

# MEMORANDUM OF AGREEMENT

between the

## COMMONWEALTH OF KENTUCKY DEPARTMENT FOR LOCAL GOVERNMENT OFFICE OF FEDERAL GRANTS

and

## LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT

THIS MEMORANDUM OF AGREEMENT (Agreement) is made and entered into as of the date last executed by the parties below as evidenced by the dates within, by and among the Department for Local Government, a governmental agency of the Commonwealth of Kentucky, with address at 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, hereinafter known as "DLG;" and the Lexington Fayette Urban County Government, public body politic, with address of 200 East Main Street, Lexington, Kentucky 40507, hereinafter known as "the Local Agency."

WHEREAS, DLG, is responsible for the administration of the Recreational Trails Program for the Commonwealth of Kentucky; and

WHEREAS, the Local Agency, submitted an eligible project (Coolavin Rail Trail) under the Recreational Trails Program that was selected for funding with the Project activities and budget listed herein as Attachment A; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and for the other good and valuable consideration, the receipt, mutuality and sufficiency of all of which is hereby acknowledged by the parties hereto, DLG and the Local Agency each agree as follows:

### **1 - OBLIGATIONS OF DLG**

DLG covenants and agrees, conditioned upon the timely performance by the other parties of their respective obligations, to undertake the following obligations:

- A. DLG shall, subject to the availability of the appropriate federal funds for the project, reimburse to the Local Agency an amount not to exceed seventy thousand one hundred eighty-eight dollars (\$70,188.00.) The Local Agency shall make full payment for the cost of an item and/or provide documentation for in-kind contributions before submitting a request for reimbursement of eligible project costs. During the term of this Agreement, eligible project costs are identified in Attachment A, Scope of Services and Budget. A request for reimbursement may not be submitted to DLG for less than 25 percent of the total eligible project costs. The rate of reimbursement will be 50 percent. The final 25

percent of the National Recreational Trails Fund grant will be withheld until the project is completed, inspected, and accepted by DLG staff and representatives of the Federal Highway Administration (FHA) and a permanent trail easement in favor of KYTC is filed.

- B. DLG and FHA may, but are not required to, make periodic inspections of the Project and may send inspection reports to the Local Agency. The Local Agency shall correct deficiencies identified in the inspection report and their correction reported in writing to DLG within two weeks of receipt of the inspection report.
- C. DLG shall cooperate fully with the Local Agency in order to facilitate the obligations set out in this Agreement.

## **2 - OBLIGATIONS OF THE LOCAL AGENCY**

The Local Agency covenants and agrees to undertake the following obligations:

- A. The Local Agency shall perform and cause to be performed all necessary acts to plan, design and construct the Project in accordance with applicable law and the provisions stated herein. Refer to the Local Public Agency (LPA) manual for guidance.
- B. The Local Agency shall obtain all necessary permits, licenses and approval from the appropriate governmental entities for construction of the Project.
- C. The Local Agency shall comply with all applicable federal and state statutes, executive orders, regulatory requirements, and policies and require all contractors employed by the Local Agency to comply with all applicable federal and state statutes, executive orders, regulatory requirements, and policies. In particular, the Local Agency, and its contractors shall comply with 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. As evidence of the grant recipient's intention to comply, a Standard Form 424D, Assurances - Construction Programs, shall be signed by the authorized certifying official and made a part of this Agreement. If applicable, the Local Agency shall provide documentation to show compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1990 as amended. This documentation must be submitted before the first request for reimbursement is made. The Local Agency shall use its own procurement procedures that reflect applicable state and local laws for all purchases of goods or services related to the Project.
- D. The Local Agency shall appropriately address any advisory comments that are attached to the Kentucky State Clearinghouse's notification letter relating to the grant recipient's project. If applicable, evidence that the advisory comments have been satisfactorily addressed must be submitted to DLG before any work can begin on this project. Additionally, during the period of performance, the Local Agency shall notify DLG immediately if any significant adverse environmental impacts result from project

implementation and shall cease all project activity until an evaluation is made by DLG and its representatives to determine what actions are necessary and appropriate.

