

**NDF GRANT AGREEMENT**

**THIS AGREEMENT** made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, (hereinafter referred to as "Metro Government"), by and through its **OFFICE OF MANAGEMENT AND BUDGET**, and **KENTUCKY WATERWAYS ALLIANCE, INC., 120 WEBSTER ST., SUITE 217, LOUISVILLE, KY 40206**. (hereinafter referred to as "Grantee"):

**WITNESSETH:**

**WHEREAS**, the Grantee is in need of funds to carry out the activities outlined in the attached Work Program and Budget; and

**WHEREAS**, Metro Government recognizes the importance of this project for meeting the needs of its citizens;

**NOW, THEREFORE**, it is mutually agreed by and between the Parties hereto as follows:

**I. GRANTEE'S SERVICES AND RESPONSIBILITIES:**

**A.** Grantee agrees to implement and administer this award in accordance with the Work Program and Budget approved through the NDF grant application process by the Louisville/Jefferson County Metro Council, and attached hereto as Exhibit A.

**B.** Grantee agrees to maintain, during the term of the contract, and retain not less than five years after completion thereof, complete and accurate records of all the Grantee's costs which are chargeable to Metro Government under this Agreement as well as all other funding sources for the funded program or project known as **Beargrass: The Creek in Your Backyard**.

**C.** Grantee agrees that Metro Government shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or any public

OB 6/8/15

accounting firm selected by it. The records thus to be maintained and retained by the Grantee shall include (without limitation):

- 1) all payroll records accounting for total time distribution of Grantee's employees working full or part time on the Agreement to include timesheets, system payroll reports, payroll records from outsourced payroll companies, as well as cancelled payroll checks and/or bank statements, or signed receipts for payroll payments in cash
- 2) for those individuals contracted to provide services: service agreements, proposals, invoices as well as cancelled checks, or signed detailed receipts for payroll payments in cash;
- 3) invoices for purchases, receiving and issuing documents, and all the inventory records for Grantee's stores, stock or capital items; and
- 4) paid invoices or receipts and cancelled checks for materials purchased and for subcontractors; and any other third party charges. In addition, Grantee will retain all records pertinent to this Project pertaining to participant records (sign-in sheets, attendance logs, etc), statistical records, and supporting documents for the same period of time.

**D.** For awards paid in one lump sum, the Grantee shall be required, and agrees to submit financial and progress reports within 30 days after the close of the 60 days in which the Grantee must spend the full payment in accordance with section II.B. below.

For awards paid on a disbursement basis, the Grantee shall be required, and agrees to submit financial and progress reports in accordance with section II.C. below and will follow this schedule:

First Quarter, July – September: Report due October 15<sup>th</sup>

Second Quarter, October – December: Report due January 15<sup>th</sup>

Third Quarter, January – March: Report due April 15<sup>th</sup>

Fourth Quarter, April – June: Report due July 15<sup>th</sup>

The financial report shall be completed in the format provided by the Office of Management and Budget, shall account for all funds received and expended by the Grantee, and shall include the documentation identified in Section I.C. In addition, grantees could be asked to provide documentation to support funding from other sources. All reports and correspondence shall be addressed to **Louisville/Jefferson County Metro Government, Office of Management and Budget, NDF Compliance, 611 West Jefferson Street, Louisville, Kentucky 40202.**

## **II. PAYMENTS:**

A. Metro Government shall make payment based on the nature of the expenditure.

B. One payment for the total amount of the Agreement shall be made for items considered one time expenditures, such as advancements for a community event and festivals or a capital purchase of machinery and equipment. The Grantee agrees to spend funds disbursed in total in accordance with the Work Program and Budget within 60 days of the check date and submit to Metro Government a financial report with supporting documentation to include (without limitation) copies of cancelled checks, invoices, and receipts by the next applicable quarterly report deadline as stipulated in section I.C. above. Please see Exhibit B.

C. Payment shall be made through equal disbursements for operating expenditures such as salaries, rents, utilities, supplies, telephone, in town travel and client services, or ongoing Capital expenditures such as construction projects. The initial disbursement shall be made to the Grantee upon execution of this agreement. All subsequent disbursements to the initial payment are contingent upon compliance by the Grantee to submit all applicable financial reports and supporting documentation as identified in Section I.D. Please see Exhibit B.

