

R-270-2020

C-252-2020

PURCHASE OF SERVICE AGREEMENT

THIS PURCHASE OF SERVICE AGREEMENT, made and entered into on the 27<sup>th</sup> day of April 2020, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the COMMONWEALTH OF KENTUCKY created pursuant to KRS Chapter 67A ("Government"), 200 East Main Street, Lexington, Kentucky 40507, on behalf of the Chief Development Officer ("CDO") and **COMMUNITY ACTION COUNCIL FOR LEXINGTON-FAYETTE, BOURBON, HARRISON, AND NICHOLAS COUNTIES, INC. FOR LEXINGTON-FAYETTE, BOURBON, HARRISON, AND NICHOLAS COUNTIES, INC. FOR LEXINGTON-FAYETTE, BOURBON, HARRISON, AND NICHOLAS COUNTIES, INC.**, a 501(c)(3) nonprofit organization, ("Organization") with offices located at 710 West High Street, Lexington, with mailing address of P.O. Box 11610, Lexington, Kentucky 40576, with an effective date of July 1, 2020.

WITNESSETH

WHEREAS, it is the public policy of the Lexington-Fayette Urban County Government to encourage, promote, and support economic development, new job training, and job placement for the public purposes of providing employment opportunities for its residents and alleviating conditions of unemployment and poverty and it wishes to provide funding related to these purposes to certain qualified entities through the use of contingent funding agreements; and

WHEREAS, the Government utilized criteria related to these purposes and an application and screening process in selecting which entities, including the Organization, would be eligible to receive funding pursuant to an agreement; and

WHEREAS, through this process and additional negotiations with the Organization, the Organization has agreed to commit to assisting individuals in training toward licensure or certification in the fields of transportation or child development, respectively, with at least twenty-five (25) of those individuals receiving a license or certification; and

WHEREAS, the requirements of the Organization's program, including the required number of participants served, is more particularly described herein; and

WHEREAS, it is in the public interest that the Government make a commitment of financial resources in order to encourage and support economic development endeavors, including job training and placement through the use of this type of funding agreement.

NOW THEREFORE, that for and in consideration of the mutual promises and covenants herein expressed, which is acknowledged and agreed to be sufficient consideration, the Government and the Organization agree as follows:

1. The above recitals are incorporated herein as part of this Agreement.
2. Definitions: For the purposes of this Agreement:

"Year One" shall be July 1, 2020 to June 30, 2021.

"Year Two" shall be July 1, 2021 to June 30, 2022.

"Workforce Development Manager" shall be the Workforce Development Manager of the Lexington-Fayette Urban County Government or its equivalent.

3. This Agreement is intended to commence on July 1, 2020 and end on June 30, 2021, unless within that period Government gives the Organization thirty (30) days written notice of termination of this Agreement in which case this Agreement shall terminate thirty (30) days from the date notice is provided to the Organization. Subject to the budgeting of funds in future years and the Organization's fulfillment of the requirements of this Agreement for Year One, this Agreement shall be automatically extended for another one-year term through Year Two.

4. In the event of termination of this Agreement by Government as provided for in Section 3 above, Organization shall be entitled to compensation in accordance with the formula provided in Exhibit A, which is attached hereto and incorporated herein by reference. If fifty percent (50%) or fewer of the total number of individuals required to receive a license or certification through the program provided in Exhibit B have received said license or certification by the termination date, the Organization shall be required to repay the Government as provided in Section 11. Any such repayment shall be due by no later than thirty (30) days after notice of termination of this Agreement is received by the Organization.

5. In return for full performance of the terms of this Agreement by the Organization, which shall include providing the services more fully described in Exhibit B, which is attached hereto and incorporated herein by reference, to at least twenty-five (25) unique individuals in Year One, Government agrees to pay the Organization the total sum of Fifty Thousand Dollars (\$50,000) in two installments and as provided in Sections 7 through 11 of this Agreement.

