Agreement shall survive such suspension or termination.

7. EVIDENTIARY MATERIALS

A. Commitments of Participating Parties and Subrecipients

(1) In selecting the Recipient for the award of this grant, the Commonwealth has relied, in material part, upon the representations of the Recipient and Participating

	Document Description	Page 18
1900004353	Breathitt Co Waterline Extension Project 19A-002	

Parties or Subrecipients, that the Recipient and the Participating Parties or Subrecipients (i) will carry out certain activities connected with the Project; (ii) will complete those activities; (iii) have, or will have, the financial capability to assure the carrying out of the activities to the completion; and (iv) will invest, or cause to be invested, a specific value amount in the Project.

(2)Evidentiary materials submitted by the Recipient as Exhibit D which have been submitted to and approved by the Commonwealth shall not be amended in any material respect without prior written approval of the Commonwealth.

B. Form of Documentary Evidence

All documentary evidence of commitments submitted to the Commonwealth for approval shall be in the form of either (i) a duplicate original, or (ii) a photographic copy of the fully executed original, of the documents.

8. MISCELLANEOUS

A. Notice

(1)All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures and consents of any kind made pursuant to this Agreement shall be in writing.

(2)Any such communication shall be deemed effective for all purposes as of the date such communication is mailed, postage prepaid, by first class, registered or certified mail, return receipt requested, to be delivered only to the office of the addressee, addressed as follows:

(a)Communications to the Commonwealth shall be mailed to: Office of Federal Grants, Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601.

(b)Communications to the Recipient shall be addressed to the Recipient, at the address set forth in Exhibit A of this Agreement, or such other address or representative as may be furnished by the Recipient to the Commonwealth.

B. Assignment

	Document Description	Page 19
1900004353	Breathitt Co Waterline Extension Project 19A-002	

No right, benefit, or advantage inuring to the Recipient under this Agreement and no burden imposed on the Recipient hereunder may be assigned without the prior written approval of the Commonwealth. An authorization by the Commonwealth for the transfer of grant funds by Recipient to a Participating Party or Subrecipient, shall not be deemed an authorization for an assignment, and such Participating Party or Subrecipient shall not succeed to any rights, benefits or advantages of the Recipient hereunder.

C. Successors Bounds

This Agreement shall bind, and the rights, benefits and advantages shall inure to, the Recipient's successors.

D. Remedies Not Impaired

No delay or omission of the Commonwealth in exercising any right or remedy available under this Agreement shall impair any such right or remedy or constitute a waiver of any default, or an acquiescence therein.

E. Cumulative Remedies

All rights and remedies of the Commonwealth under this Agreement shall be cumulative.

F. Severability

If any article, subsection, clause or provision of this Agreement is held by any court to be unenforceable or prohibited by any law applicable to this Agreement, the rights and obligations of the parties shall be construed and enforced with that part, term or provision limited so as to make it enforceable to the greatest extent allowed by law, or, if it is totally unenforceable, as if this Agreement did not contain that particular part, term or provision.

G. Entire Agreement

This Agreement constitutes the entire agreement between the Commonwealth and the Recipient and supersedes all prior oral and written agreements between the parties hereto with respect to the subject grant. Notwithstanding the provisions of Section 1-A of this Agreement and anything contained in the Application, the

	Document Description	Page 20
1900004353	Breathitt Co Waterline Extension Project 19A-002	

provisions of this Agreement shall prevail.

H. Table of Contents; Titles and Headings

Any table of contents and the headings of the sections and subsections set forth herein are not a part of this Agreement and shall not be deemed to affect the meaning or construction of any of its provisions.

I. Amendment of this Agreement

This Agreement, or any part hereof, may be amended as previously described in Section 4-C from time to time hereafter only in writing executed by the Commonwealth and the Recipient.

J. Governing Law

This Agreement as it may affect the rights, remedies, duties, and obligations of the Commonwealth shall be governed by and construed in accordance with Federal and State law. Insofar as Federal law does not apply, the provisions of this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth.

K. Waiver by the Commonwealth

The Commonwealth reserves and shall have the exclusive right to waive, at the sole discretion of the Commonwealth, and to the extent permitted by law, any requirement or provision under this Agreement. No act by or on behalf of the Commonwealth shall be, or be deemed or construed to be, any waiver of any such requirement or provision, unless the same be in writing, signed by the Commonwealth, and expressly stated to constitute such waiver.

L. Termination of Agreement

This Agreement shall terminate upon the completion of all closeout procedures respecting this grant including provisions of the Single Audit Act, 2 CFR 200 and the final settlement and conclusion between Recipient and the Commonwealth of all issues arising out of this grant. Either party may cancel the contract upon written notice in accordance with Section 9 below. This notice, if tendered by the Commonwealth, may also include the notice to cure provided for in Section 6 B. (1).

