

PURCHASE OF SERVICE AGREEMENT

THIS PURCHASE OF SERVICE AGREEMENT, made and entered into on the 14th day of September 2022, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the COMMONWEALTH OF KENTUCKY created pursuant to KRS Chapter 67A ("LFUCG"), 200 East Main Street, Lexington, Kentucky 40507, and the **BLUEGRASS AREA DEVELOPMENT DISTRICT** ("Organization"), with offices located at 699 Perimeter Drive, Lexington, Kentucky 40517.

WITNESSETH

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. **EFFECTIVE DATE; TERM.** This Agreement shall commence on July 1, 2022 and shall last for a period of 1 year unless terminated by at an earlier time as provided in Section 5.
2. **RELATED DOCUMENTS.** This Agreement shall consist of the terms herein as well as the following additional documents, which are attached hereto as exhibits and incorporated herein by reference as if fully stated:
 - A. Exhibit "A" – Scope of Work
 - B. Exhibit "B" – Annual Report

To the extent that there is any conflict between or among any of these documents, the terms and provisions of this Agreement shall prevail, followed by terms and provisions of Exhibit "A", and "B" in that order.

3. **SCOPE OF SERVICES.** Organization shall perform the services outlined in the attached Exhibit "A" – Scope of Work for LFUCG in a timely, workmanlike and professional manner (the "Services").
4. **PAYMENT.** LFUCG shall pay Organization a total amount not to exceed Sixty-One Thousand, Two Hundred and Eighty-Eight dollars (\$61,288.30) for the performance of the Services (the "Estimated Fee"). Such payment shall be made within thirty (30) days after Organization submits an invoice and an annual report described in Section 6. The funds represent dues to promote regional solutions to local issues beneficial to Lexington-Fayette County, being further described in Exhibit A. The funds are limited to the services provided herein and may not be spent by the Organization for any other purpose without the prior written consent of LFUCG. The dues are considered voluntary and shall only be paid upon completion of the requirements of this Agreement, to the reasonable satisfaction of the Government. Absent any additional written agreement stating otherwise any travel or other expenses are included in the above payment. Urban County funds provided under this Agreement will not carry forward into the next fiscal year (FY

2024). As such, failure to fulfill all the requirements of this Agreement, including, but not limited to, the required reporting; the presentation of a progress report at a Urban County Council committee or as otherwise instructed by the Government; and the provision of an invoice after or with the final report, within the term shall result in nonpayment of funds.

5. TERMINATION. LFUCG, through the Mayor or the Mayor's designee, may terminate this Agreement for any reason whatsoever by providing Organization with at least thirty (30) days advance written notice. Organization shall be entitled for payment of all work performed up to that period of time, calculated on a reasonable basis. Organization shall not be paid an amount which exceeds the Estimated Fee for the work performed.

6. REPORTING. Organization shall provide LFUCG with timely reports and updates related to the provisions of the Services in the form and manner reasonably specified by LFUCG. The Organization shall submit to the Commissioner of Social Services, by May 31, 2023, on such forms as the Commissioner of Social Services shall provide, a report containing, for each of the services enumerated in Exhibit A which were provided in the current fiscal year, (a) a description of the service provided, including the costs of providing services and the quantity and quality of the service provided, and (b) the additional information requested in and submitted on the form attached hereto as Exhibit B (or a similar form created and provided to Organization by the Government). Any and all provisions of this Agreement to the contrary notwithstanding, the compensation of Organization shall not be paid unless and until Organization submits the satisfactorily completed reports and invoice required hereunder. In addition, Organization shall be required to present a progress report as to its activities a minimum of one (1) time during the term before the Urban County Council's Economic Development Committee, the Urban County Council's General Government & Social Services Committee, or as otherwise instructed by the Government, prior to receiving funds under this Agreement.

7. REGISTRATION; COMPLIANCE; AUTHORITY TO SIGN. Organization shall be lawfully registered or authorized to do business in the Commonwealth of Kentucky and Lexington-Fayette County and shall at all times comply with any and all applicable federal, state, and local laws, ordinances, and regulations. Funds shall not be provided under this Agreement if the Organization fails to comply with all laws, ordinances, and regulations, or becomes subject to any federal or state investigation or lawsuit relating to unethical behavior or the mispending of funds during the term of this Agreement. LFUCG may request proof that Organization has timely filed federal, state, or local tax forms which shall be provided by Organization on a timely basis. The person signing this Agreement on behalf of Organization is fully authorized to do so.