6. If the Agreement is extended through Year Two, the Government agrees to pay the Organization the total sum of Fifty Thousand Dollars (\$50,000), in two installments and as provided in Sections 7 through 11 of this Agreement, to provide the services more fully described in Exhibit B. Any funds provided by Government for performance of the terms of this Agreement for Year Two shall be contingent on the funds being available and budgeted. If insufficient funds are available and budgeted to provide the total sum stated above for Year Two, the amount provided for Year Two shall be reduced by the Government commensurate with the amount of funds budgeted and available. If this occurs, the number of individuals required to be served with the funds shall be reduced in proportion to the reduction in funding provided by the Government.

7. If the Organization has entered into a Purchase of Services Agreement with the Government for services related to workforce development and provided funds under this government program, the Organization shall fulfill the requirements contained in that Agreement within either 1) ninety (90) days after any funds are provided under this Purchase of Services Agreement; or 2) ninety (90) days after the end of the previous Agreement's term, whichever is later. Failure to do so will result in repayment of previous grant funds in accordance with the repayment provisions contained within the previous Agreement and repayment of current grant funds under this Agreement.

8. The Organization shall be paid the first installment of Twenty-Five Thousand Dollars (\$25,000) no later than thirty (30) days after the Government receives official documentation that at least one individual has begun training in the program described in Exhibit B. The Organization understands that it may send this documentation, via email, to the Workforce Development Manager prior to its first

quarterly report for Year One. However, in the event the Organization's first quarterly report for Year One does not show that the services required in Exhibit B have commenced, all funds pursuant to this Agreement shall be forfeited and this Purchase of Services Agreement shall be considered void.

9. The remaining installment of Twenty-Five Thousand Dollars (\$25,000) shall be paid no later than thirty (30) days after the Government receives official documentation that one hundred percent (100%) of the total number of individuals required to receive a license or certification through the program provided in Exhibit B have received said license or certification within the applicable term. This level of compliance is required for the Organization to be deemed to have complied with this Agreement for purposes of automatic renewal under Section 3 of this Agreement for Year Two.

10. If, at the end of the applicable year, the Government receives documentation that more than fifty percent (50%) but less than one hundred percent (100%) of the total number of individuals required to receive a license or certification through the program provided in Exhibit B have received said license or certification within the applicable term, the Organization shall be paid a portion of the Twenty-Five Thousand Dollars (\$25,000) provided in Section 9 within thirty (30) days after the close of the applicable term, in accordance with the formula provided in Exhibit A. This level of compliance shall not be sufficient for purposes of automatic renewal under Section 3 of this Agreement for Year Two, but the Organization may request renewal, which shall be subject to Economic Development Investment Board and Urban County Council approval.

11. The Organization understands that in the event that fifty percent (50%) or fewer of the total number of individuals required to receive a license or certification through the program provided in Exhibit B have received said license or certification within the applicable term, the Organization shall not receive any portion of the Twenty-Five Thousand Dollars (\$25,000) provided in Section 9 for that year, and shall instead be required to repay the Government in accordance with the formula provided in Exhibit A. Any such repayment shall be due no later than thirty (30) days after the close of the applicable term. Automatic renewal under Section 3 of the Agreement for Year Two shall not occur with this level of noncompliance.

12. If the Agreement is extended for a subsequent one-year term through Year Two, the Organization shall be paid, if the funds are available and budgeted, in accordance with Sections 6 through 11 for Year Two.

13. Organization represents that the services specified in Exhibit B would not have been delivered to these participants without the funds provided in this Agreement and understands that the Government is relying upon this representation as a condition of providing the funds.

14. The Organization agrees to adhere to the program's budget as fully described in Exhibit C, which is attached hereto and incorporated by reference, to provide the required services. Any alteration in the budget for such services constitutes an amendment to this Agreement and must be in writing, via email, and approved by the Economic Development Investment Board and the Urban County Council. The

Organization further agrees that any salary increases shall not be derived from the funds provided by this Agreement.

15. Organization understands and agrees that 100% of those served must live in Fayette County at the time of enrollment into training.

