

**MEMORANDUM OF AGREEMENT
BETWEEN LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
AND SEEDLEAF, INC.
FOR THE ACCEPTANCE OF COUNCIL CAPITAL EXPENDITURE PROJECT FUNDS**

THIS MEMORANDUM OF AGREEMENT (the "Agreement"), is made and entered into on the 14 day of November, 2023 (the "Effective Date"), by and between the Lexington-Fayette Urban County Government, an urban county government of the Commonwealth of Kentucky created pursuant to KRS Chapter 67A, on behalf of the Urban County Council through the Department of Social Services, ("LFUCG"), and Seedleaf, Inc. ("Organization"), for the purpose of setting out the parties' mutual understanding as to the use of Council Capital Expenditure Project Funds provided by LFUCG to the Organization.

RECITALS

WHEREAS, Organization submitted a proposal to the Urban County Council for Council Capital Project Expenditure Funds to support a one-time capital project pursuant to Part 7 - Council Capital Project Expenditure Policy of the Lexington-Fayette Urban County Council Rules and Procedures; and

WHEREAS, Organization's proposed capital project meets the criteria of the policy and is an appropriate expenditure of public funds; and

WHEREAS, LFUCG seeks to provide Council Capital Project Expenditure Funds to Organization subject to the terms and conditions of this Agreement.

STATEMENT OF AGREEMENT

NOW, THEREFORE, and in consideration of the foregoing and the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties understand and agree as follows:

1. **Term**. This Agreement shall be in effect through June 30, 2024 (the "Term"), but Organization's obligations set forth in Sections 3, 4, 6, and 8 below shall continue for a period of five (5) years beyond the expiration or termination of this Agreement.
2. **Proposal**. Organization's request for Council Capital Project Expenditure Funds, as approved by LFUCG (the "Proposal"), is attached hereto as Exhibit "A" and incorporated by reference as if fully set forth herein. Organization agrees that it will use the Council Capital Project Expenditure Funds provided under this Agreement in a manner that is substantially consistent with the Proposal.
3. **Council Capital Expenditure Project Funds**. LFUCG hereby grants to Organization a total amount not to exceed \$13,000.00 (the "Funds") to support the Proposal. Organization understands and agrees that pursuant to Council Capital Project Expenditure Policy Section IV.2, Council Capital Expenditure Project Funds may only be used for costs in the Proposal that:
 - a. are one-time expenditures (not recurring or ongoing expenses); and
 - b. for improvements to property for a public purpose primarily benefiting the public at-large.

Organization further acknowledges that the Funds awarded under this Agreement are public funds subject to all applicable state and local laws and regulations pertaining to the use of public funds. Organization shall spend the Funds prior to the end of the Term. Within 30 days of making a payment with the Funds, Organization shall provide to LFUCG a copy of any invoice and receipt evidencing payment thereof. Funds for which no approved expenditure has been or is planned to be incurred by June 1, 2024, shall be returned to LFUCG on or before June 30, 2024. In any written or oral communications, Organization shall identify LFUCG as the source of the Funds; however, Organization shall not identify individual Urban County Councilmember(s) as being responsible for the Funds.

4. Disposition and/or Change in Usage of Property Purchased with the Funds. Organization agrees that it shall only use the Funds for the expenditures set forth in the Proposal. Organization shall not:
 - a. spend the Funds on any other expenses or costs without first obtaining the written consent of LFUCG;
 - b. transfer, sell, abandon, destroy, or otherwise dispose, or enter into any contract or agreement to see or otherwise transfer, any of the property or assets purchased with the Funds without first obtaining the written consent of LFUCG; and/or
 - c. use the property or assets purchased with the Funds to promote a private purpose.

5. Termination; Breach and Cure; Recovery of Funds. LFUCG shall have the right to terminate this Agreement in the event that Organization defaults or is in material breach of its obligations under this Agreement. In the event of termination based upon a material condition of non-performance or default by Organization, LFUCG shall provide Organization with advance written notice specifying the nature of such breach. Organization shall have ten (10) days from the receipt of such notice to cure such breach. If more time is reasonably required for Organization's performance or ability to cure such breach, then Organization shall notify LFUCG in writing of its proposed schedule for performance and commence performance within such ten (10) day period; thereafter, Organization shall diligently proceed to completion. If Organization fails to cure or to commence cure within such ten (10) day period, then LFUCG shall have the right to terminate this Agreement immediately by serving Organization with written notice of termination. In the event that this Agreement is terminated, LFUCG shall be entitled to recover all funds advanced to Organization for which it has not yet expended on the Proposal in accordance with this Agreement.

6. Record Retention; Reporting; Access. Organization shall create, maintain, and preserve sufficient records of its expenditures to demonstrate compliance with the requirements of this Agreement. Organization shall provide such records to LFUCG promptly upon written request. Such records shall be maintained not less than five (5) years after the expiration or termination of this Agreement. Organization shall provide LFUCG with timely updates related to the completion of the Proposal in the form and manner reasonably specified by LFUCG. On or before June 30 of each of the following years: 2024, 2025, 2026, 2027, and 2028, Organization shall provide LFUCG with an Affidavit of Compliance, which is attached hereto as Exhibit "B" and incorporated by reference as if fully stated herein, acknowledging its continued compliance with the applicable terms and conditions of this Agreement. Organization shall provide LFUCG with all necessary access and/or documentation to verify its compliance with any provision of this Agreement and the Exhibits attached hereto.