- E. In the design, construction, rehabilitation, and maintenance of trails funded by the Recreational Trails Program (except that federal land management agencies will use their own standards), the Local Agency shall use standards that are listed in the following publications:
- Standard Specifications for Construction of Trails, U.S. Forest Service.
  - Trails Management Handbook, U.S. Forest Service.
  - Guide for the Development of Bicycle Facilities, The American Association of State Highway and Transportation Officials.
  - Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, 49 CFR Part 37 (Local Agencies shall make efforts to provide and improve recreational access opportunities for people with disabilities within reasonable costs and environmental constraints).
- F. The Local Agency agrees that signs and traffic control devices shall comply with the Manual on Uniform Traffic Control Devices and Standard Highway Signs, U.S. Federal Highway Administration.
- G. The Local Agency shall retain all records relating to the project until DLG audits the records, or for three years after the Project is closed out, whichever occurs first. The records include, but are not limited to, the following:
- Payroll register by pay period showing names, hours worked, hourly rate, benefits, deductions, gross pay, and net pay.
  - Final cost summary of all payroll registers.
  - Time sheets signed by both employees and their respective supervisors.
  - Invoices for purchased materials.
  - Invoices for all design and construction costs.
  - Each invoice shall have the date paid and check number indicated on it.
  - Cancelled checks or copies thereof.
  - Copies of documents used in procurement (advertisements, plans and specifications, bid tabulations, contracts, and change orders).
  - Statements specifying donations to the project signed by the donor.
- H. A copy of the Local Agency's resolution authorizing the execution of this Agreement is attached hereto and made a part hereof.
- I. The Local Agency shall cooperate fully with DLG and provide any documentation requested by DLG in order to facilitate the obligations set out in this Agreement.
- J. The Local Agency shall submit quarterly progress reports to DLG in the form prescribed by DLG until the Project is closed out by DLG. The reports shall be submitted by the 15th day of the month following the last day of each calendar quarter (i.e., January 15th,

April 15th, July 15th, and October 15th). The report shall list, at a minimum, the line items in the cost estimate and the percent of completion as well as any indication of problems or time delays. The final quarterly progress report shall act as the Project Completion Report. The Progress Completion Report must be approved by DLG. Any deficiencies found in the Progress Completion Report shall be remedied by the Local Agency no later than 2 weeks from receipt of notification.

- K. The Local Agency shall execute and record in the public property records of the county clerk's office a limitation of use notice, deed of restriction, or other appropriate document dedicating the property in perpetuity to public outdoor recreation in accordance with the Conditions set forth below. The document shall identify the property by the project boundary map submitted with the application to the Department. The document and the County Clerk's filing certification shall be submitted to DLG along with the Local Agency's first request for reimbursement under this agreement. A permanent trail easement in favor of the KYTC must be approved prior to receiving final reimbursement.

Upon Project completion, the Local Agency shall operate and maintain the Project as follows:

- Facilities shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration and to encourage public use.
  - Facilities shall be kept reasonably safe for public use.
  - Facilities shall be kept open for public use at reasonable hours and times of the year for **perpetuity**.
  - Facilities shall be kept open for all persons regardless of race, color, sex, national origin, or disability.
- L. Any unauthorized or improper expenditure of funds, or expenditure of funds other than in accordance with the terms of this Agreement shall be deemed a default of this Agreement by the Local Agency, with the Local Agency returning those funds to DLG, if DLG has made reimbursement to the Local Agency.

### **3 - MUTUALITY OF OBLIGATIONS**

- A. The parties agree that the obligations imposed upon them are for the benefit of the parties and the timely fulfillment of each and every obligation in accordance with this Agreement is necessary. The failure of any party to fulfill its obligations under this Agreement or the failure of any event to occur by a date established by this Agreement shall constitute a breach of it unless the fulfillment of such obligation is waived or modified by written agreement of the parties.
- B. In the event of default by the Local Agency, including the failure to meet any time deadlines or provisions set out in this Agreement, DLG may declare this Agreement void from the beginning without further obligation to the Local Agency and may commence appropriate legal or equitable action to enforce its rights under this Agreement including action for recovery of funds expended hereunder.

- C. Except as may otherwise be provided herein, the parties to this Agreement shall be solely responsible for any costs incurred in fulfilling their obligations under this Agreement and no party shall have any claim against the other party for reimbursement of costs whether or not a party is in default.
- D. Both parties, DLG and the Local Agency, acknowledge that this Agreement is entered into under the provision of KRS 45A.023, and that future Kentucky General Assemblies may discontinue funding in subsequent budgets.

