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**DEPARTMENT OF NATURAL RESOURCES  
MEMORANDUM OF UNDERSTANDING  
REV. 12/2011  
[For Contracts Exempt From Procurement]**

THIS MEMORANDUM OF UNDERSTANDING is entered into this 22 day of November, 2016, by and between the

STATE OF MARYLAND  
DEPARTMENT OF NATURAL RESOURCES  
580 Taylor Avenue  
Annapolis, MD 21401

hereinafter ("DNR"),

and

STATE OF MARYLAND  
MARYLAND DEPARTMENT OF THE ENVIRONMENT  
1800 Washington Blvd  
Baltimore, MD 21230

hereinafter ("MDE"),

and

GARRETT COUNTY GOVERNMENT  
203 S. Fourth Street  
Oakland, MD 21550

hereinafter ("County").

WHEREAS, DNR and MDE are agencies of the State of Maryland;

WHEREAS, the County is an agency of the State of Maryland, or a political subdivision of the State, or another government as defined in State Finance and Procurement Article, §11-203 of the Annotated Code of Maryland;

WHEREAS, the County has agreed to perform work for DNR and MDE in accordance with this Memorandum of Understanding (or "MOU");

WHEREAS, the County, MDE and DNR share an interest in maintaining and improving Deep Creek Lake (the "Lake") and its watershed to ensure good water quality and for its natural resource and recreational values, as well as its importance to the economies of Garrett County and the State of Maryland;

WHEREAS, the County, MDE and DNR acknowledge the role of the Deep Creek dam for the purposes of hydro-electric power and the importance of the Wild River designation for the Youghiogeny;

WHEREAS, the County and DNR have worked together with the Deep Creek community to develop a Deep Creek Watershed Management Plan (the "Plan") to guide the State and the County in their efforts to maintain and enhance the natural resource, recreational, and economic values of the Lake;

WHEREAS, the Plan has been developed with the guidance of the community through an appointed volunteer steering committee, four subcommittees of citizen volunteers, resource experts from State and County agencies and general public comment; and

WHEREAS, the Plan identifies a number of goals, objectives and strategies to maintain and improve the management, water quality, recreational value and habitat resources of Deep Creek Lake and its watershed;

WHEREAS, the County, MDE and DNR recognize the Plan as a living document and its implementation needs to be conducted with sensitivity to all stakeholders, including but not limited to residents and visitors both inside and downstream of the watershed, and those with specific economic and environmental interests in said implementation; and,

WHEREAS, the County, MDE and DNR desire to establish a formal cooperative partnership to implement recommendations in the Plan and guide future management actions, and ensure public engagement over the long term.

NOW, THEREFORE, MDE, DNR and the County hereby agree as follows:

#### **ARTICLE I - SCOPE OF WORK**

The recitals set forth above are hereby incorporated as a substantive provision of this Memorandum of Understanding.

1. MDE, DNR and the County will form an Administrative Council composed of representatives from each agency. The Administrative Council will:
  - a) Recommend a short and long term plan of action which prioritizes recommendations within the Plan and assesses their ability to be fully implemented as written. Other projects may be assessed regardless of their inclusion in the Plan, as the group deems necessary based on need.
  - b) Recommend the formation of issue-specific workgroups. The Council will identify problem statements for each workgroup and outcomes each workgroup is to achieve. MDE, DNR, and the County commit to lending staff expertise to these groups.

- c) Discuss long range and short range funding solutions that are sufficient, sustainable and equitable. The representative agencies of the Council may jointly or separately, at their discretion and with monetary agreement, hire a contractor to develop a financing strategy.
2. DNR and the County agree to jointly and equally fund, at an annual salary not to exceed \$45,000, a Watershed Coordinator position, to be located in Garrett County, for a period of up to two years. The duties of this position are to include but are not limited to:
  - a) Serve as staff to the Administrative Council;
  - b) Oversee implementation of projects and programs designated by the Council;
  - c) Oversee updates to the Plan;
  - d) Nurture an informed and engaged citizenry through direct and indirect outreach; and,
  - e) Oversee the application and administration of grant funds for Deep Creek watershed projects and programs approved by the Council.

