

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (hereinafter the “MOA”) is made and entered into as of the ____ day of July, 2015, by and between the **BLUEGRASS COMMUNITY AND TECHNICAL COLLEGE**, a member of the Kentucky Community and Technical College System located at 470 Cooper Drive, Lexington, Kentucky 40506-0235 (hereinafter “BCTC”) and the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes, 200 East Main Street, Lexington, Kentucky 40507 (hereinafter “Lexington”).

W I T N E S S E T H:

WHEREAS, BCTC serves as an economic stimulator in Fayette County by providing educated and trained individuals to area employers; and

WHEREAS, BCTC, as a member of the Kentucky Community & Technical College System, is the fiscal sponsor for the Multi-Disciplinary Laboratory Building to be located at the BCTC Newtown Campus, in Lexington, Kentucky as further described in Exhibit “A”, which is attached hereto and incorporated herein by reference (the “Building”); and

WHEREAS, the Building will serve Lexington, the community and the citizens of Fayette County by providing more educational and training opportunities which will enhance Fayette County’s work force; and

WHEREAS, the Building is approved for matching funds from the Commonwealth of Kentucky as authorized in the Bi-Annual Kentucky State Budget, Capital Projects; and

WHEREAS, the total project cost related to the Building is estimated to be \$24 million; and

WHEREAS, a local match of \$6 million is required before construction can begin on the project and the Building; and

WHEREAS, Lexington finds that providing funding towards the required local match for this project and Building fulfills a public purpose, and is desirous of providing funding in an amount not to exceed \$1,000,000; and

WHEREAS, the BCTC is agreeable to accepting the funding and ensuring that any requirements connected to the funding are met, and is committed to this project and the construction of the Building.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. That in exchange for Lexington providing BCTC with One Million Dollars (\$1,000,000) in funding (the payment schedule for which shall be mutually agreed upon between the parties), BCTC agrees as follows: (1) that all funds must be expended for the purposes of construction of the Building, as further generally described in the letter attached hereto as Exhibit "A", which is which is incorporated herein by reference as if fully stated (the building construction described in the Exhibit may be hereinafter referred to as the "Building" or the "Work"); (2) that the LFUCG shall not disburse funds until sufficient evidence is provided by BCTC that the project is fully funded; (3) that it will take sufficient and appropriate steps to ensure that the Work is completed; (4) that Lexington will in no way be responsible for the Work other than the financial contribution further described herein; (5) that if there is formal recognition of contributors for construction of the Building, the Lexington-Fayette Urban County Government will be recognized in like manner to similar contributors; and (6) that it will provide to Lexington with sufficient documentation of the appropriate expenditure of the funds, which shall include, at a minimum a written summary report of all of the expenditures made towards the Work as of January 31, 2016, June 30, 2016, and a final report.

2. This MOA shall remain in effect until BCTC has fully complied with the requirements of this MOA and the Newtown Campus Multi-Disciplinary Building are completed, unless terminated by Lexington in writing for nonperformance at an earlier time.

3. BCTC shall perform (or ensure that) all duties and services included in the Work faithfully and satisfactorily at the time, place and for the duration prescribed herein. BCTC shall keep itself fully informed of all national and state laws and all municipal ordinances and regulations in any manner affecting the work or performance of this MOA, 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 shall indemnify Lexington, its officers, agents and employees against any claim or liability arising from and based on BCTC's violation of any such laws, ordinances or regulations. In the event of termination of this MOA by Lexington, BCTC shall be entitled to that portion of total compensation due under this MOA as the Work or services rendered bears to that required hereunder.

4. Each party agrees that it shall be responsible for any claims or damages that are based upon its respective performance of this MOA, or that are based upon the actions or inactions of its respective employees or agents.

5. BCTC shall keep and make available to Lexington any records related to this MOA such as are necessary to support its performance of this MOA. Books of accounts shall be kept by BCTC and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of BCTC related to this MOA and shall be made available to Lexington. Further, BCTC shall submit a report of expenditures to the LFUCG Commissioner Chief Development Officer by July 10, 2016.

6. BCTC shall allow Lexington the necessary access to perform the services herein and to monitor BCTC's performance under this MOA.

7. 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.

8. BCTC 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 any agency receiving funds provided pursuant to this MOA to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

9. Neither party may assign any of its rights and duties under this MOA without the prior written consent of the other party. Notwithstanding the foregoing, Lexington understands that the Work

will ultimately be performed by persons or entities other than BCTC.

10. This MOA does not create a contractual relationship with or right of action in favor of a third party against either BCTC or Lexington.

11. If any term or provision of this MOA shall be found to be illegal or unenforceable, this MOA shall remain in full force and such term or provision shall be deemed stricken.

12. This MOA shall be governed in all respects by the laws of the Commonwealth of Kentucky and venue for all actions shall lie in Fayette County, Kentucky.

13. By mutual agreement, the parties to this MOA may, from time to time, make written changes to any provision hereof. BCTC acknowledges that Lexington may make such changes only upon approval of its legislative authority, the Lexington-Fayette Urban County Council, and the signature of its Mayor.

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

15. The waiver by either party of any breach of any provision of this MOA shall not constitute a continuing waiver or waiver of any subsequent breach by either party of either the same or another provision of this MOA.

IN WITNESS WHEREOF, the parties certify that they have been duly authorized to execute, deliver and perform this Memorandum of Agreement, and have executed it as of the date first herein written.

**LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT**

BY: _____
JIM GRAY, MAYOR

ATTEST:

URBAN COUNTY COUNCIL CLERK

**BLUE GRASS COMMUNITY & TECHNICAL
COLLEGE**

BY: _____
AUGUSTA JULIAN, PRESIDENT

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing Memorandum of Agreement was subscribed, sworn to and acknowledged before me by August Julian, PhD, as President of Blue Grass Community & Technical College on this the _____ day of _____, 2015.

My commission expires: _____

NOTARY PUBLIC, STATE AT LARGE, KY

EXHIBIT "A"

Lexington/Fayette Urban County Government

Addendum for Services

Bluegrass Community & Technical College

