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Memorandum of Agreement Terms and Conditions

This Memorandum of Agreement (the Agreement) is between the Commonwealth of Kentucky, Energy and Environment Cabinet, Division of Forestry, with an address of 627 Comanche Trail, Frankfort, Kentucky, hereinafter known as “the Cabinet,” and the Lexington Fayette Urban County Government, with an address of 200 East Main Street, Lexington, Kentucky 40507, hereinafter known as “LFUCG.”

Scope of Services:

The Cabinet shall undertake the following obligations:

The Cabinet shall establish June 30, 2013 as the deadline for the agreement.

The Cabinet shall reimburse LFUCG for one hundred percent (100%) of the invoice total up to, but not to exceed, ten thousand dollars (\$10,000).

The Cabinet shall reimburse LFUCG during the project as requested, upon review of documentation.

LFUCG shall:

Cooperate fully with the Cabinet in order to facilitate the obligations set out in this Agreement including, but not limited to, allowing the Cabinet to inspect all records pertaining to the project at any time.

Treat ash trees only on publicly-managed lands - no ash trees shall be treated on private property.

Treat or contract with another entity to treat *Fraxinus* spp. (ashes) with the insecticide emamectin benzoate for the prevention of damage and/or recovery from damage by the emerald ash borer (EAB). Treatment shall be through stem injection.

Treat no ash trees less than 10 inches diameter at breast height (DBH).

Treat no ash trees that display a canopy loss greater than 50%.

Not purchase treatment injection equipment with grant funds.

Provide treatment records to the Cabinet. Records shall include GPS coordinates of treated trees, number of trees treated and DBH of each tree treated.

Incorporate public education/outreach products about EAB treatment during the project. The educational materials will include information about EAB and its impacts as well as the reasons and effectiveness of the treatment. The educational materials created will be independent of the funding provided by the Cabinet. Information on this shall be provided to the Cabinet as part of the final reimbursement request package.

Pricing:

This Agreement will be funded, in part, by an award from the United States Department of Agriculture Forest Service, Forest Health Program Funds, federal award number 11-DG-11083121-001, CFDA 10.664, in the amount of ten thousand dollars (\$10,000).

On or before June 30, 2013, UKRF shall submit to the Cabinet an invoice of the reimbursable expenses incurred in carrying out the provisions of this Agreement.

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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.

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.

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(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.

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.

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.

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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.

Assurances:

The parties shall abide by all applicable terms of the following

A. Office of Management and Budget Circular Nos. A-87, A-102, A110, A-122, and A-133, which are incorporated into this Agreement by reference.

B. The Anti-Drug Abuse Act (P.L. 100-690), which requires recipients of federal funds to certify that they have met requirements designed to promote a drug-free workplace.

C. All Federal statutes relating to nondiscrimination. These include, but are not limited to: (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, or national origin; (2) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex; (3) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 794), which prohibits discrimination on the basis of handicaps; (4) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (5) the Drug Abuse Prevention, Treatment and Rehabilitation Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (6) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 92-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (7) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (8) Title VII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing; (9) any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and (10) the requirements of any other nondiscrimination statute(s) which apply to this Agreement.

D. The Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763).

E. Titles II and III of the Uniform Relocation Assistance and Real property Acquisition Policies Act of 1970 (P.L. 91-646), which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs.

F. The Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limits the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

G. The Davis-Bacon Act (40 U.S.C. § 267a to 276a-7); the Copeland Act (40 U.S.C. § 276(c) and 18 U.S.C. § 874); and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding

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labor standards for federally-assisted construction subagreements.

H. The flood insurance purchases requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234), which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

I. The National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order No. 11514 instituting environmental quality control measures; (2) Executive Order No. 1738 which requires notification to violating facilities; (3) Executive Order No. 11990 protecting wetlands; (4) Executive Order No. 11988 evaluating flood hazards in flood plains; (5) the Coastal Zone Management Act of 1972 (916 U.S.C. §§ 1451 et seq.) assuring project consistency with approved state management programs; (6) Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (7) the Safe Drinking Water Act of 1974, as amended (P.L. 93-523) protecting underground sources of drinking water; (8) the Endangered Species Act of 1973, as amended (P.L. 93-205).

J. The Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ et seq.)

K. Section 106 of the National Historic Preservation Act of 1966, as amended (916 U.S.C. § 470); Executive Order No. 11593, which relates to the identification and protection of historic properties; and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469(a)(1) et seq.).

L. P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities.

M. The Laboratory Animal Welfare Act of 1966, as amended (P.L. 89-544, 7 U.S.C. §§ 1231 et seq.) pertaining to the care, handling and treatment of animals.

N. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.), which prohibits the use of lead-based paint in construction or rehabilitation of residential structures.

All notices, requests, demands, waivers and other communications given as provided in this Agreement shall be in writing, deemed effective upon mailing, and addressed as follows:

If to the Cabinet:

Energy and Environment Cabinet
Diana Olszowy, Branch Manager
Kentucky Division of Forestry
627 Comanche Trail
Frankfort, KY 40601

If to the LFUCG:

Tim Queary
Urban Forester
200 East Main Street
Lexington, Kentucky 40507

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Approvals:

This contract is subject to the terms and conditions as stated. By affixing signatures below, the parties agree that electronic approvals may serve as electronic signatures. In addition, the parties verify that they are authorized to bind this agreement between parties and that they accept the terms of the agreement.

Lexington Fayette Urban County Government

LFUCG

Date

Energy and Environment Cabinet

Dr. Leonard K. Peters, Secretary

Date

Approved as to form and legality:

C. Michael Haines, Executive Director
Office of General Counsel

Date

Approval Recommended by:

Steve Hohmann, Commissioner
Department for Natural Resources

Date

Leah W. MacSwords, Director
Division of Forestry

Date