D. For grants that are executed and the initial disbursement paid after April 1<sup>st</sup>, the total payment will be disbursed in two equal payments with the final payment occurring after the July 15 reports are received by OMB and approved. The Grantee shall receive an extension as identified in section IV.B. below.

E. The total amount of such compensation payable under this Agreement shall not exceed the sum of **ONE THOUSAND NINE HUNDRED FIFTY DOLLARS (\$1950.00)** as set forth in **Ordinance NA**, and cover expenditures as specified in the Work Program and Budget of the Grantee. Such disbursements shall be made in accordance with procedures established by Metro Government.

### **III. DURATION OF AGREEMENT:**

A. This Agreement shall become effective as of the 28<sup>th</sup> day of April and shall terminate on the September 30<sup>th</sup>, 2015.

B. Any expenditures incurred by the Grantee that occur prior to the effective date of this agreement, but are in accordance with the approved scope of work and Work Program and Budget, may be accepted as compliant as long as the Grantee has disclosed in the grant application that related expenditures were either already incurred prior to the application for funding, or were likely to occur after the application date but prior to the effective date of this agreement.

C. Any unspent Grant Funds held by Grantee shall be returned to Metro Government, if not used in accordance with the Work Program and Budget, Within 15 days of the end of the award period.

D. This Agreement may be terminated by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. Should Grantee terminate this

Agreement, all unspent funds shall be returned to Metro Government, within thirty (30) days of such termination.

#### IV. AGREEMENT EXTENSIONS:

A. Any award paid to the grantee via one full payment will be required to spend the awarded funding within 60 days of the check date as stipulated in section II.B. above. If a Grantee is unable to spend the award within 60 days, the Grantee may request an extension.

B. Any award paid after April 1<sup>st</sup> of any fiscal year via multiple disbursements and in accordance with section II.D. above, must be spent by September 30<sup>th</sup> of the following fiscal year. While this Agreement will terminate on June 30<sup>th</sup>, the Grantee will have an automatic extension of three (3) months, if needed, in order to spend the remaining funds. A written extension request is not required in this situation.

C. Any award paid prior to April 1<sup>st</sup> via multiple disbursements, must be spent by June 30. If the Grantee is unable to spend the funds in accordance with this deadline, an extension may be requested.

D. A written request for an extension must be submitted within 30 days prior the end of the award period and include the amount remaining to be spent, an explanation as to why the funds were not spent in accordance with the applicable deadlines identified in this agreement, and an estimated date by which the remaining funds will be fully expended. The request should be submitted to the **Louisville/Jefferson County Metro Government, Office of Management and Budget, NDF Coordinator, 611 West Jefferson Street, Louisville, Kentucky 40202**. A Grantee may request an extension only once, and the extension will be in effect for no more than ninety (90) days. If, at the end of the extension period, the Grantee still has not fully expended the award, the Grantee will be required to return any unspent funds.

V. **AMENDMENTS TO THE WORK PROGRAM AND BUDGET:**

A. If the level of funding requested by the Grantee through the application process, and identified in the application Work Program and Budget is not approved, or if at any time in the duration of the agreement, the Grantee determines that they are unable to expend the awarded funds in accordance with the approved Work Program and Budget, an amendment may be requested. **The Grantee must submit a written request to the Office of Management and Budget, NDF Compliance, 611 West Jefferson Street, Louisville, KY 40202.** The request must include an explanation for the requested change. If approved, the Grantee will receive written approval from OMB. Please see Exhibit B for additional instruction in completing an Amended Work Program and Budget.

VI. **ADDITIONAL COVENANTS AND REPRESENTATIONS OF GRANTEE:**

A. Grantee covenants that it has all necessary power, capacity and authority to execute and deliver this Agreement and to provide the services contemplated by this Agreement and the Work Program. Grantee further covenants that it is a duly organized and validly existing entity, is qualified to do business in the State of Kentucky, has full right, power and authority to enter into this Grant Agreement, and that the person signing on behalf of Grantee is authorized to do so.

