

**PENDLETON COUNTY FISCAL COURT
SPECIAL CALL MEETING
November Term, November 5, 2008**

COURT MET PURSANT TO ADJOURNMENT
With
HONORABLE HENRY BERTRAM, COUNTY JUDGE/EXECUTIVE
Presiding

MEMBERS PRESENT: Bobby Fogle, Gary Veirs

MEMBERS ABSENT: Alan Whaley, Stacey Wells

COUNTY ATTORNEY: Jeff Dean, Absent

Invocation was given by Squire Veirs, Pledge Allegiance lead by Judge Bertram

In Re: Agenda

Judge Bertram presented the agenda for this meeting. Whereupon Squire Fogle made a motion to accept the agenda as presented, seconded by Squire Veirs, motion carried.

In Re: Approve MOA for Federal Trails Grant

Judge Bertram lead discussion of the attached MOA for a Federal Trails Grant in the amount of \$38,267 for construction of new trails in the Pendleton County Nature Preserve along with improvement to the trail in the Pendleton Athletic Park. Whereupon Squire Veirs made a motion to approve and allow Judge Bertram to sign the MOA as presented, seconded by Squire Fogle, motion carried.

MEMORANDUM OF AGREEMENT
between the
**COMMONWEALTH OF KENTUCKY
DEPARTMENT FOR LOCAL GOVERNMENT
OFFICE OF FEDERAL GRANTS**
and
PENDLETON COUNTY

THIS MEMORANDUM OF AGREEMENT (Agreement) is made and entered into as of the date last executed by the parties below as evidenced by the dates within, by and among the Department for Local Government, a governmental agency of the Commonwealth of Kentucky, with address at 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, hereinafter known as "DLG;" and the Pendleton County Fiscal Court, public body politic, with address of 233 Main Street, Falmouth, Kentucky 41040, hereinafter known as "the Local Agency."

WHEREAS, DLG, is responsible for the administration of the Recreational Trails Program for the Commonwealth of Kentucky; and

WHEREAS, the Local Agency, submitted an eligible project (the Project) under the Recreational Trails Program that was selected for funding with the Project activities and budget listed herein as Attachment A; and

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, DLG and the Local Agency each agree as follows:

1 – EFFECTIVE DATES OF THE AGREEMENT

- A. This agreement is 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. Payments on personal service contracts and memoranda of 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. The Agreement shall continue in effect through **June 30, 2011**, unless terminated at an earlier date in accordance with the terms set forth herein. The terms of this Agreement may be renewed or extended upon mutual written agreement duly executed by the parties in accordance with Section 5(F).

- B. This Agreement may be terminated by either party at any time for cause and may be terminated by either party without cause on 30 days written notice. Termination or cancellation 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 or cancellation of the Agreement.

In the event of termination, DLG agrees to reimburse the Local Agency for all authorized and appropriate expenditures incurred by the Local Agency prior to the termination date at a rate of 50% as described in Section 2(A).

2 - OBLIGATIONS OF DLG

DLG covenants and agrees, conditioned upon the timely performance by the other parties of their respective obligations, to undertake the following obligations:

- A. DLG shall, subject to the availability of the appropriate federal funds for the project, reimburse to the Local Agency an amount not to exceed Thirty-Eight Thousand, Two Hundred Sixty-Seven Dollars (\$38,267.00). The Local Agency shall make full payment for the cost of an item and/or provide documentation for in-kind contributions before submitting a request for reimbursement of eligible project costs. During the term of this Agreement, eligible project costs are identified in Attachment A, Scope of Services and Budget. A request for reimbursement may not be submitted to DLG for less than 25 percent of the total eligible project costs. The rate of reimbursement will be 50 percent. The final 25 percent of the National Recreational Trails Fund grant will be withheld until the project is completed, inspected, and accepted by DLG staff and representatives of the Federal Highway Administration (FHA).
- B. DLG and FHA may, but are not required to, make periodic inspections of the Project and may send inspection reports to the Local Agency. The Local Agency shall correct deficiencies identified in the inspection report and their correction reported in writing to DLG within two weeks of receipt of the inspection report.
- C. DLG shall cooperate fully with the Local Agency in order to facilitate the obligations set out in this Agreement.

