

Goss ■ Samford PLLC



Attorneys at Law

Mark David Goss

mdgoss@gosssamfordlaw.com

(859) 368-7740

RECEIVED

OCT 02 2015

PUBLIC SERVICE
COMMISSION

October 2, 2015

Mr. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

VIA HAND DELIVERY

RE: *In re the Matter of: Joint Application of Knott County Water and Sewer, Inc. and Troublesome Creek Environmental Authority, Inc., for an Order Approving the Transfer of Ownership and Control of a Jurisdictional Asset - Case No. 2015-00301*

Dear Mr. Derouen:

Please find enclosed for filing with the Commission, in the above referenced case, an original and ten copies of Knott County Water and Sewer, Inc., and Troublesome Creek Environmental Authority, Inc.'s, Responses to Commission Staff's Initial Request for Information. The original includes a hard copy of the agreements requested in Request 4.b. and an electronic copy of the agreements is being provided on the enclosed CD in lieu of ten hard copies.

Also enclosed for filing, is an original and ten copies of a Motion to Schedule an Informal Conference in the above referenced case.

Please return a file-stamped copy of these filings to my office.

Very truly yours,

Mark David Goss

Enclosures

RECEIVED

OCT 02 2015

**PUBLIC SERVICE
COMMISSION**

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF KNOTT COUNTY WATER)	
AND SEWER, INC. AND TROUBLESOME)	
CREEK ENVIRONMENTAL AUTHORITY, INC. FOR)	CASE NO.
AN ORDER APPROVING THE TRANSFER OF)	2015-00301
OWNERSHIP AND CONTROL OF A JURISDICTIONAL)	
ASSET)	

**RESPONSES TO COMMISSION STAFF'S INITIAL REQUEST FOR
INFORMATION TO KNOTT COUNTY WATER AND SEWER, INC., AND
TROUBLESOME CREEK ENVIRONMENTAL AUTHORITY, INC.**

DATED SEPTEMBER 17, 2015

KNOTT COUNTY WATER AND SEWER, INC.
AND
TROUBLESOME CREEK ENVIRONMENTAL AUTHORITY, INC.

PSC CASE NO. 2015-00301

PUBLIC SERVICE COMMISSION'S INITIAL REQUEST FOR INFORMATION
DATED 09/17/15

Knott County Water and Sewer, Inc., ("KCWSD") and Troublesome Creek Environmental Authority, Inc., ("TEA") hereby submit responses to the information requests of the Public Service Commission Staff ("PSC") in this case dated September 17, 2015. Each response with its associated supportive reference materials is individually tabbed.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

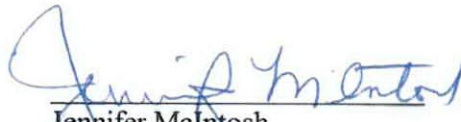
In the Matter of:

JOINT APPLICATION OF KNOTT COUNTY)	
WATER AND SEWER, INC. AND)	
TROUBLESOME CREEK ENVIRONMENTAL)	CASE NO.
AUTHORITY, INC. FOR AN ORDER)	2015-00301
APPROVING THE TRANSFER OF)	
OWNERSHIP AND CONTROL OF A)	
JURISDICTIONAL ASSET)	


CERTIFICATE

COMMONWEALTH OF KENTUCKY)
COUNTY OF KNOTT)

Jennifer McIntosh, Community Resources Planner/Water & Wastewater Planner with Kentucky River Area Development District, a consultant of Troublesome Creek Environmental Authority, Inc., being duly sworn, states that she has supervised the preparation of the responses of Knott County Water and Sewer, Inc. and Troublesome Creek Environmental Authority, Inc., to the Public Service Commission Staff's Requests for Information issued on September 17, 2015, in the above referenced case, and that the matters and things set forth therein are true and accurate to the best of her knowledge, information and belief, formed after reasonable inquiry.


Jennifer McIntosh

The foregoing Certificate was signed, acknowledged and sworn to before me this 30th day of September, 2015, by Jennifer McIntosh.


NOTARY PUBLIC, Notary # _____
Commission expiration: November 18, 2017

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

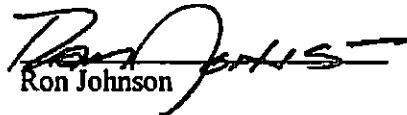
In the Matter of:

JOINT APPLICATION OF KNOTT COUNTY)	
WATER AND SEWER, INC. AND)	
TROUBLESOME CREEK ENVIRONMENTAL)	CASE NO.
AUTHORITY, INC. FOR AN ORDER)	2015-00301
APPROVING THE TRANSFER OF)	
OWNERSHIP AND CONTROL OF A)	
JURISDICTIONAL ASSET)	

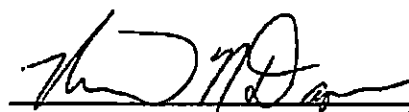
CERTIFICATE

COMMONWEALTH OF KENTUCKY)
COUNTY OF KNOTT)

Ron Johnson, President of R.M. Johnson Engineering, Inc., a consultant for Knott County Water and Sewer, Inc., and Troublesome Creek Environmental Authority, Inc., being duly sworn, states that he has supervised the preparation of the responses of Knott County Water and Sewer, Inc. and Troublesome Creek Environmental Authority, Inc., to the Public Service Commission Staff's Requests for Information issued on September 17, 2015, in the above referenced case, and that the matters and things set forth therein are true and accurate to the best of his knowledge, information and belief, formed after reasonable inquiry.


Ron Johnson

The foregoing Certificate was signed, acknowledged and sworn to before me this ____ day of September, 2015, by Ron Johnson.


NOTARY PUBLIC, Notary # 478640
Commission expiration: 12-12-2016

In the Matter of:

JOINT APPLICATION OF KNOTT COUNTY)
WATER AND SEWER, INC. AND)
TROUBLESOME CREEK ENVIRONMENTAL) CASE NO.
AUTHORITY, INC. FOR AN ORDER) 2015-00301
APPROVING THE TRANSFER OF)
OWNERSHIP AND CONTROL OF A)
JURISDICTIONAL ASSET)

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF KNOTT)

Chris Gooch, a Certified Public Accountant, for Troublesome Creek Environmental Authority, Inc., being duly sworn, states that he has supervised the preparation of the responses of Knott County Water and Sewer, Inc. and Troublesome Creek Environmental Authority, Inc., to the Public Service Commission Staff's Requests for Information issued on September 17, 2015, in the above referenced case, and that the matters and things set forth therein are true and accurate to the best of his knowledge, information and belief, formed after reasonable inquiry.

Chris Gooch

The foregoing Certificate was signed, acknowledged and sworn to before me this 30 day of September, 2015, by Chris Gooch.

Melba Caudill
NOTARY PUBLIC, Notary # 483142
Commission expiration: Feb 11, 2017

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION


In the Matter of:

JOINT APPLICATION OF KNOTT COUNTY)
WATER AND SEWER, INC. AND)
TROUBLESOME CREEK ENVIRONMENTAL) CASE NO.
AUTHORITY, INC. FOR AN ORDER) 2015-00301
APPROVING THE TRANSFER OF)
OWNERSHIP AND CONTROL OF A)
JURISDICTIONAL ASSET)

CERTIFICATE

COMMONWEALTH OF KENTUCKY)
COUNTY OF KNOTT)

L. J. Turner, Manager of Knott County Water and Sewer District, Inc., being duly sworn, states that he has supervised the preparation of the responses of Knott County Water and Sewer, Inc. and Troublesome Creek Environmental Authority, Inc., to the Public Service Commission Staff's Requests for Information issued on September 17, 2015, in the above referenced case, and that the matters and things set forth therein are true and accurate to the best of his knowledge, information and belief, formed after reasonable inquiry.


L. J. Turner

The foregoing Certificate was signed, acknowledged and sworn to before me this _____ day of September, 2015, by L.J. Turner.

Jessica Richardson
NOTARY PUBLIC, Notary # _____
Commission expiration: 5-28-16

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

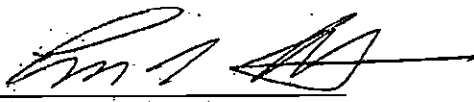
In the Matter of:

JOINT APPLICATION OF KNOTT COUNTY)	
WATER AND SEWER, INC. AND)	
TROUBLESOME CREEK ENVIRONMENTAL)	CASE NO.
AUTHORITY, INC. FOR AN ORDER)	2015-00301
APPROVING THE TRANSFER OF)	
OWNERSHIP AND CONTROL OF A)	
JURISDICTIONAL ASSET)	

CERTIFICATE

COMMONWEALTH OF KENTUCKY)
COUNTY OF KNOTT)

Calvin Randall Tackett, Outside legal counsel of Knott County Water and Sewer, Inc., being duly sworn, states that he has supervised the preparation of the responses of Knott County Water and Sewer, Inc. and Troublesome Creek Environmental Authority, Inc., to the Public Service Commission Staff's Requests for Information issued on September 17, 2015, in the above referenced case, and that the matters and things set forth therein are true and accurate to the best of his knowledge, information and belief, formed after reasonable inquiry.


Calvin Randall Tackett

The foregoing Certificate was signed, acknowledged and sworn to before me this 30th day of September, 2015, by Calvin Randall Tackett.

Kathy Lynn Carter Kilbourne
NOTARY PUBLIC, Notary # 272491
Commission expiration: 7-3-16

**KNOTT COUNTY WATER AND SEWER, INC.
AND
TROUBLESOME CREEK ENVIRONMENTAL AUTHORITY, INC.**

PSC CASE NO. 2015-00301

**PUBLIC SERVICE COMMISSION'S INITIAL REQUEST FOR INFORMATION
DATED 09/17/15**

REQUEST 1

RESPONSIBLE PERSON: L. J. Turner

COMPANY: Knott County Water and Sewer, Inc.

Request 1. Identify the number of licensed wastewater operators Knott District currently employs and provide each licensed operator's current work schedule hours. Include copies of the operators' wastewater certifications in this response.

Response 1. KCWSD currently has one employee that is a licensed Wastewater Treatment Plant Operator. KCWSD has a second employee that assists in the daily operations and is scheduled to take the exam to become a licensed Wastewater Treatment Plant Operator on November 20, 2015. This employee is currently a licensed Wastewater Collections Operator. The schedule for both of these employees is Monday – Friday 8am-5 pm, however this can change from day to day depending on the attention that the plant needs. Attached to this response are copies of the current certifications for these individuals.

ENERGY AND ENVIRONMENT CABINET

Certifies that

Timothy D Reed

IS A DULY LICENSED OPERATOR BY THE
COMMONWEALTH OF KENTUCKY

WW Treatment II 24765

Expiration Date:

06/30
2013



Energy and Environment Cabinet

**Department for
Environmental Protection**



ENERGY AND ENVIRONMENT CABINET

Certifies that

Michael Jacobs

S A DULY LICENSED OPERATOR BY THE
COMMONWEALTH OF KENTUCKY

WW Collection II

25762

Expiration Date:



**KNOTT COUNTY WATER AND SEWER, INC.
AND
TROUBLESOME CREEK ENVIRONMENTAL AUTHORITY, INC.**

PSC CASE NO. 2015-00301

**PUBLIC SERVICE COMMISSION'S INITIAL REQUEST FOR INFORMATION
DATED 09/17/15**

REQUEST 2

RESPONSIBLE PERSON: Chris Gooch

COMPANY: Outside Certified Public Accountant for TEA

Request 2. In Case No. 2010-00017,¹ Troublesome Creek estimated that the proposed wastewater facilities would cost approximately \$4,263,817 to construct; however, in its 2014 Annual Report² Troublesome Creek reports Utility Plant in Service of \$4,838,561. Provide a detailed explanation for the difference between the estimated construction costs and the actual amount reported in the 2014 Annual Report.

¹ Case No. 2010-00017, *Application of Troublesome Creek Environmental Authority, Inc., a Public Non-Profit Corporation, for a Certificate of Public Convenience and Necessity to Construct Facilities and to Operate, for Initial Rates, and for Authority to Incur Indebtedness* (Ky. PSC Feb. 16, 2010) at 2.

² Annual Report of Troublesome Creek Environmental Authority, Inc., c/o KRADD to the Public Service Commission for the Calendar Year Ended December 31, 2014.

Response 2. The Detail of Expenditures for the entire project are provided below and demonstrates the actual expense components for the “as-built” project.

Expenditure Type	Amount
Admin	50,961
Legal	33,996
Land Acq	30,500
Engineer	588,041
Construction	4,135,064
Total	4,838,561

The difference in the original construction estimate and the “as built” costs comes from the project’s “soft costs” (i.e. administrative, engineering and legal expenses) not being included as part of the original estimate.

KNOTT COUNTY WATER AND SEWER, INC.
AND
TROUBLESOME CREEK ENVIRONMENTAL AUTHORITY, INC.

PSC CASE NO. 2015-00301

**PUBLIC SERVICE COMMISSION’S INITIAL REQUEST FOR INFORMATION
DATED 09/17/15**

REQUEST 3

RESPONSIBLE PERSON: Chris Gooch and Ron Johnson
COMPANY: Outside Certified Public Accountant for TEA
and Outside Engineer for TEA

Request 3. On pages 17 and 18 of its 2013 Annual Report, Troublesome Creek divides its plant’s original cost of \$4,838,561 into the subsidiary accounts 310 – Land, and 311 – Structures and Improvements. Separate the original cost of each component of wastewater utility plant using the plant subsidiary accounts listed in the table below as required by the Uniform System of Accounts.

Account No-	Subsidiary Account Titles
301.0	Organization
302.0	Franchises and Consents
303.0	Miscellaneous Intangible Plant
310.0	Land and Land Rights
311.0	Structures and Improvements
352.1	Collection Sewers - Force
352.2	Collection Sewers - Gravity
353.0	Other Collection Plant Facilities
354.0	Services to Customers
355.0	Flow Measuring Devices
362.0	Receiving Wells and Pumps Pits
363.0	Pumping Equipment - (A-Electric, B-Diesel, C-Other)
372.0	Oxidation Lagoon
373.0	Treatment and Disposal Equipment
374.0	Plant Sewers
375.0	Outfall Sewer Lines
376.0	Other Treatment and Disposal Plant Equipment
391.0	Office Furniture and Equipment
392.0	Transportation Equipment
393.0	Other General Equipment

Response 3. The original cost of each component of wastewater utility plant is as follows:

Account No.	Subsidiary Account Titles	
301.0	Organization	\$ 650,000
302.0	Franchises and Consents	30,000
303.0	Miscellaneous Intangible Plant	50,000
310.0	Land and Land Rights	100,000
311.0	Structures and Improvements	1,014,543
352.1	Collection Sewers - Force	1,141,436
352.2	Collection Sewers - Gravity	300,650
353.0	Other Collection Plant Facilities	175,000
354.0	Services to Customers	144,000
355.0	Flow Measuring Devices	40,000
362.0	Receiving Wells and Pumps Pits	35,000
363.0	Pumping Equipment - (A-Electric, B-Diesel, C-Other)	98,400
372.0	Oxidation Lagoon	0
373.0	Treatment and Disposal Equipment	715,000
374.0	Plant Sewers	200,000
375.0	Outfall Sewer Lines	15,200
376.0	Other Treatment and Disposal Plant Equipment	59,332
391.0	Office Furniture and Equipment	20,000
392.0	Transportation Equipment	0
393.0	Other General Equipment	50,000
		\$ 4,838,561

KNOTT COUNTY WATER AND SEWER, INC.
AND
TROUBLESOME CREEK ENVIRONMENTAL AUTHORITY, INC.
PSC CASE NO. 2015-00301

**PUBLIC SERVICE COMMISSION’S INITIAL REQUEST FOR INFORMATION
DATED 09/17/15**

RESPONSIBLE PERSON: Jennifer McIntosh and Chris Gooch
COMPANY: Kentucky River Area Development District
on TEA’s behalf and outside Certified Public
Accountant for TEA

Request 4. In Case No. 2010-00017, Troublesome Creek proposed to fund the construction of the Ball Creek wastewater facilities as follows:

Kentucky Infrastructure Loan	\$1,500,000
United States Army Corps of Engineers Grant	500,000
Kentucky General Assembly Appropriation	1,425,000
Kentucky Local Government Economic Development Grant	<u>838,817</u>
Total Funding Sources	\$4,263,817

Request 4.a. Provide an updated schedule that separately lists each funding source that was used by Troublesome Creek to construct the Ball Creek wastewater facilities. For each source listed, identify the type (i.e., loan, grant, etc.), and the amount received. The total for this schedule should equal the reported plant’s original cost of \$4,838,561.

Response 4.a.

Agency	Amount	Type
KIA ARRA SRF	\$1,500,000	Loan with 50% Principal Forgiveness
Coal Severance (HB608)	\$1,424,054	Grant
Coal Severance (HB1)	\$265,123	Grant
USACE Section 531	\$507,382	Grant
Multi-County Coal Severance	\$638,817	Grant
Coal Severance (HB406)	\$450,000	Grant
Western Pocahontas	\$53,185.00 ³	Pass through of income for paying contract work on lateral lines
Total	\$4,838,561	

Request 4.b. Provide a copy of the contract or agreement for each funding source listed in the schedule provided in the response to Item 4.a.

Response 4.b. The following agreements are attached to this Response:

- KIA ARRA SRF pages 4-40
- Coal Severance (HB 608) pages 41-92
- Coal Severance (HB1) pages 93-108
- USACE Section 531 pages 109-138
- Multi-County Coal Severance pages 139-150
- Coal Severance (HB406) pages 151-158

Request 4.c. Explain why the loans or grants used by Troublesome Creek to fund the construction of the Ball Creek wastewater facilities were not recorded by Troublesome Creek on its balance sheet.

Response 4.c. The only loan for the project was the KIA Note which was paid off on July 9, 2013. The rest of the funding sources were grants which did not require pay-

³ Western Pocahontas actually paid TEA a total of \$93,185.00. Of this amount, \$40,000 was retained by TEA as an advance on Tap Fees for which Western Pocahontas would be given a credit when the so-called “Chestnut Mountain” area was developed (for further information see Response 5.c. below). The other \$53,185.00 flowed through to the general contractor for the installation of lateral lines needed by Western Pocahontas on its property in the event “Chestnut Mountain” became a viable project.

back. Therefore, the current balance sheet would not reflect any loans or grants since these have all been satisfied. The June 30, 2013 financial statement would be the last financial statement to show any debt for TEA.

KENTUCKY INFRASTRUCTURE AUTHORITY
ASSISTANCE AGREEMENT
FEDERALLY ASSISTED WASTEWATER REVOLVING LOAN FUND PROGRAM
FUND A

PROJECT NUMBER: A2 09-43
BORROWER: Troublesome Creek Environmental Authority
BORROWER'S ADDRESS: 917 Perry Park Road
Hazard, Kentucky 41701
DATE OF ASSISTANCE AGREEMENT: January 1, 2010
CFDA NO.: 66.458

RECEIVED
KENTUCKY INFRASTRUCTURE
AUTHORITY
2010 FEB -4 A 9:43

RECEIVED
KENTUCKY INFRASTRUCTURE
AUTHORITY
2010 FEB -9 A 8:25

RECEIVED
FEB 05 2010
SBE/SPAP SECTION

RECEIVED
KENTUCKY INFRASTRUCTURE
AUTHORITY
2010 JAN 22 A 9:59

RECEIVED
KENTUCKY INFRASTRUCTURE
AUTHORITY
2010 FEB 15 P 1:01

ASSISTANCE AGREEMENT

TABLE OF CONTENTS

ARTICLE I

DEFINITIONS

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of Authority 6
Section 2.2. Representations and Warranties of the Governmental Agency..... 6

ARTICLE III

AUTHORITY'S AGREEMENT TO MAKE LOAN; TERMS

Section 3.1. Determination of Eligibility 8
Section 3.2. Principal Amount of Loan Established; Loan Payments; Disbursement of Funds 8
Section 3.3. Governmental Agency's Right to Prepay Loan 8
Section 3.4. Subordination of Loan..... 9

ARTICLE IV

**CONDITIONS PRECEDENT TO DISBURSEMENT;
REQUISITION FOR FUNDS**

Section 4.1. Covenants of Governmental Agency and Conditions of Loan..... 10
Section 4.2. Additional Conditions to Disbursement Required Under the Federal Agreement and
ARRA 13
Section 4.3. Disbursements of Loan; Requisition for Funds..... 14

ARTICLE V

**CERTAIN COVENANTS OF THE GOVERNMENTAL AGENCY;
PAYMENTS TO BE MADE BY GOVERNMENTAL AGENCY TO THE AUTHORITY**

Section 5.1. Imposition of Service Charges 15
Section 5.2. Governmental Agency's Obligation to Repay Loan..... 15
Section 5.3. Covenant to Adjust Service Charges..... 15
Section 5.4. Adequacy of Service Charges 15
Section 5.5. Covenant to Establish Maintenance and Replacement Reserve..... 16
Section 5.6. Covenant to Charge Sufficient Rates; Reports; Inspection 16
Section 5.7. Segregation of Funds..... 16
Section 5.8. Mandatory Sewer Connection 16

ARTICLE VI

OTHER COVENANTS OF THE GOVERNMENTAL AGENCY

Section 6.1. Further Assurance..... 18

Section 6.2. Completion of Project 18

Section 6.3. Establishment of Completion Date 18

Section 6.4. Commitment to Operate..... 18

Section 6.5. Continue to Operate..... 18

Section 6.6. Tax Covenant 18

Section 6.7. Accounts and Reports..... 19

Section 6.8. Audit Requirements..... 19

Section 6.9. General Compliance With All Duties 19

Section 6.10. System Not to Be Disposed Of 19

Section 6.11. General 19

Section 6.12. Further Covenants under the Federal Agreement..... 19

Section 6.13. Covenants Under ARRA..... 20

Section 6.14. Continuing Disclosure Obligation..... 21

ARTICLE VII

MAINTENANCE, OPERATION, INSURANCE AND CONDEMNATION

Section 7.1. Maintain System..... 22

Section 7.2. Additions and Improvements 22

Section 7.3. Compliance with State and Federal Standards 22

Section 7.4. Access to Records 22

Section 7.5. Covenant to Insure - Casualty 22

Section 7.6. Authority as Named Insured 22

Section 7.7. Covenant to Insure - Liability 22

Section 7.8. Covenant Regarding Worker's Compensation 23

Section 7.9. Application of Casualty Insurance Proceeds..... 23

Section 7.10. Eminent Domain 23

Section 7.11. Flood Insurance 24

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.1. Events of Default Defined..... 25

Section 8.2. Remedies on Default 25

Section 8.3. Appointment of Receiver 26

Section 8.4. No Remedy Exclusive..... 26

Section 8.5. Consent to Powers of Authority Under Act 26

Section 8.6. Waivers..... 26

Section 8.7. Agreement to Pay Attorneys' Fees and Expenses 26

ARTICLE IX
MISCELLANEOUS PROVISIONS

Section 9.1. Approval not to be Unreasonably Withheld.....27

Section 9.2. Approval.....27

Section 9.3. Effective Date and Early Termination27

Section 9.4. Binding Effect27

Section 9.5. Severability.....27

Section 9.6. Assignability.....27

Section 9.7. Execution in Counterparts.....27

Section 9.8. Applicable Law27

Section 9.9. Captions.....28

SIGNATURES..... 30

EXHIBIT A - PROJECT SPECIFICS A-1

EXHIBIT B - REQUISITION FORM..... B-1

EXHIBIT C - SCHEDULE OF SERVICE CHARGES C-1

EXHIBIT D - FORM OF RESOLUTION..... D-1

EXHIBIT E - LEGAL OPINIONE-1

EXHIBIT F - SCHEDULE OF PAYMENTSF-1

EXHIBIT G - ADDITIONAL COVENANTS AND AGREEMENTS G-1

EXHIBIT H - [FOR GREEN PROJECT RESERVE ONLY]..... H-1

ASSISTANCE AGREEMENT

This Assistance Agreement made and entered into as of the date set forth on the cover page hereof (the "Assistance Agreement") by and between the KENTUCKY INFRASTRUCTURE AUTHORITY, a body corporate and politic, constituting a public corporation and governmental agency and instrumentality of the Commonwealth of Kentucky (the "Authority") and the Governmental Agency identified on the cover of this Assistance Agreement (the "Governmental Agency"):

WITNESSETH

WHEREAS, the General Assembly of the Commonwealth of Kentucky, being the duly and legally constituted legislature of Kentucky at its 1988 Regular Session, enacted House Bill 217 amending Chapter 224A of the Kentucky Revised Statutes (the "Act"), creating the "Kentucky Infrastructure Authority" to serve the public purposes identified in the Act; and

WHEREAS, the Authority has established its Program as hereinafter defined, for the purpose of providing financial assistance to Governmental Agencies, as defined in the Act, in connection with the acquisition and construction of Projects, as defined in the Act, in order to preserve, protect, upgrade, conserve, develop, utilize and manage the resources of the Commonwealth of Kentucky (the "Commonwealth") for the protection and preservation of the health, safety, convenience, and welfare of the Commonwealth and its citizens, and in that respect to assist and cooperate with Governmental Agencies in achieving such purposes; and

WHEREAS, the Program is funded in part, pursuant to the Capitalization Grant Operating Agreement between the Authority and the U.S. Environmental Protection Agency dated as of February 1, 1990, as amended, supplemented or restated from time to time (the "Federal Agreement"), under which the Authority is responsible for providing certain "match funding" described in the Federal Agreement; and

WHEREAS, the Authority has issued, and will issue from time to time, its revenue bonds pursuant to a General Trust Indenture dated as of September 1, 1989 (the "Indenture") between the Authority and U.S. Bank, National Association, as lawful successor in interest to National City Bank (F/K/A First Kentucky Trust Company) (the "Trustee") in order to provide the "match funding" for the Program; and

WHEREAS, the Governmental Agency has determined that it is necessary and desirable to acquire, construct, and finance the Project, as hereinafter defined, and the Authority has determined that the Project is a Project within the meaning of the Act and the Indenture, thereby qualifying for financial assistance from the Authority; and

WHEREAS, the Governmental Agency desires to enter into this Assistance Agreement with the Authority for the purpose of securing from the Authority the repayable Loan hereinafter identified; and

WHEREAS, the Authority is willing to cooperate with the Governmental Agency in making available the Loan pursuant to the Act and the Indenture to be applied to the Project upon the conditions hereinafter enumerated and the covenants by the Governmental Agency

herein contained to levy, collect, and enforce and remit adequate Service Charges, as hereinafter defined, for the services provided by the Governmental Agency's System, as hereinafter defined, and to apply the necessary portion of said Service Charges to the repayment of the Loan and the interest thereon, as hereinafter specifically provided; and

WHEREAS, the Authority and the Governmental Agency have determined to enter into this Assistance Agreement pursuant to the terms of the Act and the Indenture and to set forth their respective duties, rights, covenants, and obligations with respect to the acquisition, construction, and financing of the Project and the repayment of the Loan and the interest thereon;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN SET FORTH, THE LOAN HEREBY EFFECTED AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED BY EACH PARTY, THE PARTIES HERETO MUTUALLY COVENANT AND AGREE, EACH WITH THE OTHER AS FOLLOWS:

ARTICLE I

DEFINITIONS

All of the terms utilized in this Assistance Agreement will have the same definitions and meaning as ascribed to them in the Act and the Indenture, which Act and Indenture are hereby incorporated in this Assistance Agreement by reference, the same as if set forth hereby verbatim; provided, however, that those definitions utilized in the Act and the Indenture having general application are hereby modified in certain instances to apply specifically to the Governmental Agency and its Project.

"Act" shall mean Chapter 224A of the Kentucky Revised Statutes, as amended.

"Administrative Fee" means the charge of the Authority for the servicing of the Loan, which is the annual percentage charged against the unpaid principal balance of the Loan as identified in the Project Specifics.

"ARRA" shall mean the American Recovery and Reinvestment Act of 2009.

"Assistance Agreement" shall mean this agreement made and entered into by and between a Governmental Agency and the Authority, as authorized by the Act, providing for a Loan to the Governmental Agency by the Authority, and for the repayment thereof to the Authority by the Governmental Agency.

"Authority" shall mean the Kentucky Infrastructure Authority created by the Act, a body corporate and politic, constituting a public corporation and a governmental agency and instrumentality of the Commonwealth of Kentucky, or such other designation as may be effected by future amendments to the Act.

"Bond" or "Bonds" or "Revenue Bonds" shall mean any Kentucky Infrastructure Authority Bond or Bonds, or the issue of such Bonds, as the case may be, authenticated and delivered under the Indenture.

"Business Day" shall mean any day other than a Saturday, Sunday or other legal holiday on which the general offices of the Commonwealth are closed.

"Cabinet" means the Energy and Environment Cabinet of the Commonwealth.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and shall include the Regulations of the United States Department of the Treasury promulgated thereunder.

"Commonwealth" shall mean the Commonwealth of Kentucky.

"Construction" shall mean construction as defined in the Act.

"Debt Obligations" shall mean those outstanding obligations of the Governmental Agency identified in the Project Specifics outstanding as of the date of this Assistance

Agreement or issued in the future in accordance with the terms hereof, payable from the income and revenues of the System.

"Engineers" means the firm of consulting engineers employed by the Governmental Agency in connection with the Project identified in the Project Specifics.

"Federal Act" shall mean the Water Quality Act of 1987, 33 U.S.C. § 1251 et. seq.

"Governmental Agency" shall mean any agency or unit of government within the Commonwealth, now having or hereafter granted the authority and power to finance, acquire, construct, and operate a Project, including specifically but not by way of limitation, incorporated cities, counties, sanitation districts, water districts, public authorities, sewer construction districts, metropolitan sewer districts, sanitation taxing districts, and any other agencies, commissions, districts, or authorities (either acting alone, or in combination with one another pursuant to any regional or area compact, or multi-municipal agreement), now or hereafter established pursuant to the laws of the Commonwealth having and possessing such described powers; and for the purposes of this Assistance Agreement shall mean the Governmental Agency identified in the Project Specifics.

"Indenture" shall mean the General Trust Indenture dated as of February 1, 1989 between the Authority and the Trustee.

"Loan" shall mean the loan effected under this Assistance Agreement from the Authority to the Governmental Agency in the principal amount set forth in the Project Specifics, for the purpose of defraying the costs incidental to the Construction of the Project.

"Loan Rate" means the rate of interest identified in the Schedule of Payments.

"Memorandum of Agreement" means the Memorandum of Agreement dated as of February 1, 1990, as amended, supplemented or restated from time to time, between the Authority and the Cabinet.

"Person" shall mean any individual, firm, partnership, association, corporation or Governmental Agency.

"Program" shall mean the program authorized by KRS 224A.111 and the Indenture as the "federally assisted wastewater revolving fund" for financing Projects through Loans by the Authority to Governmental Agencies and shall not be deemed to mean or include any other programs of the Authority.

"Project" shall mean, when used generally, a Treatment Works project, and when used in specific reference to the Governmental Agency, the Project described in the Project Specifics.

"Project Commencement Date" means the date construction of the Project commences, or the date contracts have been executed for construction of the Project.

"Project Specifics" means those specific details of the Project identified in Exhibit A hereto, all of which are incorporated by reference in this Assistance Agreement.

"Requisition for Funds" means the form attached hereto as Exhibit B to be utilized by the Governmental Agency in obtaining disbursements of the Loan from the Authority as Construction of the Project progresses.

"Resolution" means the resolution of the Governmental Agency in the form of the resolution attached hereto as Exhibit D authorizing the execution of this Assistance Agreement.

"Schedule of Payments" means the principal and interest requirements of the Loan as set forth in Exhibit F hereto, to be established and agreed to upon or prior to the completion of the Project.

