

A2015-0008

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JUN 15 2015

GOVERNOR'S OFFICE OF
AGRICULTURE POLICY

**AGREEMENT BETWEEN
THE KENTUCKY AGRICULTURAL DEVELOPMENT BOARD
AND
LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT
PROJECT
A2015-0008**

BACKGROUND RECITALS

1. The **Kentucky Agricultural Development Board** (the "Board") was created by the General Assembly pursuant to KRS 248.707 and charged with the responsibility of administering funds from the "Rural Development Fund," established in KRS 248.655 to provide economic assistance to the agriculture community of the Commonwealth.
2. The Board, pursuant to its statutory mandate of receiving requests via Applications for funding and subsequently authorizing the distribution of said funds pursuant to KRS 248.709(2), desires to enter into an Agreement with the **Lexington Fayette Urban County Government** (the "Recipient"), in furtherance of said goals and objectives.
3. The Recipient has submitted an Application (A2015-0008). After full review and consideration during the March 20, 2015 Board meeting, the Board has approved said Application and now the Board and the Recipient (the "Parties") seek to enter into an Agreement to set forth the rights and obligations of the Parties.
4. At the time of execution of this Agreement, the Recipient had secured commitments of County funds totaling FIFTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$52,500) but was authorized by the Board to seek commitments from Counties of up to FIFTY-FIVE THOUSAND DOLLARS (\$55,000). The Board approved a grant of State funds for the lesser amount of FIFTY THOUSAND DOLLARS (\$50,000) or the total amount of funds committed by the Counties.

Accordingly, the Parties agree to the following:

**SECTION I.
FUNDING**

A. Amount of Funding

The Board, subject to the terms, conditions and restrictions set forth herein, agrees to provide to the Recipient the sum of FIFTY THOUSAND DOLLARS (\$50,000) in State funds and FIFTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$52,500) in County funds (Bourbon - \$5,000; Clark - \$5,000; Fayette - \$25,000; Jessamine - \$5,000; Madison - \$5,000; Scott - \$2,500; Woodford - \$5,000) over a two year period for one half the salary and benefits of the Local Food Coordinator (LFC) position of the Bluegrass Farm to Table program.

B. Use of State Funds

The Recipient agrees to abide by any general restrictions as set forth by the Commonwealth

of Kentucky for the use of state funds.

C. Voidable Agreement

Notwithstanding any other provision in this Agreement, this Agreement shall be voidable for any reason upon notification by the Board to the Recipient of its inability to fund the project. The Recipient recognizes and agrees that the Board shall not be liable for any funding commitment or any portion thereof when the Board is unable to fund said commitment for any reason.

**SECTION II.
TERMS AND CONDITIONS**

A. Effective Date of Agreement

The Effective Date of this Agreement shall be July 1, 2015.

B. Availability of 2015 Funds

The Board, through its duly authorized officers and representatives, shall make FIFTY-ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$51,250) in County funds available to the Recipient on the Effective Date of this Agreement.

C. Availability of 2016 Funds

If the Board votes to provide the 2016 funds (see Section VI of this Agreement), the Board, through its duly authorized officers and representatives, shall make FIFTY THOUSAND DOLLARS (\$50,000) in State funds and ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$1,250) in County funds available to the Recipient in the form of a grant on the anniversary of the Effective Date of the Agreement.

D. Utilization of Funds

1. Purpose

The Recipient shall use the State and County funds over a two year period to pay for one half the salary and benefits of the Local Food Coordinator (LFC) position of the Bluegrass Farm to Table program.

2. Approved Budget; Changes Thereto; Reallocations

a. If the Recipient wishes to:

- i.** use funds in a manner that substantially deviates from the approved budget, OR
- ii.** reallocate funds from one approved budget category to another approved budget category in an amount that exceeds TEN PERCENT (10%) of the KADF funds, the Recipient shall first submit a proposal to the Board of how it wishes the Board to amend the budget.

b. If the Board approves the amendment, the Recipient shall use the funds according to the amended budget.

c. If the Board denies the amendment, then the Recipient may use the funds according to the original approved budget, OR it may return the unused funds to the Board.