This work is more particularly described in the attached Exhibit A, which is hereby incorporated by reference.

3. The County, MDE and DNR pledge to collaborate on all projects and programs of mutual benefit to the health and therefore, economic vitality of Deep Creek Lake and its watershed. They will investigate mechanisms for funding of short-term projects and programs and pledge to discuss long term funding options as well.
4. In carrying out the duties assigned to it by the Council under this Memorandum, the County shall observe and comply with all federal, State, and local laws and ordinances that affect the work to be performed, including but not limited to, as deemed appropriate, Maryland's Open Meeting Act and Public Information Act, the persons employed or engaged in connection therewith, or any material or equipment used. The County shall procure and bear the expense of all necessary licenses, permits, and insurance.

## **ARTICLE II - COMPENSATION AND METHOD OF PAYMENT**

The Watershed Coordinator position services set forth above shall be performed by the County for a total payment from DNR not to exceed \$45,000 dollars over two years. MDE makes no commitment for funding under this MOU. The County shall submit billings to DNR for all costs expended in the performance of this Memorandum in accordance with a payment schedule set forth in the attached Scope of Work. In the absence of a payment schedule, billing shall be monthly. If the Scope of Work contains a schedule for completion of various components of the work, each monthly billing shall identify the progress made in relation to the schedule and the payment being requested. The County shall follow cost accounting practices acceptable to the DNR. Billings shall be due and payable within thirty (30) days of receipt by the DNR.

**ARTICLE III - TERM**

The term of this Memorandum shall be from October 1, 2016 through September 30, 2018. No work may be initiated under this Memorandum until it has been fully executed by all parties and the County has been instructed to proceed by the DNR.

This Agreement and its term may be amended only in writing and only with mutual consent of each party.

**ARTICLE IV – TERMINATION**

This Agreement may be terminated at any time by mutual agreement or by any party giving ninety (90) days-notice in writing to the other Parties. The effect of termination of the Contract hereunder will be to discharge the exiting Party from future performance, but not from their rights and obligations existing at the time of termination.

**ARTICLE V - NO NON-PARTY BENEFICIARIES**

Nothing in this Agreement shall be construed to: a) provide a benefit to any non-party; (b) operate in any way as a promise, covenant, warranty or other assurance to any non-party; or (c) create any obligation to any non-party.

**ARTICLE VI - MARYLAND LAW**

Maryland Law governs this Agreement.

**ARTICLE VII – DNR- GARRETT COUNTY GENERAL CONDITIONS**

The Department of Natural Resources, General Conditions for Memoranda of Understanding (Rev. 12/2011), are attached and made a part of this Memorandum.

**ARTICLE VIII - CONTRACT REPRESENTATIVES**

Each party shall designate at their discretion a contract representative.

The scope of authority of the designated Contract Representatives to act for their respective parties is set forth in this Memorandum and the attached General Conditions.

**ARTICLE IX - KEY PERSONNEL**

The County agrees that the following named individuals are considered to be essential to the work being performed hereunder, and are designated as Key Personnel who shall be made available to the full extent required to carry out the work under this Memorandum:

Deborah A. Carpenter  
Planning and Land Management  
Garrett County Government  
203 S. Fourth Street, Room 208  
Oakland, MD 21550  
Phone: 301.334.1920  
Email: [dcarpenter@garrettcountry.org](mailto:dcarpenter@garrettcountry.org)

**ARTICLE X - MERGER**

This Memorandum embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations regarding the parties' agreement other than those contained herein or incorporated herein by reference.

IN WITNESS WHEREOF, the parties have executed this Memorandum by causing the same to be signed on the day and year first above written.