"Schedule of Service Charges" shall mean those general charges to be imposed by the Governmental Agency for services provided by the System, as set forth in Exhibit C hereto, and such other revenues identified in Exhibit C from which the Loan is to be repaid, which Schedule of Service Charges shall be in full force and effect to the satisfaction of the Authority prior to the disbursement of any portion of the Loan hereunder.

"Service Charges" shall mean any monthly, quarterly, semi-annual, or annual charges, surcharges or improvement benefit assessments to be imposed by a Governmental Agency, or by the Authority, in respect of the System which Service Charges arises by reason of the existence of, and requirement of, any Assistance Agreement and for the purposes of this Assistance Agreement said Service Charge shall be no less than those set forth in the Schedule of Service Charges.

"System" shall mean the Treatment Works system owned and operated by the Governmental Agency of which the Project shall become a part and from the earnings of which (represented by the Service Charges) the Governmental Agency shall repay the Authority the Loan hereunder.

"Treatment Works" shall mean Treatment works as defined in the Act.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of Authority. The Authority represents and warrants for the benefit of the Governmental Agency as follows:

(A) The Authority is a body corporate and politic constituting a governmental agency and instrumentality of the Commonwealth, has all necessary power and Authority to enter into, and perform its obligations under, this Assistance Agreement, and has duly authorized the execution and delivery of this Assistance Agreement.

(B) Neither the execution and delivery hereof, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Authority is now a party or by which the Authority is bound, or constitutes a default under any of the foregoing.

(C) To the knowledge of the Authority, there is no litigation or proceeding pending or threatened against the Authority or any other person affecting the right of the Authority to execute or deliver this Assistance Agreement or to comply with its obligations under this Assistance Agreement. Neither the execution and delivery of this Assistance Agreement by the Authority, nor compliance by the Authority with its obligations under this Assistance Agreement, require the approval of any regulatory body, or any other entity, which approval has not been obtained.

(D) The authorization, execution and delivery of this Assistance Agreement and all actions of the Authority with respect thereto, are in compliance with the Act, the Federal Act, ARRA and any regulations issued thereunder.

Section 2.2. Representations and Warranties of the Governmental Agency. The Governmental Agency hereby represents and warrants for the benefit of the Authority as follows:

(A) The Governmental Agency is a duly organized and validly existing Governmental Agency, as described in the Act, with full power to own its properties, conduct its affairs, enter into this Assistance Agreement and consummate the transactions contemplated hereby.

(B) The negotiation, execution and delivery of this Assistance Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action of the governing body of the Governmental Agency.

(C) This Assistance Agreement has been duly executed and delivered by the Governmental Agency and is a valid and binding obligation of the Governmental Agency enforceable in accordance with its terms, except to the extent that the enforceability hereof may be limited by equitable principles and by bankruptcy, reorganization, moratorium, insolvency or similar laws heretofore or hereafter enacted relating to or affecting the enforcement of creditors' rights or remedies generally.

(D) To the knowledge of the Governmental Agency, there is no controversy or litigation of any nature pending or threatened, in any court or before any board, tribunal or administrative body, to challenge in any manner the authority of the Governmental Agency or its governing body to make payments under this Assistance Agreement or to proceed with the Project, or to challenge in any manner the authority of the Governmental Agency or its governing body to take any of the actions which have been taken in the authorization or delivery of this Assistance Agreement or the Construction of the Project, or in any way contesting or affecting the validity of this Assistance Agreement, or in any way questioning any proceedings taken with respect to the authorization or delivery by the Governmental Agency of this Assistance Agreement, or the application of the proceeds thereof or the pledge or application of any monies or security provided therefor, or in any way questioning the due existence or powers of the Governmental Agency, or otherwise wherein an unfavorable decision would have an adverse impact on the transactions authorized in connection with this Assistance Agreement.

(E) The authorization and delivery of this Assistance Agreement and the consummation of the transactions contemplated hereby will not constitute an event of default or violation or breach, nor an event which, with the giving of notice or the passage of time or both, would constitute an event of default or violation or breach, under any contract, agreement, instrument, indenture, lease, judicial or administrative order, decree, rule or regulation or other document or law affecting the Governmental Agency or its governing body.

(F) Attached hereto as Exhibit D is a true, accurate and complete copy of the resolution or ordinance of the governing body of the Governmental Agency approving and authorizing the execution and delivery of this Assistance Agreement. Such resolution or ordinance was duly enacted or adopted at a meeting of the governing body of the Governmental Agency at which a quorum was present and acting throughout; such resolution or ordinance is in full force and effect and has not been superseded, altered, amended or repealed as of the date hereof; and such meeting was duly called and held in accordance with law.

(G) All actions taken by the Governmental Agency in connection with this Assistance Agreement and the Loan described herein and the Project have been in full compliance with the provisions of the Kentucky Open Meeting Law, KRS 61.805 to 61.850.

(H) The Governmental Agency has all licenses, permits and other governmental approvals (including but not limited to all required approvals of the Kentucky Public Service Commission) required to own, occupy, operate and maintain the Project, to charge and collect the Service Charges and to enter into this Assistance Agreement, is not in violation of and has not received any notice of an alleged violation of any zoning or land use laws applicable to the Project, and has full right, power and authority to perform the acts and things as provided for in this Assistance Agreement.

(I) Legal counsel to the Governmental Agency has duly executed and delivered the opinion of legal counsel substantially in the form set forth in Exhibit E hereto.

(J) The Governmental Agency is in full compliance with all federal and state labor and procurement laws in connection with the planning, design, acquisition and construction of the Project.

ARTICLE III

AUTHORITY'S AGREEMENT TO MAKE LOAN; TERMS

Section 3.1. Determination of Eligibility. Pursuant to the terms of the Act and the Indenture, the Authority has determined that the Governmental Agency's Project is a Treatment Works Project or other Infrastructure Project permitted under the Act and the Governmental Agency is entitled to financial assistance from the Authority in connection with financing the Construction of the Project.

Section 3.2. Principal Amount of Loan Established; Loan Payments; Disbursement of Funds. The principal amount of the Loan shall be the Loan Amount as identified in the Project Specifics, subject to such adjustments, including principal forgiveness, as may be set forth in the Schedule of Payments. Principal payments shall be made semiannually in the amounts and on the dates to be established by the Schedule of Payments, which Schedule of Payments shall provide for approximately level debt service payments over the Repayment Term set forth in the Project Specifics, commencing with the Amortization Commencement Date set forth in the Project Specifics.

The Loan shall bear interest, payable semiannually, at the Loan Rate identified in the Project Specifics, and after the Amortization Commencement Date, in the amounts (based on such Loan Rate) and on the dates set forth in the Schedule of Payments; provided that, should an Event of Default occur, such payments of interest shall be made on the first day of each month during the continuation of such Event of Default.

The Authority shall advance the proceeds of the Loan as Construction of the Project progresses upon the submission by the Governmental Agency of a Requisition for Funds in substantially the same form as Exhibit B hereto. Each such Requisition of Funds shall be accompanied by a Buy-American Certification in substantially the same form as Exhibit B-1 attached hereto. Each disbursement under a Requisition for Funds representing a portion of the principal amount of the Loan shall bear interest at the Loan Rate from the date of the disbursement; subject to the requirements set forth in Article IV hereof.

Payments of principal and interest on the Loan shall be made at the principal office of the Authority or the Trustee, as designated by the Authority.

Section 3.3. Governmental Agency's Right to Prepay Loan. The Governmental Agency shall have the right to prepay and retire the entire amount of the Loan at any time without penalty upon written notice to the Authority no less than five (5) Business Days in advance of said prepayment.

Notwithstanding the foregoing, upon the determination by the Authority that it intends to issue revenue bonds secured by a pledge of the payments on the Loan, the Authority shall advise the Governmental Agency (i) of its intention to proceed with the authorization of such bonds (ii) of the limitation on prepayments after such bonds are issued and (iii) that the Governmental Agency has thirty (30) days from its receipt of said notice to exercise its option to prepay the Loan. Upon the expiration of said thirty day period the Governmental Agency's right to prepay the Loan shall be limited to the terms described in such notice.

Section 3.4. Subordination of Loan. The Authority hereby agrees that, subject to compliance by the Governmental Agency with any covenants and conditions set forth in Exhibit G hereto, the source of payment for the Loan shall be inferior and subordinate to the security interest and source of payment for the Debt Obligations of the Governmental Agency payable from the revenues of the System outstanding at the time this Assistance Agreement is executed as identified in the Project Specifics and all such Debt Obligations that may hereafter be issued on a parity with the Debt Obligations identified in the Project Specifics; provided, however, the Authority shall receive notice of any additional financings in accordance with Section 5.6 (D) hereof.

ARTICLE IV

CONDITIONS PRECEDENT TO DISBURSEMENT; REQUISITION FOR FUNDS

Section 4.1. Covenants of Governmental Agency and Conditions of Loan. By the execution of this Assistance Agreement, the Governmental Agency agrees that prior to any requests for the disbursement of all or a portion of the Loan made hereunder, the Governmental Agency shall supply the Authority and the Cabinet appropriate documentation, satisfactory to the Authority indicating the following:

(A) That the Authority and the Cabinet and any appropriate regulatory agency of the Commonwealth as may be designated by the Authority or the Cabinet, and their respective duly authorized agents, shall have the right at all reasonable times, subject to prior notice to the Governmental Agency, to enter upon the Project and to examine and inspect same.

(B) All real estate and interest in real estate and all personal property constituting the Project and the Project sites heretofore or hereafter acquired shall at all times be and remain the property of the Governmental Agency and constitute a part of the System.

(C) In the event the Governmental Agency is required to provide financing for the Project from sources other than the Authority (as described in the Project Specifics) the Authority shall have the right to receive such reasonable proofs as it may require of the ability of the Governmental Agency to finance the costs of Construction of the Project over and above the Loan, prior to the disbursement by the Authority of any portion of the Loan.

(D) The Governmental Agency shall do all things necessary to acquire all proposed and necessary sites, easements and rights of way necessary or required in respect of the Project and demonstrate its ability to construct the Project in accordance with the plans, design and specifications prepared for the Governmental Agency by the Engineers.

(E) Actual construction and installation incident to the Project shall be performed by the lump-sum (fixed price) method, and adequate legal methods of obtaining public, competitive bidding will be employed prior to the awarding of the construction contract for the Project in accordance with Kentucky law.

(F) Unless construction of the Project has already been initiated as of the date of this Assistance Agreement, pursuant to due compliance with state law and applicable regulations, the Project will not be advertised or placed on the market for construction bidding by the Governmental Agency until the final plans, designs and specifications therefor have been approved by such state and federal agencies and authorities as may be legally required, and until written notification of such approvals has been received by the Governmental Agency and furnished to the Cabinet.

(G) Duly authorized representatives of the Cabinet and such other agencies of the Commonwealth and the United States Government as may be charged with responsibility will have reasonable access to the construction work whenever it is in preparation or progress, and

the Governmental Agency will assure that the contractor or contractors will provide facilities for such access and inspection.

(H) The construction contract or contracts shall require the contractor to comply with all provisions of federal and state law legally applicable to such work, and any amendments or modifications thereto, together with all other applicable provisions of law, to cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and to be responsible for the submission of any statements required of subcontractors thereunder.

(I) A work progress schedule utilizing a method of standard acceptance in the engineering community shall be prepared prior to the institution of construction in connection with each construction contract, or, if construction has already been initiated as of the date of this Assistance Agreement, at the earliest practicable date, to indicate the proposed schedule as to completion of the Project, and same shall be maintained monthly thereafter to indicate the actual construction progress of the Project.

(J) Prior to the award of the construction contract and prior to the commencement of construction, the Governmental Agency will arrange and conduct a conference as to the Project said conference to include representatives of the Authority, the Governmental Agency, the Cabinet and any other participating federal or state agency, the Engineers, and all construction contractors, such conference to be held in accordance with guidelines established by the Authority and the Cabinet. A written brief of said conference summarizing the construction schedule, fund requirements schedule, payment authorizations, responsible parties for approval of all facets of the construction work and payment therefor, and other pertinent matters shall be prepared and distributed to each agency involved, and all construction contractors and Engineers. Provided, however, that in the event construction shall have been initiated as of the date of this Assistance Agreement, this provision may be waived.

(K) All construction contracts will be so prepared that federal participation costs, if any, and state participation costs may be readily segregated from local participation costs, if any, and from each other, and in such manner that all materials and equipment furnished to the Governmental Agency may be readily itemized.

(L) Any change or changes in a construction contract will be promptly submitted to the Cabinet and any state or federal agencies.

(M) The Construction, including the letting of contracts in connection therewith, will conform in all respects to applicable requirements of federal, state and local laws, ordinances, rules and regulations.

(N) The Governmental Agency will proceed expeditiously with and complete the Project in accordance with the approved surveys, plans specifications and designs or amendments thereto, prepared by the Engineers for the Governmental Agency and approved by state and federal agencies.

(O) The Governmental Agency will erect at the Project sites, signs satisfactory to the Authority and the United States Environmental Protection Agency noting the participation of the American Recovery and Reinvestment Act in the financing of the Project.

(P) Except as otherwise provided in this Assistance Agreement, the Governmental Agency shall have the sole and exclusive charge of all details of the Construction.

(Q) The Governmental Agency shall keep complete and accurate records of the costs of acquiring the Project sites and the costs of Construction. The Governmental Agency shall permit the Authority and the Cabinet, acting by and through their duly authorized representatives, and the duly authorized representatives of state and/or federal agencies to inspect all books, documents, papers and records relating to the Project at any and all reasonable times for the purpose of audit and examination, and the Governmental Agency shall submit to the Authority and the Cabinet such documents and information as such public bodies may reasonably require in connection with the administration of any federal or state assistance.

(R) The Governmental Agency shall require that each construction contractor or contractors furnish a performance and a payment bond in an amount at least equal to one hundred percent (100%) of the contract price or the portion of the Project covered by the particular contract as security for the faithful performance of such contract.

(S) The Governmental Agency shall require that each of its contractors and all subcontractors maintain during the life of the construction contract, worker's compensation insurance, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority. Until the Project facilities are completed and accepted by the Governmental Agency, the contractor shall maintain builders risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Governmental Agency, the prime contractor, and all subcontractors, as their interests may appear.

(T) The Governmental Agency shall provide and maintain competent and adequate resident engineering services covering the supervision and inspection of the development and construction of the Project, and bearing the responsibility of assuring that Construction conforms to the approved plans, specifications and designs prepared by the Engineers. Such resident engineer shall certify to the Cabinet, any involved state or federal agencies, and the Governmental Agency at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or, approved amendments thereto.

(U) The Governmental Agency shall demonstrate to the satisfaction of the Authority the legal capability of the Governmental Agency to enact, adopt, levy, charge, collect, enforce and remit to the Authority and the Cabinet the Service Charges of the Governmental Agency described in the Schedule of Service Charges attached to and made a part of this Assistance Agreement as Exhibit C and submit proof satisfactory to the Authority that the Service Charges are in full force and effect as of the submission of the initial Requisition for Funds.

(V) The Project Commencement Date shall be no later than February 16, 2010.

Section 4.2. Additional Conditions to Disbursement Required Under the Federal Agreement and ARRA. The Governmental Agency, in order to comply with the terms and conditions of the Federal Agreement, further covenants and further agrees to additional conditions to disbursement, as follows:

(A) Notwithstanding any other agreements contained herein regarding the maintenance of books and records, that it shall maintain Project accounts in accordance with generally accepted governmental accounting standards, as required by the Federal Agreement. The Governmental Agency shall retain such records for no less than three (3) years following the final payment by the Governmental Agency under this Assistance Agreement or if any portion of the Project is disposed of, until at least three (3) years after such disposition; provided that if any litigation, claim, appeal or audit is commenced prior to the end of such period such records shall be maintained until the completion of such action or until three (3) years after such commencement, whichever is later.

(B) That it has not and will not apply any other federal funding to the Project in a manner that would cause it to receive "double benefits" as described in Section 603 of the Water Quality Act of 1987.

(C) That all property required for the completion of the Project shall be obtained, by easement, purchase or other means acceptable to the Authority, prior to commencement of construction and that the relocation of any Person resulting therefrom be in accordance with 49 CFR24 for Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

(D) That all Project contractors shall be required to retain Project records for the periods established for the retention of the Governmental Agency's records in Section 4.2(A).

(E) That, as required by 40 CFR 35.2218, all engineering services regarding construction and regarding the first year of operation of the Project shall be provided for, including the following:

(1) The operation of the Project and the revision of the operations and maintenance manual as necessary to accommodate actual operating experience; and

(2) The training of operating personnel, including preparation of curricula and training material for operating personnel.

(F) That it shall advise the Cabinet and the Authority in writing of the date for initiation of operation of the Project.

(G) That it shall provide that qualified inspectors are present at the construction site. A summary of such inspector's qualifications and experience shall be submitted to the Cabinet and the Authority.

(H) That it shall notify the Authority and the Cabinet of the completion date of the Project.

(I) That it agrees to the terms and conditions of its application for assistance and the Authority's commitment to provide assistance, the terms of which are incorporated herein by reference.

(J) That all measures required to minimize water pollution to affected waters shall be employed in the construction of the Project including compliance with Section 404 of PL 92-500, as amended, it being understood that approval of the Project does not constitute sanction or approval of any changes or deviations from established water quality standards, criteria implementation dates, or dates established by enforcement proceedings.

(K) That no portion of the proceeds of the Loan shall be disbursed unless the Project Commencement Date is on or prior to February 16, 2010.

(L) That the Project is comprised of improvements constituting green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.

Section 4.3. Disbursements of Loan; Requisition for Funds. The Governmental Agency shall submit to the Authority (or the Trustee acting on behalf of the Authority, if so designated) and the Cabinet a Requisition for Funds prior to the fifth day of each month (or such other designated period as is acceptable to the Authority), in substantially the same form as that attached to this Assistance Agreement as Exhibit B and Exhibit B-1 and made a part hereof, accompanied by, to the extent requested by the Authority, the following documentation:

(A) A full and complete accounting of the costs of the Project to be obligated by contract or otherwise during the month in question, or already obligated and not included in any previous accounting;

(B) A full and complete accounting of any costs of the Project paid by the Governmental Agency from its own funds with the approval of the Authority and not included in any previous accounting for which it seeks reimbursement;

(C) A full and complete accounting of any costs of the Project paid or requisitioned under any other financing, loan, bond, grant or similar agreement or paid from its own funds for which it does not seek reimbursement and which have not been identified in any previous requisition form.

(D) The contractor's estimate of work performed during the preceding month pursuant to construction contracts for the Project and payment thereunder due, together with the Engineer's and Governmental Agency's approval thereof for disbursement by the Authority.

Upon the Authority's receipt of the Requisition for Funds, and such additional documentation as it may require, and subject to certification by the Cabinet, the Authority may direct the Trustee to remit the amount requested to the Governmental Agency as a draw upon the Loan.

ARTICLE V

CERTAIN COVENANTS OF THE GOVERNMENTAL AGENCY; PAYMENTS TO BE MADE BY GOVERNMENTAL AGENCY TO THE AUTHORITY

Section 5.1. Imposition of Service Charges. The Governmental Agency hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Assistance Agreement, pursuant to which the Loan is to be made by the Authority to the Governmental Agency as specified herein and in the Act and the Indenture. The Governmental Agency hereby further irrevocably covenants and agrees that it already has, or will, to the extent necessary, immediately impose Service Charges upon all persons, firms and entities to whom or which services are provided by the System, such Service Charges to be no less than as set forth in Exhibit C annexed hereto. If so required, such Service Charges shall be in addition to all other rates, rentals and service charges of a similar nature of the Governmental Agency now or hereafter authorized by law, and now or hereafter being levied and collected by the Governmental Agency and shall be levied and collected solely for the purpose of repaying to the Authority all sums received from the Authority as representing the Loan in respect of the Project.

Section 5.2. Governmental Agency's Obligation to Repay Loan. The obligation of the Governmental Agency to repay to the Authority the amount of the Loan from the Service Charges shall not be revocable, and in the event that services supplied by the Project shall cease, or be suspended for any reason, the Governmental Agency shall continue to be obligated to repay the Loan from the Services Charges. In the event the Governmental Agency defaults in the payment of any Service Charges to the Authority, the amount of such default shall bear interest at the per annum rate equal to the Default Rate set forth in the Project Specifics, from the date of the default until the date of the payment thereof.

Section 5.3. Covenant to Adjust Service Charges. In the event, for any reason, the Schedule of Service Charges shall prove to be insufficient to provide to the Authority the minimum sums set forth in the Schedule of Payments, to provide for the operation of the System as required under this Assistance Agreement and to make the required deposits to the Maintenance and Replacement Reserve, the Governmental Agency hereby covenants and agrees that it will, upon notice by the Authority, to the full extent authorized by law, both federal and state, immediately adjust and increase such Schedule of Service Charges, or immediately commence proceedings for a rate adjustment and increase with all applicable regulatory authorities, so as to provide funds sufficient to pay to the Authority the minimum sums set forth in the Schedule of Payments, to provide for the operation of the System as required under this Assistance Agreement and to make required deposits to the Maintenance and Replacement Reserve.

Section 5.4. Adequacy of Service Charges. The Service Charges herein covenanted to be imposed by the Governmental Agency shall be fixed at such rate or rates (and it is represented that the Schedule set forth in Exhibit C hereto so qualifies), as shall be at least adequate to make the payments at the times and in the amounts set forth in the Schedule of Payments, to provide for the operation of the System as required under this Assistance Agreement and to make required deposits to the Maintenance and Replacement Reserve, subject to necessary governmental and regulatory approvals.

The Service Charges imposed by the Governmental Agency shall be paid by the users of the System and accordingly the Project not less frequently than the Service Charge Payment period set forth in the Project Specifics, and shall be remitted to the Authority by the Governmental Agency with a report showing collections and any delinquencies.

Section 5.5. Covenant to Establish Maintenance and Replacement Reserve. The Governmental Agency shall establish a special account identified as a "Maintenance and Replacement Reserve". The Governmental Agency shall deposit into the Maintenance and Replacement Reserve an amount equal to the amount set forth in the Project Specifics at the times set forth in the Project Specifics. Amounts in the Maintenance and Replacement Reserve may be used for extraordinary maintenance expenses related to the Project or for the unbudgeted costs of replacing worn or obsolete portions of the Project.

Section 5.6. Covenant to Charge Sufficient Rates; Reports; Inspection. The Governmental Agency hereby irrevocably covenants and agrees with the Authority:

(A) That, as aforesaid, it will at all times impose, prescribe, charge and collect the Service Charges set forth in Exhibit C hereto for the services of the Project as shall result in net revenues to the Governmental Agency at least adequate to provide for the payments to the Authority required by this Assistance Agreement, to provide for the operation of the System as required under this Assistance Agreement and to make the required deposits to the Maintenance and Replacement Reserve.

(B) That it will furnish to the Authority and the Cabinet not less than annually reports of the operations and income and revenues of the Project, and will permit authorized agents of the Authority to inspect all records, accounts and data of the Project at all reasonable times.

(C) That it will collect, account for and promptly remit to the Authority those specific revenues, funds, income and proceeds derived from Service Charges incident to this Assistance Agreement.

(D) That it will notify the Authority in writing of its intention to issue bonds or notes payable from the revenues of the System not less than thirty (30) days prior to the sale of said obligations.

Section 5.7. Segregation of Funds. The Governmental Agency shall at all times account for the income and revenues of the System and distinguish same from all other revenues, moneys and funds of the Governmental Agency, if any.

Section 5.8. Mandatory Sewer Connection. The Governmental Agency hereby irrevocably covenants and agrees with the Authority that it will, to the maximum extent permitted by Kentucky law, and by means of ordinance, or other appropriate legislative order or action, mandatorily require the connection to and use of, the sanitary sewers constituting the Project by all persons owning, renting or occupying premises generating pollutants where such sanitary sewers are reasonably available to such premises, and to exhaust, at the expense of the Governmental Agency, all remedies for the collection of Service Charges, including, either directly or indirectly, pursuant to authority granted by Sections 96.930 to 96.943, inclusive, of the Kentucky Revised Statutes, and the Act, causing termination of water services to any

premises where the bill for sewer services is delinquent and foreclosure and decretal sale in respect of improvement benefit assessments which are delinquent.

ARTICLE VI

OTHER COVENANTS OF THE GOVERNMENTAL AGENCY

Section 6.1. Further Assurance. At any time and all times the Governmental Agency shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, assets and revenues herein pledged or assigned, or intended so to be, or which the Governmental Agency may hereafter become bound to pledge or assign.

Section 6.2. Completion of Project. The Governmental Agency hereby covenants and agrees to proceed expeditiously with and promptly complete the Project in accordance with the plans, designs and specifications prepared by the Engineers for the Governmental Agency.

Section 6.3. Establishment of Completion Date. The completion date for the Project shall be evidenced to the Authority by a certificate signed by the Engineer and an authorized representative of the Governmental Agency stating that, except for amounts retained by the Authority for costs of the Project not then due and payable, (i) the Construction has been completed and all labor, services, materials, supplies, machinery and equipment used in such Construction have been paid for, (ii) all other facilities necessary in connection with the Project have been acquired, constructed, equipped and installed and all costs and expenses incurred in connection therewith have been paid, (iii) the Project and all other facilities in connection therewith have been acquired, constructed, equipped and installed to his satisfaction.

Section 6.4. Commitment to Operate. The Governmental Agency hereby covenants and agrees to commence operation of the Project immediately on completion of construction and not to discontinue operations or dispose of such Project without the approval of the Authority.

Section 6.5. Continue to Operate. The Governmental Agency hereby covenants and agrees to continuously operate and maintain the Project in accordance with applicable provisions of federal and state law and to maintain adequate records relating to said operation; said records to be made available to the Authority upon its request at all reasonable times.

Section 6.6. Tax Covenant. In the event the Authority issues Bonds which are intended to be excludable from gross income for federal income tax purposes to provide the funds for the Loan, the Governmental Agency shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure such exclusion and shall take such actions as may be directed by the Authority in order to accomplish the foregoing. The Governmental Agency shall not permit (i) the proceeds of the Loan to be used directly or indirectly in any trade or business, (ii) its payments hereunder to be secured directly or indirectly by property to be used in a trade or business, (iii) any management agreement for the operation of the System or (iv) any federal guarantee of its obligations hereunder without the prior written consent of the Authority. The Governmental Agency will not acquire or pledge any obligations which would cause the Bonds to be "arbitrage bonds" within the meaning of the Code.

Section 6.7. Accounts and Reports. The Governmental Agency shall at all times keep, or cause to be kept, proper books of record and account in accordance with the "Uniform System of Accounts" established by the Commonwealth, in which complete and accurate entries shall be made of all its transactions relating to the System and which shall at all reasonable times be subject to the inspection of the Authority.

Section 6.8. Audit Requirements. Within one hundred eighty (180) days after the end of each fiscal year of the Governmental Agency, the Governmental Agency shall provide to the Authority, itemized financial statements of income and expense and a balance sheet in reasonable detail, certified as accurate by a firm of independent certified public accountants or the Auditor of Public Accounts of the Commonwealth. All financial information must be satisfactory to the Authority as to form and content and be prepared in accordance with generally accepted accounting principles on a basis consistent with prior practice unless specifically noted thereon. With such financial statements, the Governmental Agency shall furnish to the Authority a certificate stating that, to the best knowledge of the authorized representative signing such certificate, no default under this Assistance Agreement exists on the date of such certificate, or if any such default shall then exist, describing such default with specificity. All recipients and subrecipients expending \$500,000 or more in a year in Federal awards must have a single or program-specific audit conducted for that year in accordance with OMB Circular A-133.

Section 6.9. General Compliance With All Duties. The Governmental Agency shall faithfully and punctually perform all duties with reference to the System required by the Constitution and laws of the Commonwealth, and by the terms and provisions of this Assistance Agreement and any other Debt Obligations.

Section 6.10. System Not to Be Disposed Of. The Governmental Agency covenants and agrees that, until satisfaction in full of its obligations hereunder, it will not, without the prior written consent of the Authority, which consent shall not be unreasonably withheld, sell, mortgage, or in any manner dispose of, or surrender control or otherwise dispose of any of the facilities of the System or any part thereof (except that the Governmental Agency may retire obsolete and worn out facilities, and sell same, if appropriate).

Section 6.11. General. The Governmental Agency shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the Governmental Agency under the provisions of the Act, the Federal Act and this Assistance Agreement in accordance with the terms of such provisions including the Additional Covenants and Agreements, if any, set forth in Exhibit G hereto.

Section 6.12. Further Covenants under the Federal Agreement. The Governmental Agency shall comply with all further requirements or conditions which may arise from time to time in order to assure compliance with the Federal Act, and with the agreements of the Authority set forth in the Federal Agreement, including but not limited to the following:

(A) - The Governmental Agency shall provide all information requested of it by the Authority or the Cabinet so that (i) the Grants Information Control System, referred to in the Federal Agreement, can be maintained, (ii) the accounting and auditing procedures required by

Sections 603 and 606 of the Federal Act can be maintained and (iii) the Authority can furnish the information required of its under the Federal Agreement.

(B) Qualified operating personnel, properly certified by the Cabinet, shall be retained by the Governmental Agency to operate the Project during the entire term of this Assistance Agreement. An approved plan of operating and an operations and maintenance manual for the Project shall be provided by the Governmental Agency to the Cabinet and the Authority. The Project shall be operated and maintained in an efficient and effective manner.

(C) All residents in the service area of the Project must be offered the same opportunity to become users of the Project regardless of race, creed, color, or level of income.

(D) The Governmental Agency shall comply with provisions contained in the following federal regulations, orders, acts and circulars and the following statutes and regulations of the Commonwealth.

(1) Federal:

- (a) 49 CFR, Part 24, Implementing the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970
- (b) 40 CFR, Part 6, the National Environmental Policy Act
- (c) 40 CFR, Part 15, Administration of Clean Water Act with respect to grants and loans
- (d) 40 CFR, Part 7,8, and 12, Nondiscrimination and Equal Employment Opportunity Act
- (e) 40 CFR, Part 29, Intergovernmental Review
- (f) 40 CFR, Part 32, Debarment and Suspension
- (g) 40 CFR, Part 35, Subpart K
- (h) Executive Order 11246, as amended, 11625 and 12138
- (i) Title VI of the Civil Rights Act of 1964, as amended
- (j) Age Discrimination Act
- (k) Rehabilitation Act of 1973
- (l) Contract Work Hours and Safety Standards Act
- (m) 40 CFR, Part 25, Public Participation Requirements

(2) State:

- (a) KRS 224
- (b) KRS 224A.111 Federally Assisted Wastewater Revolving Fund
- (c) KRS Chapter 337, Labor Laws
- (d) 401 KAR Chapter 5

Section 6.13. Covenants Under ARRA. The Governmental Agency covenants and agrees that it shall comply with all further requirements or conditions which may arise from time to time in order to insure compliance with ARRA, including but not limited to the following:

- (A) The Governmental Agency shall require all laborers and mechanics employed by contractors and subcontractors on the Project shall be paid wages at rates not less than prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of Chapter 31 of title 40, United States Code.
- (B) No portion of the Loan shall be used by the Governmental Agency for the construction, alteration, maintenance or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the Project is produced in the United States unless (i) a waiver is provided to the Governmental Agency by the United States Environmental Protection Agency or (ii) compliance would be inconsistent with the United States' obligations under international agreements.
- (C) Not later than the 10th calendar day after the end of each calendar quarter, the Governmental Agency shall submit reports to the Authority complying with the requirements of Section 1512(c) and Title VII of ARRA.
- (D) The Governmental Agency shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the Governmental Agency under the provisions of ARRA.
- (E) If the Project, or any portion thereof, has been qualified as a green infrastructure water or energy efficiency project, the Governmental Agency shall notify the Authority in writing of any changes to the Project. No such changes shall be undertaken unless the Authority shall have provided the Governmental Agency with express written consent to such changes.

