

PURCHASE OF SERVICE AGREEMENT

THIS PURCHASE OF SERVICE AGREEMENT, made and entered into on the 17 day of May 2018, 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 **BUILDING INDUSTRY ASSOCIATION OF CENTRAL KENTUCKY D/B/A BUILDING INSTITUTE OF CENTRAL KENTUCKY**, a 501(c)(6) nonprofit organization, ("Organization") with offices located at 124 Trade Street, Lexington, with a mailing address of 3146 Custer Drive, Lexington, Kentucky 40517 with an effective date of July 1, 2018.

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 a minimum of at least seven (7) individuals per year (as defined in Section 2 below) in job training and placement and in finding, obtaining, and keeping gainful employment in the building trades; 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, 2018 to June 30, 2019.

"Year Two" shall be July 1, 2019 to June 30, 2020.

"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, 2018 and end on June 30, 2019, 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, the Government may extend this Agreement for another one-year term through Year Two.

4. 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 A, which is attached hereto and incorporated herein by reference, to at least seven (7) unique individuals in Year One, Government agrees to pay the Organization the total sum of Twenty-Six Thousand Dollars (\$26,000). If the Government chooses to extend this Agreement for a subsequent one-year term, the Government agrees to pay the Organization the total sum of Twenty-Six Thousand Dollars (\$26,000) to provide the services more fully described in Exhibit A to at least seven (7) unique individuals in Year Two. 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.

5. If the Organization has entered into a Purchase of Services Agreement with the Government in the past year for services related to workforce development and provided funds under this government program, any funds provided in Year One under this Purchase of Services Agreement shall be contingent upon first fulfilling the requirements within the previous Purchase of Services Agreement, except any requirement related to tracking job retention after the job training and placement tracking requirements are satisfied. In addition to the stipulations above, any funds provided for Year Two shall be contingent upon fulfilling any job retention tracking requirements provided in any previous Purchase of Services Agreement between the Government and the Organization related to workforce development under this government program.

6. For Year One, the Organization shall be paid no later than thirty (30) days after the Government receives documentation that at least one individual has begun training in the program described in Exhibit A. 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 training services required in Exhibit A have commenced, all funds pursuant to this Agreement shall be forfeited and this Purchase of Services Agreement shall be considered void. If the Government chooses to extend this Agreement for a subsequent one-year term through Year Two, the Organization shall be paid, if the funds are available and budgeted, no later than thirty (30) days after the Government receives documentation that at least one individual has begun training in the program described in Exhibit A in Year Two. The Organization

understands that it may send this documentation, via email, to the Workforce Development Manager prior to its first quarterly report for Year Two. However, in the event the Organization's first quarterly report for Year Two does not show that the training services required in Exhibit A have commenced, any funds for Year Two shall be forfeited.

7. Organization represents that the services specified in Exhibit A 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.

8. The Organization agrees to adhere to the program's budget as fully described in Exhibit B, 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 Workforce Development Manager. The Organization further agrees that any salary increases shall not be derived from the funds provided by this Agreement.

9. The Organization understands and agrees that in order to retain all of the funds provided for Year One, that by no later than the last day of the applicable year, at least seventy-five percent (75%) of the total number of individuals required in Exhibit A of this Agreement must be trained and placed into employment in a position employed and working in Fayette County, preferably in jobs outside the Organization. In the event that the Organization does not meet this requirement, it shall be required to repay the

Government for each person not trained and placed in accordance with the following formula:

75% (The required percentage of people to be trained and placed in Fayette County)

- XX% (The percentage actually trained and placed by June 30, 2019)

x \$26,000 (The funds provided in this Agreement)

Any such repayment shall be due by no later than August 1, 2019.

10. The Organization understands and agrees that in order to retain all of the funds for Year Two, if the Government agrees to extend this Agreement for another one-year term, that by no later than the last day of the applicable year, at least seventy-five percent (75%) of the total number of individuals required in Exhibit A of this Agreement must be trained and placed into employment in a position employed and working in Fayette County, preferably in jobs outside the Organization. In the event that the Organization does not meet this requirement, it shall be required to repay the Government for each person not trained and placed in accordance with the following formula:

75% (The required percentage of people to be trained and placed in Fayette County)

- XX% (The percentage actually trained and placed by June 30, 2020)

x \$26,000 (The funds provided in this Agreement)

Any such repayment shall be due by no later than August 1, 2020.

11. In the event of termination of this Agreement by the Government as provided in Section 3, the Organization will be required to repay the Government under the following formula:

75% (The required percentage to be trained and placed in Fayette County)

– XX% (The percentage actually trained and placed at the time of Termination)

x \$26,000 (The funds provided in this Agreement).

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.

12. Organization understands and agrees that no more than 10% of those served under this Agreement may live outside Fayette County at the time of enrollment into training.

13. Organization shall perform all duties and services specified in Exhibit A faithfully and satisfactorily at the time, place, and for the duration prescribed herein. Any alteration in the duties and services provided in Exhibit A constitutes an amendment to this Agreement and must be in writing, via email, and approved by the Workforce Development Manager.

14. 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.

15. 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.

16. For Year One, the Organization shall, by the tenth day of October 2018, January 2019, April 2019, and July 2019, submit electronically to the CDO on the form attached hereto as Exhibit C and incorporated herein by reference (or a similar electronic Microsoft Excel form created and provided to Organization by the Government): a report containing documentation that the duties and services required in Exhibit A 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 Urban County

Council's Budget, Finance & Economic Development Committee at the call of the chair, or as otherwise instructed by the Government.

