

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (hereinafter "MOA") is made and entered into as of the ____ day of _____, 2021, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes, 200 East Main Street, Lexington, Kentucky 40507 (hereinafter "LFUCG") and **KENTUCKY RIVER WATERSHED WATCH, INC.**, a Kentucky non-profit organization, with a mailing address of P.O. Box 1248, Frankfort, Kentucky, 40602 (hereinafter "KRWW").

WITNESSETH:

WHEREAS, LFUCG has developed the Watershed-Focused Monitoring Program Quality Assurance Project Plan (QAPP) toward the stated goal of changing its monitoring program to a watershed-focused monitoring program; and

WHEREAS, LFUCG's Watershed-Focused Monitoring Program QAPP requires data of sufficient quality and resolution to facilitate the identification and remediation of sources of recreational and aquatic habitat impairments to streams within the Urban Services Boundary; and

WHEREAS, LFUCG wishes to engage KRWW for services related to the implementation of the Watershed-Focused Monitoring Program QAPP relating to the North Elkhorn Watershed; and

WHEREAS, KRWW wishes to provide those services necessary to generate data and conduct monitoring related to the implementation of the Watershed-Focused Monitoring Program QAPP for the North Elkhorn Watershed,

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

A. OBJECTIVES

The following objectives are the stated objectives of the Watershed-Focused Monitoring Program QAPP, and all services performed by KRWW relating to the North Elkhorn Watershed pursuant to this MOA shall be in furtherance of and shall promote these objectives:

- (1) The characterization and ranking of stream corridor habitat and hydro-geomorphic function;

- (2) The characterization of the pollutant load of streams, tributaries, and major outfalls;
- (3) The enhancement of illicit discharge identification in prioritized subwatersheds;
- (4) Engaging volunteers and the scientific community in data collection efforts (when feasible and appropriate); and
- (5) Laying the foundation for watershed-based plans and TMDL implementation.

B. DESCRIPTION OF WORK

The Watershed-Focused Monitoring Program QAPP is divided into five major elements: (1) Stream Corridor Characterization, (2) Stream Biology, (3) Water Quality Monitoring, (4) Discharge Prevention Investigation, and (5) Priority Area Upland Visual Assessment. KRWW and its volunteers are responsible for performing data collection and monitoring under Element (3) – Water Quality Monitoring.

KRWW will be responsible for fulfilling the need for volunteer participation in carrying out this monitoring program and will engage sufficient numbers of KRWW-qualified volunteers or potential samplers to complete the monitoring within sampling periods specified by the Watershed-Focused Monitoring Program QAPP.

All equipment and supplies necessary to complete the training and monitoring will be provided by and maintained by LFUCG. This equipment includes Hanna multiparameter meters for dissolved oxygen (DO), pH, water temperature (TEMP), and specific conductance (COND); Hanna Checker units for ammonia (NH₃) and chlorine (CHL); tape measures for water depth measurement; sample containers and coolers; and supplies such as ice and reagents.

All work conducted pursuant to this MOA shall be performed in accordance with the detailed description of the work contained in Exhibit A – Description of Work, which is attached hereto and incorporated herein.

C. TASKS PERFORMED

KRWW specifically agrees to satisfactorily complete the following tasks, in furtherance of the Watershed-Focused Monitoring Program QAPP, pursuant to this MOA:

1. Identify a Primary Contact for KRWW to be responsible for the coordination activities outlined in this agreement and notify LFUCG, in writing, as to the identity of the Primary Contact, including the Primary Contact's contact information.
2. Coordinate and enlist volunteers to attend KRWW and LFUCG training workshops.
3. Submit volunteer training records to LFUCG.
4. Participating volunteers shall sign a Volunteer Monitoring Participant Agreement and Volunteer Activity Waiver and Assumption of Risk form. The form will be provided by LFUCG. KRWW shall provide original signed forms to LFUCG prior to initiation of field activities.
5. Coordinate participation of certified volunteers in the two (2) Phase 1 Sampling Events in October-November, 2021.
6. Coordinate participation of certified volunteers in the ten (10) Phase 2 Sampling Events in May - September 2022, and provide LFUCG not less than 48 hours of notice when staff will need to substitute for volunteers when volunteer numbers are projected to be too low to complete the sampling event.
7. Complete and submit all Chain-of-Custody documents and field measurements to LFUCG immediately after the completion of each sampling event.