Section 6.14. Continuing Disclosure Obligation. The Governmental Agency covenants and agrees that notwithstanding any other provision of this Assistance Agreement to the contrary, upon written notice from the Authority that the Schedule of Payments provides ten percent (10%) or more of the debt service requirements on an issue of the Authority's Bonds and that compliance by the Governmental Agency with the requirements of Securities and Exchange Commission Rule 15c2-12, as amended (the "SEC Rule") is required in connection with the Authority's Bonds, the Governmental Agency shall provide to the Authority such information as may be required by the Rule, within the time periods set out in such notice by the Authority, to enable the Authority to establish to the satisfaction of prospective purchasers of the Authority's Bonds that the requirements of the SEC Rule will be satisfied in connection with the issuance of the Authority's Bonds. The Governmental Agency further understands and agrees that the Authority shall act as the Governmental Agency's disclosure agent for purposes of compliance with the SEC Rule and that upon a failure by the Governmental Agency to provide the information required to be provided under the SEC Rule within the time frame specified in such notice, the Authority and/or the beneficial owners and holders of the Authority's Bonds shall be specifically granted the right of enforcing the provisions of this Section 6.13 by an action in mandamus, for specific performance, or similar remedy to compel performance.

ARTICLE VII

MAINTENANCE, OPERATION, INSURANCE AND CONDEMNATION

Section 7.1. Maintain System. The Governmental Agency agrees that during the entire term of this Assistance Agreement, it will keep the Project, including all appurtenances thereto, and the equipment and machinery therein, in good and sound repair and good operating condition at its own cost so that the completed Project will continue to provide the services for which the System is designed.

Section 7.2. Additions and Improvements. The Governmental Agency shall have the privilege of making additions, modifications and improvements to the sites of the Project, and to the Project itself from time to time provided that said additions, modifications and improvements do not impair the operation or objectives of the Project. The Cost of such additions, modifications and improvements shall be paid by the Governmental Agency, and the same shall be the property of the Governmental Agency and shall be included under the terms of this Assistance Agreement as part of the site of the Project, or the Project, as the case may be. Nothing herein contained shall be construed as precluding the Authority and the Governmental Agency from entering into one or more supplementary Assistance Agreements providing for an additional Loan or Loans in respect of additional Projects undertaken by the Governmental Agency.

Section 7.3. Compliance with State and Federal Standards. The Governmental Agency agrees that it will at all times provide operation and maintenance of the Project to comply with the water quality standards, if any, established by any state or federal agency. The Governmental Agency agrees that qualified operating personnel properly certified by the Commonwealth will be retained to operate the Project during the entire term of this Assistance Agreement.

Section 7.4. Access to Records. The Governmental Agency agrees that it will permit the Authority and any state or federal agency and their respective agents to have access to the records of the Governmental Agency pertaining to the operation and maintenance of the Project at any reasonable time following completion of construction of the Project, and commencement of operations thereof.

Section 7.5. Covenant to Insure - Casualty. The Governmental Agency agrees to insure the Project facilities in such amount as like properties are similarly insured by political subdivisions similarly situated, against loss or damage of the kinds usually insured against by political subdivisions similarly situated, by means of policies issued by reputable insurance companies duly qualified to do such business in the Commonwealth.

Section 7.6. Authority as Named Insured. Any insurance policy issued pursuant to Section 7.5 hereof, shall be so written or endorsed as to make losses, if any, payable to the Governmental Agency, and to the Authority, as their interests may appear.

Section 7.7. Covenant to Insure - Liability. The Governmental Agency agrees that it will carry public liability insurance with reference to the Project with one or more reputable insurance companies duly qualified to do business in the Commonwealth, insuring against such risks

(including but not limited to personal injury, death and property damage) and in such amounts as are set forth in the Project Specifics, and naming the Authority as an additional insured.

Section 7.8. Covenant Regarding Worker's Compensation. Throughout the entire term of this Assistance Agreement, the Governmental Agency shall maintain worker's compensation coverage, or cause the same to be maintained.

Section 7.9. Application of Casualty Insurance Proceeds. If, prior to the completion of the term of this Assistance Agreement, the Project shall be damaged or partially or totally destroyed by fire, windstorm or other casualty, there shall be no abatement or reduction in the amount payable by the Governmental Agency pursuant to the terms of this Assistance Agreement and the Governmental Agency will (1) promptly repair, rebuild or restore the Project damaged or destroyed; and (2) apply for such purpose so much as may be necessary of any net proceeds of insurance resulting from claims for such losses, as well as any additional moneys of the Governmental Agency necessary therefor. All net proceeds of insurance resulting from claims for such losses shall be paid to the Governmental Agency, and shall be promptly applied as herein provided.

Section 7.10. Eminent Domain. In the event that title to, or the temporary use of, the Project, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any Person acting under governmental authority, there shall be no abatement or reduction in the minimum amounts payable by the Governmental Agency to the Authority pursuant to the terms of this Assistance Agreement, and any and all net proceeds received from any award made in such eminent domain proceedings shall be paid to and held by the Governmental Agency in a separate condemnation award account and shall be applied by the Governmental Agency in either or both of the following ways, as shall be determined by the Governmental Agency in its sole discretion:

(A) The restoration of the improvements located on the Project sites to substantially the same condition as prior to the exercise of said power of eminent domain; or

(B) The acquisition of additional property, if necessary, and the acquisition of additional facilities by construction or otherwise, equivalent to the Project facilities, which property and facilities shall be deemed to be a part of the Project sites and a part of the Project facilities and to be substituted for Project facilities so taken by eminent domain, without the payment of any amount other than herein provided, to the same extent as if such property and facilities were specifically described herein.

Any balance of the net proceeds of the award in such eminent domain proceedings after the carrying out of the mandatory proceedings stipulated in (A) and (B) of this Section 7.10, shall be paid to the Governmental Agency upon delivery to the Authority of a certificate signed by an authorized officer of the Governmental Agency to the effect that the Governmental Agency has complied with either subparagraph (A) or (B), or both, of this Section, and written approval of such certificate by an authorized officer of the Authority. In no event will the Governmental Agency voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the written consent of the Authority.

Section 7.11. Flood Insurance. All structures located in flood prone areas shall be covered by flood insurance carried by the Governmental Agency for an amount equal to the total Project cost excluding the cost of land and any uninsurable improvements, or for the maximum limit available under the National Flood Insurance Act of 1968, as amended, whichever is less, for the entire useful life of the Project.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.1. Events of Default Defined. The following will be "Events of Default" under this Assistance Agreement and the term "Event of Default" or "Default" will mean, whenever it is used in this Assistance Agreement, any one or more of the following events:

(A) Failure by the Governmental Agency to pay any payments at the times specified herein.

(B) Failure by the Governmental Agency to observe or perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsection (A) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied will have been given to the Governmental Agency by the Authority unless the Authority agrees in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Authority will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Governmental Agency within the applicable period and diligently pursued until such failure is corrected.

(C) The dissolution or liquidation of the Governmental Agency, or the voluntary initiation by the Governmental Agency of any proceeding under any federal or state law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt or any other form of debtor relief, or the initiation against the Governmental Agency of any such proceeding which will remain undismissed for sixty (60) days, or the entry by the Governmental Agency into an agreement of composition with creditors or the failure generally by the Governmental Agency to pay its debts as they become due.

(D) A default by the Governmental Agency under the provisions of any agreements relating to its Debt Obligations.

Section 8.2. Remedies on Default. Whenever any Event of Default referred to in Section 8.1 has occurred and is continuing (other than an event of default arising under Section 6.13 of this Assistance Agreement), the Authority may, without any further demand or notice, take one or any combination of the following remedial steps:

(A) Declare all payments due hereunder, as set forth in the Schedule of Payments to be immediately due and payable.

(B) Exercise all the rights and remedies of the Authority set forth in the Act.

(C) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Assistance Agreement.

(D) Submit a formal referral to the appropriate federal agency, as required by the Federal Agreement.

The sole remedies for an Event of Default under this Assistance Agreement arising by virtue of the failure of the Governmental Agency to comply with the provisions of Section 6.13 hereof shall be those remedies specifically set forth in Section 6.13 hereof

Section 8.3. Appointment of Receiver. Upon the occurrence of an Event of Default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Authority under this Assistance Agreement, the Authority shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the System and all receipts therefrom, pending such proceedings, with such power as the court making such appointment shall confer; provided, however, that the Authority may, with or without action under this Section, pursue any available remedy to enforce the payment obligations hereunder, or to remedy any Event of Default.

Section 8.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive, and every such remedy will be cumulative and will be in addition to every other remedy given hereunder and every remedy now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power and any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 8.5. Consent to Powers of Authority Under Act. The Governmental Agency hereby acknowledges to the Authority its understanding of the provisions of the Act, vesting in the Authority certain powers, rights and privileges in respect of the Project upon the occurrence of an Event of Default, and the Governmental Agency hereby covenants and agrees that if the Authority should in the future have recourse to said rights and powers, the Governmental Agency shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of this Assistance Agreement.

Section 8.6. Waivers. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver will be limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

Section 8.7. Agreement to Pay Attorneys' Fees and Expenses. In the event that either party hereto will default under any of the provisions hereof and the non-defaulting party employs attorneys or incurs other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will pay on demand therefor to the non-defaulting party the fees of such attorneys and such other expenses so incurred by the non-defaulting party.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.1. Approval not to be Unreasonably Withheld. Any approval of the Authority required by this Assistance Agreement shall not be unreasonably withheld and shall be deemed to have been given on the thirtieth (30th) day following the submission of any matter requiring approval to the Authority, unless disapproved in writing prior to such thirtieth (30th) day. Any provision of this Assistance Agreement requiring the approval of the Authority or the satisfaction or the evidence of satisfaction of the Authority shall be interpreted as requiring action by an authorized officer of the Authority granting, authorizing or expressing such approval or satisfaction, as the case may be, unless such provision expressly provides otherwise.

Section 9.2. Approval. This Agreement is made subject to, and conditioned upon, the approval of this Assistance Agreement by the Secretary or Assistant Secretary of the Finance and Administration Cabinet.

Section 9.3. Effective Date and Early Termination. This Assistance Agreement shall become effective as of the date first set forth hereinabove and shall continue in full force and effect until the date the obligations of the Governmental Agency pursuant to the provisions of this Assistance Agreement have been fully satisfied. Notwithstanding the foregoing, in the event the Project Commencement Date shall not have occurred on or prior to February 16, 2010, this Assistance Agreement shall terminate on February 17, 2010.

Section 9.4. Binding Effect. This Assistance Agreement shall be binding upon, and shall inure to the benefit of the parties hereto, and to any person, officer, board, department, agency, municipal corporation, or body politic and corporate succeeding by operation of law to the powers and duties of either of the parties hereto. This Assistance Agreement shall not be revocable by either of the parties, without the written consent of the other party.

Section 9.5. Severability. In the event that any provision of this Assistance Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 9.6. Assignability. The rights of the Authority under this Assistance Agreement shall be assignable by the Authority without the consent of the Governmental Agency, but none of the rights, duties or obligations of the Governmental Agency under this Assistance Agreement shall be assignable by the Governmental Agency without the prior written consent of the Authority.

Section 9.7. Execution in Counterparts. This Assistance Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

Section 9.8. Applicable Law. This Assistance Agreement will be governed by and construed in accordance with the laws of the Commonwealth.

Section 9.9. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Assistance Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Assistance Agreement to be executed by their respective duly authorized officers as of the day and year above written.

ATTEST:

Sandy Williams
Title: SECRETARY

KENTUCKY INFRASTRUCTURE
AUTHORITY

By: [Signature]
Title: EXECUTIVE DIRECTOR

ATTEST:

[Signature]
Title: Secretary

GOVERNMENTAL AGENCY:
TROUBLESOME CREEK
ENVIRONMENTAL AUTHORITY

By: [Signature]
Title: Chairman

APPROVED:

E. Jeffrey Morley for
SECRETARY FINANCE AND
ADMINISTRATION CABINET OF THE
COMMONWEALTH OF KENTUCKY

EXAMINED:

Beck Shaffer + Williams LLP
LEGAL COUNSEL TO THE
KENTUCKY INFRASTRUCTURE
AUTHORITY

ENERGY AND ENVIRONMENT CABINET OF
THE COMMONWEALTH OF KENTUCKY

By: [Signature]
Director
Division of Water

APPROVED AS TO
FORM & LEGALITY
[Signature]
APPROVED
FINANCE & ADMINISTRATION CABINET

EXHIBIT A
Troublesome Creek Environmental Authority
PROJECT SPECIFICS
A2 09-43

GOVERNMENTAL AGENCY:

Name: Troublesome Creek Environmental Authority
917 Perry Park Road
Hazard, KY 41701

Contact
Person: Lewis H. Warrix
(606) 436-3158

SYSTEM: Wastewater

PROJECT: The Troublesome Creek Environmental Authority is requesting a Clean Water SRF loan in the amount of \$1,500,000 to be funded through the American Recovery and Reinvestment Act for construction of a new 100,000 gallon per day wastewater treatment plant with collection lines initially running to 85 individual residences, 2 businesses, 18 apartments and a car wash. The project will eliminate straight pipes and failing systems in the area and restore the condition of Troublesome Creek. The creation of this wastewater treatment plant will also aid in the development of Knott County through Chestnut Mountain. Once the plant is operational, development can begin. It is expected that over 400 new homes will be constructed along with several new businesses. The development is expected to create over 100 new jobs for the area.

PROJECT BUDGET:

	Total
Administrative Expenses	\$ 40,000
Legal Expenses	\$ 10,000
Land, Easements	\$ 70,000
Engineering Fees	\$ 463,790
Construction	\$ 2,654,325
Contingency	\$ 186,885
Total	\$ 3,425,000

FUNDING SOURCES:

	Amount	%
Fund A Loan	\$ 1,500,000	44%
HB608 (LGEDF)	1,425,000	41%
Section 531	500,000	15%
Total	\$ 3,425,000	100%

KIA DEBT SERVICE:

Construction Loan	\$	1,500,000
Less: Principal Forgiveness (52.1%)	\$	781,500
Amortized Loan Amount	\$	718,500
Interest Rate		1.00%
Loan Term (Years)		20
Estimated Annual Debt Service	\$	39,727
Administrative Fee (0.20%)	\$	1,437
Total Estimated Annual Debt Service	\$	41,164

AMORTIZATION COMMENCEMENT DATE: June 1 and December 1

Interest payments will commence within six months from first draw of funds (estimated 06/01/10).

Full principal and interest payments will commence within one year of initiation of operation (estimated 12/01/11).

REPLACEMENT RESERVE ACCOUNT:

\$	1,800	ANNUAL AMOUNT
\$	18,000	TOTAL AMOUNT

The annual replacement cost is \$1,800. This amount should be added to the replacement account each December 1 until the balance reaches \$18,000 and maintained for the life of the loan.

ADMINISTRATIVE FEE: 0.20%

DEFAULT RATE: 8.00%

DEBT OBLIGATIONS CURRENTLY OUTSTANDING:

	Outstanding	Maturity
Kentucky Rural Water Association (2.25%)	\$509,344	2010
Total	\$509,344	

LIABILITY INSURANCE COVERAGE:

Death or Personal Injury (per person)
Death or Personal Injury (per occurrence)
Property Damage on System

SEE ATTACHED
CONSTRUCTION
CONTRACTORS INSURA



CERTIFICATE OF LIABILITY INSURANCE

Response 4.b. Attached (01/29/10)
OP ID 7L
BRIGR-2

01/29/10

PRODUCER Neace Lukens - Lexington 2416 Sir Barton Way, Suite 300 Lexington KY 40509 Phone: 888-255-1999 Fax: 859-543-1987		INSURERS AFFORDING COVERAGE INSURER A: Westfield Insurance Co. 24112 INSURER B: Associated General Contractors INSURER C: Columbia Casualty Company 31127 INSURER D: INSURER E:	
INSURED The Bristol Group, Inc. 1115 Delaware Ave. #200 Lexington KY 40505-4003		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR ADD'L LTR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A X	GENERAL LIABILITY	TRA4035488	10/01/09	10/01/10	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 10,000
	<input checked="" type="checkbox"/> Blkt. Add. Insd.				PERSONAL & ADV INJURY	\$ 1,000,000
A A	<input checked="" type="checkbox"/> Per Proj. Agg.	TRA4035488	10/01/09	10/01/10	GENERAL AGGREGATE	\$ 3,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COM/PROP AGG	\$ 3,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				Emp Ben.	1,000,000
A A A A	AUTOMOBILE LIABILITY	TRA4035488	10/01/09	10/01/10	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS	TRA4035488	10/01/09	10/01/10	BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/> SCHEDULED AUTOS	TRA4035488	10/01/09	10/01/10	PROPERTY DAMAGE (Per accident)	\$
A A A A	<input checked="" type="checkbox"/> HIRED AUTOS	TRA4035488	10/01/09	10/01/10	AUTO ONLY - EA ACCIDENT	\$
	<input checked="" type="checkbox"/> NON-OWNED AUTOS	TRA4035488	10/01/09	10/01/10	OTHER THAN EA ACC AGG	\$
A	GARAGE LIABILITY				EACH OCCURRENCE	\$ 5,000,000
	<input type="checkbox"/> ANY AUTO				AGGREGATE	\$ 5,000,000
						\$
						\$
A	EXCESS / UMBRELLA LIABILITY	TRA4035488	10/01/09	10/01/10		\$
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE					\$
	<input type="checkbox"/> DEDUCTIBLE					\$
	<input checked="" type="checkbox"/> RETENTION \$0					\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	76380	01/01/10	12/31/10	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH)				E.L. EACH ACCIDENT	\$ 4,000,000
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$ 4,000,000
	OTHER				E.L. DISEASE - POLICY LIMIT	\$ 4,000,000
A C	Leased & Rented	TRA4035488	10/01/09	10/01/10	Equipment	1,000,000
	Contractors Prof.	CPB288270975	07/06/09	07/06/10	Limit	1,000,000
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS Troublesome Creek Environmental Authority is listed as additional insured with respects to General Liability as their interest may appear per written contract.						

CERTIFICATE HOLDER

CANCELLATION

Troublesome Creek
Environmental Authority
917 Perry Park Road
Hazard KY 41701

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ACORD 25 (2009/01)

© 1988-2009 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/04/2009

PRODUCER (270)487-6192 Rowland Insurance Agency, Inc. 101 W. First Street P. O. Box 398 Tompkinsville, KY 42167	FAX (270)487-6285	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED Cleary's Construction, Inc. 1860 Edmonton Rd Tompkinsville, KY 42167		INSURERS AFFORDING COVERAGE
		INSURER A: Westfield National
		INSURER B: KY Assoc of General Contractor
		INSURER C:
		INSURER D:
		INSURER E:

COVERAGES						
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR ADD'L TR INSUR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	TRA3424947	02/25/2009	02/25/2010	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (EA occurrence)	\$ 100,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 5,000
	<input checked="" type="checkbox"/> Includes XCU				PERSONAL & ADV INJURY	\$ 1,000,000
	Coverage				GENERAL AGGREGATE	\$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMPROP AGG	\$ 2,000,000
	POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
A	AUTOMOBILE LIABILITY	TRA3424947	02/25/2009	02/25/2010	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	<input type="checkbox"/> HIRED AUTOS					
	<input type="checkbox"/> NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY - EA ACC	\$
					AUTO ONLY - AGG	\$
A	EXCESS / UMBRELLA LIABILITY	TRA3424947	02/25/2009	02/25/2010	EACH OCCURRENCE	\$ 5,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$ 5,000,000
	<input type="checkbox"/> DEDUCTIBLE					\$
	<input type="checkbox"/> RETENTION \$					\$
						\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	7340-0	01/01/2009	12/31/2009	<input checked="" type="checkbox"/> WKS STAYU-TORY LIMITS <input type="checkbox"/> OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH)				EL EACH ACCIDENT	\$ 4,000,000
	If yes, describe under SPECIAL PROVISIONS below.				EL DISEASE - EA EMPLOYEE	\$ 4,000,000
					EL DISEASE - POLICY LIMIT	\$ 4,000,000
	OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

CANCELLATION

	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
	AUTHORIZED REPRESENTATIVE <i>Christy Jones</i>

ACORD 25 (2009/01)

© 1988-2009 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD



KENTUCKY INFRASTRUCTURE AUTHORITY


Steven L. Beshear
Governor

1024 Capital Center Drive, Suite 340
Frankfort, Kentucky 40601
Phone (502) 573-0260
Fax (502) 573-0157
<http://kia.ky.gov>

John E. Covington III
Executive Director

K.R.A.D.D.
DATE RECEIVED

JUL 10 2009

TO: 

July 9, 2009

Mr. Lewis H. Warrix
Chairman, Troublesome Creek EA
917 Perry Park Road
Hazard, Kentucky 41701

RE: Infrastructure for Economic Development Fund for Coal Producing Counties
SX21119810 – Troublesome Creek EA - \$1,425,000 - HB608 (2008)

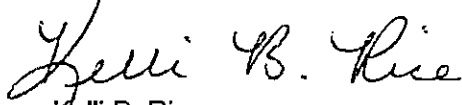
Dear Mr. Warrix:

Enclosed please find a copy of the fully executed Grant Assistance Agreement for the above-referenced line item grant.

I have also attached a checklist indicating the status of documents submitted for the grant agreement. Please review the checklist for the items that must be submitted as the project progresses (Steps 1, 2 and 3).

If you have any questions or need further assistance, please contact me.

Sincerely,


Kelli B. Rice
Kentucky Infrastructure Authority

C: Jennifer McIntosh, KRADD, (w/attachments)

7/9/2009

Grantee: Troublesome Creek Environmental Authority
WRIS: SX21119810
Project ID#: 71C-2008
Project Admin: Jennifer McIntosh
Email: jennifer@kradd.org

Project Amount: 1,425,000 of 1,425,000

CHECKLIST

Step 1, Before Project is Bid:

- | | |
|--|------------|
| 1- Executed Grant Assistance Agreement | 02/11/2009 |
| 2- Exhibit 1 - Project Profile and Estimated Project Budget | 02/11/2009 |
| 3- Exhibit 2 - Resolution | 02/10/2009 |
| 4- Exhibit 3 - Schedule for Current (and proposed if applicable) Rates and Charges | |
| 5- Clearinghouse State Applicator Identifier # (SAI) | 09/22/2008 |
| 6- Application for Electronic Transfer of Funds Form | 02/10/2009 |
| 7- Capital Projects and Bond Oversight Committee Review | 03/17/2009 |

Step 2, After Project is Bid:

- | | |
|---|------------|
| 1- Exhibit 4 - Revised Project Profile (if applicable) and Project Budget based on Project Bids | |
| 2- Additional Covenants and Agreements (if applicable) | |
| 3- Other Funding Commitment (if applicable) | |
| 4- Documentation of Clearinghouse Endorsement and Comments | 09/22/2008 |

Step 3, Project Closeout:

- | | |
|--|--|
| 1- Final Design Plan is an AutoCAD Drawing File Format (DWG), referenced to the appropriate (North and South) Kentucky State Plane Coordinate System (NAD83-Survey Feet) on a Compact Disc (CD) to be submitted within 3 months of initiation of construction. | |
| 2- If there is a significant deviation from the Final Design Plan during construction, As-built Plans shall also be provided to the Authority, within three months of construction completion. | |
| 3- Exhibit 5 - Fully executed Certificate of Completion | |

Note: Administrative Fee
Per Section 7 of the Grant Agreement, the Grantee agrees to pay to the Authority a fee equal to 1/2 of 1% of the principal amount of the Grant. The Administrative Fee shall be and payable on the date the Grantee's initial Request for Payment and Project Status Report submitted to the Authority.

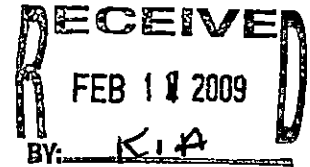
NP

Page 1 of 25

KENTUCKY INFRASTRUCTURE AUTHORITY

**2008 GENERAL ASSEMBLY
HOUSE BILL 608**

GRANT ASSISTANCE AGREEMENT



WRIS NUMBER: SX21119810

GRANT ID #: 71C-2008

GRANT AMOUNT:: 1,425,000.00

GRANTEE:: Troublesome Creek Environmental Authority

DATE OF AGREEMENT: February 10, 2009

GRANT ASSISTANCE AGREEMENT

Page 2 of 25

This Grant Assistance Agreement ("Agreement") is made and entered into this date, February 10, 2009, by and between the KENTUCKY INFRASTRUCTURE AUTHORITY ("Authority"), a body corporate and politic, constituting a public corporation and governmental agency and instrumentality of the Commonwealth of Kentucky, and the Troublesome Creek Environmental Authority ("Grantee").

WITNESS

WHEREAS, the General Assembly of the Commonwealth of Kentucky, at its 1988 Regular Session, amended Chapter 224A of the Kentucky Revised Statutes (the "Act"), creating the "Kentucky Infrastructure Authority" to serve the public purposes identified in the Act; and

WHEREAS, the Authority, an agency of the Commonwealth attached to the Governor's Office, is charged pursuant to KRS 224A.300 with coordinating the implementation of infrastructure projects and to this end maintains within the Water Resource Information System, a comprehensive database of profiles of each community's water and wastewater projects; and

WHEREAS, 2008-2010 Budget enacted by 2008 General Assembly included funding for the Infrastructure for Economic Development Fund - Non-Coal Counties and the Infrastructure for Economic Development Fund - Coal Counties and charged the Authority with administering the program; and

WHEREAS, the 2008 General Assembly included in the Commonwealth's 2008-2010 biennial Budget funding for the Grantee's infrastructure project, the subject of this Agreement; and

WHEREAS, the Grantee now seeks to implement the Project as identified in the 2008-2010 Budget of the Commonwealth and the Authority has determined that the Project is a Project within the meaning of the Act, and has been shown to be consistent with the Area Water Management Plan where applicable; and

WHEREAS, the Grantee and the Authority desire to enter into this Agreement which sets forth their respective duties, rights, covenants, and obligations with respect to the acquisition, construction and financing of the Project described in the Grantee's Project Profile.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and for the other good and valuable consideration, the receipt, mutuality and sufficiency of all of which is hereby acknowledged by the parties hereto, the Authority and

SECTION 1 – DEFINITIONS

Page 3 of 25

All terms utilized herein shall have the same definitions and meaning as ascribed to them in the Act, which are hereby incorporated in this Agreement by reference, the same as if set forth hereby verbatim; provided, however, that those definitions utilized in the Act having general application are hereby modified in certain instances to apply specifically to the Grantee and its Project.

Act shall mean Chapter 224A of the Kentucky Revised Statutes, as amended.

Agreement shall mean this Agreement made and entered into by and between the Grantee and the Authority, as authorized by the Act, providing for a Grant to the governmental agency, unit of government, or private, investor-owned water system by the Authority.

Area Water Management Council shall mean the council designated as the planning body for the area, which shall prepare the Area Water Management Plan and approve all Project Profiles for water and wastewater projects.

Area Water Management Plan shall mean the plan that identifies current and future water supply, drinking water, and wastewater service needs of the area.

Authority shall mean the Kentucky Infrastructure Authority created by the Act as amended, a body corporate and politic, constituting a public corporation and a governmental agency and instrumentality of the Commonwealth of Kentucky, or such other designation as may be effected by future amendments to the Act.

Engineer(s) shall mean the professional engineer or firm of professional engineers properly procured by the Grantee in connection with the Project identified in the Project Profile Database.

Grantee shall mean the **Troublesome Creek Environmental Authority** or the **Troublesome Creek Environmental Authority's** designee that is a governmental agency or unit of government or any private, investor owned utility within the Commonwealth eligible for funding under the Program in accordance with the Act, now having been or hereafter being granted the authority and power to finance, acquire, construct, or operate a Project, and for the purposes of this Agreement shall mean that **Troublesome Creek Environmental Authority** identified in the Project Profile or the 2008 biennial Budget of the Commonwealth.

Grant shall mean the funds effected under this Agreement from the Authority to the Grantee in the principal amount set forth in the 2008-2010 Budget of the Commonwealth, for the purpose of defraying the costs incidental to the Project.

Kentucky Water Management Plan shall mean the guide and strategy that incorporates and analyzes each Area Water Management Plan and provides an assessment of future needs and allocation of funding for water and wastewater services throughout the Commonwealth.

Program shall mean the program authorized by KRS 224A.035 for the Authority to engage in a program of assistance to designated entities with respect to the construction and acquisition of water and wastewater infrastructure projects.

Project shall mean, when used generally, water, wastewater or other infrastructure project authorized pursuant to the Act, and when used in specific reference to the Grantee, the Project described in the Project Profile.

Project Administrator shall mean that individual designated in writing to the Authority by the Grantee, who has the responsibility of supervising the Project and coordinating the preparation of all documentation with respect to the Project.

Project Budget shall mean a list of Project expenses and funding sources, in the form set forth in Exhibit 1.

Project Profile shall mean those specific details of the Project, approved by the Area Water Management Council as being consistent with the Area Water Management Plan, as applicable.

Rates and Charges shall mean an approved schedule of charges, based on actual cost of service, to adequately provide for retirement of any related debt obligation and to provide for proper operation of the Project.

System shall mean the utility system owned and operated by the Grantee of which the Project shall become a part and from the earnings of which System shall be operated, maintained and insured.

SECTION 2 - OBLIGATIONS OF THE AUTHORITY

The Authority covenants and agrees, conditioned upon the timely performance by the other party of its respective obligations, to undertake the following obligations:

- A. The Authority shall pay to the Grantee an amount not to exceed **1,425,000.00** subject to the availability of appropriate funding, to complete the Project in accordance with the Project Profile, attached hereto as **Exhibit 1**, which is hereby incorporated herein and made a part of this Agreement. No payments shall be made until after the Project has received Clearinghouse endorsement.
- B. The Authority may make periodic reviews of the Project progress and may make inspections of the Project and send inspection reports to the Grantee. Deficiencies identified in the inspection report shall be corrected by the Grantee and the correction reported in writing to the Authority within two weeks of receipt of the Authority's inspection report.

SECTION 3 - OBLIGATIONS OF THE GRANTEE

Page 6 of 25

The Grantee covenants and agrees to undertake the following obligations:

- A. The Grantee shall, before any funds are released, sign and submit the Agreement, and complete and include the following Exhibits which are incorporated herein and made a part hereof:
1. Before the Project is bid, the Grantee shall complete and submit to the Authority the following:
 - a) Project profile and estimated project budget, as Exhibit 1, as an accurate description and cost estimate of the proposed project.
 - b) Original copy of the Grantee's resolution, as Exhibit 2, accepting the grant award, amending its budget to allow for receipt and expenditures of these funds, and authorizing a designated individual to execute the Agreement and all other documentation related to the Project.
 - c) A schedule of current rates and charges, as Exhibit 3. If there will be a change in the current rate structure as a result of this project, provide the proposed schedule of rates and charges.
 2. After the Project is bid, the Grantee shall complete and submit to the Authority a revised Project Profile and Project Budget based on Project bids, as Exhibit 4.

The Grantee may request Grant funds after completion of Exhibits 1-4 by executing a Request for Payment and Project Status Report, as provided by the Authority, and attaching appropriate documentation, including, but not limited to, invoices and receipts. The Authority may withhold release of funds until receipt of Administrative Fee pursuant to Section 7.

