

AGREEMENT

THIS AGREEMENT, made and entered into on this ____ day of _____, 2013 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 the **COMMONWEALTH ATTORNEY, 28TH JUDICIAL CIRCUIT** located at 236 East Mt. Vernon, Somerset, Kentucky 42501 (hereinafter referred to as "SUBRECIPIENT").

WHEREAS, GOVERNMENT, has been awarded federal funds from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance on behalf of the United States Attorney Eastern District of Kentucky for operation of a Project Safe Neighborhoods Project (Grant # 2011-I-GP-BX-0027);

WHEREAS, GOVERNMENT has been certified as fiscal agent for the herein described project;

WHEREAS, the United States Attorney Eastern District of Kentucky and the Project Safe Neighborhood Task Force has selected the SUBRECIPIENT to receive federal funds for the partial support of an assistant prosecutor.

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

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. Scope of Work

The SUBRECIPIENT agrees to employ an Assistant Commonwealth Attorney for the purpose of prosecuting violent offenders.

SUBRECIPIENT agrees to coordinate work with the United States Attorney Eastern District of Kentucky and the Project Safe Neighborhood Task Force.

B. Reporting

The SUBRECIPIENT shall be responsible for submission of a semiannual progress report to the GOVERNMENT. The SUBRECIPIENT shall prepare semiannual progress reports that include narrative on the progress made in accomplishing the Scope of Work. Semiannual progress reports are due fifteen days after the end of the reporting periods, which are June 30 and December 31, for the life of the award.

C. Performance Monitoring

The GOVERNMENT shall monitor the performance of the SUBRECIPIENT under the terms of the Agreement. Substandard performance as determined by the GOVERNMENT shall constitute noncompliance with the Agreement. If action to correct such substandard performance is not taken by the SUBRECIPIENT 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 July 1, 2013, through July 31, 2014.

III. USE OF FEDERAL FUNDS

Federal funds from the Bureau of Justice Assistance/Office of Justice Programs/ U.S. Department of Justice in the amount of \$6,500 is available to support the costs of an assistant prosecutor to prosecute Project Safe Neighborhood cases in state court.

IV. PAYMENT

It is expressly agreed and understood that the maximum amount to be paid by the GOVERNMENT under this Agreement shall not exceed \$6,500. The SUBRECIPIENT shall invoice the GOVERNMENT monthly for the reimbursement of actual expenditures incurred. SUBRECIPIENT'S invoice must be for the expenses in the approved budget. SUBRECIPIENT'S invoice must include copies of payroll registers and signed timesheets for personnel costs. SUBRECIPIENT must provide documentation of the costs of all fringe benefits for which it is requesting reimbursement.

V. 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.

VI. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

The SUBRECIPIENT agrees to administer its program in accordance with the guidelines in the OJP Financial Guide, with OMB Circular A-21, "Cost Principles for Educational Institutions," revised April 26, 1996 (codified at 28 CFR Part 66, by reference), and with OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," November 19, 1993 (codified at 28 CFR Part 70). All regulations are made a part of this Agreement by reference.

B. Documentation and Record-Keeping

1. Records to be Maintained

The SUBRECIPIENT shall maintain all records required by the federal regulations specified in the OJP Financial Guide, OMB Circulars, and the Terms and Conditions of the Grant Award. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
 - b. Financial records as required by the OJP Financial Guide.
2. Retention

In accordance with regulations, the SUBRECIPIENT 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. Records of non-expendable property acquired with funds under this Agreement shall be retained for three (3) years after final disposition of such property. 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 SUBRECIPIENT'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 SUBRECIPIENT 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 GOVERNMENT or 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 SUBRECIPIENT within 30 days after receipt by the SUBRECIPIENT. Failure of the SUBRECIPIENT 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 SUBRECIPIENT hereby agrees to have an annual agency audit conducted in accordance with current GOVERNMENT policy concerning SUBRECIPIENT audits and, as applicable, OMB Circular A-133. Copy of Audit shall be submitted to the GOVERNMENT within 30 days of completion.