SECTION 3 - OBLIGATIONS OF THE LOCAL AGENCY

The Local Agency covenants and agrees to undertake the following obligations:

- A. The Local Agency shall perform and cause to be performed all necessary acts to plan, design and construct the Project in accordance with applicable law and the provisions stated herein.
- B. The Local Agency shall obtain all necessary permits, licenses and approval from the appropriate governmental entities for construction of the Project.

Pendleton County Agreement
Page 2 of 8

- C. The Local Agency shall comply with all applicable federal and state statutes, executive orders, regulatory requirements, and policies and require all contractors employed by the Local Agency to comply with all applicable federal and state statutes, executive orders, regulatory requirements, and policies. In particular, the Local Agency, and its contractors shall comply with 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. As evidence of the grant recipient's intention to comply, a Standard Form 424D, Assurances - Construction Programs, shall be signed by the authorized certifying official and made a part of this Agreement. If applicable, the Local Agency shall provide documentation to show compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1990 as amended. This documentation must be submitted before the first request for reimbursement is made. The Local Agency shall use its own procurement procedures that reflect applicable state and local laws for all purchases of goods or services related to the Project.
- D. The Local Agency shall appropriately address any advisory comments that are attached to the Kentucky State Clearinghouse's notification letter relating to the grant recipient's project. If applicable, evidence that the advisory comments have been satisfactorily addressed must be submitted to DLG before any work can begin on this project. Additionally, during the period of performance, the Local Agency shall notify DLG immediately if any significant adverse environmental impacts result from project implementation and shall cease all project activity until an evaluation is made by DLG and its representatives to determine what actions are necessary and appropriate.
- E. In the design, construction, rehabilitation, and maintenance of trails funded by the Recreational Trails Program (except that federal land management agencies will use their own standards), the Local Agency shall use standards that are listed in the following publications:
- Standard Specifications for Construction of Trails, U.S. Forest Service.
 - Trails Management Handbook, U.S. Forest Service.
 - Guide for the Development of Bicycle Facilities, The American Association of State Highway and Transportation Officials.
 - Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, 49 CFR Part 37 (Local Agencies shall make efforts to provide and improve recreational access opportunities for people with disabilities within reasonable costs and environmental constraints).
- F. The Local Agency agrees that signs and traffic control devices shall comply with the Manual on Uniform Traffic Control Devices and Standard Highway Signs, U.S. Federal Highway Administration.
- G. The Local Agency shall retain all records relating to the project until DLG audits the records, or for three years after the Project is closed out, whichever occurs first. The records include, but are not limited to, the following:

Pendleton County Agreement
Page 3 of 8

- Payroll register by pay period showing names, hours worked, hourly rate, benefits, deductions, gross pay, and net pay.
 - Final cost summary of all payroll registers.
 - Time sheets signed by both employees and their respective supervisors.
 - Invoices for purchased materials.
 - Invoices for all design and construction costs.
 - Each invoice shall have the date paid and check number indicated on it.
 - Cancelled checks or copies thereof.
 - Copies of documents used in procurement (advertisements, plans and specifications, bid tabulations, contracts, and change orders).
 - Statements specifying donations to the project signed by the donor.
- H. A copy of the Local Agency's resolution authorizing the execution of this Agreement is attached hereto and made a part hereof.
- I. The Local Agency 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 Local Agency 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 submitted by the 15th day of the month following the last day of each calendar quarter (i.e., January 15th, April 15th, July 15th, and October 15th). 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. The final quarterly progress report shall act as the Project Completion Report. The Progress Completion Report must be approved by DLG. Any deficiencies found in the Progress Completion Report shall be remedied by the Local Agency no later than 2 weeks from receipt of notification.
- K. Upon Project completion, the Local Agency shall operate and maintain the Project as follows:
- Facilities shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration and to encourage public use.
 - Facilities shall be kept reasonably safe for public use.
 - Facilities shall be kept open for public use at reasonable hours and times of the year.
 - Facilities shall be kept open for all persons regardless of race, color, sex, national origin, or disability.
- L. 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 Local Agency, with the Local Agency returning those funds to DLG, if DLG has made reimbursement to the Local Agency.

