

## MEMORANDUM OF AGREEMENT

**THIS MEMORANDUM OF AGREEMENT** (hereinafter “MOA”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019, 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 **HICKMAN CREEK CONSERVANCY**, a Kentucky non-profit organization, with a mailing address of 3437 Belvoir Drive, Lexington, Kentucky 40502 (hereinafter “HCC”).

### 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 HCC for services related to the implementation of the Watershed-Focused Monitoring Program QAPP relating to the West Hickman and East Hickman Watersheds; and

**WHEREAS**, HCC 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 West Hickman and East Hickman Watersheds,

**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 HCC relating to the West Hickman and East Hickman Watersheds 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. HCC and its volunteers are responsible for performing data collection and monitoring under Element (3) – Water Quality Monitoring. HCC and its volunteers, in conjunction with Kentucky River Watershed Watch (KRWW), are also responsible for providing forums for LFUCG to share the results from the sampling conducted in the West Hickman and East Hickman Watersheds.

HCC will be responsible for assisting with volunteer recruitment required to carry out this monitoring program and will publicize training events and sampling events to their membership and residents in the West Hickman and East Hickman Watersheds.

HCC will also be responsible for hosting a public forum at the conclusion of the West Hickman Watershed sampling and reporting and at the conclusion of the East Hickman Watershed sampling and reporting.

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**

HCC 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 HCC 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. Support the efforts of KRWW by promoting and enlisting volunteers to attend KRWW and LFUCG training workshops.
3. Support the efforts of KRWW by promoting and enlisting volunteers to participate in the two (2) Phase 1 Sampling Events in August - September 2019 and the ten (10) Phase 2 Sampling Events in May - September 2020.
4. Host a public forum by June 30, 2020, for LFUCG to share the results of the West Hickman Watershed sampling.
5. Host a public forum by June 30, 2021, for LFUCG to share the results of the East Hickman Watershed sampling.

HCC 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 HCC the lump sum amount of One Thousand Dollars (\$1,000.00), as follows:

1. Upon completion of the West Hickman public forum required by Task 4, as set forth in Section C hereinabove, and HCC's continuing satisfactory performance of Tasks 1 through 3, as set forth in Section C hereinabove, LFUCG shall pay HCC fifty percent (50%) of the total agreed-upon lump sum amount (\$500.00);

and

2. Upon completion of the East Hickman public forum required by Task 5, as set forth in Section C hereinabove, and HCC's continuing satisfactory performance of Tasks 1 through 3, as set forth in Section C hereinabove, LFUCG shall pay HCC the remaining fifty percent (50%) of the total agreed-upon lump sum amount (\$500.00).

**E. TERM OF AGREEMENT**

This MOA shall remain in effect until HCC 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 HCC.

**F. MISCELLANEOUS PROVISIONS**

1. HCC 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 HCC. In performing the services hereunder, HCC, its employees, agents, officers, contractors, representatives, and any volunteers provided by HCC shall not be deemed or construed to be employees or agents of LFUCG in any manner whatsoever.
3. HCC 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 HCC, 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 HCC.
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.

**IN WITNESS WHEREOF**, the parties certify that they have been duly authorized to execute, deliver and perform the Memorandum of Agreement, and have executed it as of the date first herein written.

**LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT**

BY:

\_\_\_\_\_  
LINDA GORTON, MAYOR

ATTEST:

\_\_\_\_\_  
URBAN COUNTY COUNCIL CLERK

DATE: \_\_\_\_\_

**HICKMAN CREEK CONSERVANCY**

BY:

\_\_\_\_\_  
(Representative of HCC)

COMMONWEALTH OF KENTUCKY    )  
  )  
COUNTY OF FAYETTE             )

The foregoing Memorandum of Agreement was subscribed, sworn to, and acknowledged before me by \_\_\_\_\_, as \_\_\_\_\_ of Hickman Creek Conservancy, on this the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC, STATE AT LARGE

**EXHIBIT A – DESCRIPTION OF WORK**  
East Hickman Watershed-Focused Monitoring

Kentucky River Watershed Watch (KRWW) volunteers, including those volunteers recruited by Hickman Creek Conservancy (HCC), will perform tasks in support of and in compliance with the directives of Lexington-Fayette Urban County Government's (LFUCG's) Watershed-Focused Monitoring Program Quality Assurance Project Plan (QAPP).

The Watershed-Focused Monitoring Program 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.

In preparation for monitoring, participating KRWW volunteers will need to have current Phase 1 Watershed Watch Training and attend an LFUCG Training Workshop on project-specific field equipment and paperwork. This workshop will be held at the Town Branch Wastewater Treatment Plant (WWTP) Laboratory and will cover project specifics, equipment operation, and performance of a proficiency test. Upon completion of the training, successful participants will be issued a certification.

Water Quality Monitoring will be performed in two phases. Phase 1 is a field screening effort consisting of four (4) Sampling Events performed during dry weather (at least 72 consecutive hours of dry weather prior to sampling), as follows:

- The first two (2) of the four (4) events will occur in August or September 2019, and KRWW volunteers will perform the monitoring during these two events.
- The last two (2) of the four (4) events will occur in January to March 2020, and staff and/or consultants will perform the monitoring during this timeframe.
- Twelve (12) instream sites and 45 major outfalls will be sampled during the field screening effort events.
- Sampling will only be conducted if flow is present (not dry or pooled). If no flow is present, it should be noted on the Chain-of-Custody.
- At instream sites, water depth at the staff gage will be recorded; at major outfalls, water depth will be measured and recorded. DO, pH, TEMP, and COND will be measured in the field using a Hanna multiparameter meter.

NH<sub>3</sub> and CHL will be measured in the field using Hanna Checker units. Grab samples will be collected, iced, and transported to the Town Branch Wastewater Treatment Plant (WWTP) Laboratory for analysis of E. coli, total suspended solids (TSS), total phosphorus (TP), nitrates (NO<sub>3</sub>), and detergents (DTRG) within 6 hours of collection.

- To accommodate the large number of sites, a Sampling Event may span two or more consecutive days if no rainfall is forecasted or occurs over this time.
- If the Town Branch WWTP Laboratory reaches its capacity to perform the analyses, another certified laboratory that reads and signs the Watershed-Focused Monitoring Program QAPP may be used.

Phase 2 will consist of ten (10) Sampling Events performed during the Primary Contact Recreation period (May 1 to September 30, 2020) on a set day of the week (approximately once every two weeks), regardless of weather conditions, as follows:

- Sampling will be performed at twelve (12) instream sites and major outfalls that flowed during at least two of the four (50%) Phase 1 Sampling Events. Replicate measurements and duplicate samples are to be made at 5% of sites per Sampling Event.
- Because of the large number of Sampling Events, if volunteer numbers are projected to be insufficient to complete an event, LFUCG shall be notified not less than 48 hours prior to the event.
- Sampling will only be conducted if flow is present (not dry or pooled). If no flow is present, it will be noted on the Chain-of-Custody.
- At instream sites, water depth at the staff gage will be recorded; at major outfalls, water depth will be measured and recorded. DO, pH, TEMP, and COND will be measured in the field using a Hanna multiparameter meter. CHL will be measured in the field using Hanna Checker units. Grab samples will be collected, iced, and transported to the Town Branch WWTP Laboratory for analysis of E. coli, TSS, DTRG, TP, NO<sub>3</sub>, NH<sub>3</sub>, and fluoride (FL) within 6 hours of collection.
- If the Town Branch WWTP Laboratory reaches its capacity to perform the analyses, another certified laboratory that reads and signs the Watershed-Focused Monitoring Program QAPP may be used.