- B. The Grantee agrees to adopt and use the Kentucky Uniform System of Accounting and Cost-Based Rates (KUSoA) and assure that rates and charges for service are based upon the cost of providing such service, if applicable to the Project. These rates and charges shall be in place no later than within 12 months of the end of the Grantee's current fiscal year.
- C. The Grantee shall receive Project funds via Electronic Fund Transfer (EFT) with the EFT to be implemented by use of the form provided by the Authority.
- D. The Grantee shall perform and/or cause to be performed all necessary acts to plan, design and construct the Project including, but not limited to: the procurement of

- E. The Grantee shall obtain all necessary permits, licenses and approvals from the appropriate federal, state, and/or local governmental entities prior to construction of the Project. Further, the Grantee shall require all construction contractors to pay wages pursuant to applicable prevailing wage rates (federal or state) for all work relating to the subject Project.
- F. The Grantee shall utilize the 'Fees for Professional Engineering Services—Percentage of Construction Cost', in the engineer's contract for this project, as provided by the Authority.
- G. The Grantee shall comply with all applicable federal and state statutes, executive orders, regulatory requirements, and policies relating to the planning and construction of the Project.
- H. The Grantee shall provide to the Authority access to all records related to the Project for review in determining compliance with the Grant Agreement and all applicable laws and regulations. The Grantee shall retain all records, including all invoices, relating to the Project for three years after full execution of Exhibit 5 - Certificate of Completion.
- I. The Grantee shall cooperate fully with the Authority and provide any documentation requested by the Authority in order to facilitate the obligations set out in this Agreement.
- J. Any unauthorized or improper expenditure of funds, or expenditure of funds other than in accordance with the terms of this Agreement, shall be deemed a default of this Agreement by the Grantee.
- K. The Grantee will proceed expeditiously with and complete the Project in accordance with the approved final design, plans and specifications or amendments thereto, prepared by the Project Engineer for the Grantee and as approved by the appropriate state and federal agencies.
- L. The Grantee agrees that throughout the reasonable life of the infrastructure facilities developed under this Project it will retain ownership of, operate, and maintain these facilities, and all appurtenances thereto, keeping them in good and sound repair and good operating condition at its own expense so that the completed Project will continue to provide the services for which it was designed. Change of ownership or disposal of the Project facilities may occur only with written approval of the Authority.
- M. The Grantee agrees that it will at all times impose, charge and collect sufficient customer Rates and Charges.
- N. The Grantee shall, within 3 months of initiation of construction of the Project, submit to the Authority, Final Design Plans in an AutoCAD Drawing File Format (DWG), referenced to the appropriate (North or South) Kentucky State Plane Coordinate System (NAD83-Survey Feet) on a Compact Disc (CD). If there is a significant

As-built plans shall also be provided to the Authority, within three months of construction completion, in the same format.

- O. No project shall be considered closed out until the Authority has received, and approved, the Grantee's Certificate of Completion, referenced above as Exhibit 5.

SECTION 4 - MUTUALITY OF OBLIGATIONS

- A. The parties agree that the funds granted by the Commonwealth to the Grantee are to be used solely for the purposes of implementing the Project. Further the parties agree that the obligations imposed upon them are for their respective benefit and the timely fulfillment of each and every obligation in accordance with this Agreement is necessary. The failure of either party to fulfill its obligations under this Agreement shall constitute a breach of same.
- B. In the event of default by the Grantee, including the failure to take actions directed herein and/or to comply with time deadlines set out in this Agreement, the Authority may declare this Agreement void from the beginning without further obligation to the Grantee and may commence appropriate legal action to enforce its rights under this Agreement including action for recovery of funds expended hereunder.
- C. Except as may otherwise be provided herein, the parties to this Agreement shall be solely responsible for any costs incurred in fulfilling their respective obligations under this Agreement and neither party shall have any claim against the other party for reimbursement of costs whether or not a party is in default.

SECTION 5 - TERMS OF AGREEMENT

- A. All funds made available under this Agreement are subject to reauthorization by subsequent General Assemblies of the Commonwealth of Kentucky. Should funding for the Project not be reauthorized, this agreement may be terminated.
- B. This Agreement may be terminated by either party at any time for cause and may be terminated by either party without cause upon 30 days written notice to the other party. Termination of this Agreement shall not diminish or in any other manner affect any other remedy that may be available to the parties for any breach of the Agreement that occurs prior to the termination.
- C. The Grantee acknowledges and understands that this Agreement is funded out of a tax exempt bond issuance. Pursuant to IRS Regulation, the Authority shall not reimburse the Recipient for any activity taken by the Recipient prior to May 18, 2006, with this date representing 60 days prior to the State Property and Buildings

- D. Except for payments authorized through Section 6 of this Agreement, no payment shall be made under the terms of this Agreement until the Kentucky State Clearinghouse has issued Project Endorsement.
- E. If additional financial assistance for this project becomes available to the Grantee after execution of this agreement, the amount of the assistance from the Authority shall be recalculated with the inclusion of the additional assistance, and the Grantee shall pay to the Authority the amount, if any, by which the grant actually made, exceeds the grant as determined by the recalculation.

SECTION 6 - ADVANCE FUNDING FOR PROJECT PLANNING AND DESIGN

- A. The Grantee may request, in writing, that a portion of the grant funds be disbursed prior to Project bidding to pay a portion of the cost of Project planning and design directly related to submission of the Project plans and specifications for review by the Division of Water and the Public Service Commission, as may be required.
- B. It is specifically understood and agreed by the Grantee, in the event that the Project has not commenced construction by June 30, 2010, for whatever reason, all grant funds disbursed for Project planning and design are subject to full and immediate repayment to the Authority.
- C. Funds disbursed under this Section of the Agreement shall not exceed 50% of the Project planning and design amount.
- D. Funds received under provisions of this Section shall be used solely for planning and design costs of the Project.
- E. No funds shall be released under this Section until the requirements of Section 3. A. 1. of this Agreement have been met.

SECTION 7 - ADMINISTRATIVE FEE

Pursuant to 2008 General Assembly House Bill 406 and 608, Part 1 (Operating Budget), Section A (General Government), Budget Unit 8 (Kentucky Infrastructure Authority), Sub-Unit 1 (Administrative Fee on Infrastructure for Economic Development Fund Projects), the Grantee agrees to pay to the Authority an administrative fee equal to ½ of 1% of the principal amount of the Grant. The administrative fee shall be due and payable on the date the Grantee's initial Request for Payment and Project Status Report is submitted to the Authority.

Section 7 shall only apply to those projects funded by the Infrastructure for Economic

SECTION 8 - MISCELLANEOUS PROVISIONS

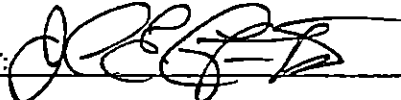
Page 10 of 25

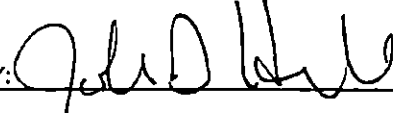
- A. This Agreement may be signed by each party on a separate copy, and in such case one counterpart of this Agreement shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Agreement may be executed in two or more counterparts each of that shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms and conditions hereof to produce or account for more than one of such counterparts.
- B. The headings set forth in this Agreement are only for convenience or reference and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.
- C. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successor and assigns, respectively, of the parties. This provision shall not be construed to permit an assignment by any party of any of its rights and duties under this Agreement which assignment shall be prohibited except with the prior written consent of the parties hereto.
- D. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof, and may be modified only by a written instrument duly executed by each of the parties hereto.
- E. The parties agree that any suit, action or proceeding with respect to this Agreement may only be brought into or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky or the United States District Court for the Eastern District of Kentucky, Frankfort Division.
- F. The Authority may audit or review all documentation and records of the Grantee relating to this Project pursuant to the provisions of KRS 45A.150.
- G. The Grantee agrees that the Authority, 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. Furthermore, any books, documents, papers records, or other evidence provided to the Commonwealth, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the contract. The Secretary of the Finance and Administration Cabinet shall not restrict the

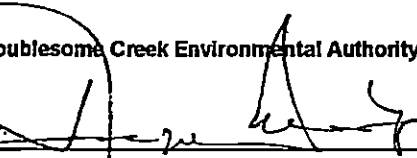
Page 11 of 25


Public release of any information which would otherwise be subject to public release if a state government agency was providing the services.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year above written.

BY: 
Title: Executive Director

BY: 
Title: Secretary

Troublesome Creek Environmental Authority
BY: 
Title: Chairman

ATTEST
BY: 
Title: Secretary

EXAMINED

LEGAL COUNSEL TO THE
KENTUCKY INFRASTRUCTURE AUTHORITY

BY: 
31709

REQUIRED EXHIBITS

Page 12 of 25

- Exhibit 1 - Project Profile and Estimated Project Budget**
- Exhibit 2 - Resolution/Certificate**
- Exhibit 3 - Schedule of Current (and proposed if applicable) Rates & Charges**
- Exhibit 4 - Revised Project Profile (if applicable) and As-bid Budget**
- Exhibit 5 - Certificate of Completion**

ATTACHMENTS

- Attachment A - Checklist**
- Attachment B - Application for Electronic Transfer of Funds**
- Attachment C - Fees for Professional Engineering Services**
- Attachment D - Request for Payment Form and Project Status Report**

EXHIBIT 1

Page 13 of 25

PROJECT PROFILE & PROJECT BUDGET

Please attach the SX/WX Project Profile and Project Budget

SX21119810

71C-2008

Troublesome Creek Environmental Authority

KENTUCKY WASTEWATER PROJECT PROFILE

Areas indicated with (*) are required fields.

1.* Project Title (use title which will be identifiable by local community):

(TEA)- Ball Creek Sewer Plant and Collection Lines

2.* Project Description:

Provide a brief narrative denoting if project relates to source, distribution, treatment, storage or other)

Construction of a new wastewater treatment plant with collection lines initially running to 85 of 430 potential customers, 2 businesses, 18 apartments and a car wash. Construction will be completed in two phases.

* Project Descriptor: Wastewater Plant and Collection lines.

* WRIS Project Number (PNUM): SX21119810

This number is assigned by an ADD through the respective Area Water Management Planning Council once the project profile is approved by the Council. This number ties each project to mapped/spatial information in the Water Resource Information System (WRIS). Project profiles without this number AND the required corresponding mapped/spatial information will NOT be accepted.

* Project County: Knott

* Is it a multi-county project: ☐ Yes ☒ No

* Project Submitted By: Kentucky River

* If wastewater project, KPDES#(s):

Available:

KY0002801
KY0020001
KY0020010
KY0020036
KY0020044
KY0020061
KY0020079
KY0020087
KY0020095
KY0020117

Include >

< Remove

Selected:

new

* If wastewater collection project, KIMOP#(s)

Available:

KYP000015
KYP000032
KYP000034
KYP000035
KYP000036
KYP000037
KYP000038
KYP000039
KYP000040
KYP000041

Include >

< Remove

Selected:

None Selected..

DR (at least one required)

3. Legal Applicant

* Legal Applicant: Troublesome Creek Environmental Authority

Wastewater Utility which will own proposed improvements:
(if different from Legal Applicant)

* Organizational Structure: Joint Sewer Agency

Authorized Official Information

• First Name: Lewis • Last Name: Warrix M.I.: H
• Title: Chairman
• Street Address Line 1: 917 Perry Park Road
Street Address Line 2:
• P.O. Box:
• City: Hazard • State: KY • Zip: 41701
• County: Perry
• Telephone: (606) 436-3158 Ext:
Fax: 606-436-2144
Email:

Contact Person Information

• First Name: Lewis • Last Name: Warrix M.I.: H
• Title: Chairman
• Street Address Line 1: 525 Picnic Hill
Street Address Line 2:
• P.O. Box:
• City: Jackson • State: KY • Zip: 41339
• County: Breathitt
• Telephone: 606-666-7774 Ext:
Fax:
Email:

Project Administrator Information

• First Name: Jennifer • Last Name: McIntosh M.I.: D
Title: Administrator
Street Address Line 1: 917 Perry Park Road
Street Address Line 2:
P.O. Box:
City: Hazard State: KY Zip: 41701
County: Perry
• Telephone: 606-436-3158 Ext: 241
Fax: 606-436-2144
Email: jennifer@kradd.org

Consulting Engineer Information

• First Name: Ron • Last Name: Johnson M.I.:
Firm: RM Johnson Engineering
Street Address Line 1:
Street Address Line 2:
P.O. Box: 444
City: Hindman State: KY Zip: 41822
County: Knott
• Telephone: 606-785-5926 Ext: 23
Fax:
Email: rjohnson@rmje.net

4.* Project Type (atleast one required/check all that apply):

- ☒ Facilities Planning
- ☒ Sewer System Evaluation Survey Report
- ☒ Design
- ☒ Construction
- ☒ Management

5. Project Alternatives: Please list a minimum of three:

- a.* On-Site System
- b.* Force main to Hindman
- c.* Nothing

6. Special Impact(s) of Proposed Wastewater Project:

- a.* New service/improve service to 85 unserved 0 underserved households
- b. Number of new jobs: 0 Number of retained jobs: 0
- c. Other beneficial technical, managerial, fiscal impacts: (20 words or less)
Initial Project would provide service to sports complex where there is potential for a huge amount of growth of business and residents. Service would also impact 18 apartments, a car wash and another business located in the vicinity.
- d.* Does proposed activity relate to public health protection emergency: ☐ Yes ☒ No
- e.* Does project involve regionalization: ☐ Yes ☒ No
- f. Number of systems affected/involved: 1

7.* Median Household Income of Service Area:

\$ 20373

8.* Project Start Schedule:

- ☒ Years 0-2 ☐ Years 3-10 ☐ Years 11-20

9. Estimated Funding Sources:

- * Estimated Local Funding Amount \$ 0
- * Estimated Other Funding Amount (all sources) \$ 2523055
- Total Estimated Project Cost \$ 2523055

10. Project Data - Wastewater (complete all items which apply to this discrete project)

- a.* Is project related to modifications to treatment plant? ☐ Yes ☒ No
- b.* Is project related to new collector sewer construction? ☒ Yes ☐ No
Total linear feet 25828
- c.* Is project related to new Interceptor sewer construction? ☐ Yes ☒ No
- d.* Is project related to sewer rehab? ☐ Yes ☒ No
- e. Number of lift stations required 2
- f. Management (describe)
- g.* Does your agency currently provide sewer service ☐ Yes ☒ No

TABLE 1: COST

Category					
Secondary Treatment	Advanced Treatment	Sewer Rehab	Collector Sowers	Interceptor Sowers	Combined Sewer Overflows
					NPS Urban

1200000	0	0	0	1323055	0	0	0
---------	---	---	---	---------	---	---	---



Should be equal to Estimated Project Cost (4.b.1)

Estimated Project Cost: \$ 2523055

Allocated: \$ 2523055

Remaining Funds: \$ 0

TABLE 2: NEEDS
Public Health Concerns
as a results of this Project

Number of Raw Sewage Discharges Eliminated	Number of Failing Septic Systems Eliminated	Septic Systems to be Eliminated	Total No. of WWTPs to be Eliminated	Total Average Design Flow from Eliminated WWTPs (MGD)
0	0	85	0	0
KPDES No.	Name of Plant Eliminated		Average Design Flow (MGD)	
			0	
			0	
			0	
			0	
			0	
			0	

* Date Project was approved by the Area Water Management Planning Council: 07/30/2007

Signature Page

KENTUCKY INFRASTRUCTURE AUTHORITY

Page 14 of 25

Project Budget: HB 608

SX21119810

Troublesome Creek Environmental Authority

71C-2008

☒ Estimated

☐ Revised

Cost Classification	Amount
1 Administrative Expenses (1)	\$40,000
2 Legal Expenses	\$20,000
3 Land Appraisals Easements	\$80,000
4 Relocation Expenses & Payments	0
5 Planning (2)	0
6 Engineering Fees - Design	\$153,180
7 Engineering Fees - Construction	
8 Engineering Fees - Inspection	\$92,100
9 Construction	\$2,002,675
10 Equipment	
11 Contingency	\$100,100
12 Other	\$35,000
Total	\$2,523,055

Funding Sources	Amount	Date Committed
1 Appalachian Regional Comm.	\$500,000	Requested
2 EDA	\$500,000	Will request
3 Corp. of Engineers 531 fund	\$500,000	Requested
4 404 in-lieu Mitigation funds	\$300,000	Requested
5		
6		
Total	\$1,800,000	

(1) Include Interim Financing

(2) Include in this category, all negotiated fees not included in the RD fee scale calculation


Signature

Chairman

Title

February 10, 2009

Date


 <div>R.M. Johnson Engineering P.O. Box 444 Hindman, Kentucky 41822</div>		CONSTRUCTION COST ESTIMATE			
		Project : TEA, Ball Creek Sewer Project Date : 08/22/08 Job No. : Est. By : SRH Checked By : RMJ DRAWING NO. :			
BALL CREEK SEWER & STREAM RESTORATION		QUANTITY			
		NO. OF UNITS	UNIT MEAS.	COST PER UNIT	TOTAL COST
GENERAL					
Erosion & Sediment Control		1	LS	\$ 15,750.00	\$ 15,750.00
Concrete Replacement		240	SY	\$ 20.00	\$ 4,800.00
Asphalt Pavement Replacement		5,300	SY	\$ 25.00	\$ 132,500.00
Easement Assistance		1,000	LF	\$ 6.50	\$ 6,500.00
SANITARY/SEWER					
8" PVC Gravity Sewer Pipe, SDR 35		525	LF	\$ 45.00	\$ 23,625.00
8" D.I. Gravity Sewer Pipe		0	LF	\$ 50.00	\$ -
6" PVC Gravity Sewer Pipe, SDR 35		0	LF	\$ 35.00	\$ -
6" PVC Sewer Cleanout		0	LF	\$ 100.00	\$ -
8" X 6" Tees or Wyes		0	EA	\$ 80.00	\$ -
Sanitary Sewer Manhole, Type B		3	EA	\$ 2,500.00	\$ 7,500.00
Extra Vertical Height for Manhole		0	EA	\$ 100.00	\$ -
6" HDPE Force Main, SDR 17		25,300	LF	\$ 20.00	\$ 506,000.00
Residential Grinder Pump Station (Complete)		85	EA	\$ 6,000.00	\$ 510,000.00
Air/Vacuum Relief Assembly		4	EA	\$ 3,000.00	\$ 12,000.00
Sanitary Sewer Creek Crossing		400	LF	\$ 65.00	\$ 26,000.00
12" Bored Steel Encasement		400	LF	\$ 120.00	\$ 48,000.00
Pump Station w/ Telemetry		2	EA	\$ 120,000.00	\$ 240,000.00
WWTP, Extended Air		1	EA	\$ 470,000.00	\$ 470,000.00
Onsite Typical S.S. Service (Septic/Aeration)		0	LS	\$ 30,000.00	\$ -
SUBTOTAL AMOUNT					\$ 2,002,675.00
5% CONST. CONTINGENCY					\$ 100,100.00
ENGINEERING DESIGN		7.65%			\$ 153,180.00
RESIDENT INSPECTION		4.60%			\$ 92,100.00
ADDITIONAL ENGINEERING					\$ 35,000.00
ADMINISTRATION					\$ 40,000.00
LEGAL, ADMINISTRATION and LAND					\$ 100,000.00
TOTAL ESTIMATED CONSTRUCTION COST					\$ 2,523,055.00

EXHIBIT 2

Page 15 of 25

RESOLUTION

**SX21119810
71C-2008**

RESOLUTION OF THE Troublesome Creek Environmental Authority (GRANTEE) ACCEPTING THE GRANT, APPROVING THE GRANT AGREEMENT, AUTHORIZING THE AMENDMENT OF LOCAL BUDGET, AND AUTHORIZING A REPRESENTATIVE TO SIGN ALL RELATED DOCUMENTS

WHEREAS, the General Assembly has appropriated funds for infrastructure projects in the 2008-2010 Budget of the Commonwealth; and

WHEREAS, the Grantee has previously determined that it is in the public interest to acquire and construct certain facilities and improvements to the Grantee's utility system (the "Project"); and

WHEREAS, the Grantee desires funding from the Kentucky Infrastructure Authority (the "Authority") for the purpose of acquisition and construction of the Project.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Troublesome Creek EA as follows:

SECTION 1. That the Grantee hereby accepts the grant award and approves the Agreement between the Grantee and the Authority substantially in the form on file with the Grantee for the purpose of providing a portion of the necessary financing to the Grantee for the acquisition and construction of the Project.

SECTION 2. That Lewis H. Warrix is hereby authorized, directed and empowered by the Grantee to execute the Agreement and all other necessary documents or agreements, and to otherwise act on behalf of the Grantee to implement the Project.

SECTION 3. That the Grantee hereby includes in its annual budget the receipt and expenditures of funds subject to the Agreement with the Authority.

SECTION 4. This Agreement shall take effect immediately upon passage.

ADOPTED on February 10, 2009.

Troublesome Creek Environmental Authority, (Grantee)

(Representative)

Title Chairman

CERTIFICATE

SX21119810

Troublesome Creek Environmental Authority

I, the undersigned, hereby certify that I am the duly qualified and acting Secreatry of the Troublesome CK EA; that the foregoing is a full, true and correct copy of a Resolution adopted by the governing authority of said Grantee at a meeting duly held on February 10, 2009; that said official action appears as a matter of public record in the official records or journal of the governing authority; that said meeting was held in accordance with all applicable requirements of Kentucky law, including KRS 61.810, 61.815, 61.820 and 61.825; that a quorum was present at said meeting; that said official action has not been modified, amended, revoked or repealed and is now in full force and effect.

IN TESTIMONY WHEREOF, witness by me this 10 day of February, 2009.



Secretary/Clerk/Recording Officer

EXHIBIT 3

Page 17 of 25

SCHEDULE OF CURRENT RATES & CHARGES
(AND PROPOSED RATES & CHARGES IF APPLICABLE)

Please attach the Schedule(s) of Rates and Charges

SX21119810

71C-2008

Troublesome Creek Environmental Authority



TroublesomeCreek

ENVIRONMENTAL AUTHORITY

c/o KRADD
917 Perry Park Road, Hazard, Kentucky 41701
Phone: (606) 436-3158 Fax: (606) 436-2144

February 10, 2009

Kelli Rice
Kentucky Infrastructure Authority
1024 Capital Center Drive
Suite 340
Frankfort, KY 40601

Dear Kelli:

At present time, The Troublesome Creek Environmental Authority does not have a set rate scale or ordinance in effect. One will be provided when an ordinance is deemed necessary and passed and rates have been set.

Thank you,

Lewis H. Warrix
Chairman

ATTACHMENT C

Page 23 of 25

**FEEES FOR PROFESSIONAL ENGINEERING SERVICES
PERCENTAGE OF CONSTRUCTION COST**

Tables I and II define the fees for Professional Engineering Services and Resident Project Representatives respectively. These tables are calculated as a percentage of project construction cost, as determined by project bids. The table is to be utilized in establishing applicable fees for professional engineering services for all water and wastewater projects in Kentucky which may involve federal and/or state funding. Note: Schedules are identical to those used by the Rural Utilities Service, Rural Development Administration, USDA. Note: Tables I and II do not pertain to fees involved in preparation of preliminary engineering reports or additional engineering services. Fees for preparation of preliminary engineering report(s) and additional professional services are subject to negotiation between the engineer, the owner, subject to approval by the funding agency(ies). Typical additional professional services are included after the tables below.

TABLE I – FEES FOR BASIC DESIGN SERVICES

These fees shall pertain to projects requiring complex or detailed engineering design. This will include sewage treatment plants, sewage collection systems, sewage lift stations, water treatment plants, water distribution mains and appurtenances, water pump stations, water storage facilities and renovations of water and sewer facilities.

<u>NET CONSTRUCTION COST</u>	<u>PERCENTAGE FEE</u>
\$	%
100,000	14.00
200,000	12.20
300,000	11.25
400,000	10.70
500,000	10.30
600,000	9.73
700,000	9.45
800,000	9.20
900,000	9.00
1,000,000	8.85
2,000,000	7.65
3,000,000	7.22
4,000,000	6.90
5,000,000	6.75
6,000,000	6.65
7,000,000	6.55
8,000,000	6.45
9,000,000	6.40

Fees for less complex projects such as light industrial buildings, roads, streets, storm drains 24 inches and larger, and appurtenances related thereto shall be 85% of the above Table I percentages. Surveys for

TABLE II – FEES FOR RESIDENT INSPECTION SERVICES

Page 24 of 25

<u>NET CONSTRUCTION COST</u>	<u>PERCENTAGE FEE</u>
\$	%
100,000	13.00
200,000	10.40
300,000	8.80
400,000	8.00
500,000	7.40
600,000	6.80
700,000	6.40
800,000	6.00
900,000	5.80
1,000,000	5.60
2,000,000	4.60
3,000,000	4.00
4,000,000	3.70
5,000,000	3.50
6,000,000	3.32
7,000,000	3.20
8,000,000	3.12
9,000,000	3.05

NOTE: Add two percent to the above Table II percentages for the first \$1,000,000 cost of treatment facilities. Add one percent to the above percentages for all over \$1,000,000 cost of treatment facilities.

GENERAL INFORMATION FOR BASIC AND RESIDENT PROJECT REPRESENTATIVE FEES

The Resident Project Representative will maintain a daily log in the identical manner as required by funding agency(ies). Compensation for construction costs between the values listed in the schedule should be determined by interpolation. If a project is divided into units and all units are authorized for design at the same time, the compensation will be determined by adding together the cost of the construction of the various units and applying the table to the sum of these costs. The initial construction award amount will set the fee percent for the project (change orders shall not adjust the fee percent). For

Owner: 

Title: Chairman

Date: February 10, 2009

Engineering Firm: R.M. Johnson Engineering

Name: 

Date: February 10, 2009

TYPICAL ADDITIONAL PROFESSIONAL SERVICES

Page 25 of 25

Tables I and II do not pertain to fees for preparation of preliminary engineering reports and additional professional services. Fees for preparation of preliminary engineering report(s) and additional professional services are to be negotiated with the service provider and the owner, and subject to approval by the funding agency(ies).

Below is a listing of 'typical' additional professional services.

- Site surveys for water treatment plants, sewage treatment works, dams, reservoirs, and other similar special surveys as may be required.
- Laboratory tests, well tests, borings, specialized geological, soils, hydraulic, or other studies recommended by the ENGINEER.
- Property surveys, detailed description of sites, maps, drawings, or estimates related thereto; assistance in negotiating for land and easement rights.
- Necessary data and filing maps for water rights, water adjudication, and litigation.
- Redesigns ordered by the OWNER after final plans have been accepted by the OWNER and the funding agency(ies), except redesigns to reduce the project cost to within the funds available.
- Appearances before courts or boards on matter of litigation or hearings related to the project.
- Preparation of environmental assessments or environmental impact statements.
- Performance of detailed staking necessary for construction of the project, in excess of control staking.
- Operation and maintenance manual for facilities.
- Value engineering.
- Preparation of a use ordinance and user charge system/ordinance based on actual customer use and in compliance with the DOW and/or other required guidelines.
- Archeological surveys
- Biological surveys
- Legal services



**OFFICE OF THE GOVERNOR
DEPARTMENT FOR LOCAL GOVERNMENT**

Steven L. Beshear
Governor

1024 Capital Center Drive, Suite 340
Frankfort, Kentucky 40601
Phone (502) 573-2382
Fax (502) 573-2939
Toll Free (800) 346-5606
www.dlg.ky.gov

Tony Wilder
Commissioner

September 22, 2008

Ms. Jennifer McIntosh
Kentucky River ADD
917 Perry Park Road
Hazard, KY 41701

K.R.A.D.D.
DATE RECEIVED

SEP 26 2008

TO: Jenn. Fe

RE: (TEA)- Ball Creek Sewer Plant and Collection Lines
SX21119810
SAI# KY20080825-0892
CFDA# 11.300,23.002 & 10.770

Dear Ms. McIntosh:

The Kentucky State Clearinghouse, which has been officially designated as the Commonwealth's Single Point of Contact (SPOC) pursuant to Presidential Executive Order 12372, has completed its evaluation of your proposal. The clearinghouse review of this proposal indicates there are no identifiable conflicts with any state or local plan, goal, or objective. Therefore, the State Clearinghouse recommends this project be approved for assistance by the cognizant federal agency.

Although the primary function of the State Single Point of Contact is to coordinate the state and local evaluation of your proposal, the Kentucky State Clearinghouse also utilizes this process to apprise the applicant of statutory and regulatory requirements or other types of information which could prove to be useful in the event the project is approved for assistance. Information of this nature, if any, concerning this particular proposal will be attached to this correspondence.

You should now continue with the application process prescribed by the appropriate funding agency. This process may include a detailed review by state agencies that have authority over specific types of projects.

This letter signifies only that the project has been processed through the State Single Point of Contact. It is neither a commitment of funds from this agency or any other state or federal agency.

The results of this review are valid for one year from the date of this letter.
Continuation or renewal applications must be submitted to the State Clearinghouse annually.
An application not submitted to the funding agency, or not approved within one year after completion of this review, must be re-submitted to receive a valid intergovernmental review.

If you have any questions regarding this letter, please feel free to contact my office at 502-573-2382.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee Nailey".

Lee Nailey
Kentucky State Clearinghouse

Attachments

Cc: KIA
ARC
Rural Development

The Labor Cabinet has made the following advisory comment pertaining to State Application Identifier Number KY200808250892

Prevailing Wage Rates are applicable please contact the Kentucky Labor Cabinet at 502-564-1523 to obtain the proper rates

The Fish & Wildlife has made the following advisory comment pertaining to State Application Identifier Number KY200808250892

To minimize impacts to the aquatic environment the Kentucky Dept. of Fish & Wildlife Resources recommends that erosion control measures be developed and implemented prior to construction to reduce siltation into waterways located within the project area. Such erosion control measures may include, but are not limited to silt fences, staked straw bales, brush barriers, sediment basins, and diversion ditches. Erosion control measures will need to be installed prior to construction and should be inspected and repaired regularly as needed.

Additionally, KDFWR recommends the following for the portions of the project that crosses intermittent or perennial streams: Development/excavation in streams should be done during low flow periods to minimize disturbances. When crossing a stream, the pipe should be laid perpendicular to the stream bank to minimize the direct impacts to the streambed. We recommend that all instream disturbances be returned to a stable condition upon completion of stream pipeline crossing.

The Housing, Building, Construction has made the following advisory comment pertaining to State Application Identifier Number KY200808250892
no comment

The Office of State Budget Director has made the following advisory comment pertaining to State Application Identifier Number KY200808250892
no comments

The Health and Family Services has made the following advisory comment pertaining to State Application Identifier Number KY200808250892

The Cabinet for Health and Family Services supports projects that improve the lives of Kentuckians, this project should be coordinated with the Department of Public Health, Division of Public Health Protection & Safety to ensure that activities and funding are not duplicative.

The Natural Resources has made the following advisory comment pertaining to State Application Identifier Number KY200808250892

This review was based upon the information that was provided by the applicant through the Clearinghouse for this project. An endorsement of this project does not satisfy, or imply, the acceptance or issuance of any permits, certifications or approvals that may be required from this agency under Kentucky Revised Statutes or Kentucky Administrative Regulations. Such endorsement means this agency has found no major concerns from the review of the proposed project as presented other than those stated as conditions or comments.

All solid waste generated by this project must be disposed at a permitted facility. If underground storage tanks are encountered they must be properly addressed. If asbestos, lead paint, and/or other contaminants are encountered during this project, they must be properly addressed.

The proposed project is subject to Division of Water (DOW) jurisdiction because the following are or appear to be involved: sewer lines and appurtenances and wastewater treatment plant. Prior approval must be obtained from the DOW before construction can begin. The applicant must cite the State Application Identifier (SAI #KY200808250892) when submitting plans and specifications.