E. Advisory Committee

The Recipient shall expand the program's Advisory Committee to include a Kentucky

Department of Agriculture Representative of Kentucky Proud.

F. Expiration of Funds

1. 2015 Funds

If any portion of the 2015 funds given by the Board to the Recipient under Section II.B have not been committed or encumbered within ONE (1) year of the Effective Date, the Recipient shall return the uncommitted or unencumbered funds to the Board or its duly authorized representative within THIRTY (30) days of the anniversary of the Effective Date of the Agreement.

2. 2016 Funds

If any portion of the 2016 funds given by the Board to the Recipient under Section II.C have not been committed or encumbered within TWO (2) years of the Effective Date, the Recipient shall return the uncommitted or unencumbered funds to the Board or its duly authorized representative within THIRTY (30) days of the second anniversary of the Effective Date of the Agreement.

3. Failure to Refund

If the Recipient does not refund the unused funds to the Board or its duly authorized representatives within this time period, the Recipient shall not be eligible to receive additional funds from the Kentucky Agricultural Development Fund or from the Kentucky Agricultural Finance Corporation.

G. Acknowledgement of Funding Source

All grants are intended to further the mission of the Kentucky Agricultural Development Fund (KADF) of diversifying and modernizing Kentucky's farm economy. Therefore, the Borrower shall acknowledge in any awards, publications, brochures, websites, articles, advertising, correspondence, or promotional projects and activities that a portion of the funding for this project was provided by the KADF. Furthermore, the Borrower shall utilize where possible, the KADF logo which is available for download at <http://agpolicy.ky.gov/Pages/KADF-Logo.aspx>. Copies of publications, brochures, etc. shall be submitted in conjunction with the Borrower's Progress Reports as required by Section VI, below.

**SECTION III.
DURATION OF LEGAL AGREEMENT**

The Legal Agreement herein shall be in full force and effect for TWO (2) years from the Effective Date as defined in Section II.A., above.

**SECTION IV.
MODIFICATION**

A. Procedure for Modification

1. If, in the duration of this Agreement, the Recipient wishes to modify or amend the Agreement, the Recipient shall make a formal written request to the GOAP with specific suggested modifications or additions to the Agreement.
2. The GOAP shall submit the request to the Board for review.

3. Requests for modification must be submitted at least THIRTY (30) days before expiration of the Agreement.

B. Incorporation of Amendment

If the Board approves said modification or amendment, it shall be incorporated as an Amendment to the original Agreement.

**SECTION V.
REQUIRED RECORDKEEPING**

A. Maintenance of Business Records

The Recipient shall maintain all business records and supporting documentation for a period of at least SEVEN (7) years from the date of the initial payment of funds to the Recipient.

B. Business Records Defined

For purposes of this Agreement business records include, but are not limited to, those documents typically required in the normal course and scope of a traditional business operation, as well as any documents required by the Board or its authorized representatives.

C. Format of Business Records

Business records may be maintained in either paper or generally recognized electronic format.

D. Substantiation of Expenditures

The business documents maintained by the Recipient shall substantiate expenditures made with funds received pursuant to this Agreement.

E. Right to Inspect/Copy Business Records

Upon request by the Board, the Recipient shall permit the Board or its authorized representative(s) the right to inspect and/or copy any business records maintained by the Recipient, including, but not limited to, books, documents, papers, records, computer programs or any other evidence reflecting the project funded by the Board and memorialized by the Agreement herein.

F. Subject to Open Records Law

Said business records shall be subject to public disclosure pursuant to Kentucky's Open Records Law unless exempted from disclosure by KRS 61.878 or other applicable law.

**SECTION VI.
REPORTS REQUIRED FROM RECIPIENT**

A. Grant Funds Expenditures Reports

1. First Year Reporting

The Recipient shall make the following two reports of grant fund expenditures during the first year of the agreement:

a. Six Month Report

The Recipient shall submit a Semi-Annual Expenditure Report (Exhibit B) to the GOAP SIX (6) months after the Effective Date of the Agreement. The report shall be submitted electronically and can be found on the Governor's Office of Agricultural Policy's website: http://agpolicy.ky.gov/funds/Pages/project_reporting.aspx. Reports should be e-mailed to: GovKYAGPolicy@ky.gov.

b. One Year Report

The Recipient shall report all remaining expenditures of grant funds not previously reported in the six month expenditure report when submitting the Annual Programmatic Report (Exhibit C) detailed in Subsection B. of this Section, below.

