

AGREEMENT

THIS AGREEMENT, made and entered into on this _____ day of _____, 2012, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government pursuant to KRS Chapter 67A, and located at 200 East Main Street, Lexington, Fayette County, Kentucky 40507 (hereinafter referred to as "GOVERNMENT"), and **FRIENDS OF WOLF RUN**, whose post office address is 639 Cardinal Lane, Lexington, Kentucky 40503 (hereinafter referred to as "FOWR").

WHEREAS, the GOVERNMENT has been awarded federal funds from the Commonwealth of Kentucky Energy and Environment Cabinet, Department for Environmental Protection, Kentucky Division of Water (Award No. C9994861-09);

WHEREAS, the funds were awarded to the Commonwealth of Kentucky by the U.S. Environmental Protection Agency under Section 319(h) of the Clean Water Act

WHEREAS, the GOVERNMENT'S approved work plan provides for a partnership with a citizen organization, FOWR, that will be responsible for performing work related to implementation of a watershed based plan;

WHEREAS, the GOVERNMENT'S responsibility for ensuring compliance with all grant requirements necessitates a written agreement with the FOWR;

NOW, THEREFORE, in consideration of the foregoing and mutually agreed upon promises, conditions, and covenants hereinafter set forth, pursuant to grant requirements, the parties hereto agree as follows:

I. SCOPE OF SERVICES

A. Activities

The FOWR will be responsible for specific tasks identified in the Scope of Work, attached hereto as EXHIBIT A. The services shall be operated in a manner satisfactory to the GOVERNMENT and in compliance with all local, state, and federal laws and regulations.

B. Reporting

The FOWR shall submit to the GOVERNMENT: quarterly reports due 30 days after the end of each calendar quarter, reports as required for the Quality Assurance Project Plan (QAPP), and reports as required by the Department of Environmental Quality and Public Works for completion of the final report.

C. Performance Monitoring

The GOVERNMENT'S Department of Environmental Quality and Public Works will monitor the performance of the FOWR under the terms of the Agreement. Substandard performance as determined by the GOVERNMENT will constitute noncompliance with the Agreement. If action to correct such substandard performance is not taken by the FOWR within a reasonable period of time after being notified by the GOVERNMENT, Agreement suspension or termination procedures will be initiated.

II. TIME OF PERFORMANCE

The term of this Agreement shall be January 1, 2013 through June 30, 2016.

III. USE OF FEDERAL FUNDS

The GOVERNMENT will provide funds in the amount of \$16,000 for the approved activities as described in the project budget, more fully described in EXHIBIT A.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the GOVERNMENT under this Agreement shall not exceed \$16,000. The FOWR shall invoice the GOVERNMENT for the reimbursement of actual expenditures incurred in accordance with the approved budget. FOWR'S invoice must be for the services specified in the approved budget. FOWR'S invoice must include copies of invoices for supplies, documentation of travel expenses, and documentation of personnel costs.

V. GRANT MATCH

The FOWR agrees to provide in-kind match in the amount of \$16,000. The in-kind match will come from the value of volunteer time contributed for watershed council meetings and participation in stream walks project administration. All volunteer time shall be fully documented by timesheets and certified by the FOWR Primary Contact. Documentation of match shall be submitted with requests for reimbursement of funds.

VI. NOTICES

All notices hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, return receipt requested, to the parties at their respective addresses as first set out herein.

VII. GENERAL CONDITIONS

- A. The FOWR agrees to comply with the regulations at 40 CFR Parts 7, 29, 30, 31, 32, 34, 35, 39, 45, 47, and OMB Circular Nos. A-21, A-87, A-110, A-122, and A-133, as applicable. The FOWR further agrees to comply with all elements of the GOVERNMENT'S work plan as provided for in its approved grant application.
- B. The FOWR agrees to defend, indemnify, and hold harmless GOVERNMENT from any and all losses or claims of whatever kind, that are in any way incidental to, or connected with, or that arise or are alleged to have arisen, directly or indirectly, in whole or in part, from the execution, performance, or breach of this agreement by FOWR, including any environmental problems, including, without limitation, soil and/or water contamination, and remedial investigations and feasibility studies thereof, which exist at or prior to the agreement commencement date, regardless of when such losses or claims are made or incurred. This indemnity agreement shall in no way be limited by any financial responsibility, or loss control requirements below, and shall survive the termination of this agreement;