	Document Description	Page 21
1900004353	Breathitt Co Waterline Extension Project 19A-002	

Upon termination of the agreement pursuant to this provision, the Recipient shall have no right to grant funds remaining to be disbursed. This provision shall in no way impair and shall be in addition to any additional remedies the Commonwealth may have upon a finding of default or other non-compliance according to the terms of this Agreement. Upon termination of this Agreement by either party with or without cause, the Commonwealth may declare this Agreement void from the beginning without further obligation to the Recipient. Further, if the Agreement is terminated by the Recipient with or without cause or by the Commonwealth with cause, the Commonwealth or ARC may recover all funds paid to the Recipient hereunder.

M. Anti-Speculation Provisions-Sale of Real Property

(1)When, in Exhibit D of this Agreement, a document is required to contain a provision for the prevention or discouragement of speculation in the purchase and sale of property by a beneficiary of grant funds, then, unless otherwise specified, such provision shall comply with this Section.

(2)The document shall prohibit the beneficiary of grant funds from selling or otherwise disposing of the property within a period specified in Exhibit D of this Agreement after the date of the purchase, for an amount in excess of the purchase price paid, plus the actual costs of any improvements to the property by the beneficiary. The prohibition against sale shall have the same force and effect as a lis pendens, and shall specify that in the event of any attempted sale in violation of the provision; the Recipient shall be entitled to the ex-parte issuance of an injunction restraining such sale. The document shall be executed and authenticated in such manner and form as may be required under State law to authorize its recordation at the place of recordation of deeds, as if a lis pendens and the document shall be so recorded.

(3)The document may, in conjunction with the foregoing or in lieu thereof, describe a procedure where under, in the event of any sale of the property within the period specified in Exhibit D of the Agreement, the amount of grant funds which benefited the beneficiary shall be repaid by the beneficiary to the Recipient. Such procedure may include a pro-rata reduction of the amount to be repaid, based upon the time elapsing between the date of the initial purchase of the property and its disposition by the beneficiary. The document must either specify the amount of the grant funds which benefited the beneficiary, or set forth a formula or agreed method for determining such amount. The document shall be executed and authenticated in such manner and form as may be required to authorize its recordation, as if a lis pendens and the document shall be so recorded.

	Document Description	Page 22
1900004353	Breathitt Co Waterline Extension Project 19A-002	

	Document Description	Page 23
1900004353	Breathitt Co Waterline Extension Project 19A-002	

**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 24
1900004353	Breathitt Co Waterline Extension Project 19A-002	

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 25
1900004353	Breathitt Co Waterline Extension Project 19A-002	

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 26
1900004353	Breathitt Co Waterline Extension Project 19A-002	

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 27
1900004353	Breathitt Co Waterline Extension Project 19A-002	

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 28
1900004353	Breathitt Co Waterline Extension Project 19A-002	

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.

FIRST PARTY:

Department for Local Government
100 Airport Road 3rd Floor
Frankfort, Kentucky 40601

Dennis Keene, Commissioner
Department for Local Government

SECOND PARTY:

Breathitt County Water District
1137 Main Street
Jackson, Kentucky 41339

Bobby Thorpe, Chairman
Breathitt County Water District

Examined for Form and Legality Only:

Matthew Stephens, General Counsel
Department for Local Government

Counsel
Breathitt County Water District

	<i>Document Description</i>	<i>Page 26</i>
1900004353	Breathitt Co Waterline Extension Project 19A-002	

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Commonwealth of Kentucky

Signature
Dennis Keene
Printed Name

Commissioner
Department For Local Government
Title

Date

Breathitt County Water District:

Signature
Bobby Thorpe
Printed Name

Chairman
Title

Date

Approved as to form and legality:

Dawn R. Watts
Signature

Water District Legal Counsel
Title

Dawn R. Watts
Printed Name

09-03-2020
Date

Signature
Matthew Stephens
Printed Name

General Counsel
Department For Local Government
Title


Date

	<i>Document Description</i>	<i>Page 26</i>
1900004353	Breathitt Co Waterline Extension Project 19A-002	

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Commonwealth of Kentucky:



 Signature

Dennis Keene

 Printed Name


Commissioner
 Department For Local Government

 Title

9-10-2020

 Date

Breathitt County Water District:



 Signature

Bobby Thorpe

 Printed Name

Chairman

 Title

9-3-2020

 Date

Approved as to form and legality:


 Signature

 Printed Name

Water District Legal Counsel

 Title

 Date



 Signature

Matthew Stephens

 Printed Name

General Counsel
 Department For Local Government

 Title

9-4-20

 Date