B. Grantee covenants that the person executing this Agreement has the full and requisite power to legally bind the Grantee and no additional approvals are required.

C. Grantee agrees to expend all Grant Funds and to implement and administer the Project strictly in conformity with the Work Program and Budget, and agrees not to deviate from the Work Program and Budget without the prior written agreement of Metro Government.



D. Grantee agrees that it shall implement and administer the Project in compliance with all applicable laws, regulations and codes of the federal, state and consolidated local governments.

E. Grantee agrees that in the implementation and administration of the Project it shall not unlawfully discriminate against any person by reason of race, religion, color, sex, national origin, because the person is a qualified individual with a disability, age 40 or over, familial status, sexual orientation, gender identity, is a smoker or non-smoker, or because of the person's Vietnam-era Veteran status.

F. Grantee covenants that this Agreement together with the Work Program is in all respects the legal, valid and binding obligation of the Grantee and the performance of the Project and the compliance with the terms of this Agreement does not and will not violate any existing provisions of the Grantee's articles of incorporation, by-laws or other agreements of organization.

G. Grantee covenants that neither this Agreement, the Work Program, the grant application or any other document submitted to Metro Government in support of this grant contains any untrue statement of any material fact or omits to state any material fact necessary to make the statements contained therein, and further that there is no fact known to the Grantee that materially and adversely affects, or in the future could materially and adversely affect the ability of the Grantee to implement and administer the Project.

H. Grantee agrees to publicly acknowledge that Louisville/Jefferson County Metro Government has provided partial funding for the project

VI. **HOLD HARMLESS:**

The Grantee shall indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and

successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from Grantee's (or Grantee's subcontractors, if any) performance or breach of this Agreement provided that such claim, damage, loss or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or breach of contract, and (2) not caused by the negligent act or omission or willful misconduct of the Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.

## **VII. DEFAULT:**

Each of the following events or occurrences shall constitute an event of default under this Agreement:

- A.** Declaration of Bankruptcy of Grantee.
- B.** Failure to administer and implement the Project in conformity with this Agreement and the Work Program.
- C.** Failure to submit the financial and progress reports required by Section I.C. of this Agreement in accordance with the established deadline schedule, or to furnish any additional information to Metro Government if required pursuant to Section I.B. of this Agreement.
- D.** Disclosure or discovery that the covenants and representations made by the Grantee in this Agreement, the Work Program, the grant application or other document submitted in support of this Grant is, was, or shall be false or misleading in any material respect.



E. Disclosure or discovery that goods purchased with Grant Funds have not been used in accordance with the Work Program and Budget. In such cases, Grantee shall return said goods to Metro Government or return the amount of the Grant Funds.

**VIII. REMEDIES OF METRO GOVERNMENT UPON EVENTS OF DEFAULT:**

Upon the occurrence of an event of default, Metro Government, in its sole discretion and without notice to the Grantee, may at any time exercise any one or more of the following rights and remedies:

A. Immediately terminate or suspend the Grant, by written notice, after which Metro Government shall be under no obligation to advance any undisbursed Grant Funds to the Grantee.

B. Immediately suspend the Grantee from receiving future NDF awards until all Default events have been satisfied.

C. Commence an appropriate legal or equitable action to enforce the Grantee's performance of the terms, covenants and conditions of this Agreement or the Work Program.

D. Declare all Grant Funds previously disbursed to the Grantee to be immediately due and payable in full, without any presentment, demand or notice of any kind, all of which are hereby waived by the Grantee.

E. Commence appropriate legal or equitable action to enforce the rights and remedies of Metro Government, or any one or more of them, pursuant to the terms, covenants and conditions of this Agreement.

F. Exercise any other rights or remedies that may be available to Metro Government pursuant to this Agreement or under applicable laws.

**IX. EMPLOYER/EMPLOYEE RELATIONSHIP**

It is expressly understood that no employer/employee relationship is created by this agreement nor does it cause Grantee to be an officer, official, or agent of the Metro Government.

**X. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All Parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

**XI. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the Parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the Parties that are not embodied in this Agreement.