7. Registration; Compliance; Authority to Sign. Organization shall be lawfully registered or authorized to do business in the Commonwealth of Kentucky and Lexington-Fayette County and shall at all times comply with any and all applicable federal, state, and local laws, ordinances, and regulations. LFUCG may request proof that Organization has timely filed federal, state, or local tax forms which shall be provided by Organization on a timely basis. The person signing this Agreement on behalf of Organization is fully authorized to do so.
8. Indemnity. Organization shall defend, indemnify and hold harmless LFUCG and/or its officers, agents, employees, representatives, assignees, and/or designees from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses arising out of or resulting from this Agreement. Organization understands that LFUCG is a political subdivision of the Commonwealth of Kentucky and acknowledges and agrees that LFUCG is unable to provide indemnity or otherwise save, hold harmless, or defend the Organization in any manner associated with the use of the Funds.
9. Open Records. Organization understands and agrees that this Agreement and any related documents may be subject to disclosure under the Kentucky Open Records Act and will comply with any reasonable request by LFUCG to provide assistance with such a request.
10. Independent Contractors. In no event shall the parties be construed, held or become in any way for any purpose the employee of the other party, or partners, associates or joint ventures in the conduct of their respective endeavors or otherwise in the performance of this Agreement.
11. Equal Opportunity; Fairness Ordinance. Organization shall provide equal opportunity in employment for all qualified persons, and shall (a) prohibit discrimination in employment because of race, color, creed, national origin, sex, age, sexual orientation, gender identity, or handicap, (b) promote equal employment through a positive, continuing program of equal employment, and (c) cause any subcontractor or agency receiving funds provided pursuant to this Agreement to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices. Organization agrees to comply with LFUCG's Fairness Ordinance (Ordinance No. 201-99) and all sources of applicable law, including those specified in any Exhibit attached to this Agreement and incorporated herein by reference.
12. Sexual Harassment. Organization must adopt or have adopted a written sexual harassment policy, which shall, at a minimum, contain a statement of current law; a list of prohibited behaviors; a complaint process; and a procedure which provides for a confidential investigation of all complaints. The policy shall be given to all employees and clients and shall be posted at all locations where Organization conducts business. The policy shall be made available to LFUCG upon request.
13. No Assignment; No Third Party Rights. Organization may not assign any of its rights and duties under this Agreement without prior written consent of LFUCG. This Agreement does not create a contractual relationship with or right of action in favor of a third party against either Organization or LFUCG.
14. Law and Venue. This Agreement shall be governed in all respects by the laws of the Commonwealth of Kentucky. Venue for all actions arising under this Agreement shall lie in the Circuit Court of Fayette County, Kentucky.

15. Amendments. This Agreement may be amended or modified from time to time only by the mutual written agreement of the parties hereto. Organization acknowledges that LFUCG may make such changes only upon approval of its legislative authority, the Lexington-Fayette Urban County Council, and the signature of its Mayor.
16. Waiver. The waiver by either party of any breach of any provision of this Agreement shall not constitute a continuing waiver or waiver of any subsequent breach by either party of either the same or another provision
17. Notice. Any notice required by this Agreement shall be delivered via hand delivery or certified mail, return receipt requested, to the following:

To LFUCG: Lexington-Fayette Urban County Government
 Department of Social Services
 200 East Main Street
 Lexington, Kentucky 40507
 Attn: Theresa Maynard, Senior Administrative Officer

To Organization: Seedleaf, Inc.
 714 N Limestone
 Lexington, Kentucky 40508
 Attn: Christine Smith, Executive Director

18. Entire Agreement. This Agreement shall constitute the entire agreement between the parties hereto, and no representations, inducements, promises, or agreements, oral or otherwise, which are not embodied herein shall be effective for any purpose. This Agreement shall replace any previous agreement between the parties on the same subject matter.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**LEXINGTON-FAYETTE
 URBAN COUNTY GOVERNMENT**

Linda Gorton

 Linda Gorton, Mayor

SEEDLEAF, INC.

Christine Smith

 Christine Smith, Executive Director

Attested by:

Maxine Stock

 Clerk of the Urban County Council

Deputy

EXHIBIT "A"

ORGANIZATION'S PROPOSAL



Lexington-Fayette Urban County Council

Memorandum

To: Shauntae Hall, Council Administrator

From: Councilmember At-Large James Brown

Date: 11/6/23

Subject: FY2022 Council Capital Project Expenditure Allocation

Please allocate \$13,000 to the Department of Social Services to disburse to Seedleaf to install a fence to protect community garden.

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|---|-------------------------------|
| LFUCG Department/Division Name: | Department of Social Services |
| Contact Name: | Theresa Maynard |
| Contact Phone/Email: | 859- 258-3807 |
| Accounting information (from Division): | |
| Project Commencement Date: | November 2023 |
| Project Completion Date: | December 2023 |

EXHIBIT "B"

AFFIDAVIT OF COMPLIANCE

Seedleaf (Name of Organization), by and through its authorized agent Christine Smith (Name of Affiant), hereby states and affirms that it is in compliance with its obligations under the applicable terms and conditions of the Memorandum of Agreement between Lexington-Fayette Urban County Government and Seedleaf (Name of Organization) for the Acceptance of Council Capital Expenditure Project Funds authorized by Urban County Council Resolution No. _____ (Resolution Number). This Affidavit is being executed in accordance with Section 6 of the Memorandum of Agreement, and the Affiant certifies that the statements above are complete, true, and accurate to the best of its knowledge and belief.

Commonwealth of Kentucky))
County of Fayette))

The foregoing Affidavit of Compliance was subscribed, sworn to and acknowledged before me this the 14th day of November, 2022, by Christine Smith as an authorized representative of [ORGANIZATION].

[Seal/Stamp]



Kimberly Rivera
Notary Public ID No. KYNP 47122
State at Large, Kentucky
My Commission Expires on 3.15.24

Kimberly Rivera
Notary Public, Kentucky, State at Large
My Commission Expires: March 15, 2024
Notary Id: KYNP 47122