16. Organization shall perform all duties and services specified in Exhibit B faithfully and satisfactorily at the time, place, and for the duration prescribed herein. Any alteration in the duties and services provided in Exhibit B constitutes an amendment to this Agreement and must be in writing, via email, and approved by the Economic Development Investment Board and the Urban County Council.

17. Organization shall keep itself fully informed of all national and state laws and all municipal ordinances and regulations that in any manner would affect the work or performance of this Agreement, and shall at all times observe and comply with such laws, ordinances, and regulations, whether or not such laws, ordinances, or regulations are mentioned herein; and further agrees to indemnify, release, and hold harmless Government, its officers, agents, and employees against any and all claims or liability arising from or based upon Organization's violation of any such laws, ordinances, or regulations. The Organization shall repay the full funds provided in this Agreement if it fails to observe and comply with such laws, ordinances, and regulations during the funding period.

18. The Organization represents that at all times relevant to this Agreement it shall remain in good standing with the Government as to any required registrations or certifications and shall timely pay any taxes, fees, fines, or penalties owed. Organization

further represents that it has filed any federal, state or local income tax returns required by law in the legally prescribed time and manner and shall provide copies of the same to Organization upon request.

19. The Organization shall, by the tenth day of October, January, April, and July of each respective term, submit electronically to the CDO, in the form provided by the Workforce Development Manager, a report containing documentation that the duties and services required in Exhibit B are being fulfilled for the previous quarter. Absent extenuating circumstances, failure to electronically submit the quarterly report described herein by the required date shall result in the Organization repaying the full funds provided in this Agreement. In addition, Organization may be required to present a progress report as to its activities before the Economic Development Investment Board at the call of the chair, or as otherwise instructed.

20. The Organization agrees to complete the quarterly reports required above in good faith and to the satisfaction of the Workforce Development Manager. Any report deemed deficient by the Workforce Development Manager shall be remedied by the Organization within one month of notice thereof. The Organization further agrees that a representative of the Organization shall attend any quarterly meeting requested by the Workforce Development Manager. Absent extenuating circumstances, failure to comply with this Section shall result in repayment of the funds provided in this Agreement by the Organization for the applicable year.

21. Books of accounts shall be kept by the Organization and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any



other transactions of the Organization. The books of accounts, together with all bonds, notes, bills, letters and other writings belonging to the Organization, shall be maintained at the principal place of business of the Organization as set forth in this Agreement. Government shall have free and complete access to the books, papers and affairs of the Organization relating to the LFUCG funds provided hereunder at all reasonable times, and if it desires, it may have said books and papers of the Organization audited and examined by auditors, accountants or attorneys. Any examination shall be at the expense of the Government.

22. Government may designate such persons as may be necessary to monitor and evaluate the services rendered hereunder by the Organization. The Government, its agents and employees, shall, at all times, have access to all places where or in which the services required hereunder are being carried on and conducted. Inspection and monitoring of the work by these authorities shall in no manner be presumed to relieve in any degree the responsibility or obligations of Organization, or to constitute Organization an agent of the Government.

23. Organization shall provide equal opportunity in employment for all qualified persons, shall prohibit discrimination in employment because of race, color, creed, national origin, sex, age, sexual orientation or gender identity, or handicap, shall promote equal employment through a positive, continuing program of equal employment, and shall cause each of its subcontracting agencies to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

24. Organization shall adopt 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 submitted to the CDO for review within thirty (30) days of the execution of this Agreement.

25. Organization agrees that all revenue and expenditures shall be audited at least annually by independent certified public accountants who shall express an opinion as to whether or not revenue and expenditures during the year audited have conformed to state and local law and regulation. Organization further agrees to submit a copy of its most recent audit before any payment is provided by the Government under this Agreement.