C. Procurement

The SUBRECIPIENT shall procure all materials, property, or services in accordance with the requirements of the OJP Financial Guide and OMB Circular A-110.

VII. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The SUBRECIPIENT agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968, 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 Order 11375 and as supplemented in Department of Labor regulations (41 CFR chapter 60).

The SUBRECIPIENT 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

2. Nondiscrimination

The SUBRECIPIENT agrees to comply with Title VII of the Civil Rights Act of 1964 as amended. The SUBRECIPIENT 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 SUBRECIPIENT 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 SUBRECIPIENT 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 SUBRECIPIENT agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), which prohibits discrimination against the handicapped in any federally assisted program.

B. Affirmative Action

1. Approved Plan

The SUBRECIPIENT 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 SUBRECIPIENT to assist in the formulation of such program.

2. W/MBE

The SUBRECIPIENT 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 SUBRECIPIENT may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. EEO/AA Statement

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

4. Subcontract Provisions

The SUBRECIPIENT will include the provisions of Paragraphs VII 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 own subrecipients or subcontractors. SUBRECIPIENT shall also obtain written certification from all its contractors, subrecipients, and subcontractors that they are in compliance with Executive Order 12549 on Debarment and Suspension.

C. Privacy

SUBRECIPIENT agrees to comply with all confidentiality requirements of 42 U.S.C. section 3789g and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. SUBRECIPIENT further agrees to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, section 22.23.

VIII. GENERAL CONDITIONS

A. The SUBRECIPIENT agrees to comply with the requirements of OJP Financial Guide and also agrees to comply with all other applicable federal, state, and local laws, regulations, and policies governing the operation of hereindescribed grant-supported services.

B. The SUBRECIPIENT 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 alleged to have arisen, directly or indirectly, in whole or in part, from the execution, performance, or breach of this agreement by SUBRECIPIENT, 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 SUBRECIPIENT’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 SUBRECIPIENT and GOVERNMENT, and damage to, or destruction of, any property, including the property of GOVERNMENT.

C. The SUBRECIPIENT 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 SUBRECIPIENT.

E. This Agreement, in accordance with 28 CFR 66.43 can be terminated if SUBRECIPIENT fails to comply with any term of the award. This Agreement may be terminated for convenience in accordance with 28 CFR 66.44 upon written notice by the GOVERNMENT.

F. GOVERNMENT and the SUBRECIPIENT 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.

G. Prohibited Activity

The SUBRECIPIENT 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.

H. Drug Free Workplace

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

I. Assignability

The SUBRECIPIENT 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.

J. Subcontracts

a. Approvals

The SUBRECIPIENT shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the GOVERNMENT prior to the execution of such agreement.

b. Monitoring

The SUBRECIPIENT will monitor all subcontracted services on a regular basis to assure compliance with this Agreement. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The SUBRECIPIENT shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The SUBRECIPIENT shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

K. Hatch Act

The SUBRECIPIENT 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.

L. Conflict of Interest

The SUBRECIPIENT agrees to abide by the provisions of 45 CFR 74.42 with respect to conflicts of interest, and covenants that it will maintain written standards of conduct governing the performance of its employees engaged in the administration of this Agreement.

M. Lobbying

The SUBRECIPIENT 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 subrecipients 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.

N. 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.

O. Religious Organization

The SUBRECIPIENT agrees that funds provided under this Agreement will not be used for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with federal regulations.

P. Suspension and Debarment

The SUBRECIPIENT 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:

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;

- a. 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 statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- b. 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
- c. 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.

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

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

Jim Gray, Mayor

ATTEST:

Clerk of Urban County Council

COMMONWEALTH ATTORNEY
28TH JUDICIAL CIRCUIT

BY: 
Eddy Montgomery, Commonwealth Attorney