WITNESS: Carol A. Riley  
~~Kevin G. Null~~ CAROL A. RILEY

Print Name: Carol A. Riley  
~~Paul C. Edwards~~ CAROL A. RILEY

Print Name: Carol A. Riley

Print Name: CAROL A. RILEY

Carol A. Riley  
Print Name: CAROL A. RILEY

WITNESS: Bruce Michael

Print Name: Bruce Michael

GARRETT COUNTY:  
By Kevin Null  
Kevin Null, Garrett County Administrator  
Date:

By Paul C. Edwards  
Paul C. Edwards, Chairman  
Date:

By James C. Hinebaugh, Jr.  
James C. Hinebaugh, Jr., Commissioner  
Date:

By S. Larry Tichnell  
S. Larry Tichnell, Commissioner  
Date:

STATE OF MARYLAND  
DEPARTMENT OF NATURAL RESOURCES:

By Mark J. Belton  
Mark J. Belton, Secretary  
Date:

Approved as to form and legal sufficiency for DNR

this 2<sup>nd</sup> day of January, 2016

[Signature]  
Assistant Attorney General

STATE OF MARYLAND  
DEPARTMENT OF THE ENVIRONMENT:

By 

Thomas J. French, Acting Director  
Operational Services Administration (or designee)

Date: 11/2/16

Approved as to form and legal sufficiency for MDE

this 18 day of Oct, 2016

  
Assistant Attorney General

**DEPARTMENT OF NATURAL RESOURCES  
GENERAL CONDITIONS FOR  
MEMORANDA OF UNDERSTANDING  
REV. 12/2011  
[For Contracts Exempt from Procurement]**

**ARTICLE I - TERMS AND APPLICABILITY**

These General Conditions apply to contracts exempt from the requirements of State Finance and Procurement Article, §11-101 *et seq.* of the Annotated Code of Maryland. The General Conditions do not constitute a complete agreement but are part of a Memorandum of Understanding (“Memorandum” or “MOU”) executed by all parties, which identifies the specific work to be performed, compensation, term, and special conditions, if any. The General Conditions and the MOU are intended to be complementary and shall be construed together. In the event of a direct conflict between them, the terms of the Memorandum shall govern and control.

Specific terms used in this document have the following meaning:

- A. “Contract” means the agreement between the DNR and the County for performance of services, including the MOU, Scope of Work and these General Conditions.
- B. “Scope of Work” or “Work” refers to the specific contractual obligation of the County as identified in the MOU or other work statement incorporated into the Contract.
- C. “County” means the State agency, political subdivision or government obligated to perform services for the DNR under this Contract.
- D. “DNR” means the Maryland Department of Natural Resources.

**ARTICLE II - THE PARTIES**

- A. Independent County - The County is not an employee of the DNR but is an independent County. The County shall be responsible for providing all supplies and materials necessary for performance of all work under the Contract, and for withholding any taxes and social security payments due in relation to the Contract. The County is not an agent of the DNR and cannot commit the DNR to any expenditure of funds or enter into any contractual obligation on behalf of the DNR.
- B. Notices - Service of any notice required by the Contract shall be complete upon mailing of such notice, postage prepaid, to the appropriate contract representative at the address indicated in the MOU. If no contract representative is named, then the person executing the MOU for a party shall be the contract representative for purposes of notice.

**ARTICLE III - PERFORMANCE**



A. Standard of Performance - The County is responsible for the supervision and inspection of, and the technical accuracy and coordination of all data and work pursuant to this Contract, and shall provide services and products meeting professional standards of quality and methodology.

B. Prosecution of the Work - The County agrees to prosecute all work under this Contract continuously and diligently and to meet all milestones contained in the Contract. The County further agrees that no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the County, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another County in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the County or the subCountys or suppliers.