17. If the Government chooses to extend this Agreement for a subsequent one-year term, the Organization shall, by the tenth day of October 2019, January 2020, April 2020, and July 2020, submit electronically to the CDO on the form attached hereto as Exhibit C and incorporated herein by reference (or a similar electronic Microsoft Excel form created and provided to Organization by the Government): a report containing documentation that the duties and services required in Exhibit A 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 Urban County Council's Budget, Finance & Economic Development Committee at the call of the chair, or as otherwise instructed by the Government.

18. In order to determine and evaluate job retention, the Organization shall also, on the quarterly report described in Sections 16 and 17, track each individual placed into a job by the Organization in a field related to the training until each individual placed into employment by the Organization has been tracked for one (1) year from the date of initial placement. In the event that this one year job retention tracking requirement extends past the periods required in Sections 16 and 17 for quarterly reports, the Organization agrees to continue tracking each individual placed into a job by the Organization on a quarterly report provided by the Workforce Development Manager until each individual placed into a

job by the Organization has been tracked for one (1) year from the date of initial placement.

19. The Organization understands that failure to track job retention in accordance with Section 18 may delay or prevent future funding if the Organization is selected for future funding cycles until such time as the requirements in Section 18 are satisfied or could trigger repayment of grant funds in accordance with the following formula:

XX (The number of quarters in which Organization failed to track an individual placed into employment)

x 25%

x \$26,000 (The funds provided in this Agreement).

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 unrestricted reasonable 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. 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.

27. 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.

28. 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.

29. 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.


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

For Organization: Building Industry Association of Central Kentucky d/b/a Building Institute of Central Kentucky
3146 Custer Drive
Lexington, Kentucky 40517
Att: Stephen Howard, 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: 
JIM GRAY, MAYOR

ATTEST: 
Martha Allen
Clerk of the Urban County Council

BUILDING INDUSTRY ASSOCIATION
OF CENTRAL KENTUCKY D/B/A
BUILDING INSTITUTE OF CENTRAL
KENTUCKY

BY: 
STEPHEN HOWARD, BOARD CHAIR

ATTEST: 

WITNESS:
DATE: 5/26/2013

EXHIBIT "A"

**Lexington/Fayette Urban County Government
Addendum for Services
Building Industry Association of Central Kentucky d/b/a Building Institute of Central
Kentucky**

Scope of Work

Building Industry Association of Central Kentucky d/b/a Building Institute of Central Kentucky ("Building Institute" or "Organization") will use these funds from Lexington-Fayette Urban County Government to:

- **Provide classroom and lab training for HVAC, plumbing, electric, carpentry, and property maintenance for participants who would not have been served without the funds.**
- **Provide an expedited path to licensure for those participants training in the electric, HVAC, and plumbing trades.**
- **Provide additional training in EPA608, CPR, OSHA10, and First Aid.**

Any reference to "training" or any requirement by Organization to "train" within this Exhibit or the Purchase of Service Agreement shall include the provision of classroom and lab training in at least one of the above trades, including the expedited path to licensure for some trades, as well as at least one of the above additional trainings, to each individual required to be served under this Exhibit and the Purchase of Service Agreement.

Total Number: By the end of each respective year, as defined in the Purchase of Service Agreement, Building Institute will train and place at least seven (7) unique individuals into jobs related to the training who would not have been served without these funds.

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.

While it is the intent of the parties that the Organization shall train and place seven (7) unique individuals, in order to prevent triggering repayment under Sections 9 and 10 of the Purchase of Service Agreement, at least seventy-five percent (75%) of the total number of individuals required in Exhibit A of this Agreement must be trained and placed into employment in a position employed and working in Fayette County, preferably in jobs outside the Organization.

EXHIBIT "B"

**Lexington/Fayette Urban County Government
Building Industry Association of Central Kentucky d/b/a Building Institute of Central
Kentucky**

Budget for Services

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**Building Institute of Central Kentucky
Grant Spending Budget 2018
Based on \$26,000 for 7 Students**

Revised November 27, 2017

Costs Per Student	\$
Instructor Cost	650
Recruitment and Job Placement	1425
Textbooks and Classroom Supplies	180
Tools	125
Materials and Supplies	425
Non-classroom instruction (EPA, CPR, OSHA10, First Aid)	250
Administrative Services	675
Total	\$ 3,730

EXHIBIT "C"

**Lexington/Fayette Urban County Government
Building Industry Association of Central Kentucky d/b/a Building Institute of Central
Kentucky**

Quarterly Report Format

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OARs 1 (January 1, 2018 - March 31, 2019)				OARs 2 (April 1, 2019 - June 30, 2019)				OARs 3 (July 1, 2019 - September 30, 2019)				OARs 4 (October 1, 2019 - December 31, 2019)			
Category	MAF	Purchasing	Commodity	Financial	Contract	IT	Legal	Marketing	Personnel	Programs	Real Estate	Travel	Utilities	Other	Subtotal

Organization	Building Institute of Central Kentucky																			
		Quarter 1 (July 1, 2018 - September 30, 2018) ***Due October 10, 2018								Quarter 2 (October 1, 2018 - December 31, 2018) ***Due January 10, 2019										
		Employment Start Date (if applicable)	Name of Employer	Hourly wage	Employment County	Employment End Date (if applicable)	Reason for exit (if applicable)	Employment Start Date (if applicable)	Name of Employer	Hourly wage	Employment County	Employment End Date (if applicable)								

2019	Reason for employment unit (if applicable)	Employment Start Date (if specified)	Name of Employer	Hour/Wage	Employment Class	Employment End Date (if specified)	Reason for employment unit (if applicable)	Placement Effect-At	Placement Effect-By
								Quarter 3 (January 1, 2019 - March 31, 2019)	Quarter 4 (October 10, 2019)

Placemen Check-In (July 10, 2020)																				
														Employment Status (if applicable)	Name of Employee	Hourly Wage	Employment County	Employment End Date (if applicable)	Reason for end (if applicable)	