For the purposes of this Indemnity Provision:

- 1. The word "defend" includes, but is not limited to, investigating, handling, responding to, resisting, providing a defense for, and defending claims, at FOWR'S expense, using attorneys approved in writing by GOVERNMENT, which approval shall not be unreasonably withheld.
- 2. The word "claims" includes, but is not limited to, claims, demands, liens, suits, notices of violation from Governmental agencies, and other causes of action of whatever kind.
- 3. The word "losses" includes, but is not limited to: attorney fees and expenses; costs of litigation; court or administrative costs; judgments; fines; penalties; interest; all environmental cleanups and remediation costs of whatever kind; and any liability arising from death, injury, or damage of

any kind, to any person, including employees and agents of FOWR and GOVERNMENT, and damage to, or destruction of, any property, including the property of GOVERNMENT.

- C. As applicable, the FOWR shall provide Workers' Compensation insurance coverage for all its employees involved in the performance of this Agreement.
- D. This Agreement, or any part hereof, may be amended from time to time hereafter only in writing executed by the GOVERNMENT and the FOWR.
- E. This Agreement, can be terminated if FOWR fails to comply with any term of the award. This Agreement may be terminated upon written notice by the GOVERNMENT.
- F. GOVERNMENT and the FOWR each binds himself and his partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of the Agreement.

VIII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The FOWR agrees to comply with OMB Circular A-110 and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The FOWR shall administer its program in conformance with OMB Circular A-122, "Cost Principles for Non-Profit Organizations." These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record-Keeping

1. Records to be Maintained

The FOWR shall maintain all records that are pertinent to the activities to be funded under this Agreement.

2. Retention

The FOWR shall retain all records pertinent to expenditures incurred under this Agreement for a period of three (3) years after the termination of all activities funded under this Agreement. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the three-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the three-year period, whichever occurs later.

3. Close-outs

The FOWR's obligation to the GOVERNMENT shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the GOVERNMENT and determining the custodianship of records.

4. Audits and Inspections

All FOWR records with respect to any matters covered by this Agreement shall be made available to the GOVERNMENT, grantor agency, their designees or the federal government, at any time during normal business hours, as often as the grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the FOWR within 30 days after receipt by the FOWR. Failure of the FOWR to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of the future payments. The FOWR hereby agrees to have an annual agency audit conducted in accordance with current GOVERNMENT policy concerning FOWR audits and, as applicable, OMB Circular A-133.

C. Procurement

1. Compliance

The FOWR shall comply with current GOVERNMENT policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.,) shall revert to the GOVERNMENT upon termination of this Agreement.

2. OMB Standards

The FOWR shall procure all materials, property, or services in accordance with the requirements of OMB Circular A-110, Procurement Standards.

D. Debarment

FOWR certifies, in accordance with Executive Order 12549 (Debarment and Suspension February 18, 1986) that to the best of its knowledge and belief, that it, its principals, and its subcontractors:

- a) Are not presently debarred, suspended, proposed for debarment, declared negligible, or voluntarily excluded from covered transactions or contract by and Federal department or agency for noncompliance with the Federal Labor Standards, Title VI of the Civil Rights Act of 1964 as amended, Executive Order 11246 as amended or any other federal law;
- b.) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of federal or state antitrust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c.) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (a) of this certification; and
- d.) Have not within a three-year period preceding this proposal had one or more public (Federal, State, or local) transactions or contracts terminated for cause or default.

IX. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The FOWR agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

The FOWR agrees that no person shall on the ground of race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, or any other basis prohibited by applicable law be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with Community Development Block Grant Program.

2. Nondiscrimination

The FOWR will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. The FOWR will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay or other forms of compensation, and selection of training, including apprenticeship. The FOWR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

3. Section 504

The FOWR agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), which prohibits discrimination against the handicapped in any federally assisted program. The Grantee shall provide the FOWR with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

The FOWR agrees that it shall be committed to carry out pursuant to the GOVERNMENT's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965. The GOVERNMENT shall provide Affirmative Action guidelines to the FOWR to assist in the formulation of such program.

2. W/MBE

The FOWR will use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The FOWR may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The FOWR shall furnish and cause each of its subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by GOVERNMENT, EPA or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. EEO/AA Statement

The FOWR will, in all solicitations or advertisements for employees placed or on behalf of the FOWR, state that it is an Equal Opportunity or Affirmative Action employer.

