

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN THE**

**COMMONWEALTH OF KENTUCKY**

**ENERGY AND ENVIRONMENT CABINET**

**AND**

**THE UNIVERSITY OF LOUISVILLE**

Subject: Center for Renewable Energy Research and  
Environmental Stewardship

THIS MEMORANDUM OF UNDERSTANDING (the AGREEMENT) is made and entered into this 14<sup>th</sup> day of Sept, 2009 by and between the Commonwealth of Kentucky, Energy and Environment Cabinet, with an address of 500 Mero Street, Capital Plaza Tower, 12<sup>th</sup> Floor, Frankfort Kentucky 40601 (hereinafter "EEC"), and the University of Louisville, with an address of Grawemeyer Hall, Louisville, Kentucky 40292 (hereinafter "U of L"),

**WITNESSETH**

**WHEREAS**, on Apr 15<sup>th</sup>, 2008, the Kentucky General Assembly passed House Bill 2, which in part created The Center for Renewable Energy Research and Environmental Stewardship (hereinafter "CRERES"); and

**WHEREAS**, the purposes for which CRERES was established are set forth in KRS 152.713, and includes in part promoting partnerships among Kentucky's postsecondary education institutions, private industry, and nonprofit organizations to actively pursue federal research and development resources that are dedicated to renewable energy; and

**WHEREAS**, House Bill 2 provides that the Secretary of EEC shall serve as the Chair of CRERES' Board of Directors; and

**WHEREAS**, CRERES and its Board of Directors are attached to EEC for administrative purposes; and

**WHEREAS**, EEC and U of L want to work together to carry out the intent of House Bill 2 and the statutory mandates created by that legislation;

**NOW, THEREFORE**, in consideration of the foregoing premises and the covenants and conditions contained herein, EEC and U of L hereby AGREE as follows:

## **1. OBLIGATIONS OF EEC**

EEC shall:

- 1.1 Coordinate and cooperate with U of L to ensure that all of the mandates in House Bill 2, as codified in KRS 152. 713 \_\_\_\_\_, are carried out and that the CRERES functions effectively.
- 1.2 Provide U of L with all requested information, data and reports that may assist U of L in establishing and operating CRERES.
- 1.3 Encourage the cooperation of other Kentucky state agencies that are able to contribute resources to U of L for the purposes for which CRERES was established.
- 1.4 Provide consultation, coordination services, technical assistance, and staff support to CRERES and its Board of Directors on an as-needed basis.
- 1.5 Perform other necessary administrative functions until CRERES is deemed fully operational.

## **2. OBLIGATIONS OF U of L**

U of L shall:

- 2.1 Using its own funding, establish, provide staff for, and operate CRERES for the purposes set out in House Bill 2, as codified in KRS 152. 713 and as financially feasible as determined by U of L .
- 2.2 Provide EEC upon request with status reports on the progress it makes in establishing CRERES.
- 2.3 Collaborate with EEC to avoid duplication of efforts, provide appropriate data and information, and support the implementation of Kentucky's comprehensive energy strategy.

2.4 Coordinate with CRERES' Board of Directors to ensure that the goals of CRERES are met, including but not limited to supporting development in the area of renewable energy and providing staff support when necessary.

### **3. MUTUALITY OF OBLIGATIONS**

3.1 The obligations imposed upon the parties to this AGREEMENT are for the benefit of the parties and the timely fulfillment of each and every obligation in accordance with this AGREEMENT is necessary.

3.2 In the event of a material breach by either party to this AGREEMENT, the other party may terminate this AGREEMENT as provided in Section 7 of this AGREEMENT, without further obligation to the other party. The rights of the parties to this AGREEMENT to pursue remedies for breach of any of the provisions hereof shall survive the termination, expiration or cancellation of this AGREEMENT.

3.3 Except as otherwise 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 such costs, unless said costs are attributable to enforcing compliance under this AGREEMENT or seeking redress from the other party's default under this AGREEMENT.

### **4. TERM OF AGREEMENT**

4.1 This AGREEMENT shall be effective as of the date first written above and shall expire on December 31, 2015, unless the parties agree in writing to extend it for an additional period of time.

## **5. ASSURANCES**

5.1 The parties to this AGREEMENT shall comply with the Executive Branch Code of Ethics (KRS Chapter 11A) and all applicable state and federal statutes relating to nondiscrimination.