WITNESS the agreement of the parties hereto as attested by their signatures affixed hereon, this 28<sup>th</sup> day of April 2015.

APPROVED:

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT:

(Office of Management and Budget)

By: Daniel Trocht  
(Print Name)  
Title: Interim Chief Financial Officer

Signature: [Handwritten Signature]

Date: 6-16-15

APPROVED:

GRANTEE:

(Kentucky Waterways Alliance, Inc.)

By: Anaela Doyle  
(Print Name)  
Title: Development Director

Signature: [Handwritten Signature]

Agency Tax ID # 61-1239766

Date: 5-13-15

Approved as to form:

Sarah Stewart Ashburner  
Print Name

Assistant County Attorney  
Title

[Handwritten Signature]  
Signature

Date: 6/9/15

**EXHIBIT A**  
**NDF PROGRAM BUDGET**

**PLEASE SEE ATTACHED GRANT APPLICATION**  
**PROGRAM BUDGET**

## EXHIBIT B

## AMENDED NDF PROGRAM BUDGET

<b>AMENDED NDF GRANT PROGRAM BUDGET</b>			
<i>Budget Category</i>	<i>Metro Funds</i>	<i>Non-Metro Funds</i>	<i>Total</i>
Personnel Costs, including benefits:			
Rent / Utilities:			
Office Supplies:			
Telephone:			
In-Town Travel:			
Client Assistance, Attach Detailed List:			
Professional Services Contracts:	\$1,950	\$46,050	\$48,000
Program Materials:			
Community Events and Festivals, Attach Detailed List:			
Machinery and Equipment:			
Capital Project:			
Other Expenses, Attach Detailed List:		\$2,000	\$2,000
<b>TOTAL:</b>	\$1,950	\$48,050	\$50,000

Other Expenses: \$2,000

Kentucky Waterways Alliance will use 4% of the \$50,000 budget (\$2,000) for overhead costs incurred for oversight of the project by staff.

**EXHIBIT C****PAYMENT SCHEDULES**

<b>Payment Method Schedule</b>	
<b>Operating</b>	<b>Payment Method</b>
Personnel Costs, including benefits	Disbursements
Rent / Utilities	Disbursements
Office Supplies	Disbursements
Telephone	Disbursements
In-Town Travel	Disbursements
Client Assistance	Disbursements
Professional Services Contracts	Disbursements
Program Materials	Disbursements
Community Events and Festivals	One-Time Payment
<b>Capital</b>	<b>Payment Method</b>
Machinery and Equipment	One-Time Payment
Capital Project	Disbursements
<b>Other</b>	<b>Payment Method</b>
Other Expenses, Attach Detailed List:	Disbursements or One-Time payment as determined appropriate

**ONE TIME PAYMENT SCHEDULE:**

<u>Payment Processed</u>	<u>One Payment</u>	<u>Funds Spent by</u>	<u>Final Report Due</u>
July 1 - Sept 30	Upon Execution	Within 60 days of check date	Within 30 days after the close of 60 days
Oct 1 - Dec 30	Upon Execution	Within 60 days of check date	Within 30 days after the close of 60 days
Jan 1 - Mar 31	Upon Execution	Within 60 days of check date	Within 30 days after the close of 60 days
April 1 - Jun 30	Upon Execution	Within 60 days of check date	Within 30 days after the close of 60 days



**DISBURSEMENTS PAYMENT SCHEDULE:**

<u>Payment Processed</u>	<u>1st pymt</u>	<u>2nd pymt</u>	<u>3rd pymt</u>	<u>4th pymt</u>	<u>Funds spent By</u>	<u>Final Report Due</u>
July 1 - Sept 30	Upon Execution	After Oct. 15 rept received and approved	After Jan. 15 rept received and approved	After April 15 rept received and approved	June 30	July 15
Oct 1 - Dec 30	Upon Execution	After Jan. 15 rept received and approved	After April 15 rept received and approved		June 30	July 15
Jan 1 - Mar 31	Upon Execution	After April 15 rept received and approved			June 30	July 15
April 1 - Jun 30 (automatic extension to Sept 30)	Upon Execution	After July 15 rept received and approved			Sept 30	Oct 15