This project will construction of a new wastewater treatment plant (WWTP) with collection lines initially running to 85 of 430 potential customers, 2 businesses, 18 apartments and a car wash. Construction will be completed in two phases. The initial project would provide service to a sports complex where there is potential for a huge amount of growth of business and residents. Service would also impact 18 apartments, a car wash and another business located in the vicinity. This project to construct a new WWTP is not located within any facility planning area, however the Applicant is NOT a Regional Planning Agency under 401 KAR 5:086. Therefore the Facilities Construction Branch of DOW endorses the proposed project.

From the application data, DOW ascertains that a stream construction permit application will need to be submitted to our office for further review of this project.

If the construction area disturbed is equal to or greater than 1 acre, the applicant will need to apply for a Kentucky Pollutant Discharge Elimination System (KPDES) storm water discharge permit.

Utility line projects that cross a stream will require a Section 404 permit from the US Army Corps of Engineers and a 401 Water Quality Certification from DOW.

The Heritage Council has made the following advisory comment pertaining to State Application Identifier Number KY200808250892

The applicant must ensure compliance with the Advisory Council on Historic Preservation's Rules and Regulations for the Protection of Historic and Cultural Properties (36CRF, Part 800) pursuant to the National Historic Preservation Act of 1966, the National Environmental Policy Act of 1969, and Executive Order 11593.

Those proposed wastewater lines in the existing right-of-way do not require an archaeological survey, however, the lines not in the right-of-way and the location of the new wastewater treatment plant must be surveyed by a professional archaeologist to determine if sites eligible for listing in the National Register of Historic Places will be affected by the undertaking. Where a given project area or portions thereof have been disturbed by prior construction, the applicant may file documentation of that disturbance with the State Historic Preservation Officer and may request an opinion concerning the need of an archaeological survey. The State Historic Preservation Officer must review and approve the survey report.

The Kentucky River ADD has made the following advisory comment pertaining to State Application Identifier Number KY200808250892
no comments

The Kentucky Housing Corporation has made the following advisory comment pertaining to State Application Identifier Number KY200808250892
no comments

The Transportation has made the following advisory comment pertaining to State Application Identifier Number KY200808250892

Damron (D12), Keith: This project appears to affect KYTC Right of Way. IF so, then an encroachment permit will be needed. Please contact Gene Layne at 606-433-7791.

INTERLOCAL COOPERATION AGREEMENT

by and between

Breathitt County Fiscal Court
Knott County Fiscal Court
and
Perry County Fiscal Court

Relating to the Troublesome Creek Environmental Authority, Inc.

Dated Effective as of May 1, 2006

RECEIVED

JUN 21 2006

SECRETARY OF STATE
COMMONWEALTH OF KY

Paula Cran

INDEX TO INTERLOCAL COOPERATION AGREEMENT

<u>Article</u>	<u>Title</u>	<u>Page</u>
1	Recitals	2
2	Authority, Effective Date, Duration, and, Administrator of Agreement	4
3	Creation, Organization and Powers of Authority	5
4	Manner of Funding Facilities Development; Budget	8
5	Termination of Agreement; Disposition of Property	8
6	Loans, Bonds and Other Financing Obligations Not General Obligations or Indebtedness of Parties; No Personal Liability	9
7	Execution in Counterparts	10
8	Addresses and Places of Business of Parties	10

STATE OF KENTUCKY
COUNTY OF KNOTT

KENNETH GAYHEART, KNOTT COUNTY CLERK IN AND FOR
THE COUNTY AND STATE OF KENTUCKY, CERTIFY THAT
THE FOREGOING INSTRUMENT OF WRITING IS AN

THE 29 DAY OF June 2006
LOGGED IN MY OFFICE FOR RECORD AND RETURNED TO THE
SAME WITH THE FOREGOING APPLICABLE CERTIFICATE
HAVE BEEN DULY RECORDED IN MY OFFICE.

GIVEN UNDER MY HAND THIS 29 DAY OF

June 2006

KENNETH GAYHEART, CLERK
KNC:

Gene Hays D.C.

Page 1 of 17

16:06 PM 11 JUL 2006
RECEIVED
PERRY COUNTY CLERK

11:59 AM

Misc 1

Page 21

TROUBLESOME CREEK INTERLOCAL COOPERATION AGREEMENT

This INTERLOCAL COOPERATION AGREEMENT (the Agreement), dated as of May 1, 2006, is made and entered into by and among the Fiscal Courts of Breathitt, Knott and Perry Counties, Kentucky, each being duly established counties and political subdivision of the Commonwealth of Kentucky (hereafter referred to individually as "County" or "Party" or collectively as "Counties" or, "Parties"), and each acting by and through the respective Judge Executive, as authorized.

WITNESS:

WHEREAS, the Parties hereto seek to enter into an Interlocal Cooperation Agreement, pursuant to KRS 65.210 to 65.300, inclusive, in order to initiate a joint and cooperative undertaking for, inter alia, the improvement of water quality and enhancement of fish and wildlife dependent on Troublesome Creek by proactively engaging in planning, development, construction, operation and management of sewer system(s) to serve the Parties hereto, and to assume all rights, benefits, responsibilities, and obligations related thereto, including legal and fiscal rights and obligations relating to said system facilities to benefit their respective residents located along Troublesome Creek and its tributaries; and,

WHEREAS, the Parties desire to execute this Agreement for the purpose of providing for the establishment of a corporate vehicle, as the agency, instrumentality, and constituted authority of the Counties, to carry out the planning, development, financing, construction, operation and management of such sewer facilities that are necessary and environmentally and technologically appropriate to provide affordable sewer service to communities and individual households along Troublesome Creek for and on behalf of the Counties;

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants contained herein, the Parties hereto do hereby agree as follows:

ARTICLE I

Recitals

The Parties declare and agree that the following recitals constitute a true and accurate statement of the factual background incidental to the execution of this Agreement and represent legislative findings by the Parties and as such represent statements of public interest affecting the Parties, including their respective constituencies and prospective sewer system users, subject of this Agreement.

A. Pursuant to KRS 65.210 to KRS 65.300, inclusive, the Counties are authorized by way of an interlocal agreement to engage in a joint and cooperative undertaking, and, pursuant to KRS 58 develop a public project, and pursuant to KRS 273 establish a corporate entity to carry out the intended planning, acquisition, construction, financing, management, and operational activities. The Parties hereto, in accordance with such statutory authority, do now enter into such an Agreement providing for, Inter alia, the creation and administration of the "Troublesome Creek Environmental Authority, Inc." (hereinafter, "Authority") to administer a cooperative undertaking consisting of the planning, development, financing, construction, operation and management of on site and centralized sewage collection and treatment facilities to serve residents of each of the Counties living along Troublesome Creek. Such facilities and related projects may include, but not be limited to sewage treatment plants, pumping stations, gravity and pressure main lines, and associated collection system facilities and appurtenances to be developed separately or in combination with the development, ownership and operation of on-site systems and system components such as septic tanks, packaged treatment systems, peat filtration systems, holding tanks, drainage fields and others as may be deemed appropriate to be constructed along Troublesome Creek and its tributaries in each of the Counties as well as the acquisition of related equipment and real properties.

B. It is the intent of the Parties and is directed herein that those individuals living along Troublesome Creek and its tributaries shall be provided access to sewer service by the Authority at the lowest reasonable costs. Further, any and all service provided by the Authority to residents within each of the Counties shall be subject to and under the jurisdiction of the Kentucky Public Service Commission and all rates and user fees subject to approval by that Commission.

C. Planning for sewer service generally and planning for component projects of the overall system for collection and treatment within the service area shall rest with the Authority and shall proceed with all due diligence by the Authority. Such planning responsibilities shall include the development of a comprehensive regional sewer facilities plan to encompass the Troublesome Creek drainage area as its designated planning area. Such plan shall identify and include appropriate stream quality enhancement measures to be constructed in the affected areas of the main stem and tributaries of Troublesome Creek in the course of sewer facilities construction as envisioned in this Agreement. The Authority shall cooperate in any reasonable manner with the Parties hereto and any related agencies or other governmental units directly engaged in provision of wastewater services in or adjacent to the planning area as set out in this section. Further, the Authority may serve as applicant, project manager, agent, administrator, or assume any other role as appropriate, to assist in applying for or otherwise securing funds from any source for the development of a sewer system.

D. The purposes of this Agreement are: 1) to provide for the creation and establishment of a legally constituted entity empowered to plan, design, develop, operate and maintain appropriate centralized sewage collection and treatment facilities, as well as to plan, own, operate and maintain on-site sewage systems, and apply

whichever method best serves a given community in the service area in a fully competent, responsible, and professional manner that bespeaks sound environmental stewardship; 2) authorize the incorporation of the Authority as a statutory, public, nonprofit corporation through which to carry out joint and cooperative undertakings relating to sewer system development and operation; 3) authorize the Authority to secure any and all legitimate funding for any sewer related project, including grants, donations, gifts, payments in lieu of taxes, stream impact mitigation fees as well as any form of financing and/or refinancing such as loans and the issuance of bonds or other obligations; 4) authorize the Authority to acquire, own, hold, operate, manage, lease, contract and otherwise secure any land, easements, rights of way, real property, services, facilities, materials and whatever related equipment it may come to own for purposes of providing sewer service; and 5) to retain by contract or employment qualified individuals or firms to assist in planning, funding, developing, managing, operating or maintaining the sewer facilities subject to this Agreement; and 6) plan for, conduct, inspect and enforce that any and all construction is carried out in a manner that best assures the protection and enhancement of the natural environment generally and safeguards and improves the water quality of Troublesome Creek specifically; and 7) authorize these and other actions which may benefit the Parties hereto and which are consistent with or which may be carried out pursuant to the provisions of KRS 65.210 to 65.300, inclusive, KRS 58.180, and KRS 273.161 to 273.390, inclusive.

ARTICLE 2

Authority, Effective Date, Duration, and, Administrator of Agreement

A. Authority: The Parties hereto, each constituting a "public agency" as that term is defined in KRS 65.230, voluntarily enter into this Agreement under the laws of the Commonwealth of Kentucky, including KRS 65.210 to 65.300, inclusive. Further, this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. If any provision of this Agreement is held to be in conflict with any applicable statute or rule of law, or is otherwise held to be unenforceable, the invalidity of such portion shall not affect any or all of the remaining portions of this Agreement.

B. Effective Date: This Agreement shall become operational and have force and effect upon its execution by the Parties, approval by the Commissioner of the Governor's Office for Local Department, Commonwealth of Kentucky pursuant to KRS 65.260, and filing with the County Court Clerks of Breathitt, Knott and Perry Counties, Kentucky, and filing with the Office of the Secretary of State, Commonwealth of Kentucky all pursuant to KRS 65.260 and 65.290. Upon completion of such execution, approval and filings, this Agreement shall be in full force and effect.

C. **Duration:** The duration of this Agreement shall extend and remain in effect and be binding on the Parties hereto until and at which time those activities and actions, set out herein, or as may otherwise be contemplated by this Agreement, shall have been completed and all fiscal obligations of the Authority have been fully satisfied. The date of completion of such activities and actions and satisfaction of all fiscal obligations is anticipated to be not later than January 1, 2020.

D. **Administrator:** The Parties to this Agreement hereby designate the Kentucky River Area Development District to be the "administrator" of this Agreement, and charge same to assist in appropriate and timely planning and coordination of the various activities necessary for the implementation of the Agreement and to provide a brief report regarding the current status of the agreement to the Parties in January of each year, or as may be otherwise requested by the Parties hereto.

ARTICLE 3

Creation, Organization and Powers of the Authority

A. **Creation:** The Counties shall cause the creation of a corporation for public, civic, municipal and governmental purposes pursuant to the provisions of KRS 273.161 to 273.390, inclusive, KRS 58.180 and KRS 65.210 to 65.300, inclusive, to be named the "Troublesome Creek Environmental Authority Inc." (the "Authority"). The Judge Executives of the Counties shall be authorized to serve as incorporators of said corporation.

B. **Organization:** The Authority shall be at all times a nonprofit, non-stock public corporation pursuant to the provisions of KRS 273.161 to 273.390, inclusive, and KRS 58.180 for the performance of public, municipal, civic and governmental purposes, and shall be an agency, instrumentality and constituted authority of the Counties created and organized pursuant to, inter alia, KRS 58.180 and this Agreement. The purposes for which the Authority is organized are exclusively to assist and cooperate with, and to act on behalf of, at the direction of and as the agency, instrumentality and constituted authority of, the Counties in the planning, development, acquisition, construction, installation, operation, management, financing and refinancing of centralized or on site sewer systems, and all appurtenances thereof, and any related component projects for and on behalf of, and as the joint and cooperative undertakings of, the Counties in participation with and for the benefit of the Parties hereto.

Attached hereto as Exhibit A, and incorporated as a part hereof, is a form of the proposed Articles of Incorporation of the Authority, and reference is hereby made to Exhibit A for a description of the precise organization, composition and nature of the Authority organizational structure. The Authority shall be created and organized immediately after the effective date of this Agreement, as set out in the foregoing Article

2 hereof, and the Articles of Incorporation of the Authority shall be in substantially the form contained in Exhibit A, allowing for such minor changes and corrections as may be necessary or desirable upon the advice of counsel. The Authority is hereby directed by the Parties hereto to proceed with the planning, development, acquisition, construction, installation, operation, management and financing of the facilities envisioned by this Agreement, in part or whole.

It is specifically agreed by the Counties, and the bylaws of the Authority shall so provide, that a vote of two thirds of the directors of the Authority (constituting a quorum) present at any meeting of the directors shall be required in order for the board of directors of the Authority to take any official action.

C. Powers: In addition to the purposes and powers of the Authority as set out herein and in Exhibit A, the Authority shall possess such powers and authority as shall be delegated to it by the Parties hereto from time to time, including without limitation the power to own, operate and manage centralized and on site sewer facilities and all components thereof which may be reasonably added at the discretion of the Authority, until the entirety of the Troublesome Creek water shed is provide sewer service. Additionally, the Authority shall have and possess the specific powers and authority set out herein after, to wit:

- (1) To act as the lead agency on behalf of the Parties hereto in applying for any form of financial assistance made available by the federal or state government in order to pay for the design and construction of sewer treatment and collection facilities necessary to implement the preferred alternatives in its regional facilities plan relating to the service areas encompassed by the Authority;
- (2) To apply for grants, loans, or other similar revenues or funding from any source.
- (3) To secure by employment, contract, or other means qualified personnel to plan, develop, finance, manage, operate and maintain all facilities subject to this agreement pursuant to a staffing plan.
- (4) To employ qualified engineers, accountants, attorneys, administrators, and any other advisers deemed necessary by the Authority, and to award construction contracts to implement any sewer project in a manner consistent with proper governmental procurement as delineated in KRS 45A;
- (5) To serve as the single point of contact for and on behalf of the Parties hereto as relates to any and all federal and state environmental or utility regulatory agencies and further, to act as agent for the respective Parties as regards any enforcement

actions, stemming from or arising out of issues stemming from this Agreement with the understanding that costs for resolution of same shall be borne solely by the Authority, as warranted.

- (6) To own or lease, to operate, maintain, and manage centralized or on site treatment facilities, pumping stations, storage facilities and collection lines together with all necessary and appropriate equipment, vehicles and tools as may be required.
- (7) To charge all users of the sewer system fair and equitable rates, fees and charges for such use pursuant to tariffs approved by the Kentucky Public Service Commission.
- (8) To invoke penalties for failure to pay the charges assessed the customers serviced hereunder;
- (9) To establish effluent standards for accepting discharge and monitor compliance with those standards;
- (10) To adopt appropriate rules and regulations for enforcing those standards, including invoking penalties for non-compliance;
- (11) To issue revenue bonds in accordance with KRS 58.010 to 58.210, inclusive, and any other applicable provision of the KRS;
- (12) To accept donations or gifts from any lawful source and to accept appropriations and grants from the federal government or any agency thereof and appropriations, loans or grants from the Commonwealth of Kentucky, or any agency thereof, or from any county, city or other political subdivision;
- (13) To sue and be sued;
- (14) To execute any and all contracts and other documents necessary to effectuate the purposes for *which* the Authority is created;
- (15) To mortgage and pledge properties and revenues and provide for the repayment of any obligations incurred by the Authority;
- (16) To acquire, hold and dispose of real and personal property used by the Authority in the furtherance of the development of the sewer service envisioned in this Agreement;
- (17) To pay reasonable per diem allowance to the Directors including reimbursement of reasonable and necessary expenses incurred by

the Directors and to pay reasonable salaries to any officers and employees of the Authority;

- (18) To request the appropriate unit of government to exercise the power of eminent domain as provided by law when warranted; and
- (19) To implement the preferred alternatives in its regional sewer facilities plan.
- (20) To conduct all financial affairs and transactions according to sound governmental fiscal procedure and secure an independent audit of all funds and fiscal transactions annually.
- (21) To perform any and all other acts and deeds deemed necessary or desirable in the furtherance of the Authority's purpose as permitted by law and within the limitations contained herein.

ARTICLE 4

Manner of Funding Facilities Development; Budget

A. **Funding:** In order to fund the planning, design, construction of facilities and the acquisition of necessary lands, easements and rights of way as well as equipment for any one section or component or more than one section or component of the overall sewer system that the Authority is herein authorized to undertake, the Authority may expend cash funds received from any source to include but not be limited to gifts, donations and grants from state and federal agencies, via general fund appropriations, coal severance funds, stream impact mitigation fees and monies from other fund sources. Additionally, the Authority may borrow funds or issue revenue bonds in accordance with the provisions of KRS 58.010 to 58.210, inclusive, to which statutory provisions reference is hereby made. Such loans or bonds shall be payable from revenues to be derived by the Authority from the receipt of user charges and fees, and from other revenues which may be received from the participating Counties, federal and state agencies and any other source. Special Note: It is the declared intent and desire of the Parties to this Agreement that one source of funds to be secured for the development of the sewer facilities envisioned herein may be 'stream impact mitigation fees'. It is understood by the Parties that such fees, assessed in the course of the mine permitting process and remitted by the coal companies may be directed to the Authority in the amounts and in the manner approved by the mine permitting agency(ies) having jurisdiction. All such funds received by the Authority shall be used solely for the purposes of the Authority, accounted for and reported in the form and manner consistent with current governmental accounting principals and procedures and subject to the Authority's annual audit by an independent certified public accountant.

B. **Budget:** The Authority shall establish a budget on an annual basis and shall maintain such budget by seeking and obtaining appropriations, loans and grants from federal or state agencies, from the Parties hereto and by acceptance of other donations or gifts from any lawful source, and from charging customers, reasonable rates, fees and charges for use of the Authority's facilities, as approved by the Kentucky Public Service Commission. A copy of the Authority's annual budget shall be provided to the Parties not later than April 1st of each year.

ARTICLE 5

Termination of Agreement; Disposal of Property

A. **Termination of Agreement:** Any Party hereto may withdraw from this Agreement and may withdraw from participation in the sewer system project at any time prior to a scheduled date of public sale of revenue bonds of the Authority or signing of a bank note or other form of indebtedness to be issued to finance any portion of the sewer system project upon written notice to the other Parties hereto. Upon withdrawal of any Party hereto from this Agreement and participation in the Project, this Agreement shall be deemed to be terminated as to such Party, and such Party's representation on the Board of Directors of the Authority shall be eliminated by appropriate action of the Authority, including amendment of its Articles of Incorporation. Except as expressly set forth in this section no Party hereto may withdraw from this Agreement or from participation in the sewer system project, and this Agreement may not be terminated in any respect, until the date of final payment and retirement (or satisfactory arrangements are made for the payment and retirement) of all of the revenue bonds or other financing issued or incurred to finance any one or other component of the sewer system project and the complete satisfaction of all other obligations and commitments of the Parties hereto pertaining to such revenue bonds, loans or other indentures secured in the name of the Authority.

Upon the final payment and retirement (or satisfactory arrangements are made for the payment and retirement) of all of the revenue bonds or other financing issued or incurred to finance the sewer system project and the complete satisfaction of all other obligations and commitments of the Parties hereto pertaining to such revenue bonds or other financing any Party hereto may withdraw from this Agreement and from participation in the sewer system project in the manner and with the effect set out in Article 5 B, below. If no debt or bond obligation has been incurred by the Authority, this Agreement may be terminated upon appropriate action of all the Parties hereto, pending appropriate legal notice.

B. **Disposition of Property:** Upon termination of this Agreement, all appropriate action shall be taken for the dissolution of the Authority and disposal of its assets and satisfaction of its liabilities according to the provisions of Article II of Exhibit A hereto, and in a fair and equitable manner as the Parties may determine.

ARTICLE 6

Loans, Bonds and Other Financing Obligations Not General Obligations or Indebtedness of Parties; No Personal Liability

A. **Loan and Bonded Indebtedness:** Any loan, revenue bond, or other financial obligations incurred to finance the Authority's sewer system project and any component thereof shall be obligations of the Authority and shall be payable solely from and secured by a pledge of (i) the proceeds of the bonds or other financing until disbursed, (ii) the investment of such proceeds and (iii) all revenues, funds, proceeds of insurance and other assets pledged under the documentation securing the loan(s), bonds or other obligations.

B. **Not General Obligation or Personal Liability:** Loan(s), bonds or other financing obligations that may be incurred by the Authority, as authorized by the Parties, shall not constitute an indebtedness of any of the Parties hereto, neither individually or collectively, nor be payable out of any general or special tax revenues of any of the Parties hereto, within the meaning of any constitutional provision or limitation.

None of the officials of the Parties hereto or any of the members of the legislative bodies of the Parties hereto, or any directors, officers or employees of the Authority, shall be subject to or in any way liable for any debt, bond obligation, contract or other fiscal obligation or expense legally incurred in furtherance of the sewer system project, subject of this Agreement.

ARTICLE 7

Execution in Counterparts

This Agreement may be executed in any number of counterparts, and each such counterpart shall constitute an original and all such counterparts shall constitute one and the same instrument.

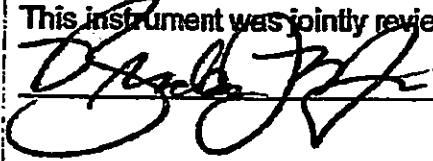
ARTICLE 8

Addresses and Places of Business

The principal Offices and places of business of the Parties hereto are set forth in the respective signature blocks of the Parties hereto at the end of this Agreement.

IN TESTIMONY WHEREOF, witness the signatures of the Parties hereto, duly authorized, as of the date first above written. For convenience in execution, the Judge Executives of each participating County to this Agreement have signed or shall sign on the same page as the page on which their signatures are acknowledged, and the signatures and acknowledgment of each party appear or shall appear on a separate page, following.

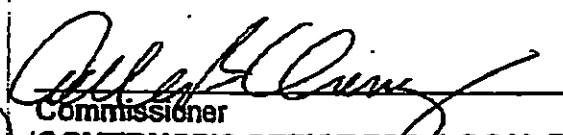
This instrument was jointly reviewed and approved by:

 _____, Breathitt County Attorney
_____, Knott County Attorney
_____, Perry County Attorney

APPROVAL AS TO PROPER FORM AND COMPATIBILITY WITH STATUTE

I, Steve Robertson the undersigned, Commissioner of the Governor's Office of Local Development, Commonwealth of Kentucky, hereby certify that the Agreement captioned Interlocal Cooperation Agreement by and between Breathitt County, Knott County and Perry County, Kentucky relating to the Troublesome Creek Environmental Authority, Inc., has been duly filed with this Office and has been found to be in proper form and is compatible with state statutes, pursuant to KRS 65.260.

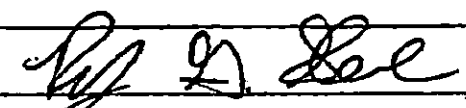

Dated this _____ day of _____, 200__.

 06/20/06

Commissioner
GOVERNOR'S OFFICE FOR LOCAL DEVELOPMENT
COMMONWEALTH OF KENTUCKY

IN TESTIMONY WHEREOF, witness the signatures of the Parties hereto, duly authorized, as of the date first above written. For convenience in execution, the Judge Executives of each participating County to this Agreement have signed or shall sign on the same page as the page on which their signatures are acknowledged, and the signatures and acknowledgment of each party appear or shall appear on a separate page, following.

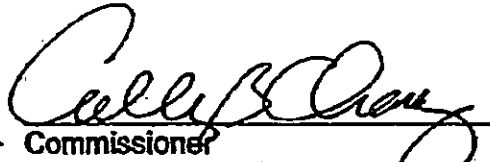
This instrument was jointly reviewed and approved by:

_____, Breathitt County Attorney
_____, Knott County Attorney
_____, Perry County Attorney

APPROVAL AS TO PROPER FORM AND COMPATIBILITY WITH STATUTE

I, Steve Robertson the undersigned, Commissioner of the Governor's Office of Local Development, Commonwealth of Kentucky, hereby certify that the Agreement captioned Interlocal Cooperation Agreement by and between Breathitt County, Knott County and Perry County, Kentucky relating to the Troublesome Creek Environmental Authority, Inc., has been duly filed with this Office and has been found to be in proper form and is compatible with state statutes, pursuant to KRS 65.260.

Dated this _____ day of _____, 200__.

 06/29/02
Commissioner
GOVERNOR'S OFFICE FOR LOCAL DEVELOPMENT
COMMONWEALTH OF KENTUCKY

IN TESTIMONY WHEREOF, witness the signatures of the Parties hereto, duly authorized, as of the date first above written. For convenience in execution, the Judge Executives of each participating County to this Agreement have signed or shall sign on the same page as the page on which their signatures are acknowledged, and the signatures and acknowledgment of each party appear or shall appear on a separate page, following.

This instrument was jointly reviewed and approved by:

_____, Breathitt County Attorney


_____, Knott County Attorney

_____, Perry County Attorney

APPROVAL AS TO PROPER FORM AND COMPATIBILITY WITH STATUTE

I, Steve Robertson the undersigned, Commissioner of the Governor's Office of Local Development, Commonwealth of Kentucky, hereby certify that the Agreement captioned Interlocal Cooperation Agreement by and between Breathitt County, Knott County and Perry County, Kentucky relating to the Troublesome Creek Environmental Authority, Inc., has been duly filed with this Office and has been found to be in proper form and is compatible with state statutes, pursuant to KRS 65.260.

Dated this ____ day of _____, 200__.

 06/20/06
Commissioner
GOVERNOR'S OFFICE FOR LOCAL DEVELOPMENT
COMMONWEALTH OF KENTUCKY

BREATHITT COUNTY, KENTUCKY

The address, principal office and place of business of Breathitt County is:

Breathitt County Fiscal Court
Breathitt County Courthouse
1137 Main Street
Jackson KY 41339

Lewis H. Warrix, Judge Executive

By 
Judge Executive

Attest: Authorized by action of the Fiscal Court on March 29, 2006.


County Court Clerk

STATE OF KENTUCKY
COUNTY OF Breathitt

The foregoing instrument was acknowledged before me this 11 day of April, 2006, by Lewis H. Warrix and Tony G. Watts who are the County Judge Executive and the County Court Clerk respectively, of Breathitt County, Kentucky, on behalf of said County.

WITNESS my signature this 11 day of April, 2006. My Commission expires: 11-19-09.

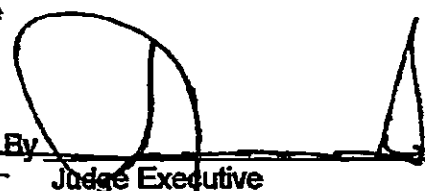

Notary Public in and for
said County and State

BREATHITT COUNTY, KENTUCKY

The address, principal office and place of business of Breathitt County is:

Breathitt County Fiscal Court
Breathitt County Courthouse
1137 Main Street
Jackson KY 41339

Lewis H. Warrix, Judge Executive

By 
Judge Executive

Second Reading & Adoption


Attest: Authorized by action of the Fiscal Court on April 25, 2006.


County Court Clerk

**STATE OF KENTUCKY
COUNTY OF BREATHITT**

The foregoing instrument was acknowledged before me this 25 day of April, 2006, by Lewis H. Warrix and Tony G. Watts who are the County Judge Executive and the County Court Clerk respectively, of Breathitt County, Kentucky, on behalf of said County.

WITNESS my signature this 25 day of April, 2006. My Commission expires: 11-19-09.

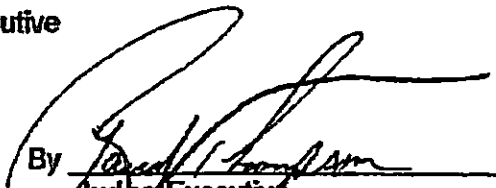

Notary Public in and for
said County and State

KNOTT COUNTY, KENTUCKY

The address, principal office and place of business of Knott County is:

Knott County Fiscal Court
Knott County Courthouse
P.O. Box 505
Hindman, KY 41822

Randy Thompson, Judge Executive

By 
Judge Executive

Attest: Authorized by action of the Fiscal Court on April 31, 2006.


County Court Clerk

STATE OF KENTUCKY
COUNTY OF Knott

The foregoing instrument was acknowledged before me this 31 day of April, 2006, by Randy Thompson and Kenneth Gayheart who are the County Judge Executive and the County Court Clerk respectively, of Knott County, Kentucky, on behalf of said County.

WITNESS my signature this 31 day of April, 2006. My Commission expires: 9-23-09.


Notary Public in and for
said County and State

PERRY COUNTY, KENTUCKY

The address, principal office and place of business of Perry County is:

Perry County Fiscal Court
Perry County Courthouse
P.O. Box 210
Hazard, KY 41702

Denny Ray Noble, Judge Executive

By Denny R. Noble
Judge Executive

Attest: Authorized by action of the Fiscal Court on March 30, 2006.

Haven King
County Court Clerk

STATE OF KENTUCKY
COUNTY OF Perry

The foregoing instrument was acknowledged before me this 30 day of March, 2006, by Denny Ray Noble and Haven King who are the County Judge Executive and the County Court Clerk respectively, of the Perry County, Kentucky, on behalf of said County.

WITNESS my signature this 30 day of March, 2006. My Commission expires: 8-11-09.

Donna Dabhi
Notary Public in and for
said County and State

**CERTIFICATE OF BREATHITT COUNTY CLERK AS TO
FILING OF A COPY OF THE AGREEMENT**

I, _____, being the duly elected Breathitt County Court Clerk, certify that a fully executed copy of the document styled Interlocal Cooperation Agreement by and Breathitt County, Knott County and Perry County relating to the Troublesome Creek Environmental Authority, Inc. was duly filed in the Breathitt County Court Clerk's Office, this the _____ day of _____, 200__.

By: _____

**CERTIFICATE OF KNOTT COUNTY CLERK AS TO
FILING OF A COPY OF THE AGREEMENT**

I, Kennith Ray Gayheart being the duly elected Knott County Court Clerk;
certify that a fully executed copy of the document styled Interlocal Cooperation
Agreement by and Breathitt County, Knott County and Perry County relating to the
Troublesome Creek Environmental Authority, Inc. was duly filed in the Knott County
Court Clerk's Office, this the 29 day of June, 2006.

By: Carolyn Gayheart DC

STATE OF KENTUCKY
COUNTY OF KNOTT

KENNITH GAYHEART, KNOTT COUNTY CLERK, IN AND FOR
THE COUNTY AND STATE OF KENTUCKY DO CERTIFY THAT
THE FOREGOING INSTRUMENT OF WRITING WAS ON

THE 29 DAY OF June 2006
LOGGED IN MY OFFICE FOR RECORD, WHEREUPON THE
SAME WITH THE FOREGOING AND THIS CERTIFICATE
HAVE BEEN DULY RECORDED IN MY OFFICE.

GIVEN UNDER MY HAND THIS 29 DAY OF
June 2006

KENNITH GAYHEART, CLERK

BY Quinn Harp D.C.