26. The Organization and any of its agents agrees to defend, indemnify and save harmless LFUCG, its employees, volunteers and elected officials, from and against all liabilities, claims, actions, expenses, obligations, losses, fines, and assessments resulting from or arising out of any error or omission, negligence or intentional misconduct, or any other action relating to the provision of the services specified herein. Indemnification will include, in addition to the above, attorney's fees, costs related to investigation and defense and any other expenses related to any such claim, action or proceeding. The Organization will not be liable for such claims, actions, obligations, losses, fines, penalties and assessments resulting from or arising out of any error or omission, negligence or intentional misconduct of LFUCG, its agents, and employees.

27. This Agreement is non-assignable and the Organization shall not assign its duties, obligations, or responsibilities under this Agreement to any other person or entity.

28. The parties agree that the Organization is an independent contractor and in no way will it or its employees or agents be viewed or treated as employees of the Government.

29. This Agreement and its enforcement shall be interpreted and subject to the laws of the Commonwealth of Kentucky and any related court action shall only be filed in Fayette County, Kentucky.

30. This instrument contains the entire agreement between the parties, and no statement, promises or inducements made by either party or agent of either party that is not contained in this written Agreement shall be valid and binding; and this Agreement may not be enlarged, modified or altered except in writing signed by the parties and endorsed hereon.

31. Notice – Any written notice required by the Agreement shall be delivered by certified mail, return receipt requested, to the following:

For Organization: Community Action Council for Lexington-Fayette, Bourbon, Harrison, and Nicholas Counties, Inc.

P.O. Box 11610

Lexington, Kentucky 40576

Att: Denise Beatty, Board Chair (or as otherwise designated in writing by Organization)

For Government: Lexington-Fayette Urban County Gov.

200 East Main Street

Lexington, Kentucky 40507

Att: Kevin Atkins, Chief Development Officer

IN WITNESS WHEREOF, the parties have executed this Agreement at  
Lexington, Kentucky, the day and year first above written.

LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT

BY: *Linda Gorton*  
LINDA GORTON, MAYOR

ATTEST:

*Abigail Allan*  
~~Abigail Allan~~  
Deputy Clerk of the Urban County Council

COMMUNITY ACTION COUNCIL FOR  
LEXINGTON-FAYETTE, BOURBON,  
HARRISON, AND NICHOLAS  
COUNTIES, INC.

BY: *Denise Beatty*  
DENISE BEATTY, BOARD CHAIR

ATTEST:

WITNESS: \_\_\_\_\_

DATE: \_\_\_\_\_

## **EXHIBIT "A"**

Lexington/Fayette Urban County Government  
Addendum for Services  
Community Action Council for Lexington-Fayette, Bourbon, Harrison, and Nicholas  
Counties, Inc.

### **Formula for Payment/Repayment**

The Organization shall be entitled to \$2,000 per individual who received a certificate or license through the program provided in Exhibit B at the time of termination or end of the relevant term, whichever occurs first, up to the total amount provided in this Agreement for the relevant term. Any amounts provided in the relevant term by the Government under this Agreement shall act as a credit to the Government. If the amounts previously provided by the Government under this Agreement for the relevant term are greater than the amount required to be provided by this paragraph, the Organization shall be required to repay the Government the difference.

## EXHIBIT "B"

Lexington/Fayette Urban County Government  
Addendum for Services  
Community Action Council for Lexington-Fayette, Bourbon, Harrison, and Nicholas  
Counties, Inc.

### Scope of Work

The Organization's application, which is attached and incorporated herein, shall serve as its Scope of Work.

**Total Number:** By the end of each respective year, as defined in the Purchase of Service Agreement, at least twenty-five (25) individuals will obtain a CDL or CDA license as a result of the training provided by the Council in the fields and programs provided in its Scope of Work.

These individuals must be different from those served in previous Purchase of Service Agreements under this government program. Participants served by multiple organizations with money provided under this government program may only be counted by one organization.

**EXHIBIT "C"**

Lexington/Fayette Urban County Government  
Community Action Council for Lexington-Fayette, Bourbon, Harrison, and Nicholas  
Counties, Inc.

**Budget for Services**

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