

MEMORANDUM OF AGREEMENT

between the

**COMMONWEALTH OF KENTUCKY
OFFICE OF THE GOVERNOR
DEPARTMENT FOR LOCAL GOVERNMENT**

and the

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

THIS MEMORANDUM OF AGREEMENT (hereinafter "the Agreement"), by and between the Commonwealth of Kentucky, Office of the Governor, Department for Local Government, Office of State Grants (hereinafter "DLG"), with address at 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601 and the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, with address of 200 East Main Street, Lexington, KY 40507, (hereinafter "the Recipient") is made and entered into as of the date last executed by the parties thereto as evidenced by the dates written below.

WHEREAS, the 2012 General Assembly enacted House Bill 265 authorizing certain projects from funds reserved in the Local Government Economic Development Fund, Multi-County Fund pursuant to KRS 42.4592(1)(c) for local administration; and

WHEREAS one of the local grant projects authorized by House Bill 265 is described as follows: Lexington Downtown Redevelopment Project (hereinafter 'the Project') and is to be funded, subject to the availability of appropriate funds, in an amount not to exceed \$1,250,000 (ONE MILLION TWO HUNDRED AND FIFTY THOUSAND AND 00/100) IN FY 2013; and \$1,250,000 (ONE MILLION TWO HUNDRED AND FIFTY THOUSAND AND 00/100) in FY 2014; and

WHEREAS, DLG has been duly designated to administer the local grant for the Project; and

WHEREAS, the Recipient has agreed to serve as the administrator and beneficiary of the grant money from DLG for the Project as provided in House Bill 265 under the terms and conditions enumerated herein and has further agreed to effectuate the completion of the Project in accordance with those terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants, commitments, and conditions contained herein, DLG and the Recipient agree as follows:

1 – OBLIGATIONS OF DLG

DLG covenants and agrees, conditioned upon the timely performance by the Recipient of its obligations herein, to undertake the following obligations:

- A. DLG shall, subject to the availability of appropriate funds, make available to the Recipient, a sum not to exceed \$312,500 (THREE HUNDRED TWELVE THOUSAND FIVE HUNDRED AND 100/100) in each quarter of fiscal year 2013 and in each quarter of fiscal year 2014, for a cumulative total of \$2,500,000 (TWO MILLION FIVE HUNDRED THOUSAND AND 00/100) for the biennium, in accordance with the submission of a Request for Disbursement set forth as Attachment A, which is hereby incorporated herein and made a part of this Agreement. Notwithstanding the above language, the initial payment to Recipient for fiscal year 2013 shall be for all of the quarterly payments due and outstanding as of the effective date of this Agreement.
- B. DLG, may, but is not required to, make periodic inspections of the Project and may send inspection reports to the Recipient. Deficiencies identified in an inspection report shall be corrected by the Recipient and their correction reported in writing to DLG within two weeks of receipt of the inspection report.
- C. DLG shall cooperate fully with the Recipient in order to facilitate the obligations set out in this memorandum.
- D. DLG shall close out the Project upon satisfactory completion of the Project by the Recipient in accordance with the terms and conditions of this Agreement and submission of an acceptable project completion report in the form prescribed by DLG.

2 – OBLIGATIONS OF THE RECIPIENT

The Recipient covenants and agrees to undertake the following obligations:

- A. The Recipient shall perform or cause to be performed all necessary acts to plan, design and complete the Project in accordance with the Scope of Work attached hereto as Attachment B which is hereby incorporated herein and made a part of this Agreement.
- B. Recipient shall, as a condition to receiving funding under this Agreement, provide matching funds on a dollar for dollar basis in an amount equal to the total disbursed by DLG, not to exceed \$2,500,000.
- C. DLG shall disburse funds only if and only to the extent that Recipient provides to DLG proof of matching funds on a dollar for dollar basis, as required in paragraph B, above.
- D. The Recipient shall obtain all necessary permits, licenses, and approvals required for completion of the Project from the appropriate governmental entities.
- E. The Recipient shall comply with all applicable federal and state statutes, executive orders, regulatory requirements and policies.

F. The Recipient shall use procurement procedures that reflect applicable state and local laws for all purchases of goods or services related to the Project.

G. Beginning upon the effective date of this agreement and regardless of whether any funds have been drawn, the Recipient shall submit quarterly progress reports to DLG in the form prescribed by DLG until the Project is deemed closed by DLG. The reports shall be postmarked no later than the 30th day of the month following the last day of each calendar quarter (i.e., January 30th, April 30th, July 30th, and October 30th). The report shall list, at a minimum, the line items in the cost estimate and the percent of completion as well as any indication of problems or time delays. Failure to submit or fully complete the required report will place the recipient in noncompliance status at which time DLG will suspend the release of additional funds until the appropriate documentation has been submitted.

H. The Recipient shall retain all records relating to the Project until the records are audited by DLG, or for three years after the Project has been closed by DLG, whichever occurs first.