Misc Book

11:57
AM

Page
315

**CERTIFICATE OF PERRY COUNTY CLERK AS TO
FILING OF A COPY OF THE AGREEMENT**

I, _____, being the duly elected Perry County Court Clerk,
certify that a fully executed copy of the document styled Interlocal Cooperation
Agreement by and Breathitt County, Knott County and Perry County relating to the
Troublesome Creek Environmental Authority, Inc. was duly filed in the Perry County
Court Clerk's Office, this the _____ day of _____, 200__.

By: _____

STATE OF KENTUCKY

COUNTY OF PERRY

I, HAVEN KING, CLERK OF THE STATE AND COUNTY AFORESAID DO CERTIFY
THAT THE FOREGOING INSTRUMENT WAS LODGED FOR RECORD IN MY OFFICE AND IT
THE FOREGOING AND THIS MY CERTIFICATE HAVE BEEN DULY RECORDED IN MY OFFICE

IN Misc BOOK NO. 37 PAGE 207.

WITNESS MY HAND THIS 11th DAY OF July 2006.

HAVEN KING, CLERK
PERRY COUNTY.

BY Barbara Sue Franks



Steven L. Beshear
Governor

KENTUCKY INFRASTRUCTURE AUTHORITY

1024 Capital Center Drive, Suite 340
Frankfort, Kentucky 40601
Phone (502) 573-0260
Fax (502) 573-0157
<http://kia.ky.gov>

John E. Covington III
Executive Director

KRADD
RECEIVED

DEC 08 2011

TO: Jennifer

December 7, 2011

Honorable Randy Thompson
Judge/Executive
Knott County Fiscal Court
P.O. Box 505
Hindman, Kentucky 41822

RE: HB1 Coal Severance Tax Allocation MOA - #201
SX21119810 - Knott County Fiscal Court - \$500,000 - FY12
Ball Creek Wastewater Treatment Plant and Line Extension Project

Dear Judge Thompson:

Enclosed please find a copy of the fully executed Memorandum of Agreement (MOA) for the above-referenced project.

The following item remains outstanding:

- As-bid Budget

You may now request up to 50% of planning and design fees. The remaining funds can be released once we have the as-bid budget. Please include back up invoices with all requests for payment.

If you have any questions or need further assistance, please contact me.

Sincerely,

Debby Milton
Financial Analyst

C: Jennifer McIntosh, KRADD
Ann Barnes, DLG



Commonwealth of Kentucky

CONTRACT

IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

Doc Description: SX21119810 Knott County Fiscal Court HB1 Coal Severance #201

Doc ID No: PON2 082 1200000866 1

Procurement Folder: 2341312

Procurement Type: Memorandum of Agreement

Administered By: DEBBY MILTON

Cited Authority: FAP111-44-00

Telephone: 502-573-0260

Issued By: DEBBY MILTON

✓ Knott County Fiscal Court

PO Box 1148

Hindman KY 41822
US

Line	Item Description	Unit Price	Contract Amount	Total Amount
1	MISCELLANEOUS GRANT AWARDS	0.00	0.00000	500,000.00

Extended Description

From 12/01/2011 to 6/30/2012 funds will be used for Ball Creek Wastewater Treatment Plant and Line Extension

497314

✓ GG KY INFRASTRUCTURE AUTHORITY
1024 CAPITAL CENTER DR SUITE 340FRANKFORT KY 40601
US

Total Order Amount 500,000.00 ✓

MEMORANDUM OF AGREEMENT

between the

**COMMONWEALTH OF KENTUCKY
KENTUCKY INFRASTRUCTURE AUTHORITY
and the**

**KNOTT COUNTY FISCAL COURT -
SX21119810*
HB1 - #201 (FY2012) \$500,000**

2011 OCT 21 A 10:02

THIS MEMORANDUM OF AGREEMENT (hereinafter "the Agreement"), by and between the Commonwealth of Kentucky, Kentucky Infrastructure Authority (hereinafter "KIA"), with address at 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601 and the Knott County Fiscal Court, Knott County, Kentucky, with address of P.O. Box 505, Hindman, Kentucky 41822, (hereinafter "the Recipient") is made and entered into as of the date last executed by the parties thereto as evidenced by the dates written below.

WHEREAS, the 2010 General Assembly enacted House Bill 1 authorizing the certain projects for local administration through a local grant program; and

WHEREAS, one of the local grant program projects authorized by House Bill 1 is described as follows: Water and Sewer project (hereinafter "the Project") and is to be funded in an amount not to exceed \$500,000 dollars during FY 2012; and

WHEREAS, KIA has been duly designated to administer the local grant for the Project; and

WHEREAS, the Recipient has agreed to serve as the beneficiary of the grant money from KIA for the Project as provided in House Bill 1 under the terms and conditions enumerated herein and has further agreed to effectuate the completion of the Project in accordance with those terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants, commitments, and conditions contained herein, KIA and the Recipient agree as follows:

1 - OBLIGATIONS OF KIA

KIA covenants and agrees, conditioned upon the timely performance by the Recipient of its obligations herein, to undertake the following obligations:

- A. KIA shall, subject to the availability of appropriate funds, pay the Recipient a sum not to exceed \$500,000 dollars.
- B. KIA may, but is not required to, make periodic inspections of the Project and may send inspection reports to the Recipient. Deficiencies identified in an inspection

report shall be corrected by the Recipient and their correction reported in writing to KIA within two weeks of receipt of the inspection report.

- C. KIA shall cooperate fully with the Recipient in order to facilitate the obligations set out in this memorandum.
- D. KIA shall close out the Project upon satisfactory completion of the Project by the Recipient in accordance with the terms and conditions of this Agreement and submission of an acceptable project completion report in the form prescribed by KIA.

2 - OBLIGATIONS OF THE RECIPIENT

The Recipient covenants and agrees to undertake the following obligations:

- A. The Recipient shall, before any funds are released, sign and submit the Agreement, and complete and include the following Attachments which are incorporated herein and made a part hereof:
 - 1. **Before the Project is bid**, the Recipient shall complete and submit to the Authority the following:
 - a) Project profile and estimated project budget, as **Attachment A**, as an accurate description and cost estimate of the proposed project.
 - b) Original copy of the Recipient's resolution, as **Attachment B**, accepting the Agreement, amending its budget to allow for receipt and expenditures of these funds, and authorizing a designated individual to execute the Agreement and all other documentation related to the Project.
 - 2. **After the Project is bid**, the Recipient shall complete and submit to the Authority a revised Project Profile and Project Budget based on Project bids.

The Recipient may request funds after completion of Attachments A and B by executing a Request for Payment and Project Status Report as **Attachment C**, as provided by the Authority, and attaching appropriate documentation, including, but not limited to, invoices and receipts.

- B. The Recipient agrees to adopt and use the Kentucky Uniform System of Accounting and Cost-Based Rates (KUSoA) and assure that rates and charges for service are based upon the cost of providing such service, if applicable to the Project. These rates and charges shall be in place no later than within 12 months of the end of the Recipient's current fiscal year.
- C. The Recipient shall receive Project funds via Electronic Fund Transfer (EFT) with the EFT to be implemented by use of the form provided by the Authority as **Attachment D**.

- D. The Recipient shall perform and/or cause to be performed all necessary acts to plan, design and construct the Project including, but not limited to: the procurement of land, easements and rights of way; professional services; and equipment and/or materials.
- E. The Recipient shall obtain all necessary permits, licenses and approvals from the appropriate federal, state, and/or local governmental entities prior to construction of the Project. Further, the Recipient shall require all construction contractors to pay wages pursuant to applicable prevailing wage rates (federal or state) for all work relating to the subject Project.
- F. The Recipient shall comply with all applicable federal and state statutes, executive orders, regulatory requirements, and policies relating to the planning and construction of the Project.
- G. The Recipient shall provide to the Authority access to all records related to the Project for review in determining compliance with the Agreement and all applicable laws and regulations. The Recipient shall retain all records, including all invoices, relating to the Project for three years after full execution of the Certificate of Completion as **Attachment E**.
- H. The Recipient shall cooperate fully with the Authority and provide any documentation requested by the Authority in order to facilitate the obligations set out in this Agreement.
- I. Any unauthorized or improper expenditure of funds, or expenditure of funds other than in accordance with the terms of this Agreement, shall be deemed a default of this Agreement by the Recipient.
- J. The Recipient will proceed expeditiously with and complete the Project in accordance with the approved final design, plans and specifications or amendments thereto, prepared by the Project Engineer for the Recipient and as approved by the appropriate state and federal agencies.
- K. The Recipient agrees that throughout the reasonable life of the infrastructure facilities developed under this Project it will retain ownership of, operate, and maintain these facilities, and all appurtenances thereto, keeping them in good and sound repair and good operating condition at its own expense so that the completed Project will continue to provide the services for which it was designed. Change of ownership or disposal of the Project facilities may occur only with written approval of the Authority.
- L. The Recipient agrees that it will at all times impose, charge and collect sufficient customer Rates and Charges.
- M. The Recipient shall, within 3 months of initiation of construction of the Project, submit to the Authority, Final Design Plans in an AutoCAD Drawing File Format

(DWG), referenced to the appropriate (North or South) Kentucky State Plane Coordinate System (NAD83-Survey Feet) on a Compact Disc (CD). If there is a significant deviation from the Final Design Plan during construction, As-built plans shall also be provided to the Authority, within three months of construction completion, in the same format.

- N. No project shall be considered closed out until the Authority has received, and approved, the Recipient's Certificate of Completion, referenced above as **Attachment E**.

3 - MUTUALITY OF OBLIGATIONS

- A. The parties agree that the obligations imposed upon them are for the benefit of the parties and the timely fulfillment of each and every obligation in accordance with this Agreement is necessary. The failure of any party to fulfill its obligations under this Agreement or the failure of any event to occur by a date established by this Agreement shall constitute a breach of it unless the fulfillment of such obligation is waived or modified by written Agreement of the parties.
- B. In the event of default by the Recipient, including the failure to meet any time deadlines set out in this memorandum, KIA may declare this Agreement void from the beginning without further obligation to the Recipient and may commence appropriate legal or equitable action to enforce its rights under this Agreement including action for recovery of funds expended hereunder.
- C. Except as may otherwise be provided herein, the parties to this Agreement shall be solely responsible for any costs incurred in fulfilling their obligations under this Agreement and no party shall have any claim against the other party for reimbursement of costs whether or not a party is in default.

4 - MISCELLANEOUS PROVISIONS

- A. This Agreement may be signed by each party upon a separate copy, and in such case one counterpart of this Agreement shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Agreement may be executed in two or more counterparts each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms and conditions hereof to produce or account for more than one of such counterparts.
- B. The headings set forth in this Agreement are for convenience or reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.
- C. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of the parties. This provision shall not be construed to permit assignment by any party of any of its

rights and duties under this Agreement which assignment shall be prohibited except with the prior written consent of all parties hereto.

- D. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements among them concerning the subject matter hereof, and may be modified only by a written instrument duly executed by each of the parties hereto.
- E. Time is of the essence in the performance of each of the terms and conditions of this Agreement.
- F. The parties agree that any suit, action, or proceeding with respect to this Agreement may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky or the United States District Court for the Eastern District of Kentucky, Frankfort Division.
- G. All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing, and shall be addressed as follows:
 - If to KIA: Kentucky Infrastructure Authority
1024 Capital Center Drive, Suite 340
Frankfort, Kentucky 40601
 - If to the Recipient: Knott County Fiscal Court
P.O. Box 505
Hindman, Kentucky 41822
- H. KIA may audit or review all documentation and records of the Recipient relating to this project pursuant to the provisions of KRS 45A.150.
- I. The parties agree that this Agreement is not entered into under the provisions of KRS 56.8161 et seq.
- J. Duly executed copies of Attachments A and B submitted pursuant to paragraphs 3(A)(1)(a) and (b) shall be incorporated into this Agreement as though set forth fully herein. These incorporated attachments shall not be amended except pursuant to section 5(D).

5 - MOA STANDARD TERMS AND CONDITIONS

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.

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.

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

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.

IN WITNESS WHEREOF, KIA and the Recipient have executed this memorandum as of the dates written below.

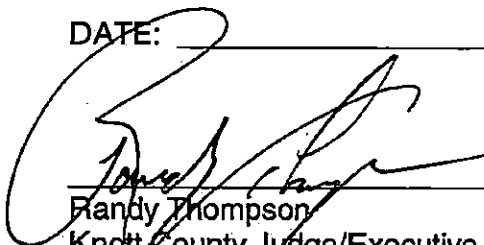
REMAINDER OF PAGE LEFT BLANK

Recipient

Kentucky Infrastructure Authority

DATE: _____

DATE: 12/7/11



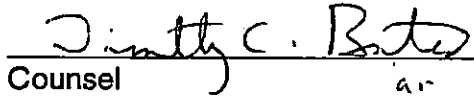
Randy Thompson
Knott County Judge/Executive



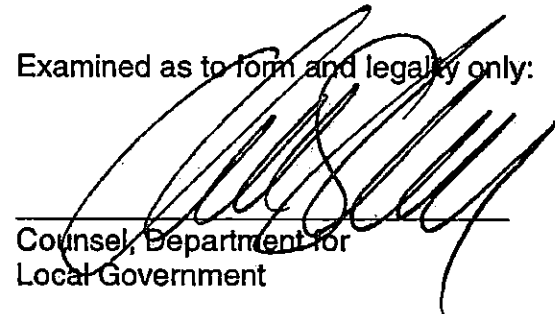
John E. Covington, III
Executive Director

Examined as to form and legality only:

Examined as to form and legality only:



Counsel
an Knott
County
Attorney



Counsel, Department for
Local Government

ATTACHMENTS TO MEMORANDUM OF AGREEMENT

Attachment A - Project Profile and Estimated Project Budget

Attachment B - Resolution/Certificate

Attachment C – Request for Payment and Project Status Report

Attachment D – Electronic Transfer Form

Attachment E - Certificate of Completion

NOTE: ALL PROJECTS RECEIVING THESE FUNDS MUST BE SUBMITTED TO THE STATE CLEARINGHOUSE FOR REVIEW AND COMMENT. A COPY OF THE CLEARINGHOUSE LETTER OF ENDORSEMENT MUST BE SUBMITTED AS PART OF THIS AGREEMENT.

Attachment A

PROJECT PROFILE & PROJECT BUDGET

**SX21119810 – Knott County Fiscal Court
HB1 #201**

☐ **Estimated**

☐ **As Bid**

☐ **Revised**

Cost Classification		Amount
1	Administrative Expenses (1)	
2	Legal Expenses	
3	Land, Appraisals, Easements	
4	Relocation Expense & Payments	
5	Planning (2)	
6	Engineering Fees - Design	
7	Engineering Fees - Construction	
8	Engineering Fees - Inspection	
9	Construction	
10	Equipment	
11	Contingency	
12	Other	
Total		

Funding Sources		Amount	Date Committed
1			
2			
3			
4			
5			
6			
Total			

(1) Include Interim Financing

(2) Include in this category, all negotiated fees not included in the RD fee scale calculation

Signature

Title

Date

Attachment B

RESOLUTION

RESOLUTION OF THE Knott County Fiscal Court ACCEPTING THE AGREEMENT, APPROVING THE AGREEMENT, AUTHORIZING THE AMENDMENT OF LOCAL BUDGET, AND AUTHORIZING A REPRESENTATIVE TO SIGN ALL RELATED DOCUMENTS

WHEREAS, the General Assembly has appropriated funds for infrastructure projects in the 2010-2012 Budget of the Commonwealth; and

WHEREAS, the Recipient has previously determined that it is in the public interest to acquire and construct certain facilities and improvements to the Recipient's utility system (the "Project"); and

WHEREAS, the Recipient desires funding from the Kentucky Infrastructure Authority (the "Authority") for the purpose of acquisition and construction of the Project.

NOW, THEREFORE, BE IT RESOLVED by the Fiscal Court of the Knott Co. as follows:

SECTION 1. That the Recipient hereby accepts the Agreement and approves the Agreement between the Recipient and the Authority substantially in the form on file with the Recipient for the purpose of providing a portion of the necessary financing to the Recipient for the acquisition and construction of the Project.

SECTION 2. That Randy Thompson is hereby authorized, directed and empowered by the Recipient to execute the Agreement and all other necessary documents or agreements, and to otherwise act on behalf of the Recipient to implement the Project.

SECTION 3. That the Recipient hereby includes in its annual budget the receipt and expenditures of funds subject to the Agreement with the Authority.

SECTION 4. This Agreement shall take effect immediately upon passage.

ADOPTED on Nov. 21st, 20011.

Knott County Fiscal Court

Randy Thompson, (Representative)

Title County Judge Executive

CERTIFICATE

I, the undersigned, hereby certify that I am the duly qualified and acting recording clerk of the Knott Co. Fiscal Court; that the foregoing is a full, true and correct copy of a Resolution adopted by the governing authority of said Recipient at a meeting duly held on November 21, 2011; that said official action appears as a matter of public record in the official records or journal of the governing authority; that said meeting was held in accordance with all applicable requirements of Kentucky law, including KRS 61.810, 61.815, 61.820 and 61.825; that a quorum was present at said meeting; that said official action has not been modified, amended, revoked or repealed and is now in full force and effect.

IN TESTIMONY WHEREOF, witness by me this 22nd day of November, 2011.



Secretary/Clerk/Recording Officer
Michael Sturgill

10-2 A 10:01

Attachment D

AUTHORIZATION FOR ELECTRONIC DEPOSIT
OF PAYMENT
KENTUCKY INFRASTRUCTURE AUTHORITY

SX21119810 – Knott County Fiscal Court
HB1 - #201

Grantee Information:

Water Utility: Knott County Fiscal Court
Address: PO Box 505
City: Hindman State: KY Zip: 41822-0505
Telephone: 606 785 5592 Contact: Kevin Jacobs, County Treas
E-mail address: jacobsk@t9t91.com
Federal I.D. #: 61-6000820

Financial Institution Information:

Bank Name: Community Trust
Branch: Knott Co. Phone No: 606 785-5095
City: Hindman State: KY Zip: 41822
Transit / ABA No.: 042102694
Account Name: State Grants Fund
Account Number: 4001 756 875

I, the undersigned, authorize payments directly to the account indicated above and to correct any errors which may occur from the transactions. I also authorize the Financial Institution to post these transactions to that account.

Signature: [Signature] Date: _____
Name Printed: Paul E. Thompson Job Title: Treasurer

Please return completed form to: Kentucky Infrastructure Authority
1024 Capital Center Drive, Suite 340
Frankfort, KY 40601
phone: 502-573-0260
fax: 502-573-0157

Attachment E

CERTIFICATE OF COMPLETION

**Knott County Fiscal Court
SX21119810**

Pursuant to the Agreement between the Kentucky Infrastructure Authority and (the Recipient) for the Project as described in **Exhibit 1** of the Agreement, this certificate, signed by the authorized official and the Project Administrator of the Recipient confirms that the following activities are complete.

1. The Project construction has been completed and payment has been made to all vendors and/or contractors for labor, services, materials, supplies, machinery and equipment included in the above referenced Project.
2. All lands, easements, rights of ways, permits or other facilities necessary in connection with the Project have been acquired, constructed, equipped and installed and all costs and expenses incurred in connection therewith have been paid.
3. The Project is complete and is available for the provision of services which are expected to commence on or about _____.

Project Administrator: _____

Authorized Official: _____

Date: _____

**Acceptance of Certificate of Completion by Kentucky Infrastructure
Authority:**

By: _____

Date: _____

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
TROUBLESOME CREEK ENVIRONMENTAL AUTHORITY
FOR
DESIGN AND CONSTRUCTION
ASSISTANCE
FOR THE
BALL CREEK SEWER PLANT AND COLLECTION LINES PROJECT

THIS AGREEMENT is entered into this 4 day of MARCH, 2011, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Huntington District and Troublesome Creek Environmental Authority (hereinafter the "Non-Federal Sponsor"), represented by its Chairman.

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army is authorized to provide design and construction assistance, which may be in the form of grants or reimbursements of the Federal share of project costs, for water-related environmental infrastructure and resource protection and development projects in southern and eastern Kentucky (hereinafter the "Section 531 Program") pursuant to Section 531 of the Water Resources Development Act of 1996, Public Law 104-303, as amended (hereinafter "Section 531");

WHEREAS, Section 531 provides that the Secretary of the Army may provide assistance for a water-related environmental infrastructure and resource protection and development project only if the project is publicly owned;

WHEREAS, Section 531 provides that \$40,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for the Section 531 Program;

WHEREAS, the U.S. Army Engineer, Huntington District (hereinafter the "District Engineer") has determined that the Ball Creek Sewer Plant and Collection Line Project in the Ball Creek Community of Leburn, Knott County, Kentucky (hereinafter the "Project", as defined in Article I.A. of this Agreement) is eligible for implementation under Section 531;

WHEREAS, Section 531 provides that the Secretary of the Army shall not provide assistance for any water-related environmental infrastructure and resource protection and development projects until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project;

WHEREAS, Section 531 specifies the cost-sharing requirements applicable to the *Project* including that the Secretary of the Army shall afford credit for the reasonable costs of design completed by the non-Federal interest before entering into a written agreement with the Secretary;

WHEREAS, Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103, provides that credits and reimbursements afforded for all applicable general authorities and under specific project authority shall not exceed \$100,000,000 for all applicable programs and projects in each fiscal year;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the "Agreement") for the provision of design and construction assistance for the *Project*;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS

A. The term "*Project*" shall mean design and construction of a new wastewater treatment plant with collection lines, lift stations, manholes and associated appurtenances to provide public sewer service to the residents in the Ball Creek Community of Leburn, Knott County, Kentucky, as generally described in the "Decision Document, Ball Creek Sewer Plant and Collection Lines Project, Leburn, Knott County, KY (Ball Creek Community), Section 531 Southern and Eastern Kentucky Environmental Infrastructure Program", dated February, 2011 and approved by Amy K. Frantz, Chief of Planning Branch, on February 25, 2011.

B. The term "*total project costs*" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement that the District Engineer determines are directly related to design and construction of the *Project*. Subject to the provisions of this Agreement including audits conducted in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs, the term shall include, but is not necessarily limited to: the costs of the Non-Federal Sponsor's *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement; the Non-Federal Sponsor's design costs incurred after the effective date of this Agreement; the Government's costs of review in accordance with Article II.A.1. of this Agreement; the Government's costs of preparation of environmental compliance documentation

in accordance with Article II.A.2. of this Agreement; the Government's costs of inspection in accordance with Article II.A.6. of this Agreement; the Government's costs of technical assistance in accordance with Article II.A.1. and Article II.A.6. of this Agreement; the Non-Federal Sponsor's and the Government's costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A.1. and Article XIV.A.2. of this Agreement; the Non-Federal Sponsor's and the Government's costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.B. of this Agreement; the Non-Federal Sponsor's construction costs; the Non-Federal Sponsor's supervision and administration costs; the Non-Federal Sponsor's costs of identification of legal and institutional structures in accordance with Article II.J. of this Agreement not incurred pursuant to any other agreement for the *Project*; the Non-Federal Sponsor's and the Government's costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Non-Federal Sponsor's costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement but not to exceed 25 percent of total project costs; the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article X.B. and Article X.C. of this Agreement; and any other costs incurred by the Government pursuant to the provisions of this Agreement. The term does not include any costs of activities performed under any other agreement for the *Project*; any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of establishment and maintenance of legal and institutional structures in accordance with Article II.J. of this Agreement; any costs of *betterments*; any costs incurred in advertising and awarding any construction contracts prior to the effective date of this Agreement; any construction costs incurred prior to the effective date of this Agreement; any interest penalty paid in accordance with Article VI.B.4. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government's costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

C. The term "*period of design and construction*" shall mean the time from the effective date of this Agreement to the date that construction of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article II.E. or Article XIII or Article XIV.C. of this Agreement, whichever is earlier.

D. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

E. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

F. The term "*betterment*" shall mean a difference in the design or construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design or

construction of that element. The term does not include any design or construction for features not included in the *Project* as defined in paragraph A. of this Article.

G. The term "*fiscal year*" shall mean one year beginning on October 1 and ending on September 30.

H. The term "*Federal program funds*" shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

I. The term "*sufficient invoice*" shall mean submission of all of the following three items: (1) a written certification by the Non-Federal Sponsor to the Government that it has made specified payments to contractors, suppliers, or employees for performance of work in accordance with this Agreement, or a written certification by the Non-Federal Sponsor to the Government that it has received bills from contractors, suppliers, or employees for performance of work in accordance with this Agreement; (2) copies of all relevant invoices and evidence of such payments or bills received; and (3) a written request for reimbursement for the amount of such specified payments or bills received that identifies those costs that have been paid or will be paid with *Federal program funds*.

J. The term "*Section 531 Program Limit*" shall mean the amount of Federal funds authorized to be appropriated for the Section 531 Program. As of the effective date of this Agreement, such amount is \$40,000,000.

K. The term "*Section 102 Limit*" shall mean the annual limit on credits and reimbursements imposed by Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103.

L. The term "*pre-Agreement design work*" shall mean the work performed prior to the effective date of this Agreement by the Non-Federal Sponsor that is directly related to design of the *Project* and that was not performed pursuant to any other agreement for the *Project*.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. Using its funds, the Non-Federal Sponsor expeditiously shall design and construct the *Project* in accordance with Federal laws, regulations, and policies.

1. The Non-Federal Sponsor shall require all contractors to whom it awards design contracts to provide 30 percent and 100 percent design information to enable in-progress review of the design. The Government may participate in the review of the design at each stage of completion and may provide technical assistance to the Non-Federal Sponsor on an as-needed basis until the end of the *period of design and construction*. The Government shall perform a final review to verify that the design is complete and is necessary for the *Project*. Upon completion of design, the Non-Federal Sponsor shall furnish the District Engineer with copies of the completed design.

2. Using information developed by the Non-Federal Sponsor, the Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental Policy Act of 1969 (hereinafter "NEPA"). The Non-Federal Sponsor shall not issue the solicitation for the first construction contract for the *Project* or commence construction of the *Project* using the Non-Federal Sponsor's own forces until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

3. The Non-Federal Sponsor shall obtain all permits and licenses necessary for the design and construction of the *Project* and, in the exercise of its rights and obligations under this Agreement, shall comply with all applicable Federal, state, and local laws, regulations, ordinances, and policies including the laws and regulations specified in Article XI of this Agreement. As necessary to ensure compliance with such laws, regulations, ordinances, and policies, the Non-Federal Sponsor shall include appropriate provisions in its contracts for the design and construction of the *Project*.

4. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *Project*, including relevant plans and specifications, prior to the Non-Federal Sponsor's issuance of such solicitations. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government, but the contents of solicitations, award of contracts or commencement of design or construction using the Non-Federal Sponsor's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Non-Federal Sponsor.

5. At the time the Non-Federal Sponsor furnishes a contractor with a notice of acceptance of completed work for each contract for the *Project*, the Non-Federal Sponsor shall furnish a copy thereof to the Government.

6. The Government may perform periodic inspections to verify the progress of construction and that the work is being performed in a satisfactory manner. In addition, the Government may provide technical assistance to the Non-Federal Sponsor on an as-needed basis until the end of the *period of design and construction*. Further, the Government shall perform a final inspection to verify the completion of construction of the entire *Project* or completed portion thereof as the case may be. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-

Federal Sponsor now or hereafter owns or controls for the purpose of performing such inspections.

B. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, and shall perform or ensure performance of all *relocations* that the Non-Federal Sponsor and the Government jointly determine to be required or to be necessary for construction, operation, and maintenance of the *Project*. In addition, the Non-Federal Sponsor shall obtain all permits necessary for placement of the *Project* on publicly owned or controlled lands.

C. The Government shall determine and include in *total project costs* any costs incurred by the Non-Federal Sponsor that the District Engineer determines are directly related to design and construction of the *Project*, subject to the conditions and limitations of this paragraph.

1. Pursuant to paragraph A.6. of this Article, all work performed by the Non-Federal Sponsor for the *Project* is subject to on-site inspection and determination by the Government that the work was accomplished in a satisfactory manner and is suitable for inclusion in the *Project*.

2. The Non-Federal Sponsor's costs for design and construction that may be eligible for inclusion in *total project costs* shall be subject to an audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

3. No costs shall be included in *total project costs* for any construction of the *Project* that was performed prior to compliance with all applicable environmental laws and regulations, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

4. In the performance of all work for the *Project*, the Non-Federal Sponsor must comply with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti- Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, inclusion of costs for construction in *total project costs* may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

5. The Non-Federal Sponsor's costs for design and construction that may be eligible for inclusion in *total project costs* pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the work is completed and the time the costs are included in *total project costs*.

6. The Government shall not include in *total project costs* any costs paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

D. The Government shall reimburse the Non-Federal Sponsor, in accordance with Article VI.B. of this Agreement, the amount necessary so that the Federal contribution towards *total project costs* equals 75 percent; however, any reimbursement by the Government is subject to the availability of funds and is limited by the *Section 531 Program Limit*.

E. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Project* is limited by the following provisions of this paragraph.

1. As of the effective date of this Agreement, \$31,583,000 of Federal funds have been provided by the Congress of the United States (hereinafter the "Congress") for the Section 531 Program of which \$535,000 is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the Section 531 Program or the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

2. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, the Government's future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement. However, if the Government cannot make available sufficient Federal funds to meet the Federal share of *total project costs* in the then-current *fiscal year* solely due to the *Section 102 Limit*, only the Government's future performance related to reimbursement pursuant to paragraph D. of this Article shall be suspended.

3. If the Government determines that the total amount of Federal funds provided by Congress for the Section 531 Program has reached the *Section 531 Program Limit*, and the Government projects that the Federal funds the Government will make available to the *Project* within the *Section 531 Program Limit* will not be sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project* within the *Section*

531 Program Limit, the parties shall terminate this Agreement and proceed in accordance with Article XIII of this Agreement.

F. During the *period of design and construction*, the Non-Federal Sponsor shall prepare and furnish to the Government for review a proposed Operation, Maintenance, Repair, Rehabilitation and Replacement Manual (hereinafter the "OMRR&R Manual"). The failure of the Non-Federal Sponsor to prepare an OMRR&R Manual acceptable to the Government shall not relieve the Non-Federal Sponsor of its responsibilities for operation, maintenance, repair, rehabilitation, and replacement of the entire completed *Project*, or any completed portion thereof as the case may be, in accordance with the provisions of this Agreement.

G. Upon completion of construction and final inspection by the Government in accordance with paragraph A.6. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or a completed portion thereof as the case may be, in accordance with Article VIII of this Agreement. Further, after completion of all contracts for the *Project*, copies of all of the Non-Federal Sponsor's Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Government.

H. Upon conclusion of the *period of design and construction*, the Government shall conduct an accounting, in accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

I. The Non-Federal Sponsor and the Government, in consultation with appropriate Federal and State officials, shall develop a facilities development plan or resource protection plan. Such plan shall include necessary design, completion of all necessary NEPA compliance, preparation of appropriate plans and specifications, preparation of an OMRR&R Manual, and any other matters related to design and construction of the *Project* in accordance with this Agreement.

J. The Non-Federal Sponsor shall identify, establish, and maintain such legal and institutional structures as are necessary to ensure the effective long-term operation of the *Project*. The Non-Federal Sponsor shall provide to the Government a description of such legal and institutional structures and such descriptions shall be included in the OMRR&R Manual prepared by the Non-Federal Sponsor. The Non-Federal Sponsor's costs of identification of such legal and institutional structures shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government shall have no obligation under this Agreement for any costs of establishment and maintenance of such legal and institutional structures.

K. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

L. The Non-Federal Sponsor may request the Government to acquire lands, easements, or rights-of-way or to perform *relocations* for the *Project* on behalf of the Non-Federal Sponsor. Such requests shall be in writing and shall describe the services requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the services performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.D. of this Agreement. Notwithstanding the acquisition of lands, easements, or rights-of-way or performance of *relocations* by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

M. In the event that the Non-Federal Sponsor elects to include *betterments* in the design or construction of the *Project* during the *period of design and construction*, the Non-Federal Sponsor shall notify the Government in writing and describe the *betterments* it intends to design and construct. The Non-Federal Sponsor shall be solely responsible for all costs due to *betterments*, including costs associated with obtaining permits therefor, and shall pay all such costs without reimbursement by the Government.

N. The Government shall determine and include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor for *pre-Agreement design work*, subject to the conditions and limitations of this paragraph, that have not been incurred pursuant to any other agreement for the *Project*. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in *total project costs* for *pre-Agreement design work*.

1. *Pre-Agreement design work* shall be subject to a review by the Government to verify that the work was accomplished in a satisfactory manner and is necessary for the *Project*.

2. Where the Non-Federal Sponsor's cost for completed *pre-Agreement design work* is expressed as fixed costs plus a percentage of construction costs, the Non-Federal Sponsor shall renegotiate such costs with its Architect-Engineer based on actual costs.

3. The Non-Federal Sponsor's costs for *pre-Agreement design work* that may be eligible for inclusion in *total project costs* shall be subject to an audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

4. The Non-Federal Sponsor's costs for *pre-Agreement design work* that may be eligible for inclusion in *total project costs* pursuant to this paragraph are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *pre-Agreement design work* was completed and the time the costs are included in *total project costs*.

5. The Government shall not include in *total project costs* any costs for *pre-Agreement design work* paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS,
AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Non-Federal Sponsor and the Government jointly shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. Upon reaching such determination, the Government shall provide written confirmation to the Non-Federal Sponsor thereof including a description of the lands, easements, and rights-of-way jointly determined to be required. Prior to the issuance of the solicitation for each contract for construction of the *Project*, or prior to the Non-Federal Sponsor incurring any financial obligations for construction of a portion of the *Project* using the Non-Federal Sponsor's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Non-Federal Sponsor and the Government jointly determine the Non-Federal Sponsor must provide for that work and shall certify in writing to the Government that said interests have been acquired. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way required for the *Project* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Non-Federal Sponsor and the Government jointly shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. Upon reaching such determination, the Government shall provide written confirmation to the Non-Federal Sponsor thereof including a description of the *relocations* jointly determined to be necessary. Prior to the issuance of the solicitation for each contract for construction of the *Project*, or prior to the Non-Federal Sponsor incurring any financial obligations for construction of a portion of the *Project* using the Non-Federal Sponsor's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Non-Federal Sponsor and the Government jointly determine to be necessary for that work and certify in writing to the Government that said work has been performed. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall perform or ensure performance of all *relocations* necessary for construction, operation, and maintenance of the *Project*.

C. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24,

in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, AND RELOCATIONS AND COSTS OF PERMITS

A. The Government shall include in *total project costs* the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor and the Government jointly determine must be provided by the Non-Federal Sponsor pursuant to Article III.A. of this Agreement and the value of the *relocations* that the Non-Federal Sponsor and the Government jointly determine must be performed by the Non-Federal Sponsor or for which it must ensure performance pursuant to Article III.B. of this Agreement. The Government also shall include in *total project costs* the costs incurred by the Non-Federal Sponsor that are associated with obtaining permits pursuant to Article II.B. of this Agreement that are necessary for placement of the *Project* on publicly owned or controlled lands. However, the Government shall not include in *total project costs* the value of any lands, easements, rights-of-way, or *relocations* that have been provided previously as an item of cooperation for another Federal project. Further, the Government shall not include in *total project costs* the value of lands, easements, rights-of-way, or *relocations* that were acquired or performed using *Federal program funds* or the costs of obtaining permits paid using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that reimbursement for the value and costs of such items is expressly authorized by Federal law. Finally, no value or costs of such items shall be included in *total project costs* pursuant to this Article, and no reimbursement shall be provided to the Non-Federal Sponsor, for any value or costs in excess of 25 percent of *total project costs*.

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A. or Article III.B. of this Agreement and to determine the costs incurred by the Non-Federal Sponsor that are associated with obtaining permits pursuant to Article II.B. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions and the reasonable costs for obtaining such permits and include in *total project costs* the amount of such value and costs that does not exceed 25 percent of *total project costs*.

C. For the sole purpose of determining the value to be included in *total project costs* in accordance with this Agreement and except as otherwise provided in paragraph E. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor awards the first construction contract for the *Project*, or, if the Non-Federal Sponsor performs the construction using its own forces, the date that the Non-Federal Sponsor begins construction of the *Project*. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide a copy of each appraisal to the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government

notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Non-Federal Sponsor and the Government jointly determined such interests are required for construction, operation, and maintenance of the *Project*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C. of this Agreement, and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals prepared for review by the Government pursuant to paragraph C.2.a. of this Article subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. After consultation with the Non-Federal Sponsor, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the Commonwealth of Kentucky would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

4. The value to be included in *total project costs* for *relocations* performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, inclusion of the value of *relocations* in *total project costs* may be denied, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

E. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.L. of this Agreement, acquires lands, easements, or rights-of-way or performs *relocations*, the value to be included in *total project costs* in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsor in accordance with Article VI.D. of this Agreement. In addition, the value to be included in *total project costs* in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsor in accordance with the terms and conditions agreed upon in writing

pursuant to Article II.L. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

F. The Government shall include in *total project costs* the costs incurred by the Non-Federal Sponsor pursuant to Article II.B. of this Agreement that are associated with obtaining permits necessary for placement of the *Project* on publicly owned or controlled lands, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of design and construction*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of design and construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the *period of design and construction*, the Project Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary NEPA coordination; plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for *relocations* and the construction portion of the *Project*; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the Government's cost projections; final inspection of the entire *Project* or completed portions thereof as the case may be; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government and the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations to the Non-Federal Sponsor on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Non-Federal Sponsor in good

faith shall consider the recommendations of the Project Coordination Team. The Non-Federal Sponsor, having the legal authority and responsibility for design and construction of the *Project*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations.

E. The Non-Federal Sponsor's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. The Non-Federal Sponsor shall provide the Government with such documents as are sufficient to enable the Government to maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement, and the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement.

1. As of the effective date of this Agreement, *total project costs* are projected to be \$713,333; the Government's share of *total project costs* is projected to be \$535,000; the Non-Federal Sponsor's share of *total project costs* is projected to be \$178,333; *total project costs* to be incurred by the Government are projected to be \$35,000; *total project costs* to be incurred by the Non-Federal Sponsor are projected to be \$678,333; total reimbursements in accordance with paragraph B.2. of this Article are projected to be \$500,000; the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement is projected to be \$0; the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement are projected to be \$178,333; the Government's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement is projected to be \$0; the Non-Federal Sponsor's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement is projected to be \$0; and the Government's total financial obligations to be incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution for the *Project* on behalf of the Non-Federal Sponsor are projected to be \$0. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By May 31, 2011 and by each quarterly anniversary thereof until the conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the Government's share of *total project costs*; the Non-Federal Sponsor's share of *total project costs*; *total project costs* incurred by the Government; *total project costs* incurred by the Non-Federal Sponsor; total reimbursements paid to the Non-Federal Sponsor; the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement; the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement; the Government's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement; the Non-Federal Sponsor's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement; and the Government's total financial obligations to be incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.L. of this Agreement.

B. The Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor, in accordance with the provisions of this paragraph, the amount required pursuant to Article II.D. of this Agreement.

1. Periodically, but not more frequently than once every 30 calendar days, the Non-Federal Sponsor shall provide the Government with a *sufficient invoice* for costs the Non-Federal Sponsor has incurred for the *Project*.

2. Upon receipt of such *sufficient invoice*, the Government shall review the costs identified therein and shall determine: (a) the amount to be included in *total project costs*, subject to the limitations in Article II.C. of this Agreement; (b) the total costs incurred by the parties to date (including the value of lands, easements, rights-of-way, and *relocations*, and the costs of permits determined in accordance with Article IV of this Agreement); (c) each party's share of *total project costs* and the costs of data recovery activities in accordance with Article XVII.E. of this Agreement incurred by the parties to date; (d) the costs incurred by each party to date; (e) the total amount of reimbursements the Government has made to date in accordance with this paragraph; (f) the balance of Federal funds available for the *Project*, as of the date of such review; (g) the amount of reimbursement, if any, due to the Non-Federal Sponsor; and (h) the amount that actually will be paid to the Non-Federal Sponsor (hereinafter the "payment amount") if the amount of reimbursement determined above cannot be fully paid due to an insufficiency of Federal funds or the limitations of the *Section 531 Program Limit* or the *Section 102 Limit*.

3. Within 30 calendar days after receipt of the *sufficient invoice* provided in accordance with paragraph B.1. of this Article (hereinafter the "payment period"), the Government shall: furnish the Non-Federal Sponsor written notice of the determinations made in accordance with paragraph B.2. of this Article; provide an explanation, if necessary, of why the

payment amount is less than the amount of reimbursement determined due to the Non-Federal Sponsor; and make a payment to the Non-Federal Sponsor equal to the payment amount.

4. If the payment amount is not paid by the end of the payment period, the designated payment office shall credit to the Non-Federal Sponsor's account an interest penalty on the payment amount, without request from the Non-Federal Sponsor. Unless prescribed by other Federal authority, the interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the first day after the end of the payment period.

a. The interest penalty shall accrue daily from the first day after the end of the payment period through the date on which the payment is made. Accruals shall be compounded at 30 calendar day intervals through the date on which the payment is made.

b. The interest penalty shall not accrue, nor be compounded, during suspension of all of the Government's future performance or during suspension of only the Government's future performance to provide reimbursement. Further no interest penalty shall accrue, nor be compounded, upon termination of this Agreement under Article XIII of this Agreement.

C. Upon conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total project costs* and the costs of any data recovery activities. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Government's total required shares of *total project costs* and the costs of any data recovery activities exceed the Government's total contributions provided thereto, the Government, no later than 90 calendar days after completion of the interim or final accounting, as applicable, shall make a payment to the Non-Federal Sponsor, subject to the availability of funds and as limited by the *Section 531 Program Limit* and the *Section 102 Limit*, in an amount equal to the difference.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Government for *total project costs* and the costs of any data recovery activities exceed the Government's total required shares thereof, the Non-Federal Sponsor shall refund the excess amount to the Government within 90 calendar days of the date of

completion of such accounting by delivering a check payable to "FAO, USAED, Huntington" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government. In the event the Government is due a refund and funds are not available to refund the excess to the Government, the Non-Federal Sponsor shall seek such appropriations as are necessary to make the refund.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.L. of this Agreement for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for the first financial obligation for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of such work. No later than 30 calendar days prior to the Government incurring any financial obligation for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such work by delivering a check payable to "FAO, USAED, Huntington" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or by providing an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph D.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of such work from being conducted in a timely manner, the Government shall conduct an interim accounting of such work

and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor exceed the total contribution of funds provided by the Non-Federal Sponsor for such work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Huntington" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor exceeds the total obligations for such work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII – OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon completion of construction and final inspection by the Government in accordance with Article II.A.6. of this Agreement, the Non-Federal Sponsor, pursuant to Article

II.G. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or a completed portion thereof as the case may be, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Project* for the purpose of inspection, if the Government determines an inspection to be necessary. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor.

ARTICLE IX – HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in

accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend the Government's future performance under this Agreement.

B. In the event all of the Government's future performance under this Agreement or only the Government's future performance to provide reimbursement is suspended pursuant to Article II.E.2. of this Agreement such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVIL.D. and Article XVII.E. of this Agreement the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate this Agreement; 2) the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XIV.C. of this Agreement; or 3) the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

D. If after completion of the design portion of the *Project* the parties mutually agree in writing not to proceed with construction of the *Project*, the parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement.

E. In the event that this Agreement is terminated pursuant to this Article or Article II.E. or Article XIV.C. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement. The Government may reserve a percentage of total Federal funds made available for the *Project* as a contingency to pay costs of termination. Notwithstanding such termination, the Non-Federal Sponsor may continue with design and construction of the *Project*, at no cost to the Government.

F. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.E. or Article XIV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and coordination with the Government, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances in, on, or under any lands, easements, or rights-of-way that the Non-Federal Sponsor and the Government jointly determine to be required for construction, operation, and maintenance of the *Project*, pursuant to Article III of this Agreement, shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal

Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total project costs*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement or suspend its future performance under this Agreement, including reimbursement pursuant to Article II.D. of this Agreement.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Chairman
Troublesome Creek Environmental Authority
917 Perry County Park Road
Hazard, Kentucky 41701

If to the Government:

District Engineer
Huntington District
Corps of Engineers
502 Eighth Street
Huntington, West Virginia 25701-2070

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVII - HISTORIC PRESERVATION

A. The Government shall ensure compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f; hereinafter "Section 106") prior to initiation of construction by the Non-Federal Sponsor. At the Government's request, the Non-Federal Sponsor shall prepare information, analyses, and recommendations as required by Section 106 and implementing regulations. Any costs incurred by the Non-Federal Sponsor relating to compliance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Any costs incurred by the Government relating to compliance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. The Non-Federal Sponsor shall perform any identification, survey, evaluation, or mitigation (except for data recovery activities) of historic properties the Government determines necessary for the *Project*, in accordance with this paragraph.

1. The Non-Federal Sponsor shall ensure that its studies are conducted by qualified archaeologists, historians, architectural historians and historic architects, as appropriate, who meet, at minimum, the Secretary of the Interior's Professional Qualifications Standards. The Non-Federal Sponsor shall submit study plans and reports to the Government for review and approval and shall be responsible for resolving any deficiencies.

2. In the event the Government determines that mitigation (except for data recovery activities) should be undertaken due to possible adverse effects to significant archeological or historical properties, the Non-Federal Sponsor shall formulate a plan in consultation with the Government and any other parties involved in the development of a Memorandum of Agreement executed in accordance with Section 106.

3. The Non-Federal Sponsor shall be responsible for implementing mitigation (except for data recovery activities) prior to the initiation of any construction activities affecting historic properties.

4. Any costs of identification, survey, evaluation, and mitigation (except for data recovery activities) of historic properties incurred by the Non-Federal Sponsor pursuant to paragraph B. of this Article shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

C. The Non-Federal Sponsor shall include provisions in all of its construction contracts for the protection of cultural resources discovered during construction. These provisions shall include, at a minimum, the requirement to cease all work in the immediate area of a discovered cultural resource until the situation is properly evaluated, and the requirement to immediately provide verbal and written notice to the Non-Federal Sponsor and Government in the event of such discovery. Upon receipt of notice that cultural resources have been discovered, the Government, pursuant to its responsibilities under the National Historic Preservation Act, must authorize further action or study before construction may continue. If the Government concludes that such discovery warrants consultation under the National Historic Preservation Act, the Non-Federal Sponsor shall participate as a consulting party. In such a case, construction shall not continue until the Government sends written notification to the Non-Federal Sponsor. Where the Non-Federal Sponsor elects to perform the construction using its own forces, the same procedures shall be followed.

D. The Government, as it determines necessary for the *Project*, shall perform any data recovery activities associated with historic preservation. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation for this *Project* and all other projects implemented pursuant to the Section 531 Program shall be borne entirely by the Government up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the Section 531 Program. None of the costs of data recovery activities shall be included in *total project costs*.

E. The Government shall not incur costs for data recovery activities that exceed the statutory one percent limit specified in paragraph D. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit, and the Secretary of the Interior has concurred in the waiver, in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. Section 469c-2(3)). Any costs of data recovery activities that exceed the one percent limit shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost sharing requirements of the Section 531 Program, as follows: 25 percent will be borne by the Non-Federal Sponsor and 75 percent will be borne by the Government.

ARTICLE XVIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY


TROUBLESOME CREEK
ENVIRONMENTAL AUTHORITY

BY:



Robert D. Peterson
Colonel, Corps of Engineers
District Engineer

BY:



Lewis H. Warrix
Chairman

DATE:

4 March 2011

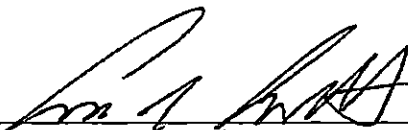
DATE:

4 March 2011

CERTIFICATE OF AUTHORITY

I, Calvin R. Tackett, do hereby certify that I am the principal legal officer of the Troublesome Creek Environmental Authority, that the Troublesome Creek Environmental Authority is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Troublesome Creek Environmental Authority in connection with the Ball Creek Sewer Plant and Collection Lines Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the Troublesome Creek Environmental Authority have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
4 day of MARCH 2011.



Calvin R. Tackett
Attorney for
Troublesome Creek Environmental Authority

CERTIFICATION REGARDING LOBBYING


The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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.

(2) 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language 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.

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.



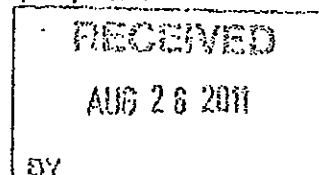
Lewis H. Warrix
Chairman
Troublesome Creek Environmental Authority

DATE: 4 March 2011

COMMONWEALTH OF KENTUCKY
DEPARTMENT FOR LOCAL GOVERNMENT
AMENDMENT

M.A. No. 1000001492
Amendment No. 3
Project No. 747
Net Incr/Decr \$250,000.00

Troublesome Creek Environmental Authority
917 Perry Park Road
Hazard, KY 41701



RE: Ball Creek WWTP and Collection Lines (MultiCounty)

The Memorandum of Agreement (MA) cited above, by and between the Commonwealth of Kentucky, Department for Local Government (DLG) and the Troublesome Creek Environmental Authority, Kentucky is being amended as follows: INCREASE THE FUNDING AMOUNT BY \$250,000 FOR A TOTAL AWARD AMOUNT OF \$638,817 AND AMEND THE SCOPE OF WORK TO INCLUDE ASPHALT PAVING, SLUDGE ENCLOSURE, PAINTING, LIGHTING, ADDITIONAL CONNECTIONS AND CONSTRUCTION OF AN OFFICE BUILDING IN ORDER TO ALLOW FOR PROJECT COMPLETION.

All other terms and conditions of the MA, except as modified above and by prior amendments, if any, are hereby ratified and confirmed.

Payments pursuant to this Amendment 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.

This Amendment shall be approved by the Secretary of the Finance and Administration Cabinet prior to it taking effect.

This Amendment may be terminated by either party at any time for cause and may be terminated by either party without cause upon 30 days written notice to the other party.

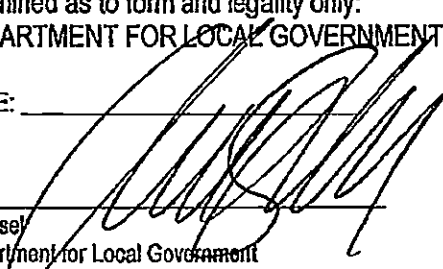
Funding Out Provision:

DLG may terminate this Agreement if funds are not appropriated for the Project 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 Agreement. DLG shall provide the Recipient thirty (30) calendar-days written notice of termination of the Agreement.

IN WITNESS WHEREOF, DLG and the Recipient have executed this Amendment.

Examined as to form and legality only:
DEPARTMENT FOR LOCAL GOVERNMENT:


DATE: _____


Counsel
Department for Local Government


Tony Wilder, Commissioner
Department for Local Government

RECIPIENT:

DATE: 8/23/11


Counsel
Troublesome Creek Environmental Authority


Lewis Warnix, Chairman
Troublesome Creek Environmental Authority



Steven L. Beshear
Governor

OFFICE OF THE GOVERNOR
DEPARTMENT FOR LOCAL GOVERNMENT

1024 Capital Center Drive, Suite 340
Frankfort, Kentucky 40601
Phone (502) 573-2382
Fax (502) 573-2939
Toll Free (800) 346-5606
www.dlg.ky.gov

Tony Wilder
Commissioner

K.R.A.D.D.
DATE RECEIVED

MAR 25 2010

TO: Tennder

MEMORANDUM

TO: Lewis H. Warrix, Chairman
Troublesome Creek Environmental Authority

FROM: Amy C. Barnes, Branch Manager
Coal Development Branch
Office of State Grants *ACB*

DATE: March 23, 2010

SUBJECT: ID #747 – Ball Creek WWTP and Collection Lines

Attached is the fully executed copy of the Memorandum of Agreement (MOA) for your above referenced Local Government Economic Development Fund (LGEDF) Coal Severance Multi-County grant project. The original document is being maintained in the project files in the Office of State Grants.

This project has now been approved and you may begin requesting the disbursement of funds as needed. These forms can be found on the Department for Local Government (DLG) website at <http://www.dlg.ky.gov/grants/stategrants/coaldevelopment.htm> along with the helpful instructional guidelines manual.

If you need additional assistance, please call me at 800-346-5606 or 502-573-2382.

Attachment

mg



An Equal Opportunity Employer M/F/D

#747
PSC Request 4
Page 141 of 158
RESPONSE TO ATTACHMENTS
RECEIVED
MAR 10 2010
BY _____

MEMORANDUM OF AGREEMENT

by and between

**COMMONWEALTH OF KENTUCKY
OFFICE OF THE GOVERNOR
DEPARTMENT FOR LOCAL GOVERNMENT**

and

TROUBLESOME CREEK ENVIRONMENTAL AUTHORITY

THIS GRANT AGREEMENT (hereinafter "Agreement"), is made and entered into on the 9th day of March 2010, by and between the **COMMONWEALTH OF KENTUCKY, OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT** (hereinafter "DLG"), with a mailing address of 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky, 40601 and **TROUBLESOME CREEK ENVIRONMENTAL AUTHORITY**, (hereinafter "Recipient"), with a mailing address of 917 Perry Park Road, Hazard, KY 41701.

WHEREAS, it is the public policy of the Commonwealth of Kentucky to encourage, promote, and support water and wastewater infrastructure development in Kentucky in order to provide safe, potable water for its citizens and residents; and

WHEREAS, the 2008 Kentucky General Assembly enacted House Bill 406 authorizing the 'Parameters for County Flexibility' (hereinafter "Parameters") county grant program; and

WHEREAS, the Parameters program enhanced the KRS 42.4588 coal severance grant program administered by DLG; and

WHEREAS, Executive Order 2009-543, dated June 12, 2009, moves the administration of the Multi-County LGEDF Account funds to the Department for Local Government, Office of State Grants from the Economic Development Cabinet; the Commissioner of the Department for Local Government further has all of the authorities, duties, function, responsibilities, and obligations for Multi-County LGEDF Account funds, in accordance with KRS 42.4588; the Commissioner of the Department for Local Government now has the same authorities, duties, function, responsibilities, and obligations as the Secretary of the Economic Development Cabinet and the Kentucky Economic Development Finance Authority (hereinafter "KEDFA") within the statutory powers listed in KRS 42.4588 and KRS 42.4595 for the purposes of administering the Multi-County LGEDF Account funds; and

agreements, documents, or instruments made in modification, amendment, renewal, extension, substitution, or replacement thereof;

“Water and Wastewater infrastructure development” means the promotion or provision of services and/or the construction of infrastructure to improve, maintain or create access to clean and safe water.

“Laws” include all laws, statutes, court decisions, rules, orders and regulations of the United States of America, the Commonwealth of Kentucky and its respective counties, municipalities and other subdivisions;

“Local Government Economic Development Fund” (“LGEDF”) means that certain fund created pursuant to KRS 42.4582, constituting a portion of the severance and processing taxes on coal collected annually by the Commonwealth, which is administered by DLG, as a system of grants to coal producing counties;

“Memorandum of Agreement” (“MOA”) shall refer to this certain agreement by and between DLG and the Troublesome Creek Environmental Authority for the purpose of entering into the Grant Agreement;

“Multi-County LGEDF Account” means those certain funds reserved in the LGEDF pursuant to KRS 42.4592(1)(c) for disbursement as grants by DLG for industrial development projects benefitting two or more coal producing counties pursuant to KRS 42.4588;

“Multi-County LGEDF Grant” shall mean a grant awarded pursuant to KRS 42.4588 for the benefit of two or more coal producing counties and funded through the Multi-County LGEDF Account;

“Person” shall include an individual, firm, trust, estate, association, unincorporated organization, corporation, partnership, joint venture, or government or agency or political subdivision thereof;

“Project Costs” shall mean the actual costs allowed by DLG under Section 2.2, including labor costs, materials, services and other work performed in connection with the Project in accordance with the terms and conditions of the MOA and KRS 42.4588; Project Costs do not include charges for the overhead of the Recipient;

“Request for Disbursement” means a written request to the Commissioner of DLG to make a disbursement of proceeds of the Grant, in its sole discretion; and substantially in the form attached hereto as Exhibit A;

“Supporting Documentation” means all receipts, vouchers, statements, bills of sale, invoices, AIA forms, equipment lists, property descriptions, deeds, purchase

Disbursement; (ii) the percentage of completion of the Project differs materially from that shown on the Request for Disbursement or from that shown on any documentation submitted to the Commissioner of DLG with the Request for Disbursement; (iii) the Recipient shall have failed to perform any condition precedent to the Disbursement under the terms and conditions of this Agreement or other Grant Documents; or (iv) any Event of Default shall have occurred and be continuing.

SECTION THREE

CONDITIONS PRECEDENT TO DISBURSEMENT

Section 3.1 Conditions Precedent to Disbursement. The requirements listed below are conditions precedent to any obligation of DLG to make a disbursement of any proceeds of the Grant, and the Recipient shall fully perform all of the following conditions precedent in form and substance acceptable to the Commissioner of DLG in its sole discretion prior to funding:

- (a) Grant Documents. The Recipient shall execute and fully perform each of the conditions precedent to the Grant set forth in this MOA and in each of the other Grant Documents;
- (b) Request for Disbursement. The Recipient shall properly execute, complete, and deliver to DLG a Request for Disbursement as set forth above;
- (c) Approvals. The Recipient shall (i) take all actions necessary to approve the Grant Documents and their participation in the Grant with respect to the Project and (ii) provide certified copies of all resolutions, ordinances, or other governmental actions taken in connection with the authorization of the Grant and the Project;
- (d) Event of Default. No event or condition which with notice or the passage of time or both, shall exist or have occurred that would constitute an Event of Default under the terms and conditions of this MOA or any of the other Grant Documents as of the date of each Disbursement.

SECTION FOUR

REPRESENTATIONS AND WARRANTIES

The Recipient hereby represents and warrants to the Commissioner of DLG as follows:

Section 4.1 Authority to Act. The Recipient has the requisite power, capacity, and authority to execute and deliver this MOA and the other Grant Documents, to consummate the transactions contemplated by this MOA and the other Grant Documents,

SECTION FIVE **COVENANTS**

To induce the Commissioner of DLG to enter into this Agreement, the Recipient hereby covenants and agrees with him/her as follows:

Section 5.1. Recipient's Audit Requirement. Pursuant to KRS 42.460, the Recipient agrees that an independent audit of any Grant proceeds received shall be conducted in accordance with generally accepted accounting standards; Government Auditing Standards, issued by the Comptroller General of the United States, the provisions of Office of Management and Budget Circular A-133, "Audits of State and Local Governments," if applicable, and the Audit Guide for Fiscal Court Audits issued by the Kentucky Auditor of Public Accounts. Bound within the audit report shall be a certification of compliance that the funds were expended in accordance with the provisions of KRS 42.4588 and 42.495. A copy of the audit report and the certification shall be forwarded to DLG within eighteen (18) months following the end of any fiscal year during which such proceeds were received.

Section 5.2. Right of DLG to Inspect. The Recipient agrees that the Commissioner of DLG and/or his/her designee shall have the right, but not the obligation, to enter onto the Real Property for the purpose of inspecting the Project. The Recipient shall cause the owner of the Real Property and any contractors or subcontractors to cooperate with the Commissioner of DLG in the exercise of his/her right to inspect hereunder. The Commissioner of DLG shall not be obligated in any way to inspect the Project, correct any defects discovered by him/her, or to notify the Recipient or any other Person with respect thereto. The Commissioner of DLG may, but is not obligated to, send inspection reports to the Recipient. Deficiencies identified in an inspection report shall be corrected by the Recipient and their correction reported in writing to DLG within two weeks of the receipt of the inspection report. DLG may audit or review all documentation and records of the recipient relating to the Project.

Section 5.3. Access to Records. DLG may audit or review all documentation and records of the Recipient relating to the Project pursuant to the provisions of KRS 45A.150. The contractor, as defined in KRS 45A.030(9), agrees that DLG, 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. Furthermore, any books, documents, papers, records, or other evidence provided to DLG, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the

any of the other Grant Documents, shall at any time be false or misleading in any material respect; or

- (b) Obligations. If the Recipient shall fail to keep, observe or perform any of the terms, agreements, covenants, representations or warranties set forth in this Agreement or in any of the other Grant Documents, or if the Recipient is unable or unwilling to meet its obligations hereunder.

Section 7.2. Remedies of DLG Upon an Event of Default. Notwithstanding anything to the contrary set forth herein, upon the occurrence of an Event of Default, then the Commissioner of DLG, in his/her sole discretion and without notice to the Recipient, may at any time exercise any one or more of the following rights and remedies:

- (a) Withhold disbursement under the Grant, after which DLG shall be under no obligation to advance any undisbursed monies from the Grant to the Recipient;
- (b) Declare the entire disbursement portion of the Grant plus any interest earned thereon to be immediately due and payable in full from the Recipient;
- (c) Commence an appropriate legal or equitable action to enforce the Recipient's performance of the terms, agreements, covenants, and conditions of this Agreement and any of the other Grant Documents; and/or
- (d) Exercise any other rights or remedies, at law, in equity or otherwise, that may be available to DLG pursuant to this Agreement, any other Grant Documents, or under applicable Laws, including, but not limited to, the rights to bring suit or other proceedings before any tribunal of competent jurisdiction, either for specific performance of any agreement, covenant or condition contained in this Agreement.

Section 7.3 Cumulative Rights. All rights available to DLG under this Agreement or the other Grant Documents shall be cumulative and in addition to all other rights granted to the Commissioner of DLG at law or in equity, whether or not DLG shall have instituted any suit or other action in connection with this Agreement or the other Grant Documents.

SECTION EIGHT

INSURANCE

Section 8.1 General Insurance Requirements. The Recipient shall carry and maintain general public liability insurance and worker's compensation insurance and a comprehensive builder's risk policy with respect to the Project during any period of

Section 10.1 Committee Approval. Payments on memoranda of agreements shall not be authorized for services rendered after Committee disapproval, unless the decision of the Committee is overridden by the Secretary of the Finance and Administration Cabinet or Commissioner of DLG, if DLG has been granted delegation authority by the Secretary.

Section 10.2 Expenses. At the Commissioner of DLG's request, the Recipient shall promptly indemnify and/or reimburse DLG for all expenses, costs and charges of any kind (but, not limited to, taxes, assessments, insurance premiums, repairs and maintenance expenses, reasonable attorneys' fees and legal expenses, title examination fees, survey expenses, recording expenses, and inspectors fees) incurred by or billed to DLG in connection with preservation, perfection and enforcement of DLG's rights and remedies under this Agreement and the other Grant Documents. If any Event of Default under Section 7.1 shall occur under this MOA or any of the Grant Documents, the Recipient shall pay to DLG, to the extent allowable by applicable law, such amounts as shall be sufficient to reimburse DLG fully for all applicable costs and expenses incurred in enforcing its rights and remedies under this MOA any of the Grant Documents, including without limitation the reasonable attorney's fees and court costs for DLG.