C. Subletting or Assignment - The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and their respective successors, provided the personnel of any such successor, whether such successor be an individual, a partnership or a corporation, is acceptable to the DNR. The County shall not hire consultants, sublet, sell, transfer, assign or otherwise dispose of this Contract or any portion thereof, or of its right, title or interest therein, without prior written consent of the DNR.

In the case of any subcontract, the County agrees to bind the subCounty and every subCounty agrees to be bound by all terms of this Contract unless particular provisions are expressly waived in writing by the DNR.

D. Changes - The DNR, by written direction to the County, may at any time make any change in the work within the general scope of the Contract. Within fifteen (15) days of receipt of a Notice of Change, the County shall advise the DNR of the effect, if any, such changes would have on budgeting, cost, delivery schedules, milestones or any other Contract provisions. If such effects are acceptable to the DNR, the DNR shall issue a Notice to Proceed With Changes, upon receipt of which the County shall immediately institute all such requested changes. Such directed additions or changes to the Scope of Work shall become part of the contractual obligation. Each contract modification or change order that affects contract price is subject to the prior written approval of the DNR.

E. Suspension of Work - The DNR unilaterally may order the County in writing to suspend, delay, or interrupt all or any part of the work for a period of time the DNR determines to be appropriate.

F. Disputes - If the County intends to assert a claim against the DNR, the County shall do so within 30 days of the date the County knows, or should know, of the basis of the claim. Failure to file a claim within the 30-day period is a complete bar to the claim. The claim shall consist of a written statement to the DNR setting forth the nature and monetary extent of the claim, and the facts on which the claim is based. Pending resolution of a claim, the County shall proceed diligently with the performance of the Contract.

#### **ARTICLE IV - PROPERTY**

A. Rights in Data, Public Disclosure - Unless otherwise specified by addendum to this Contract, the County agrees that all reports, drawings, studies, specifications, estimates, maps, and computations prepared by or for it under the terms of this Contract shall be delivered to and become and remain the property of the DNR upon termination or completion of the work. The DNR shall have the absolute right to duplicate and use, for any purpose whatsoever, all or any part of the technical data which are to be delivered under this Contract.

The County shall notify the DNR in advance of public disclosure of any information related to this Contract, unless such disclosure is compelled by legislative or judicial process. The County shall in all cases submit to the DNR three (3) copies of any scientific or technical paper, abstract, report or other vehicle pertaining in whole or in part to this Contract which the County desires to publish, submit for publication, distribute or otherwise publicly disseminate. Such submission shall be made by the County to the DNR at least thirty (30) days prior to its planned initial public dissemination, disclosure, or submission for publication. The County shall include in any such documents or vehicles of public disclosure a statement which acknowledges the DNR, the specific programs therein, and the financial support provided by this Contract. Furthermore, upon receipt of a written request from the DNR, the County shall also provide a disclaimer stating that the contents of the aforesaid document or vehicle of public disclosure do not in any way reflect the views, opinions, or policies of the DNR.

B. Patents and Copyrights - The County may retain the entire right, title, and interest throughout the world to each subject invention associated with or reduced to practice in the course of performance under this Contract. With respect to any subject invention in which the County retains title, the DNR, and in those cases where federal money is involved, the federal government, shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced the subject invention throughout the world.

The County shall have the duty to disclose to the DNR any invention associated with or reduced to practice in the course of performance under this Contract. Furthermore, the County agrees that, if at any time during the course of performance of this Contract, it should become aware of a potential conflict between the rights of the DNR under this Contract, and those of any other party or entity, as to ownership of any patent or copyright interests developing in relation to said performance, then the DNR shall be immediately notified of such conflict. In such a case, it is agreed and understood that the terms of this Contract may be adjusted to provide for an equitable relationship between monies expended hereunder in pursuit of such patent or copyright interests and benefits to be obtained therefrom by the DNR.