5. Subcontract Provisions

The FOWR will include the provisions of Paragraphs IX A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The FOWR is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, sectarian or religious activities, lobbying, political patronage, and nepotism activities.

2. Drug Free Workplace

The FOWR shall administer a policy designed to ensure that the organization is free from the illegal use, possession, or distribution of drugs or alcohol by its employees and beneficiaries.

D. Conduct

1. Assignability

The FOWR shall not assign or transfer any interest in this Agreement without the prior written consent of the GOVERNMENT thereto; provided, however, that claims for money due or to become due to the GOVERNMENT under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the GOVERNMENT.

2. Hatch Act

The FOWR agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

3. Conflict of Interest

The FOWR covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The FOWR further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the FOWR hereunder.

4. Lobbying

The FOWR hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative 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, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- c. It will require that the language of paragraph (d) 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 FOWRs shall certify and disclose accordingly; and
- d. Lobbying Certification - Paragraph d

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.

5. Copyright

If this Agreement results in any copyrightable material or inventions, the GOVERNMENT and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.

IN WITNESS WHEREOF, the parties executed this Agreement on the day, month, and year above written.


LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

Jim Gray, Mayor

ATTEST:

Clerk of Urban County Council

FRIENDS OF WOLF RUN

BY 

Ken Cooke, Secretary
Printed Name Title

**Friends of Wolf Run
Administrative Support to the Wolf Run Watershed Council
Nonpoint Source Pollution Control Program**

Scope of Work

Summary

Through this Memorandum of Agreement, the Friends of Wolf Run (FOWR) will receive **\$16,000** from the LFUCG to provide administrative support to the Wolf Run Watershed Council. FOWR will document time devoted by their staff and watershed council members to be reported as in-kind match toward the LFUCG's cooperative agreement with the state Energy and Environment Cabinet (EEC). The total match from FOWR is estimated at **\$16,000**.

Background

Over the past 2 ½ years the LFUCG, in partnership with FOWR and Third Rock Consultants, has developed a plan to address nonpoint source pollution in the Wolf Run watershed. This work has been supported through a cooperative agreement between the LFUCG and the EEC. Ordinance 27-2010 authorized acceptance of the state grant, the funds for which were awarded to the state by the U.S. EPA under the federal nonpoint source pollution control program (Clean Water Act §319(h)). Expenses under the agreement are shared between the state (60%) and the LFUCG and other local partners (40%).

In developing the watershed plan, the LFUCG partnered (see resolution 328-2010) with the FOWR to provide education and outreach to citizens, to assess environmental conditions in the watershed through a network of trained volunteers, and to assist LFUCG in establishing and facilitating the Wolf Run Watershed Council. The Watershed Council is a group of interested stakeholders who have provided critical public input into the process and helped LFUCG formulate the plan. The group has met quarterly since its first meeting on December 6, 2010.

With the watershed plan completed, the LFUCG now moves into a new phase of work involving construction of a stormwater management solution in accordance with standard "best management practices" or "BMPs". This new work is, likewise, funded through a state §319 grant award plus the required 40% match from LFUCG. In support of future BMP development and plan implementation, FOWR will provide support for the watershed council through **6/30/2016**.

The council will continue to meet on a quarterly basis to discuss and plan the implementation of the watershed plan and provide input to the project team.

Tasks

FOWR scope of work:

1. Coordinate with LFUCG project managers to schedule appropriate dates for the quarterly council meetings; secure a suitable meeting venue and handle all logistical arrangements and support for the meetings.
2. Document the attendance, minutes and outcomes from each council meeting and provide this information to the LFUCG project manager.

EXHIBIT A
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3. Provide quarterly documentation of all activities to LFUCG so that the material can be included in the quarterly grant progress reports submitted by LFUCG to EEC.
4. Conduct stream walks within the Wolf Run Watershed in support of furthering public education on potential BMP installations.
5. Identify a Primary Contact from the organization responsible for the reporting and documentation requirements in this agreement and notify LFUCG in writing should the organization's primary contact change.

Budget

	LFUCG	Match	Total
Project Administration	\$0	\$4,800	\$4,800
Stream Walks (min. 1 per year)	\$5,500	\$5,500	\$11,000
Fourteen (14) watershed council meetings	\$10,500	\$5,700	\$16,200
	<hr/> \$16,000	<hr/> \$16,000	<hr/> \$32,000