KRWW shall perform and ensure that all duties and services included in the Description of Work (Section B and Exhibit A) and the Tasks Performed (Section C) sections are performed faithfully and satisfactorily at the time, place, and for the duration prescribed herein.

D. PAYMENT

In consideration for the performance of the work described in Section B and Exhibit A of this MOA and upon the satisfactory completion of the tasks identified in Section C of this MOA, LFUCG shall pay KRWW the lump sum amount of Five Thousand Dollars (\$5,000.00), as follows:

1. Upon completion of the two (2) Phase 1 Sampling Events required by Task 5, as set forth in Section C hereinabove, and KRWW's continuing satisfactory performance of Tasks 1 through 4 and Task 7, as set forth in Section C hereinabove, LFUCG shall pay KRWW twenty-five percent (25%) of the total agreed-upon lump sum amount (\$1,250.00);

and

2. Upon completion of the ten (10) Phase 2 Sampling Events required by Task 6, as set forth in Section C hereinabove, and KRWW's continuing satisfactory performance of Tasks 1 through 4 and Task 7, as set forth in Section C hereinabove, LFUCG shall pay KRWW the remaining seventy-five percent (75%) of the total agreed-upon lump sum amount (\$3,750.00).

E. TERM OF AGREEMENT

This MOA shall remain in effect until KRWW has fully complied with the tasks set forth in Section C hereinabove. LFUCG may cancel this agreement at any time upon thirty (30) days written notice to the registered agent of KRWW.

F. MISCELLANEOUS PROVISIONS

1. KRWW shall familiarize itself with and shall at all times comply with all federal, state, and local laws, ordinances, and regulations that in any manner affect the services of this agreement.
2. Nothing herein shall create an employment relationship, partnership, or joint venture between the parties or between LFUCG and any volunteers provided by KRWW. In performing the services hereunder, KRWW, its employees, agents, officers, contractors, representatives, and any volunteers provided by KRWW shall not be deemed or construed to be employees or agents of LFUCG in any manner whatsoever.
3. KRWW agrees to indemnify, defend, and hold harmless LFUCG for all claims and liabilities of whatever nature directly or indirectly arising out of, caused by, or attributable to the performance of this MOA by KRWW, its employees, agents, representatives, and volunteers.
4. The parties hereto agree that causes of action between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes, and that venue of any legal action shall be a court of appropriate jurisdiction in Fayette County, Kentucky. The parties further agree that

Kentucky law shall apply with respect to the interpretation of any provision of this agreement.

5. This MOA shall not create a contractual relationship with or right of action in favor of any third party against either LFUCG or KRWW.
6. If any term or provision of this MOA shall be found illegal or unenforceable by a court of competent jurisdiction, such term or provision shall be deemed stricken and this MOA shall remain in full force.
7. This MOA shall constitute the entire agreement between the parties and no representations, inducements, promises, or agreements, oral or otherwise, which are not embodied herein shall be effective for any purpose. This MOA shall replace any previous agreement between the parties on the same subject matter. This MOA may only be modified by a writing signed by both parties and with the approval of the Lexington-Fayette Urban County Council.
8. The failure of either party to enforce any right reserved to it in this MOA shall not be a waiver of any such right to which the party is entitled, and a waiver by either party of any breach of any provision of this MOA shall not constitute a continuing waiver or waiver of any subsequent breach by either party of either the same or another provision of this MOA.

