



Commonwealth of Kentucky

CONTRACT

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Document Description: HB1 East KY State Aid Funding for Emergencies (EKSAFE) Fund
 Cited Authority: KRS39A.303 EKSAFE
 East Kentucky State Aid Funding for Emergencies (EKSAFE)
 Reason for Modification:

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Effective From: 09/15/2022 **Effective To:** 06/30/2024

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0.00000		HB1 East KY State Aid Funding for Emergencies (EKSAFE) Fund	\$0.000000	\$20,000,000.00	\$20,000,000.00

Extended Description:
 Beginning July 26th and continuing through August 11, 2022, the Commonwealth of Kentucky experienced a severe overnight weather system generating multiple rounds of heavy torrential rain, creating flooding, flash flooding, mudslides, and landslides, and the deaths of an estimated 39 Kentuckians. This event severely impacted the following declared Kentucky counties: Breathitt, Casey, Clay, Cumberland, Floyd, Harlan, Johnson, Knott, Lee, Leslie, Letcher, Lincoln, Magoffin, Martin, Owsley, Perry, Pike, Powell, Whitley, and Wolfe. HB1, as passed in the 2022 Special Session of the Kentucky General Assembly, establishes funds to assist impacted counties with recovery efforts.

Shipping Information:	Billing Information:
DMA - Division of Emergency Management 100 Minuteman Pkwy Bldg 110 Frankfort KY 40601	DMA - Division of Administrative Services 100 Minuteman Pkwy Procurement Sec Frankfort KY 40601

TOTAL CONTRACT AMOUNT: \$20,000,000.00

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For the purpose of the
EAST KENTUCKY STATE AID FUNDING FOR EMERGENCIES (EKSAFE) FUND

Between

The Department of Military Affairs Division of Emergency Management

and

1. **City, county, urban-county government, consolidated local government, unified local government, or charter county government;**
2. **Nonprofit or public utility service provider;**
3. **State agency; or**
4. **School district.**

This Memorandum of Agreement (this "Agreement") is entered into by and between the **Division of Emergency Management** (hereafter "Emergency Management"), an agency of the Commonwealth of Kentucky, and the **SOUTHERN WATER AND SEWER** (hereafter "Recipient").

Collectively, Emergency Management and Recipient shall be referred to as "the Parties."

WHEREAS, on July 28, 2022 Andy Beshear, Governor of the Commonwealth of Kentucky, in response to a severe weather system generating multiple rounds of heavy torrential rain, creating flooding, flash flooding, mudslides, and landslides impacting the Commonwealth of Kentucky, creating dangerous conditions and damage to public infrastructure, utility distribution systems, and private properties, issued Executive Order 2022-457, declaring a State of Emergency in the Commonwealth of Kentucky;

WHEREAS, on July 29, 2022, President Joseph R. Biden Jr. approved a Major Disaster Declaration in the Commonwealth of Kentucky making, through amendment, federal funding available to affected individuals, state and local governments located in Breathitt, Casey, Clay, Cumberland, Floyd, Harlan, Johnson, Knott, Lee, Leslie, Letcher, Lincoln, Magoffin, Martin, Owsley, Perry, Pike, Powell, Whitley, and Wolfe;

WHEREAS, Executive Order 2022-457 orders and directs that the Division of Emergency Management within the Department of Military Affairs execute the Kentucky Emergency Operations Plan and, from the Kentucky Emergency Operations Center, to coordinate the response and relief activities of all state agencies and private relief organizations in response to this emergency;

WHEREAS, Executive Order 2022-457 orders and directs that all state agencies to coordinate any and all public and emergency information and/or activities/releases related to this emergency and the response efforts of state agencies with the Division of Emergency Management;

WHEREAS, Executive Order 2022-457 orders and directs that the Finance and Administration Cabinet to provide assistance with incident/disaster resource management, procurements and contracting and to fund the urgent operational and/or response of the Division of Emergency Management and the unbudgeted expenditures.