2. Second Year Reporting

If the Recipient receives the 2016 funding, then the Recipient shall submit Semi-Annual Expenditure Reports EIGHTEEN (18) months and TWO (2) years after the Effective Date.

B. Programmatic Report

1. Purpose

The Recipient shall submit to the GOAP Annual Programmatic Reports that will provide the Board sufficient information, data, and statistics so that the Board can evaluate the impact of this investment.

2. Annual Requirement

The Recipient shall continue to submit these annual reports on the subsequent anniversaries of the Effective Date until the Recipient receives a Completion Letter from the GOAP.

3. Impact Numbers

Additionally, the Recipient shall also report impact numbers, including but not limited to the number of producers and institutions assisted, as well as a detail of any outreach efforts made to producers in each county.

C. 2016 Presentation to the Board

1. The Recipient shall give a presentation to the Board at the June 2016 Board meeting.
2. The Board shall not release the 2016 funds if the Recipient does not make this presentation.
3. The Recipient shall include in the presentation all activity of the prior year, address benchmarks and goals related to the project, and outline goals for the coming year.

D. Compliance Requirement

Failure to comply with the reporting requirements set forth in this Section may result in the denial of requests for funding in the future by the Recipient or its subsidiaries.

**SECTION VII.
ASSIGNMENT**

This Agreement shall not be assigned to any other person or entity. Any attempted assignment of this Agreement by the Recipient shall be void.

SECTION VIII.

SUB-CONTRACTS

A. Board Approval Required

1. If the Recipient wishes to enter into a sub-contract for work to be done that would normally be part of the duties and responsibilities of the Recipient, the Recipient shall not do so until it makes a request to and receives permission from the Board.
2. At the time of the request for approval, the Recipient shall provide the necessary documentation (in paper or electronic form) to aid the Board, including, but not limited to, details regarding the scope of the sub-contract and cost estimates.
3. Furthermore, failure to comply with the provisions of this paragraph may result in the Recipient being found in default and the Board may terminate this Agreement pursuant to Section XV.

B. Terms of Agreement

The sub-agreement shall be in writing and require that the subcontractor be subject to all provisions of this Agreement and shall be incorporated by reference into this Agreement herein.

SECTION IX. AUDIT OF RECORDS

The Recipient agrees that the Governor's Office of Agricultural Policy, 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 (application) 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 Recipient 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.

In the event of a dispute between the Recipient and the GOAP, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order No. 11-004.

SECTION X. COMPLIANCE WITH STATE AND FEDERAL LAWS

A. Recipient's Compliance

The Recipient represents and warrants that it complies, and will comply for the duration of this Agreement, with all state and federal laws and regulations.

B. Conflict of Laws

This Agreement and all sub-Agreements are governed by KRS Chapter 248. If any material portion of this Agreement conflicts with said laws or regulations, such portion shall be void with the remainder of this Agreement to continue in full force and effect.

C. Tax Consequences

The Recipient shall be responsible for all tax consequences, if any, that may result from the receipt of said money from the Board.

**SECTION XI.
CONFLICTS OF INTEREST**

The Recipient agrees to avoid entering into business relationships that create a conflict of interest, either real or perceived. If Recipient can provide sufficient evidence that a conflict of interest can be overcome, the justification for approval, as well as additional oversight measures should be documented by legal counsel and submitted to the Board for approval as an Addendum to the Agreement herein.

**SECTION XII.
RELATED PARTY TRANSACTIONS**

The Recipient shall seek prior approval from the Board for all business transactions or agreements with related parties. For purposes of this Agreement related parties are defined as relatives of the Recipient's management, or arrangements with businesses or other entities in which an officer or employee of the Recipient holds a significant financial interest.