Section 10.3 Incorporation by Reference. All exhibits, schedules, annexes, or other attachments to this MOA are hereby incorporated into and made a part of this MOA as if set out at length herein.

Section 10.4 Multiple Counterparts. This MOA may be signed by each party upon a separate copy, and in such case one counterpart of this MOA shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This MOA may be executed in two or more counterparts, each of which shall be deemed an original, and shall not be necessary in making proof of this MOA or the terms and conditions hereof to produce or account for more than one of such counterparts.

Section 10.5 Headings. The section headings set forth in this MOA are for convenience of reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this MOA.

Section 10.6 Partial Invalidity. If any term or provision of this MOA, or the application thereof to any Person or circumstances shall, to any extent, be determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this MOA shall not be affected thereby, and the remaining provisions of this MOA shall be valid and enforceable to the fullest extent permitted by applicable law.

Section 10.7 Successors and Assigns. Each of the representations, warranties, agreements, covenants, obligations, and duties of the parties shall be deemed to have been made for the benefit of all parties, their successors and assigns. Except as otherwise expressly provided herein, the terms and condition of this MOA shall be binding upon

If to DLG: Office of the Governor
Department for Local Government
1024 Capital Center Drive, Suite 340
Frankfort, KY 40601
Attn: Amy Barnes

If to Recipient: Troublesome Creek Environmental
Authority
917 Perry Park Road
Hazard, KY 41701
Attn: Lewis H. Warrix

Any notice required or permitted to be given under this Grant Agreement shall be deemed sufficiently given for all purposes if sent by registered mail, postage pre-paid and return receipt requested, addressed to the intended recipient at the address set forth above. DLG or the Recipient may change their respective addresses as provided above by given written notice of the change to the other parties hereto as provided in this paragraph.

Section 10.15 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the United States of America, the Commonwealth of Kentucky, and its respective counties, municipalities and other subdivisions.


Section 10.16 Jurisdiction and Venue. The parties agree that any suit, action, or proceeding with respect to this Agreement may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky or the United States District Court for the Eastern District of Kentucky's Frankfort Division.

Section 10.17 No Commonwealth Liability. Under no circumstances will the Commonwealth, its officials, agents, directors, contractors, servants, members, employees, licensees, or assigns be held or adjudged liable in connection with any cause of action arising under or as a result of this Agreement, the Project or in connection with claims or cross-claims by or among the Recipient and any third party.


Section 10.18 Indemnity. The Recipient agrees to indemnify DLG for any damage to persons or property caused by an agent, employee, or independent contractor conducting any of the Project activities contemplated on the Project in this MOA including, without limitation, reasonable costs, and attorney's fees for defending any such action.

THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK

Examined as form and legality only:


Counsel
Troublesome Creek Environmental
Authority

Examined as to form and legality only:


Counsel
Department for Local Government

THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK



Commonwealth of Kentucky

CONTRACT

IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

Doc Description: M747TroublesomeCreekEnvAuthBallCreekWaterTreatmentPitLGEDFM	
Doc ID No: PON2 112 1000001492 1	Procurement Folder:
Procurement Type: Memorandum of Agreement	
Administered By: Mary Gabbard	Cited Authority: KRS42.4588
Telephone: 502-573-2382	Issued By: MARY GABBARD

C O N T R A C T F O R	Troublesome Creek Environmental Authority	
	917 Perry Park Road	
	Hazard	KY 41701
	US	

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	M747TroublesomeCreekEnvAuthBall CreekWaterTreatmentPitLGEDFM		0.00		0.00000	388,817.00	388,817.00

Extended Description
Service From/To Dates: 03/26/2010 - 06/30/2010
FUNDS WILL BE USED CONSTRUCTION OF A 100,000 GPD WASTEWATER TREATMENT PLANT ON HWY 1087
KNOTT COUNTY, INCLUDING CONSTRUCTION OF COLLECTION LINES, 4,870 LF OF PVC GRAVITY SEWER, 34,030
LF OF FORCE MAIN, A 200 GPM LIFT STATION W/TELEMETRY, AND 40 RESIDENTIAL GRINDER PUMP STATIONS.

B I L L T O	1826	S H I P T O	
	GG GOLD - KY COMMUNITY DEV OF		
	1024 CAPITAL CTR STE 340		
	KY COMMUNITY DEV OF		
	FRANKFORT		KY 406001
	US		

Total Order Amount:	388,817.00
---------------------	------------

<i>Project Number</i>	<i>Scope of Work</i>	<i>Type</i>
747	<i>Project Name</i> Ball Creek WWTP and Collection Lines	MultiCounty
<i>Funded Amount</i>	<i>Document</i>	<i>County</i>
\$388,817.00		Knott
	<i>Scope of Work</i>	
FUNDS WILL BE USED FOR THE CONSTRUCTION OF A 100,000 GPD WASTEWATER TREATMENT PLANT ON HWY 1087, JUST OFF HWY 80 AT KNOB BOTTOM IN KNOTT COUNTY. ALSO INCLUDED WILL BE CONSTRUCTION OF COLLECTION LINES INCLUDING 4,870 LF OF PVC GRAVITY SEWER, 34,030 LF OF FORCE MAIN, A 200 GPM LIFT STATION W/TELEMETRY, AND 40 RESIDENTIAL GRINDER PUMP STATIONS.		



MEMORANDUM OF AGREEMENT

between the

**COMMONWEALTH OF KENTUCKY
OFFICE OF THE GOVERNOR
DEPARTMENT FOR LOCAL GOVERNMENT**

and the

Knott County Fiscal Court, KENTUCKY

THIS MEMORANDUM OF AGREEMENT (hereinafter 'the Agreement') by and between the Commonwealth of Kentucky, Office of the Governor, Department for Local Government (hereinafter 'DLG'), with address at 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601 and the Knott County Fiscal Court, Kentucky, with address of Post Office Box 505 - Hindman, KY 41822, (hereinafter 'the Recipient') is made and entered into as of the date last executed by the parties thereto as evidenced by the dates written below.

WHEREAS, the 2008 General Assembly enacted House Bill 406 authorizing the 'Parameters for County Flexibility' (Parameters) county grant program; and

WHEREAS, the Parameters program enhanced the KRS 42.4588 coal severance grant program administered by DLG; and

WHEREAS, the Recipient has submitted an application for coal severance funds, with the application having been approved by DLG, for the following project and in the following amount: Troublesome Creek Environmental Sewage Treatment Project project (hereinafter 'the Project') and is to be funded in an amount not to exceed \$450,000.00 (FOUR HUNDRED FIFTY THOUSAND AND 00/100); and

WHEREAS, the Recipient has agreed to the terms and conditions enumerated herein and has further agreed to effectuate the completion of the Project in accordance with those terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants, commitments, and conditions contained herein, DLG and the Recipient agree as follows:

1 – EFFECTIVE DATES OF THE AGREEMENT

A. This Agreement shall be effective only upon approval by the Government Contract Review Committee of the Legislative Research Commission or, in the event of disapproval by the committee, upon override of the committee's action in accordance with KRS 45A.695(7). Pursuant to KRS 45A.700, should this Agreement be for the sum of \$50,000.00 or less, as denoted in Section 2(A), this Agreement shall be effective upon filing with the Government Contract Review Committee and does not require Government Contract Review Committee approval. The Agreement shall continue in effect through June 30, 2010, unless terminated at an earlier date in accordance with the terms set forth herein. The terms of the Agreement may be renewed or extended upon mutual written agreement duly executed by the parties.

B. This Agreement may be terminated by either party at any time for cause and may be terminated by either party without cause upon 30 days written notice to the other party. Termination of this Agreement shall not diminish or in any other manner affect any other remedy that may be available to the parties for any breach of the Agreement that occurs prior to the termination.

2 – OBLIGATIONS OF DLG

DLG covenants and agrees, conditioned upon the timely performance by the Recipient of its obligations herein, to undertake the following obligations:

A. DLG shall, subject to the availability of appropriate funds, pay the Recipient a sum not to exceed \$450,000.00 (FOUR HUNDRED FIFTY THOUSAND AND 00/100) in accordance with the submission of a Request for Disbursement set forth as Attachment A, which is hereby incorporated herein and made a part of this Agreement.

B. Payments pursuant to this Agreement 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.

C. DLG may, but is not required to, make periodic inspections of the Project and may send inspection reports to the Recipient. Deficiencies identified in an inspection report shall be corrected by the Recipient and their correction reported in writing to DLG within two weeks of receipt of the inspection report.

D. DLG shall cooperate fully with the Recipient to the extent necessary to facilitate the obligations set out in this Agreement.

E. DLG shall close out the Project upon satisfactory completion of the Project by the Recipient in accordance with the terms and conditions of this Agreement and submission of an acceptable project completion report in the form prescribed by DLG.

3 – OBLIGATIONS OF THE RECIPIENT

The Recipient covenants and agrees to undertake the following obligations:

A. The Recipient shall perform and cause to be performed all necessary acts to plan, design and complete the Project in accordance with the Scope of Work attached hereto as Attachment B which is hereby incorporated herein and made a part of this agreement.

B. The Recipient shall obtain all necessary permits, licenses, and approvals required for completion of the Project from the appropriate governmental entities.

C. The Recipient shall comply with all applicable federal and state statutes, executive orders, regulatory requirements, and policies.

D. The Recipient shall use its own procurement procedures that reflect applicable state and local laws for all purchases of goods or services related to the Project.

E. Beginning upon the effective date of this agreement and regardless of whether any funds have been drawn, the Recipient shall submit quarterly progress reports to DLG in the form prescribed by DLG until the Project is closed out by DLG. The reports shall be postmarked no later than the 30th day of the month following the last day of each calendar quarter (i.e., January 30th, April 30th, July 30th, and October 30th). The report shall list, at a minimum, the line items in the cost estimate and the percent of completion as well as any indication of problems or time delays. Failure to submit or fully complete the required report will place the recipient in noncompliance status at which time DLG will suspend the release of additional funds until the appropriate documentation has been submitted.

F. The Recipient shall submit to DLG a copy of the engineer's certification of completion and As-built plans in an AutoCAD Drawing File Format (DWG), and a 1 inch: 2,000 square foot topographic map outlining flood zones and showing project location in the county. Both items should be submitted on a Compact Disc (CD) within three months of project completion.

G. The Recipient shall retain all records relating to the Project until the records are audited by DLG, or for three years after the Project has been closed out by DLG, whichever occurs first.

H. A copy of the Recipient resolution authorizing the execution of this Agreement is attached hereto as Attachment C which is hereby incorporated herein and made a part of this Agreement.

I. The Recipient shall cooperate fully with DLG and provide any documentation requested by DLG in order to facilitate the obligations set out in this Agreement.

J. The Recipient shall begin design of the Project no later than upon receipt of the initial draw. The Project shall be completed by the Recipient no later than June 30, 2010.

K. The Recipient shall be responsible for the expenditure of funds in accordance with House Bill 400, all other applicable laws. Any unauthorized or improper expenditure of funds or expenditure of funds other than in accordance with the terms of this Agreement shall be deemed a default of this Agreement by the Recipient. The Recipient shall repay DLG all funds that are not spent in accordance with this Agreement and appropriate laws.

L. The Recipient shall submit a project completion report to DLG in the form prescribed by DLG upon completion of the Project.

M. All recipients, with the exception of 6th Class Cities covered by KRS 81A.040(2) and (3) and Districts covered by KRS 65.065(2), are subject to an independent annual audit conducted in accordance with generally accepted auditing standards. Government Auditing Standards, issued by the Comptroller General of the United States, the provisions of Office of Management and Budget Circular A-133, "Audits of State and Local Governments," if applicable, and the Audit Guide for Fiscal Court Audits issued by the Kentucky Auditor of Public Accounts. The audit report shall include a certification that the funds were expended for the purpose intended. A copy of the audit and certification of compliance shall be forwarded to DLG, Office of State Grants, no later than 12 months after the end of each fiscal year in which funds were received by a recipient.

N. Those 6th Class Cities and Districts referenced above shall be required to submit a copy of their financial statement, when applicable, to DLG, Office of State Grants, no later than 12 months after the end of each fiscal year in which funds were received by a recipient. Where a financial statement is not applicable, pursuant to the relevant statute, an audit shall be required.

4 – MUTUALITY OF OBLIGATIONS

A. The parties agree that the obligations imposed upon them are for the benefit of the parties and the timely fulfillment of each and every obligation in accordance with this Agreement is necessary. The failure of any party to fulfill its obligations under this Agreement or the failure of any event to occur by a date established by this Agreement shall constitute a breach of it unless the fulfillment of such obligation is waived or modified by written Agreement of the parties.

B. In the event of default by the Recipient, including the failure to meet any time deadlines set out in this memorandum, DLG may declare this Agreement void from the beginning without further obligation to the Recipient and may commence appropriate legal or equitable action to enforce its rights under this Agreement including action for recovery of funds expended hereunder.

C. Except as may other wise be provided herein, the parties to this Agreement shall be solely responsible for any costs incurred in fulfilling their obligations under this Agreement and no party shall have any claim against the other party for reimbursement of costs whether or not a party is in default.

5 – MISCELLANEOUS PROVISIONS

A. This Agreement may be signed by each party upon a separate copy, and in such case one counterpart of this Agreement shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Agreement may be executed in two or more counterparts each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms and conditions hereof to produce or account for more than one of such counterparts.

B. The headings set forth in this Agreement are for convenience or reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

C. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of the parties. This provision shall not be construed to permit assignment by any party of any of its rights and duties under this Agreement which assignment shall be prohibited except with the prior written consent of all parties hereto.

D. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements among them concerning the subject matter hereof, and may be modified only by a written instrument duly executed by each of the parties hereto.

E. Time is of the essence in the performance of each of the terms and conditions of this Agreement.

F. The parties agree that any suit, action, or proceeding with respect to this Agreement may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky or the United States District Court for the Eastern District of Kentucky, Frankfort Division.

G. All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing, and shall be addressed as follows:

If to DLG: Department for Local Government
Office of State Grants
1024 Capital Center Drive, Suite 340
Frankfort, KY 40601
ATTN: Amy Barnes

If to the Recipient: Knott County Fiscal Court
Post Office Box 505
Hindman, KY 41822
ATTN: Randy C. Thompson, County Judge Executive

INITIAL 

H. DLG may audit or review all documentation and records of the Recipient relating to this project pursuant to the provisions of KRS 45A.150.


I. The Recipient agrees that DLG, 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. Furthermore, any books, document, papers, records, or other evidence provided to the Commonwealth, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1) (c) prior to the execution of the contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information which would otherwise be subject to public release if a state government agency was providing the services.

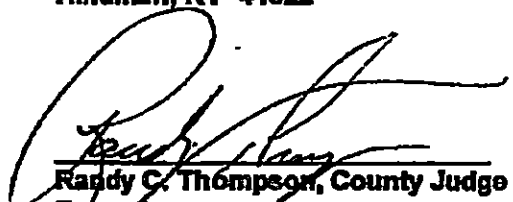
J. The parties agree that this Agreement is not entered into under the provisions of KRS 56.8161 et seq.

IN WITNESS WHEREOF, DLG and the Recipient have executed this memorandum as of the dates written below.

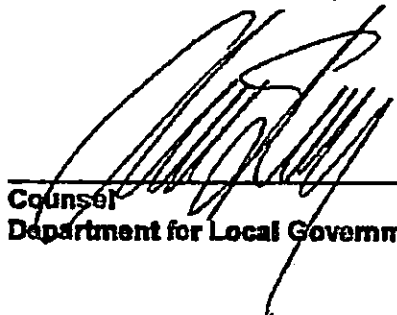
Department for Local Government
1024 Capital Center Drive, Ste. 340
Frankfort, Kentucky 40601

Knott County Fiscal Court
Post Office Box 605
Hindman, KY 41822


Tony Wilder, Commissioner 6-30-09
Department for Local Government


Randy C. Thompson, County Judge
Executive
Knott County Fiscal Court

Examined for Form & Legality Only:


Counsel 6-30-09
Department for Local Government


Counsel
Knott County Fiscal Court

Scope of Work

LGEDF #949

FUNDS WILL BE USED FOR THE TROUBLESOME CREEK ENVIRONMENTAL -BALL CREEK WASTEWATER TREATMENT PROJECT. FUNDS WILL BE USED FOR ENGINEERING AND CONSTRUCTION EXPENSES FOR A SEWAGE TREATMENT SYSTEM CAPABLE OF ACCEPTING PRESENT DAY SEWER FLOWS FROM THE HEADWATERS OF TROUBLESOME CREEK AT CHESTNUT MOUNTAIN IN KNOTT COUNTY ALONG ROUTES 80 AND 1087 TOWARDS PERRY COUNTY.

**KNOTT COUNTY WATER AND SEWER, INC.
AND
TROUBLESOME CREEK ENVIRONMENTAL AUTHORITY, INC.**

PSC CASE NO. 2015-00301

**PUBLIC SERVICE COMMISSION'S INITIAL REQUEST FOR INFORMATION
DATED 09/17/15**

REQUEST 5

RESPONSIBLE PERSON: Jennifer McIntosh and Chris Gooch
COMPANY: Kentucky River Area Development District
and outside Certified Public Accountant on
behalf of TEA

Request 5. Refer to the Application, Exhibit 2, Agreement of Sale and Transfer ("Agreement") at 5, and Exhibit G, January 4, 2012, letter from Western Pocahontas Properties ("Western Properties").

a. Western Properties agreed to advance \$40,000 to Troublesome Creek to fund "the cost of start-up and initial operating expenses for the Ball Creek Wastewater Treatment facility." The \$40,000 payment would be treated as advanced or pre-paid tap fees and would be applied as directed by Western Properties. Explain why the \$40,000 tap-fee advance from Western Properties was not recorded by Troublesome Creek as a liability on the Balance Sheet.

Response 5.a. The \$40,000 that was received from Western Pocahontas was recorded by TEA as income. Of the \$40,000 total, \$20,000 was recorded as income in 2012 and \$20,000 was recorded as income in 2013. However, no adjustments were made to reclassify this on the Balance Sheet as a liability.

Request 5.b. Given that the \$40,000 tap-fee advance has not been recorded by Troublesome Creek as a liability, explain why it is appropriate for Knott District to assume this potential liability as a condition of the proposed asset transfer.

Response 5.b. Although recorded as income, we believe the January 4, 2012, letter from Western Pocahontas⁴ supersedes the Balance Sheet entry and therefore a prior period Balance Sheet adjustment reclassifying the income as Advance payment-tap fees would be necessary.

Request 5.c. Explain how Troublesome Creek spent the \$40,000 it received from Western Properties.

Response 5.c. The \$40,000 that was received from Western Pocahontas was spent on the following services: UMG for operations, utility bills – electric, phone, internet, water and gas, insurance dues, KPDES permit for the plant, and CPA audit expenses. Western Pocahontas provided these funds to assist TEA with its financials to insure TEA's viability and asked that instead of repayment the funds be allocated to tap fees when the Chestnut Mountain area was developed.

⁴ A copy of this letter is attached to the Application as Exhibit 2G.

**KNOTT COUNTY WATER AND SEWER, INC.
AND
TROUBLESOME CREEK ENVIRONMENTAL AUTHORITY, INC.**

PSC CASE NO. 2015-00301

**PUBLIC SERVICE COMMISSION'S INITIAL REQUEST FOR INFORMATION
DATED 09/17/15**

REQUEST 6

RESPONSIBLE PERSON: Jennifer McIntosh and Calvin R. Tackett
COMPANY: Kentucky River Area Development District
for TEA and Outside General Counsel for TEA
and KCWSD

Request 6. Refer to the Application at 2 and the Agreement at 4. As noted on page 2 of the Application, Troublesome Creek was created "by joint action of the fiscal courts of Knott, Perry and Breathitt Counties to improve water quality of the Troublesome Creek watershed." Page 4 of the Agreement states that Knott District will pay an annual stipend of \$7500 to Troublesome Creek "for corporate governance purposes which are necessary for TEA to maintain its good standing as a public entity."

Request 6.a. Knott District was to begin paying the \$7500 stipend to Troublesome Creek on October 1, 2014. Did Knott District pay the stipend on that date? If not, when does Knott District expect to make the initial payment?

Response 6.a. The \$7,500 stipend is to be paid out per invoice received from TEA. The agreement set forth between the two parties was that KCWSD would assist TEA with its expenses on a per item basis up to \$7,500 per calendar year. The exact provision in the October 1, 2014 Agreement between TEA and KCWSD reads as follows:

8.Payment: KCW&S declares that it is crucial to financially support TEA, so the Highway 80 Corridor sewer line project can be completed. Starting with the date of this Agreement, KCW&S shall pay a stipend not to exceed \$7,500.00 per year to TEA. These payments are earmarked for corporate governance purposes which are necessary for TEA to maintain its good standing as a public corporate entity. Such cost includes, Secretary of State annual fees, Audit of Finances by CPA, other dues and fees, Directors Insurance and publication notices. This stipend will be paid on a draw basis. TEA will present a copy of a particular bill to KCW&S who in turn will issue funds to TEA for payment.

The stipend is deemed to be a draw against the total yearly amount, so if any portion is unused there will be no carry forward of unused funds into the next year. The yearly stipend will continue for two years or until the Highway 80 sewer project is complete. There was one invoice for \$512.59 submitted to KCWSD for reimbursement during the 2014 year, which was paid by KCWSD. The invoice is attached to this response.

Request 6.b. Since the \$7500 stipend is necessary to sustain Troublesome Creek's continued efforts to expand in all three counties, explain why it is appropriate for only an entity from Knott County to pay the entire fee, rather than for all three counties to contribute the stipend equally.

Response 6.b KCWSD assumed this future contingent debt because it felt that if any significant short and long-term increase in sewer customers would occur it would come from lands owned by Western Pocahontas. More specifically, KCWSD was aware of plans to design and construct a residential development named Chestnut Mountain Development (a mixed commercial/residential development) to the east of the plant that would have greatly increased the customer base. When TEA first started it intended to build and operate WWTP's in all three counties. After construction of the Ball Creek Plant, the board decided to become a "build and turn-over" entity. At present time the Ball Creek Plant is the first completed project for TEA. Therefore, TEA asked KCWSD to take the plant and lines and to assist them in staying viable so that they could pursue more projects. Also, all of the customers served by the Ball Creek Plant are currently Knott County residents.

Request 6.c. State whether Knott District or Troublesome Creek has contacted the fiscal courts of Knott, Perry, and Breathitt counties to see if they are willing to contribute toward the \$7500 stipend paid for Troublesome Creek's continuance.

Response 6.c. To date only KCWSD has been contacted as they are the beneficiary of the plant and customers as well as the new project which is in the final stages of acquiring all necessary grants.

Request 6.d. Provide all correspondence between Troublesome Creek and/or Knott District and the fiscal courts of Knott, Perry, and Breathitt counties wherein payment of the continuance stipend was discussed.

Response 6.d. No such correspondence exists as it was not brought before the fiscal courts, except to have a resolution passed that they agreed to allow KCWSD to take over the Ball Creek Plant.

Request 6.e. Provide an itemized list of the costs that were incurred by Troublesome Creek in calendar year 2014 that would be recovered through the \$7500 stipend.

Response 6.e. See Response 6.a. Also attached is a spreadsheet listing the amounts for calendar year 2015 that have been paid so far in conjunction with the \$7500 stipend.



Statement of Balance Due
KACo All Lines Fund
400 Englewood Drive
Frankfort, KY 40601
1-800-264-5226

PSC Request 6
K.R.A.D.D. Page 5 of 6
DATE RECEIVED
NOV 07 2014
TO: Jennifer

Troublesome Creek Env. Auth.
c/o KRADD
917 Perry Park Rd
HAZARD, KY 41701

Statement Date: 11/5/2014
Customer Number: 02-0003312

Date	Invoice Number	Description	Charge	Credit	Balance
6/30/2014	K140132-IN	2014-15 Premium	1,015.00		
6/30/2014		Payment Ref: 1413		507.49	507.51
11/5/2014	NOV1791-FC	Finance Charge	5.08		5.08

Balance Due: 512.59

****PLEASE NOTE:** All 14-15 Premiums were due in full by November 1, 2014. All outstanding balances will now accrue a monthly compounding finance charge of 1% (minimum charge is \$5.00). To ensure further penalties will not be charged to your account, please mail in the full balance due as soon as possible.

\$7,500.00

[illegible]

**KNOTT COUNTY WATER AND SEWER, INC.
AND
TROUBLESOME CREEK ENVIRONMENTAL AUTHORITY, INC.**

PSC CASE NO. 2015-00301

**PUBLIC SERVICE COMMISSION'S INITIAL REQUEST FOR INFORMATION
DATED 09/17/15**

REQUEST 7

RESPONSIBLE PERSON: Chris Gooch
COMPANY: Outside CPA for TEA

Request 7. On page 2 of the Application, Joint Applicants state that Troublesome Creek's monthly income from the Ball Creek Plant is approximately \$844 and the monthly operational costs are approximately \$1,608. Considering that current revenues are sufficient to pay only one-half of the operating expenses, explain why Knott District agreed to pay the \$7500 stipend to Troublesome Creek, increasing the monthly operating expenses by \$625 (\$7500 Stipend / 12 Months).

Response 7. TEA reviewed its annual expenses prior to the agreement to determine that the \$7,500 stipend would be sufficient to maintain the entity based upon dues and fees, CPA related expenses, board insurance, advertising and all other debts that it may incur. However, as stated previously, the \$7500 stipend is an annual maximum amount and KCWSD only pays these expenses of TEA which are duly invoiced. For the three months of 2014 that the stipend was in effect, KCWSD only paid \$512.59 on behalf of TEA.

**KNOTT COUNTY WATER AND SEWER, INC.
AND
TROUBLESOME CREEK ENVIRONMENTAL AUTHORITY, INC.**

PSC CASE NO. 2015-00301

**PUBLIC SERVICE COMMISSION'S INITIAL REQUEST FOR INFORMATION
DATED 09/17/15**

REQUEST 8

RESPONSIBLE PERSON: L.J. Turner

COMPANY: Knott County Water and Sewer, Inc.

Request 8. On page 4 of the Application, Joint Applicants state that the rates that will be charged to the Troublesome Creek customers will be lowered to the sewer rates currently charged by Knott District subsequent to the asset transfer. Provide the estimated monthly revenues that will be generated from the Troublesome Creek's customers after the rate decrease is implemented.

Response 8. The estimated revenues under the new rate would be approximately \$420.00 monthly.

**KNOTT COUNTY WATER AND SEWER, INC.
AND
TROUBLESOME CREEK ENVIRONMENTAL AUTHORITY, INC.**

PSC CASE NO. 2015-00301

**PUBLIC SERVICE COMMISSION'S INITIAL REQUEST FOR INFORMATION
DATED 09/17/15**

REQUEST 9

RESPONSIBLE PERSON: L.J. Turner

COMPANY: Knott County Water and Sewer, Inc.

Request 9. Explain why it is prudent for Knott District to lower the rates charged to the Troublesome Creek customers when the existing rates do not produce revenues sufficient to pay the expenses Knott District will incur to operate the Ball Creek wastewater facilities.

Response 9. KCWSD is assuming service to only 30 customers from TEA. KCWSD made the decision to serve those customers under its currently approved and published tariff to promote rate uniformity and as a way to discourage potential questions and complaints from customers regarding disparate rates charged by KCWSD for its legacy customers versus the new TEA customers. The effect of this decision will have a *de minimis* effect upon KCWSD's financial condition considering the small number of

customers being absorbed and the fact that KCWSD is acquiring a \$4,000,000-plus Waste Water Treatment Facility into utility plant for virtually zero cost. Moreover, the long-term prospects are that by acquiring the Ball Creek Plant and absorbing the 30 customers it serves, KCWSD will substantially enhance its ability to attract and serve many more customers going forward as new projects are funded and constructed.

KNOTT COUNTY WATER AND SEWER, INC.
AND
TROUBLESOME CREEK ENVIRONMENTAL AUTHORITY, INC.

PSC CASE NO. 2015-00301

PUBLIC SERVICE COMMISSION'S INITIAL REQUEST FOR INFORMATION
DATED 09/17/15

REQUEST 10

RESPONSIBLE PERSON: Chris Gooch

COMPANY: Outside Certified Public Accountant for TEA

Request 10. Refer to page 25 of Troublesome Creek's 2014 Annual Report.

Request 10a. Troublesome Creek reports income from Nonutility Operations of \$109,070. Provide an itemized list of the amounts that were recorded in this account and include a detailed description for each identified item.

Response 10.a.

Income Type	Amount
KIA Grant 8CS-2014 Income	62,600
Multi-County Coal Fund - Perry Income	2,500
Multi-County Coal Fund - Breathitt Income	43,970
Total	109,070

Request 10b. Explain whether Knott District will receive any of the revenues identified in the response to 10.a. after the asset transfer.

Response 10b. KCWSD will receive all revenues from the plant and collection lines, TEA will only receive up to the \$7500 per year stipend to maintain the entity. All

of the income listed in Response 10.a. was used in the project therefore, KCWSD will not be receiving any of that income.

**KNOTT COUNTY WATER AND SEWER, INC.
AND
TROUBLESOME CREEK ENVIRONMENTAL AUTHORITY, INC.**

PSC CASE NO. 2015-00301

**PUBLIC SERVICE COMMISSION'S INITIAL REQUEST FOR INFORMATION
DATED 09/17/15**

REQUEST 11

RESPONSIBLE PERSON: Chris Gooch

COMPANY: Outside Certified Public Accountant for TEA

Request 11. Refer to page 28 of Troublesome Creek's 2014 Annual Report.

Request 11a. Troublesome Creek reports Maintenance of General Plant of \$114,661. Provide an itemized list of the amounts that were recorded in this account and include a detailed description for each identified item.

Response 11.a.

Expense Type	Amount
KIA Grant 8CS-2014 Expense	62,600
R.M. Johnson - Ball Creek Phase 2	20,000
R.M. Johnson - HB265 8CS	22,600
R.M. Johnson - HB265 8CS	20,000
Multi-County Coal Sev - Perry Expense	5,518
R.M. Johnson - Engineering	2,501
R.M. Johnson - Engineering	3,018
Multi-County Coal Sev - Breathitt Expense	46,543
R.M. Johnson - Engineering	2,573
R.M. Johnson - Engineering	10,000
Riverside Christian School - Property BC Draw	12,500
Brendon D. Miller - Legal	2,500
R.M. Johnson - Engineering	18,970
Total	114,661

Request 11b. Explain whether Knott District will incur any of the expenses identified in the response to 11.a. after the asset transfer.

Response 11b. Following the asset transfer, KCWSD will assume all of the operation and maintenance expenses associated with the Ball Creek Plant. All of the expenses listed in Response 11.a. have all been satisfied therefore, KCWSD will not be incurring any of those expenses.

**KNOTT COUNTY WATER AND SEWER, INC.
AND
TROUBLESOME CREEK ENVIRONMENTAL AUTHORITY, INC.**

PSC CASE NO. 2015-00301

**PUBLIC SERVICE COMMISSION'S INITIAL REQUEST FOR INFORMATION
DATED 09/17/15**

REQUEST 12

RESPONSIBLE PERSON: L.J. Turner

COMPANY: Knott County Water and Sewer, Inc.

Request 12. At page 2 of the Application, Troublesome Creek states that it currently provides wastewater service to 28 customers; however, at page 36 of its 2014 Annual Report, Troublesome Creek claims to have 53 customers. Identify the correct number of customers that Troublesome Creek is currently serving.

Response 12. KCWSD currently has 30 active customers in our system that are TEA customers. This number is subject to change if the customer leaves the location. Some of these customers are apartment complexes which will house multiple families. KCWSD assumes that TEA may have calculated the number in its Annual Report based on the number of households or users instead of the number of meters since the apartment complexes would have multiple users but only one meter.