#### **4 - MISCELLANEOUS PROVISIONS**

- A. This Agreement may be signed by each party upon a separate copy, and in such case one counterpart of this Agreement shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Agreement may be executed in two or more counterparts each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms and conditions hereof to produce or account for more than one of such counterparts.
- B. The headings set forth in this Agreement are only for convenience or reference and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.
- C. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successor and assigns, respectively, of the parties. This provision shall not be construed to permit assignment by any party of any of its rights and duties under this Agreement which assignment shall be prohibited except with the prior written consent of all parties hereto.
- D. No decision-making official or employee of the Local Agency involved in discussions regarding a contract or subcontract in connection with the project shall have any financial or other personal interest in any such contract or subcontract.
- E. No person performing services for the Local Agency in connection with this project shall have a financial or other personal interest in any real property acquired for this project unless such interest is openly disclosed in the Local Agency's public meeting and reflected in the Public Agency's public meeting minutes, and such officer, employee, or person has not participated in the acquisition of said property for or on behalf of the Local Agency.
- F. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof, superseded all existing agreements among them concerning the subject matter hereof, and may be modified only by a written instrument duly executed by each of the parties hereto.

- G. Time is of the essence in the performance of each of the terms and conditions of this Agreement.
- H. The parties agree that any suit, action or proceeding with respect to this Agreement may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky or the United States District Court for the Eastern District of Kentucky, Frankfort Division.
- I. The Grantee hereby agrees to adopt the provisions of DLG's Implementation Plan for Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq (nondiscrimination in use of federal funds), a copy of which is available upon request. In lieu of this requirement, the Grantee may adopt its own Title VI Implementation Plan, provided that the Grantee attaches hereto a copy of its Title VI Implementation Plan and any applicable annual updates.
- J. All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing, and shall be addressed as follows:

If to DLG: Department for Local Government  
 1024 Capital Center Drive, Suite 340  
 Frankfort, Kentucky 40601  
 ATTENTION: Jodie McDonald

If to the Local Agency: Lexington Fayette Urban County Government  
 200 East Main Street, 6<sup>th</sup> Floor  
 Lexington, Kentucky 40507  
 ATTENTION: Mayor Jim Gray

- K. Disadvantaged Business Enterprises (DBE)

The Local Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The Local Agency shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Local Agency's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Local Agency of its failure to carry out its approved program, DLG may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C.3801 et seq.).

- L. The Local Government Agency complies with the Local Public Agencies (LPA) manual for federal aid assistance created by the Kentucky Transportation Cabinet and the Federal Highway Administration.

## 5 - MOA STANDARD TERMS AND CONDITIONS

### Cancellation clause:

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

### Funding Out Provision:

The state agency may terminate this contract 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 contract. The state agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract.

### Access to Records

The contractor, as defined in KRS 45A.030(9) 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 contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). 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.

In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004.

### 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 contract and until the contract has been submitted to the government contract review committee. However, Memoranda of Agreements \$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 only as provided under KRS 45A.700. **This Agreement shall continue in effect through June 30, 2014, unless terminated at an earlier date in accordance with the terms set forth herein.**

KRS 45A.695(7) Payments on personal service contracts and memoranda of agreements shall

not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration cabinet or agency head, if the agency has been granted delegation authority by the secretary.

#### Violation of tax and employment laws

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

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

Contractor must check one:

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

\_\_\_\_\_ The contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached

#### Reduction in Contract Worker Hours:

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

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**IN WITNESS WHEREOF**, DLG and the Local Agency have executed this Agreement as of the dates written below.

DLG:

Examined as to form and legality only:

Date: \_\_\_\_\_, 2013

\_\_\_\_\_  
Counsel

\_\_\_\_\_  
Tony Wilder  
Commissioner

LOCAL AGENCY:

Date: \_\_\_\_\_, 2013

Examined as to form and legality only:

\_\_\_\_\_  
Counsel

\_\_\_\_\_  
Jim Gray  
Mayor

# SCOPE OF WORK

## COOLAVIN TRAIL

**SCOPE:** Construct 3,275 ft., 12 ft. wide asphalt trail which is part of the Legacy Trail. The project includes trailside facilities/landscaping.

### BUDGET:

Trail Construction	\$120,000.00
Trailside Facilities/Misc	\$20,376.00
Total Project Costs	\$140,376.00

### FUNDING:

<b>RTP Grant</b>	<b>\$ 70,188.00</b>
<b>Local Match</b>	<b>\$ 70,188.00</b>
<b>Total Funds</b>	<b>\$140,376.00</b>