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and obligations of other state agencies that are incurred in response to and recovery from this emergency incident and in executing the provisions of this Executive Order;

WHEREAS, the Kentucky General Assembly during the 2022 Special Session enacted House Bill 1, an act creating the East Kentucky State Aid Funding for Emergencies (“EKSAFE”) fund, making appropriations thereto, and declaring an emergency. The Governor signed HB into law on August 26, 2022;

WHEREAS, HB 1 charges the Division of Emergency Management to administer the EKSAFE fund to provide financial assistance for those impacted and provide financial support to the Eastern Kentucky region to recover from the devastation caused by the storms and tornadoes in accordance with the HB 1;

WHEREAS, HB 1 charges the Department for Local Government to assist in the administration of portions of the EKSAFE fund;

THEREFORE, the Parties agree as follows:

1. **Purpose of Memorandum.** On behalf of the Commonwealth of Kentucky, the Division of Emergency Management, is responsible for administering the EKSAFE fund as authorized by the provisions of HB 1 enacted during the 2022 Special Session of the Kentucky General Assembly. This Memorandum of Agreement (“MOA” or “Agreement”) sets forth the responsibilities of the of the Parties regarding the administration, use, and reporting of the EKSAFE fund.
2. **Agreement Term.** This Agreement is effective beginning **SEPTEMBER 15, 2022** and ending **JUNE 30, 2024**. Any obligations placed upon the Recipient by HB 1, or otherwise provided by law, shall survive the termination of this MOA.
3. **Roles of the Parties.**
 - a. Emergency Management shall be responsible for the following:
 - i. **Eligible Entity:** The Division of Emergency Management shall require sufficient information and attestation to confirm that the Recipient has disaster-related needs as a result of the devastation experienced from the July 2022 severe storms, flooding, landslides and mudslides and is a:
 1. City, county, urban-county government, consolidated local government, unified local government, or charter county government;
 2. Nonprofit or public utility service provider;
 3. State agency; or
 4. School district;
 - ii. **Eligible Location:** Emergency Management shall require sufficient information and attestation to confirm that the Recipient has disaster-related needs in response to the severe storms, flooding, landslides and mudslides that occurred in July 2022 and maintains substantial operations in Breathitt, Casey, Clay, Cumberland, Floyd, Harlan, Johnson, Knott, Lee, Leslie, Letcher, Lincoln, Magoffin, Martin, Owsley, Perry, Pike, Powell, Whitley, and Wolfe County. Any dispute regarding whether an entity maintains substantial contacts in one or more of the eligible Counties shall be in the sole discretion of Emergency Management.
 - iii. **Eligible Expenses:** Emergency Management shall require sufficient information and attestation to confirm that the Recipient’s EKSAFE fund expenditures are used for disaster and recovery relief.

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- iv. **Reporting:** Emergency Management shall require a monthly report, due on the tenth day of each month following distribution of funds, with sufficient information and attestation to confirm the Recipient's continued eligibility to receive EKSAFE funds, that the Recipient's expenditures are consistent with the intent of the EKSAFE fund, and include, but are not limited to:
 - 1. The legal name of the Recipient;
 - 2. The dollar amount of EKSAFE funds received;
 - 3. The dollar amount of EKSAFE funds repaid;
 - 4. A detailed description of how the monies were used; and
 - 5. Status of all requests for reimbursement, grants requests or insurance claims relevant to projects identified in Recipient's award of EKSAFE funds.
- b. Recipient of EKSAFE funds shall:
 - i. **Application:** Recipient hereby acknowledges that it submitted an application for EKSAFE funds to the Division of Emergency Management and that:
 - 1. Recipient's descriptions and representations contained in, attached to, or submitted in support of the Application are true and accurate; and
 - 2. Recipient shall immediately place the Division of Emergency Management on notice, utilizing the methods described herein, if any information submitted in the application is inaccurate or has materially changed.
 - ii. **Eligible Entity:** The Recipient shall provide sufficient information and attestation, as determined by the Division of Emergency Management, to confirm that the Recipient has disaster-related needs as a result of the devastation experienced from the July 2022 severe storms, flooding, landslides, and mudslides and qualifies as a:
 - a:

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1. City, county, urban-county government, consolidated local government, unified local government, or charter county government;
 2. Nonprofit or public utility service provider;
 3. State agency; or
 4. School district;
- iii. **Eligible Location:** The Recipient shall provide sufficient information and attestation, as determined by the Division of Emergency Management, to confirm that the Recipient has disaster-related needs in response to the severe storms, flooding, landslides and mudslides that occurred in July 2022 and is located in the counties of Breathitt, Casey, Clay, Cumberland, Floyd, Harlan, Johnson, Knott, Lee, Leslie, Letcher, Lincoln, Magoffin, Martin, Owsley, Perry, Pike, Powell, Whitley, and Wolfe;
- iv. **Eligible Expenses:** The Recipient shall provide sufficient information and attestation, as determined by the Division of Emergency Management, to confirm that the Recipient's EKSAFE fund expenditures are either used for disaster and recovery relief or to provide fiscal liquidity;
- v. **Repayment of EKSAFE funds:**
1. In accordance with HB 1, if after receiving moneys from the EKSAFE fund the Recipient receives disaster or recovery moneys from any other source, the Recipient shall immediately notify and reimburse the Commonwealth of Kentucky up to the amount of disaster or recovery moneys received from another source within 30 days of receiving the moneys from another source.
 2. **Strained Fiscal Liquidity** – For entities receiving moneys to address strained fiscal liquidity claims as a result of the July 2022 severe storms, flooding, landslides and mudslides or the recovery therefrom, the Recipient shall maintain sufficient financial information evidencing the Recipient's current financial condition, including its fiscal liquidity and expected future expenditures and promptly provide said information to Department for Local Government upon request. Based upon the information provided, Department for Local Government shall make a determination regarding the Recipient's ability to repay the EKSAFE funds while maintaining the Recipient's essential services and establish a schedule of payments in accordance with the Recipient's financial condition.
- vi. **Monthly Reporting:** The Recipient shall submit monthly reports, due on the tenth day of each month following distribution of EKSAFE funds, to the Division of Emergency Management or their designee to provide sufficient information and attestation to confirm the Recipient's continued eligibility to receive EKSAFE funds, that the Recipient's expenditures are consistent with the intent of the EKSAFE fund, and include, but are not limited to:
1. The legal name of the Recipient;
 2. The dollar amount of EKSAFE funds received;

17(c)
Repayment

17(d)

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3. The dollar amount of any EKSAFE funds repaid;
 4. A detailed description of how the monies were utilized; and
 5. Status of request for reimbursement, grants requests or insurance claims relevant to projects identified in Recipient's award of EKSAFE funds.
- vii. **Advancement Reporting:** If the Recipient receives an advancement of EKSAFE funds to address strained financial liquidity while awaiting reimbursement as contemplated by HB 1, the Recipient shall maintain sufficient financial information for the Division of Emergency Management and the Department for Local Government that include an accounting of the advancement and any amount of payment for reimbursement required by House Bill 1. Any accounting shall comport with the applicable standards published by the Governmental Accounting Standards Board (GASB) for the type of entity that received the funds;
 - viii. The Recipient shall perform or cause to be performed all necessary acts to plan, design and complete the project in accordance with the application, which is hereby incorporated herein and made a part of this MOA;
 - ix. The Recipient shall obtain all necessary permits, licenses, and approvals required for completion of the project from the appropriate governmental entities;
 - x. The Recipient shall comply with all applicable federal and state statutes, executive orders, regulatory requirements, and policies;
 - xi. The Recipient shall use its own procurement procedures that are compliant with all applicable state and local laws for all purchases of goods or services related to the Project; and
 - xii. Any unauthorized or improper expenditure of funds, or expenditure of funds other than in accordance with the terms of this MOA shall be deemed a default of this MOA by the Recipient. The Recipient shall reimburse the Commonwealth all funds that are not spent in accordance with this MOA and applicable laws.