The County assumes the risk that any materials, equipment, process, or other items required under the Contract or furnished by the County are subject to any patent, copyright, trademark, trade secret or other property right of another. The County shall pay for all royalties and license fees and shall obtain all necessary licenses or permits to permit use of any such item by the DNR. The County shall defend all suits or claims of infringement of any patent, copyright, trademark, trade secret or other property right of another and shall save the DNR harmless from loss or expense on account thereof.

C. Equipment - Unless otherwise provided in the MOU, all non-expendable equipment, including major equipment as defined in this Article, procured with funds from this Contract, shall be DNR property and shall be used primarily for work under this Contract. Prior written approval of the DNR shall be required for use of the equipment, on a non-interference basis, for other work of the County. The County shall use all effort to care for and maintain the equipment. Upon termination of this Contract, the DNR shall determine what disposition shall be made of the equipment and shall so notify the County within thirty (30) days. The County shall report its acquisition of non-expendable equipment covered by this Contract to the DNR annually. Non-expendable equipment is that which: 1) has a probable useful life in excess of one year beyond the date of acquisition, and 2) costs at least \$500, either as an individual piece or as a group of pieces intended to be used together.

All items of Major Equipment to be procured with funds from this Contract shall be itemized in the budget of this Contract to the extent possible. "Major Equipment" shall be defined as any item of equipment costing Two Thousand Dollars (\$2,000.00) or more. Unless itemized in the budget approved by the DNR, purchase of each item of Major Equipment shall require prior written approval of the DNR.

#### **ARTICLE V - INDEMNIFICATION**

A. DNR Saved Harmless - The County is, to the fullest extent permitted by law, responsible for all damage to life and property due to its activities, or those of its agents, employees, or subCountys, in connection with its performance under this Contract, and is responsible for all work, both permanent and temporary, until all services under this Contract are declared accepted by the DNR.

The County shall, to the fullest extent permitted by law, indemnify and save harmless and defend the DNR and all of its representatives from all suits, actions, or claims of any character, brought on account of any injuries or damage sustained by any person or property in consequence of any work performed under this Contract, either by the County or any subCounty, or their employees, agents, or representatives. This responsibility is not to be deemed as a waiver of any immunity which may exist in any action against the DNR.

B. Insurance - If specified in the MOU, the County shall provide insurance protecting the DNR from bodily injury and property damage. Certificates of such insurance acknowledging the foregoing "DNR Saved Harmless" clause shall be filed with the DNR.

#### **ARTICLE VI - WARRANTIES AND DISCLOSURES**

A. Nondiscrimination in Employment - The County agrees: (1) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (2) to include a provision similar to that contained in subsection (1), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (3) to post and to cause subcontractors to post in conspicuous places available to

employees and applicants for employment, notices setting forth the substance of this clause.

B. Compliance with Laws - The County hereby represents and warrants that:

1. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
2. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

#### **ARTICLE VII - ACCOUNTING**

A. Retention of Records - Audit - The County shall retain and maintain all records and documents relating to this Contract for three years after final payment by the DNR hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the DNR, including the procurement officer or designee, at all reasonable times. The DNR shall have the right, during usual business hours, to examine and audit pertinent records of the County to verify invoices submitted pursuant to this Contract.

B. Payment of State Obligations - Payments to the County shall be made in accordance with the terms of the MOU. Charges for late payment are prohibited.

#### **ARTICLE VIII - DURATION**

A. Effective Date - It is understood and agreed by the parties hereto that this Contract and any modification thereof shall not become effective or enforceable until executed by the DNR.

B. Termination for Convenience - The performance of work under this contract may be terminated by the DNR in accordance with this clause in whole, or from time to time in part, whenever the DNR shall determine that such termination is in the best interest of the DNR. The DNR will pay all reasonable costs associated with this contract that the County has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the County shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

C. Termination for Default - If the County fails to fulfill its obligation under this contract properly and on time, or otherwise violates any provision of the Contract, the DNR may terminate the Contract by written notice to the County. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the County shall, at the DNR's option, become the DNR's property. The DNR shall pay the County fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by County's breach. If the damages are more than the compensation payable to the County, the County will remain liable after termination and the DNR can affirmatively collect damages.