Pendleton County Agreement
Page 4 of 8

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 Local Agency, including the failure to meet any time deadlines or provisions set out in this Agreement, DLG may declare this Agreement void from the beginning without further obligation to the Local Agency 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.
- D. Both parties, DLG and the Local Agency, acknowledge that this Agreement is entered into under the provision of KRS 45A.023, and that future Kentucky General Assemblies may discontinue funding in subsequent budgets.

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 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 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.

Pendleton County Agreement
Page 5 of 8

- D. No decision-making official or employee of the Local Agency involved in discussions regarding a contract or subcontract in connection with the project shall have any financial or other personal interest in any such contract or subcontract.
- E. No person performing services for the Local Agency in connection with this project shall have a financial or other personal interest in any real property acquired for this project unless such interest is openly disclosed in the Local Agency's public meeting and reflected in the Public Agency's public meeting minutes, and such officer, employee, or person has not participated in the acquisition of said property for or on behalf of the Local Agency.
- F. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof, superseding 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.
- G. Time is of the essence in the performance of each of the terms and conditions of this Agreement.
- H. 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.
- I. The Grantee hereby agrees to adopt the provisions of DLG's Implementation Plan for Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq (nondiscrimination in use of federal funds), a copy of which is available upon request. In lieu of this requirement, the Grantee may adopt its own Title VI Implementation Plan, provided that the Grantee attaches hereto a copy of its Title VI Implementation Plan and any applicable annual updates.
- J. 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
1024 Capital Center Drive, Suite 340
Frankfort, Kentucky 40601
ATTENTION: Jodie McDonald
- If to the Local Agency: Pendleton County Fiscal Court
233 Main Street
Falmouth, Kentucky 41040
ATTENTION: Henry Bertram, Judge Executive

Pendleton County Agreement
Page 6 of 8

- K. Disadvantaged Business Enterprises (DBE)
- The Local Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The Local Agency shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Local Agency's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Local Agency of its failure to carry out its approved program, DLG may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C.3801 et seq.).
- L. The Local Agency agrees that DLG, the FHA, the General Accounting Office, 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 contracting agency, 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 provision 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.

Pendleton County Agreement
Page 7 of 8

IN WITNESS WHEREOF, DLG and the Local Agency have executed this Agreement as of the dates written below.

DLG:

Examined as to form and legality only: Date: _____, 2008

Counsel

Tony Wilder
Commissioner

LOCAL AGENCY:

Date: 11/5/08, 2008

Examined as to form and legality only:

Counsel

Henry Bertram
Pendleton County Judge Executive

SCOPE OF WORK

Pendleton County Multi-Jurisdictional Nature Trail Development Project

Scope of Work: The Cedar Link Nature Preserve site includes trail development, trailhead facilities, bridge construction, riprap and signage. The South Fork Nature Trail includes trail development, bridge construction, riprap, signage, trailside facilities, and educational materials.

Cedar Line Nature Preserve Site

5 Bridges	\$ 7,375.00
Rip Rap	\$ 2,595.00
Trailhead Facility (parking)	\$ 995.00
Trail Development	\$8,647.00
Trail Side Facilities	\$4,254.00
Educational Materials	\$2,950.00
Total for Cedar Line Nature Preserve Site	\$26,816.00

South Fork Nature Trail Site

4 Bridges	\$5,900.00
Rip Rap	\$3,281.00
Trailside Facilities	\$1,320.00
Educational Materials	\$ 950.00
Total for South Fork Nature Trail	\$11,451.00

Land Donation	\$38,267.00
Total Project Cost	\$76,534.00

FUNDING:

RTP Grant	\$38,267.00
Local Match	\$38,267.00
Total Funds	\$76,534.00

In Re: Adjournment

A motion was made by Squire Veirs, seconded by Squire Fogle, carried, that this meeting be adjourned, to meet again in regular session on November 11, 2008 at 7:00 P.M., Subject to any call meetings.

Pendleton County Judge/Executive

ATTEST: _____
Pendleton County Clerk