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4. **Eligible Expenses** - EKSAFE fund proceeds may only be expended to support disaster and recovery relief, including:
 - a. **Non-Federal Cost Share** - Any portion of the state or local share of the non-federal cost share of FEMA eligible expenses or expenses covered by any other disaster related relief aid provided by the Federal Government of the United States;
 - b. **Uninsured/Underinsured Costs** - Disaster and recovery related expenses that are either not covered by insurance, any portion that exceeds insurance coverage, or the Recipient is awaiting reimbursement from the insurance provider;
 - c. **FEMA Ineligible** - Disaster or recovery related expenses that are not eligible for FEMA disaster relief or emergency aid; and
 - d. **Strained Fiscal Liquidity** - Expenses of city, county, urban- county government, consolidated local government, unified local government, charter county governments or nonprofit or public utility service providers experiencing strained fiscal liquidity as a result of the July 2022 severe storms, flooding, landslides, and mudslides or the recovery therefrom.
5. **EKSAFE funds Promissory Note, Transfer Repayment & Use.** The Parties anticipate the following use of the EKSAFE funds monies:
 - a. Pursuant to this Agreement, Recipient has been determined to be eligible for and has been granted EKSAFE fund monies in the amount not to exceed twenty million dollars (\$20,000,000);
 - b. EKSAFE fund Financing Pool. The EKSAFE fund monies listed above consist of:
 - i. Non-Federal Cost Share;
 - ii. Uninsured/Underinsured Costs;
 - iii. FEMA Ineligible; or
 - iv. Strained Fiscal Liquidity.
6. **Records.** The Parties will have sole responsibility as follows:
 - a. The Division of Emergency Management and the Recipient shall maintain their respective records necessary to fulfill any audit or other administrative responsibilities related to the EKSAFE fund until June 30, 2029 five (5) years after any remaining EKSAFE funds lapse to the General Fund) unless a longer retention period is required by the parties respective records retention schedule;
 - b. The Parties agree to utilize data privacy and security practices that:
 - i. Include appropriate measures to ensure the protection of individual and household privacy;
 - ii. Provide EKSAFE fund information, including any personally identifiable information, is collected and used only to administer and provide required reports regarding the EKSAFE fund; and
 - iii. Provide confidentiality protections for data collected about any individual, including those who are survivors of intimate partner violence, sexual assault or stalking.
 - c. Each respective party shall be responsible for its response to any request regarding the EKSAFE fund made pursuant to the Kentucky Open Records Act.
7. **Duty to Cooperate.** The Parties agree that they will cooperate to the extent necessary to comply with any lawful request received by any of the Parties with respect to the administration of the EKSAFE fund.

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8. **Personal Information Security.** The Parties shall ensure that they and any of their employees, agents, successors or assigns, including, but not limited to, a contractor or subcontractor, shall maintain and protect Personal Information, as defined by KRS 61.931, in a manner consistent with KRS 61.931 through KRS 61.934.
9. **Misuse of Information.** Recipient shall be responsible for ensuring that all information collected under the administration EKSAFE funds and subsequently accessed by the Recipient, its employees, agents, or contractors, shall only be used for the purposes contemplated by this Agreement or for other purposes related to and authorized by the EKSAFE fund.
10. **Entire Agreement.** This Agreement shall constitute the entire agreement between the Parties concerning Recipient's access to EKSAFE funds. Except as set forth herein, this Agreement supersedes any prior written or oral agreement.
11. **Amendments.** The terms of this Agreement may not be waived, altered, modified, or amended except by written agreement of authorized representatives of both Parties.
12. **Assignments.** This Agreement is binding upon, and inures to the benefit of, the Parties and their respective successors and assigns. Assignment of the rights and responsibilities specified by this Agreement shall require the written consent of the non-assigning parties, with such consent not to be unreasonably withheld.
13. **Jurisdiction and Venue.** All questions as to execution, validity, interpretation, and performance of this Agreement shall be governed by the laws of the Commonwealth of Kentucky and applicable federal law. Venue shall lie in Franklin Circuit Court, Franklin County, Kentucky.

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**Memorandum of Agreement Standard Terms and Conditions
Revised January 2023**

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 Contractor 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

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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 contract to reveal to the Commonwealth 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. Disclosure of any violations is required prior to the award of any state contract and throughout the duration the contract.

Failure to disclose violations, shall be grounds for the Commonwealth's disqualification of a contractor or subcontractor from eligibility for future state contracts for a period of two (2) years.

To comply with KRS 45A.485, the Contractor and all subcontractors performing work

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under this contract shall report any such final determination(s) of any violation(s) within the previous five (5) years to the Commonwealth by providing a list of the following information regarding any violation(s): (1) specific KRS violated, (2) date of any final determination of a violation, and (3) state agency which issued the final determination.

A list of any disclosures made prior to award of a contract shall be attached to the contract.

The Contractor affirms that it has not violated any of the provisions of the above statutes within the previous five (5) year period, aside from violations explicitly disclosed and attached to this contract. Contractor further affirms that it will (1) communicate the above KRS 45A.485 disclosure requirements to any subcontractors and (2) disclose any subcontractor violations it becomes aware of to the Commonwealth.

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, 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

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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 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,

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

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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.

1st Party:

Signature

Title

Printed Name

Date

2nd Party:

Signature

Title

Printed Name

Date

Other Party:

Signature

Title

Printed Name

Date

Approved as to form and legality:

Attorney