5.2 The parties represent and warrant, by the signatures of their duly appointed representatives, that they are legally entitled to enter into this AGREEMENT and that they will not violate, directly or indirectly, any conflict of interest statute of the Commonwealth of Kentucky by performing the obligations imposed on them by this AGREEMENT. The parties further represent and warrant that they have no conflict of interest, in any manner or degree, with the performance of the duties imposed by this AGREEMENT, and that no persons with a conflict of interest shall be employed to assist in performing the parties' obligations under this AGREEMENT.

5.3 None of the commitments in this AGREEMENT shall be implemented inconsistently with, or in violation of, any legal authority, and this AGREEMENT shall be subject to that authority, including Kentucky's Revised Statutes and Administrative Regulations.

5.4 All commitments in this AGREEMENT are subject to the availability of each party's resources, including financial resources, as determined by each party in its sole discretion.

## **6. CHOICE OF LAW AND FORUM**

6.1 All questions as to the execution, validity, interpretation, construction, and performance of this AGREEMENT or any of its terms shall be governed by the laws of the Commonwealth of Kentucky.

6.2 Any suit, action or other proceeding regarding the execution, validity, interpretation, construction, or performance of this AGREEMENT shall be filed in the Franklin Circuit Court of the Commonwealth of Kentucky.

## **7. TERMINATION**

Either party may cancel this AGREEMENT at any time for cause or without cause on thirty (30) days' written notice to the other party. Termination shall be effective on the thirtieth (30<sup>th</sup>) day following written notice, unless a later date is set forth in the notice.

## **8. MISCELLANEOUS PROVISIONS**

8.1 The headings set forth in this AGREEMENT are for convenience of reference only, and the words contained therein shall in no way be intended to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this AGREEMENT.

8.2 The terms and conditions of this AGREEMENT shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns. This provision shall not be construed to permit assignment by any party of any of its rights or duties under this AGREEMENT, unless agreed to in writing by the parties hereto.

8.3 This AGREEMENT does not create any rights, substantive or procedural, enforceable at law or in equity against either party hereto, and it is the parties' intent only to memorialize their mutual intentions with respect to the subject matter hereof.

8.4 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.

8.5 Time is of the essence in performing each of the terms and conditions of this AGREEMENT.

8.6 All notices, requests, demands, waivers, and other communications pertaining to this AGREEMENT shall be in writing, sent by First Class Mail, deemed effective upon mailing, and addressed as follows:

If to EEC: Leonard K. Peters, Secretary  
Energy and Environment Cabinet  
500 Mero Street  
Capital Plaza Tower, 12<sup>th</sup> Floor  
Frankfort, Kentucky 40601  
(502) 564-3350

If to U OF L: Shirley C. Willihnganz  
Provost  
University of Louisville  
103 Grawemeyer Hall  
Louisville, Kentucky 40292  
(502) 852-6153

8.7 Either party to this AGREEMENT may change the address at which it is to receive notices, requests, demands, waivers, and other communications, on the condition that party first provides written notice of the change of address to the other party.

8.8 Nothing in this AGREEMENT shall be interpreted as guaranteeing the rights of any person or governmental agency other than the parties to this AGREEMENT.

8.9 If a provision of this AGREEMENT or the application thereof to any person or circumstance is declared to be invalid or unenforceable to any extent, the remainder of this AGREEMENT and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the fullest extent permitted by law.

8.10 Except to the extent otherwise expressly specified in this AGREEMENT, all remedies specified herein are in addition to, and not in lieu of, other remedies available to the parties both at law and in equity.

IN WITNESS WHEREOF, EEC and U OF L have executed this AGREEMENT as of the date first above written.

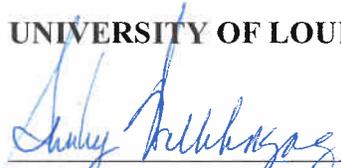
**AGREED TO BY:**

**COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET**

  
\_\_\_\_\_  
Leonard K. Peters, Secretary

Date: 9/14/09

**UNIVERSITY OF LOUISVILLE**

  
\_\_\_\_\_  
Shirley C. Willihnganz, Provost

Date: 8/17/09

**APPROVED AS TO FORM AND LEGALITY:**

**COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET**

  
\_\_\_\_\_  
C. Michael Haines, General Counsel

Date: 10-14-09

**UNIVERSITY OF LOUISVILLE**

  
\_\_\_\_\_  
Associate University Counsel

Date: 8/26/2009