I. A copy of the Recipient resolution authorizing the execution of this Agreement is attached hereto as Attachment C, which is incorporated into this Agreement as though set forth fully herein.

J. The Recipient shall cooperate fully with DLG and provide any documentation requested by DLG in order to facilitate the obligations set out in this Agreement.

K. The Recipient shall be responsible for the expenditure of funds in accordance with the terms and conditions hereof. Any unauthorized or improper expenditure of funds, or expenditure of funds other than in accordance with the terms of this Agreement shall be deemed a default of this Agreement by the Recipient. The Recipient shall repay DLG all funds that are not spent in accordance with this Agreement and appropriate laws.

L. The Recipient shall submit a project completion report to DLG in the form prescribed by DLG upon completion of the Project.

M. All Recipients, with the exception of 6th Class Cities covered by KRS 91A.040(2) and (3) and Districts covered by KRS 65.065(2), are subject to an independent annual audit conducted in accordance with generally accepted auditing standards, Government Auditing Standards, issued by the Comptroller General of the United States, the provision of Office of Management and Budget Circular A-133, "Audits of State and Local Governments," if applicable, and the Audit Guide for Fiscal Court Audits issued by the Kentucky Auditor of Public Accounts. The audit report shall include a certification that the funds were expended for the purpose intended. A copy of the audit and certification of compliance shall be forwarded to DLG, Office of State Grants, no later than 18 months after the end of each fiscal year in which funds were received by a recipient.

Those 6th Class Cities and Districts referenced above shall be required to submit a copy of their financial statement, when applicable, to DLG, Office of State Grants, no later than

18 months after the end of each fiscal year in which funds were received by a recipient. Where a financial statement is not applicable, pursuant to the relevant statute, an audit shall be required.

3 – MUTUALITY OF OBLIGATIONS

A. The parties agree that the obligations imposed upon them are for the benefit of the parties and timely fulfillment of each and every obligation in accordance with this Agreement is necessary. The failure of any party to fulfill its obligations under this Agreement or the failure of any event to occur by a date established by this Agreement shall constitute a breach of the Agreement unless the obligation is waived or modified by written Agreement of the parties.

B. In the event of default by the Recipient, including the failure to meet any time deadlines set out in this memorandum, DLG may declare this Agreement void from the beginning without further obligation to the Recipient and may commence appropriate legal or equitable action to enforce its rights under this Agreement including action for recovery of funds expended hereunder.

C. Except as may otherwise be 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 costs whether or not a party is in default.

4 – MISCELLANEOUS PROVISIONS

A. This Agreement may be signed by each party upon a separate copy, and in such case one counterpart of this Agreement shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Agreement may be executed in two or more counterparts each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms and conditions hereof to produce or account for more than one of such counterparts.

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

C. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of the parties. This provision shall not be construed to permit assignment by any party, other than an agency or instrumentality of that party, of any of its rights and duties under this Agreement which assignment shall be prohibited except with the prior written consent of all parties hereto.

D. 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.

E. Performance of each of the terms and conditions of this Agreement shall be carried out in a timely manner.

F. The parties agree that any suit, action, or proceeding with respect to this Agreement may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky or the United States District Court for the Eastern District of Kentucky, Frankfort Division.

G. All notices requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing, and shall be addressed as follows:

If to DLG: Department for Local Government
Office of State Grants
1024 Capital Center Drive, Suite 340
Frankfort, Kentucky 40601
ATTENTION: Amy Barnes

If to the Recipient: Lexington-Fayette Urban County Government
200 East Main Street
Lexington, KY 40507
ATTN: Bill O'Mara

H. DLG may audit or review all documentation and records of the Recipient relating to this project pursuant to the provisions of KRS 45A.150.

I. The parties agree that this Agreement is not entered into under the provisions of KRS 56.8161 et seq.

5 – MOA STANDARD TERMS AND CONDITIONS

Cancellation Clause: Either party may cancel the contract at any time for cause or may cancel without cause on 30 days' written notice.

Funding-Out Provision: DLG may terminate this contract if funds are not appropriated to the Recipient or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. DLG shall provide the Recipient thirty (30) calendar day's written notice of termination of the contract.

Access to Records: The state agency certifies that it is in compliance with the provisions of KRS 45A.695. "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The contractor, as defined in KRS 45A.030(9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records or other evidence, which are directly pertinent to this contract for the purpose of financial

audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

Effective Date: All Memorandum of Agreements are not effective until the secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the government contract review committee. However, Memoranda of Agreements \$50,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes only as provided under KRS 45A.700.

KRS 45A.695(7) Payments on personal service contracts and memoranda of agreements shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration cabinet or agency head, if the agency has been granted delegation authority by the secretary.

The Agreement shall continue in effect through June 30, 2014, unless terminated at an earlier date in accordance with the terms set forth herein. The terms of this Agreement may be renewed or extended upon mutual written agreement duly executed by the parties.