**SECTION XIII.
VENUE AND CHOICE OF LAW**

A. Venue

Both parties agree that venue for any legal action regarding the terms and conditions of this Legal Agreement shall be in the Franklin County Circuit Court or the United States District Court, Eastern District of Kentucky, Frankfort Division. Both parties agree that this is a material term of the Agreement and consent to said venue.

B. Choice of Law

Both parties further agree that all questions as to the execution, validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the Commonwealth of Kentucky. Recipient agrees to place the substance of this paragraph into all sub-agreements with other entities.

**SECTION XIV.
WAIVER OF LIABILITY**

In accepting the Kentucky Agricultural Development Funds offered and approved by the Board, the Recipient, its agents, employees, representatives, subcontractors, successors, and assigns, absolutely and unconditionally release and forever discharge the Commonwealth,

including the members of the Board, Chief Executive Officer of the Board and all staff members of the Governor's Office of Agricultural Policy, both in their official and individual capacities, from any and all actions, claims, demands, damages, executions, judgments, liabilities, expenses, costs, attorneys fees, and suits, arising out of, in connection with, or in any manner related to the Application, this Agreement and the grant funds disbursed to the Recipient hereunder, whether past, present or future, known or unknown, foreseen or unforeseen, existent or nonexistent, disclosed or undisclosed.

SECTION XV. TERMINATION

The Board shall have the right to terminate this Agreement upon thirty (30) days written notice via certified mail, return receipt requested, to the Recipient. Specifically, the Board may terminate this Agreement because the Recipient is failing to perform its contractual duties, or for the convenience of the Commonwealth if the Board has determined that such action is in the best interest of the Commonwealth. This provision allows the Board to react to budgetary constraints, performance concerns, and other events.

A. Termination by Default

1. Default Defined – Events defining default shall include, but are not limited to:
 - a. Recipient's failure to perform the Agreement according to its terms, conditions and specifications;
 - b. Recipient's failure to diligently advance the work of the project in accordance with the terms of the Agreement and project application as evidenced by GOAP staff inspection;
 - c. The filing of a bankruptcy petition by or against the Recipient; or
 - d. Actions that endanger the health, safety or welfare of the Commonwealth or its citizens.
2. Curing of Deficiencies – If the Board determines that the identified default can be cured, the notice of termination shall include the specifics required to cure the deficiency and the date by which it shall be accomplished. Failure to cure the deficiencies within the time specified shall result in the Board proceeding with termination pursuant to this Section.

B. Termination for Convenience of the Commonwealth

The Board may terminate this Agreement for convenience if it determines that termination is in the Commonwealth's best interest.

C. Action Following Notice of Termination

If the Board or the Recipient gives the other Party notice of termination, then the Recipient shall:

1. Return any unused funds that have not been expended and/or committed as of the date of notice of termination to the Board or the Board's designee within THIRTY (30) days of receipt of the notice, and

2. If the Recipient desires to negotiate a settlement, a written request must be received in the GOAP offices within the thirty (30) day timeframe. A meeting will be scheduled and the settlement offer communicated to the Board for review.

AND

3. If the notice of termination is given within SIX (6) months of the Effective Date, the Recipient shall provide the Board with a Semi-Annual Expenditure Report (Exhibit B) along with its standard report of expenditures within THIRTY (30) days from the receipt of the Board's notice of termination, or
4. In the alternative, if the notice of termination is given more than SIX (6) months after the Effective Date, the Recipient shall provide the Board with an Annual Programmatic Report (Exhibit C) along with its standard report of expenditures within THIRTY (30) days from the receipt of the Board's notice of termination.

D. Board Not Liable for Damages

The Board shall not be responsible for any costs, damages, or expenditures to entities that receive funds from the Recipient because of termination of this Agreement with the Recipient.

IN WITNESS WHEREOF, the parties have set their hands by and through the duly authorized officers and agents.