D. Multi-Year Restriction - If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available. The County may not recover anticipatory profits or costs incurred after termination.

#### **ARTICLE IX - LEGAL**

A. Severability - If any of these provisions shall contravene, or be invalid under, the laws of the particular state, county or jurisdiction where used, such contravention or invalidity shall not invalidate the whole agreement, but the Contract shall be construed as if not containing the particular provision or provisions held to be invalid in the particular state, county, or jurisdiction, and the rights and obligations of the parties shall be construed and enforced accordingly.

B. Law Applicable - Unless otherwise authorized by the Board of Public Works, this Contract shall be governed by the laws of the State of Maryland, and the parties hereby expressly agree that the courts of the State of Maryland shall have exclusive jurisdiction to decide any question arising hereunder.

**APPROVED** as to form and legal sufficiency  
Office of the Attorney General  
Department of Natural Resources  
December, 2011

## **EXHIBIT A**

### **WATERSHED COORDINATOR JOB DESCRIPTION**

**JOB TITLE:** Watershed Coordinator  
**DEPARTMENT:** Planning & Land Management  
**REPORTS TO:** Director of the Department of Planning & Land Management  
**FLSA STATUS:** Exempt

#### **SUMMARY:**

This is an administrative position responsible for the coordination and implementation of watershed management practices for the Deep Creek watershed. This position would serve as the responsible staff assigned to the Deep Creek Watershed Administrative Council (the Council), oversee the implementation and update of the Deep Creek Watershed Management Plan, write and oversee grants for specific projects and be the central point of contact for all matters related to Deep Creek watershed. This position requires knowledge of higher concepts of environmental planning as well as effective communication skills.

#### **ESSENTIAL DUTIES AND RESPONSIBILITIES:**

1. Set the agenda for monthly meetings of the Council.
2. Present relevant information regarding matters pertinent to Deep Creek watershed to the Council for their consideration for inclusion in project priority listings. Relevant information may be compiled from the Watershed Management Plan, watershed or other organizations, or from citizen input.
3. Attend all POA, PRB and other applicable organization meetings to receive input and feedback from those organizations as to what they consider their priority projects within the watershed.
4. Communicate regularly with members of the Council to relay pertinent information in a timely fashion.
5. Organize and communicate with project specific workgroups that have been created by the Council.
6. Oversee updates to the Deep Creek Watershed Management Plan.
7. Create and manage a website for Deep Creek watershed issues to include a citizen comment section.
8. Direct citizen comments and concerns to the appropriate entity/entities and ensure appropriate and timely response.
9. Communicate with the media when appropriate.
10. Write grants or assist state agencies with writing grants as needed to seek funding for specific watershed related projects.
11. Oversee grant administration and ensure all deadlines are achieved.
12. Manage the completion of specific projects within the watershed.
13. Other duties as assigned by the Director.

**EDUCATION AND EXPERIENCE:**

1. Bachelor's degree in planning or related field
2. Five years' experience in project management and public engagement

**--OR--**

1. Master's degree in planning or related field
2. Three years' experience in project management and public engagement

A comparable amount of training and experience may be substituted for the minimum qualifications.

**KNOWLEDGE, SKILLS AND ABILITIES:**

1. Read, analyze and interpret documents regarding watershed management and environmental planning
2. Interpret governmental regulations and processes
3. Make lucid presentations on complex topics to top management, public groups and/or boards and employees
4. Manage conflict and handle controversy
5. Write reports, correspondence, procedures and other required documentation
6. Design website and manage website content, organizing it in a clear and transparent fashion
7. Define problems, identify stakeholders or stakeholder groups, facilitate meetings, establish facts, and identify action steps

**ANTICIPATED SALARY:** \$40,000 with benefits