Violation of Tax and Employment Laws: KRS 45A.485 requires the Recipient to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Recipient within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341 and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the Recipient shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the Recipient shall be in continuous compliance with the provisions of those statutes which apply to the contractor's operations, and that the Recipient's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for DLG's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

_____ The contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

_____ The contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached.

Reduction in Contract Worker Hours: The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

IN WITNESS WHEREOF, DLG, and the Recipient have executed this memorandum as of the dates written below.

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

COMMONWEALTH OF KENTUCKY

DATE: _____

DATE: _____

Jim Gray
Mayor

Tony Wilder, Commissioner
Department for Local Government

Examined as to form and legality only:

Examined as to form and legality only:

Counsel
Lexington-Fayette Urban County Government

Counsel
Department for Local Government

Project Number SP045	SCOPE OF WORK	TYPE Special Projects
Project Name Lexington Downtown Redevelopment Project		
Funded Amount \$2,500,000.00	Document	County Fayette
<p>Funds will be used for the planning and design of the renovations of Rupp Arena including any facilities displaced by the proposed renovations of Rupp Arena.</p>		

Request for Disbursement
Department for Local Government • Office of State Grants

Funding Program/HB# _____

Project ID# _____

Please put an "X" in the appropriate box:

- Coal Severance Line-Item Project
 Local Government Economic Development Fund (LGEDF) Coal Severance Grant
 HB380 Line-Item Project Renaissance Other _____

Project Name: _____

Grantee Information

Legal Applicant: _____

Mailing Address: _____

City, State, Zip: _____

Office Phone: _____ Office Fax: _____

Email Address: _____ County: _____

Offical's Name/Title: _____

Request Information

Date of Request _____ Request # _____ Amount Requested: _____

A. Status

1 Original/Total Award Amount: _____

2 Funding Disbursements to Date: _____

3 Amount Being Requested: \$ -

4 New Account Balance: \$ -

B. Summary of Payees of Amount Requested:

1	_____	_____
2	_____	_____
3	_____	_____
4	_____	_____
5	_____	_____
6	_____	_____
Total Amount of Funding Request		\$ _____

C. Certification:

Certification: _____ "Recipient" hereby makes this request to DLG ("DLG") for a disbursement of funding made by DLG to the Recipient. The Recipient hereby represents, warrants and certifies to DLG that (i) this request is made in accordance with the terms and conditions of that certain grant agreement as represented in the executed memorandum of agreement and any subsequent amendments thereto (the "Memorandum of Agreement"), (ii) the Person executing this instrument on behalf of Recipient is duly authorized to execute and deliver this request, (iii) Recipient requires the amount requested to meet its current payment obligations in connection with the Project as described in the Memorandum of Agreement, (iv) each of the representations, warranties and covenants of Recipient in the Memorandum of Agreement is true and correct on the date hereof, including but not limited to compliance with KRS 154.50-336, (v) no Event of Default under the Memorandum of Agreement has occurred and is continuing, (vi) all work performed by any contractors and subcontractors has been completed in a good and workmanlike manner and in accordance with all applicable c. Recipient has attached to this request all supporting documentation (cost estimates, invoices and/or receipts, etc.) deemed necessary by DLG, in IN WITNESS WHEREOF, Recipient, by its duly authorized representative, has executed this Request for Disbursement as of the date written her

Signature _____ *Date*

FOR DLG USE ONLY

Project Reporting Status: Compliant Non-Compliant

Reviewer: _____ Date: _____

Branch Mgr: _____

Accounting: _____

Comments:

Office of State Grants • Department for Local Government
 1024 Capital Center Drive, Suite 340 • Frankfort, KY 40601
 Phone: 502-573-2382 • Toll Free: 800-346-5606 • Fax: 502-573-0175 • www.dlg.ky.gov

Quarterly Progress Report

Department for Local Government - Office of State Grants

Funding Prog/House Bill: _____ Proj ID# _____

Project Title: _____

County: _____ Contact Person: _____

Contact email: _____ Phone: _____

Project Allocation: _____ Total Expended to Date: _____

LEGAL APPLICANT: _____

Third Party Recipient (if applicable): _____

Reporting Period Check One:	Jul-Sep <small>(Postmarked by 10/30)</small>	Oct-Dec <small>(Postmarked by 1/30)</small>	Jan-Mar <small>(Postmarked by 4/30)</small>	Apr-Jun <small>(Postmarked by 7/30)</small>
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Expected Completion Date: _____

Project Status Report:

previous draws: _____ Total amount rcvd to date: _____

List all financial transactions that occurred during this quarter :

Payable	Amount	Purpose

List all financial documentation (cancelled checks etc) not previously submitted that are included with this report. Attach additional pages if necessary.

- _____
- _____
- _____
- _____

Chief Executive Signature: _____ Date: _____

3rd Party Recip Signature: _____ Date: _____

DLG Use Only: This Quarterly Progress Report is hereby certified:

DLG Staff Review _____ Date: _____