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT

By:

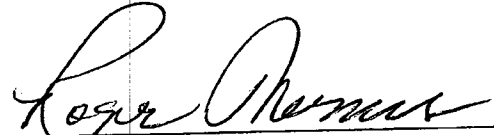


JIM GRAY
Mayor

6/12/15
Date

Lexington Fayette Urban County Government
Authorized Representative for Lexington Fayette Urban County Government

**COMMONWEALTH OF KENTUCKY
KENTUCKY AGRICULTURE DEVELOPMENT BOARD**

By: 

ROGER THOMAS
Executive Director
Governor's Office of Agricultural Policy
Authorized Representative of the Kentucky Agricultural Development Board

6-23-15
Date

APPROVED AS TO FORM AND LEGALITY:



Brian Murphy
General Counsel
Governor's Office of Agricultural Policy

RECEIVED

JUN 23 2015

GOVERNOR'S OFFICE OF
AGRICULTURE POLICY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Legal Agreement between the KADB and the Lexington Fayette Urban County Government was mailed via U.S. Mail, first class, postage pre-paid on this 24th day of June, 2015, to:

Lexington Fayette Urban County Government
c/o Ashton Wright
200 E. Main Street
Lexington, KY 40502
Recipient

And the original shall be maintained on file at the Governor's Office of Agricultural Policy

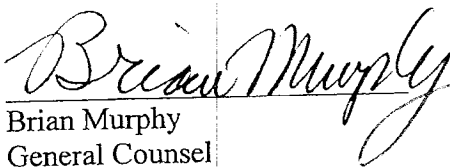

Brian Murphy
General Counsel

Exhibit A

Exhibit B



PROJECT SEMI-ANNUAL EXPENDITURE REPORT

Reporting Period: _____ Year: _____ Application Number: _____

Title of Project: _____

Name of Recipient: _____

Contact Person: _____ Title: _____

Telephone: _____ E-mail: _____

1. On the form provided (or on a separate page), complete the Semi-Annual Project Expenditure Report detailing how the funds granted were utilized.

Amount of ADF Grant/Loan Approved: \$				Report Due Dates: Semi-Annual & Annual		
Approved Expense Items for This Project (from application budget)				Project Expenditures to Date by Item		
Item	ADF Portion	Other Funds (Match)	Total Amount Budgeted	ADF Expenditures	Other Funding Expenditures (Match)	Total Expenditures
e.g. Walk-in Cooler	\$4,000.00	\$4,000.00	\$8,000.00	\$3,500.00	\$3,500.00	\$7,000.00
TOTALS						
	ADF Budget Total	Match Budget Total	Project Budget Total	Total ADF Expenditures	Total Match Expenditures	Total Expenditures

Budget Modifications must be approved by the Agricultural Development Board prior to the expenditure of funds.

List funding sources for this project's match: _____ Amount _____
 Source _____

Completed By: _____ Date: _____
 (Name and Title)

SUBMIT REPORT TO THE COMPLIANCE SPECIALIST AT THE GOVERNOR'S OFFICE OF AG POLICY
 REPORT SHOULD BE SUBMITTED ELECTRONICALLY TO GOVKYAGPOLICY@KY.GOV

Exhibit C



PROJECT ANNUAL PROGRAMMATIC REPORT

Reporting Year: _____ Application Number: _____

Title of Project: _____

Name of Recipient: _____

Contact Person: _____ Title: _____

Address: _____

Telephone: _____ E-mail: _____

Date of Proposed Expenditure of all KADF Funds: _____

Is this a Forgivable Loan? _____
If yes, then attach the *Forgivable Loan Forgiveness Detail* to the report.

Is this a 0% Interest Loan? _____

1. Provide a brief summary of the project's goals and objectives:

2. Estimate the percentage of project completion to date: _____ %. If 100%, then is this an on-going project?

3. Provide information on the scope of the project:
 - a. Number of farmers you have impacted to-date: _____

 - b. List of counties impacted to date: _____

 - c. Total sales, net profit, increased capacity, or other information related to the economic impact that can be attributed to the grant:

 - d. If this is a youth project, how many youth impacted: _____ Estimate how many are from farm families: _____

4. Provide an update of your project's compliance of specific performance measures/established benchmarks that are outlined in your legal agreement. (List terms & how they have been achieved.)