8. INSURANCE; INDEMNITY.

a. At all times relevant to the performance of this Agreement, Organization shall maintain insurance coverages in at least the following amounts, which shall be properly filed and approved by the Kentucky Department of Insurance. Evidence of such coverage shall be made available to LFUCG upon request. General Liability (\$1 million per

occurrence, \$2 million aggregate or \$2 million combined single limit); Commercial Automobile Liability (combined single, \$1 million per occurrence); (if applicable) Professional Liability (\$1 million per occurrence, \$2 million aggregate); Worker's Compensation (Statutory); and Employer's Liability (\$1 million).

b. Organization shall indemnify, defend and hold harmless LFUCG and its elected and appointed officials, employees, agents, volunteers, and successors in interest, from and against any and all liability, damages, and losses, including but not limited to: demands, claims, liens, suits, notices of violation from governmental agencies, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by Organization's performance of, or breach of this Agreement and/or the provision of goods or services, provided that (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of Organization or its officials, employees, or agents; and (b) not caused solely by willful misconduct of LFUCG.

c. Organization understands and agrees that its obligation to defend LFUCG includes the obligation to investigate, handle, respond to, resist, provide a defense for, and defend claims, at Organization's expense, using attorneys approved in writing by the LFUCG, which approval shall not be unreasonably withheld.

d. Organization further understands and agrees that its obligation to indemnify includes, but is not limited to: attorney fees and expenses, costs of litigation, court and administrative costs, expert witness fees and expenses, judgments, fines, penalties, interest, all environmental cleanups and remediation costs of whatever kind, and any liability arising from death, injury, or damage of any kind, to any person, including employees and agents of Organization and LFUCG, and damage to, or destruction of, any property, including the property of LFUCG.

e. This provision shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this Agreement.

f. Organization understands that LFUCG is a political subdivision of the Commonwealth of Kentucky and acknowledges and agrees that LFUCG is unable to provide indemnity or otherwise save, hold harmless, or defend the Organization in any manner.

9. **RECORDS.** Organization shall keep and make available to LFUCG any records related to this Agreement as are necessary to support its performance of the services. Books of accounts shall be kept by Organization and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of Organization related to this Agreement and shall be made available to

LFUCG upon request.

10. ACCESS. Organization shall allow LFUCG any necessary reasonable access to monitor its performance under this Agreement. Inspection and monitoring of the Organization's work 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.

11. CONTRACTUAL RELATIONSHIP ONLY. 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.

12. EQUAL OPPORTUNITY; FAIRNESS ORDINANCE. Organization shall provide equal opportunity in employment for all qualified persons, and shall (a) prohibit discrimination in employment because of race, color, creed, national origin, sex, age, sexual orientation, gender identity, or handicap, (b) promote equal employment through a positive, continuing program of equal employment, and (c) cause any subcontractor or agency receiving funds provided pursuant to this Agreement to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices. Organization agrees to comply with LFUCG's Fairness Ordinance (Ordinance No. 201-99) and all sources of applicable law, including those specified in any Exhibit attached to this Agreement and incorporated herein by reference.

13. SEXUAL HARASSMENT. Organization must adopt or have adopted 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 given to all employees and clients and shall be posted at all locations where Organization conducts business. The policy shall be made available to LFUCG upon request.

14. ANNUAL AUDIT. Organization agrees that all revenue and expenditures related to this Agreement 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. A copy of this audit, or clean audit opinion letter from an independent certified public accountant, shall be submitted to LFUCG each year of the Agreement.

15. INVESTMENT. Any investment of the funds received pursuant to this Agreement must fully comply with any restrictions imposed by law, including, but not limited to, Section 2-23 of the Lexington-Fayette Urban County Code of Ordinances, if applicable.

16. NO ASSIGNMENT. Organization may not assign any of its rights and duties under this Agreement without the prior written consent of LFUCG.

17. NO THIRD PARTY RIGHTS. This Agreement does not create a contractual

relationship with or right of action in favor of a third party against either Organization or LFUCG.

18. KENTUCKY LAW AND VENUE. This Agreement shall be governed in all respects by the laws of the Commonwealth of Kentucky and venue for all actions shall lie in the Circuit Court of Fayette County, Kentucky.

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

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

For Organization:

Bluegrass Area Development District
699 Perimeter Drive
Lexington, Kentucky 40517 Attention: Executive Director

For Government:

Lexington-Fayette Urban County Government
Kacy Allen-Bryant, Commissioner of Social Services
200 East Main Street
Lexington, Kentucky 40507

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

22. ENTIRE AGREEMENT. This Agreement 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 Agreement shall replace any previous agreement between the parties on the same subject matter.

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

[SIGNATURE PAGE TO FOLLOW]

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

BY: Linda Gorton
LINDA GORTON, MAYOR

ATTEST:

Mankamie Jack
Deputy Clerk of the Urban County Council

BLUEGRASS AREA DEVELOPMENT
DISTRICT

BY: D. H. Dittlinger
Executive Director

Kelly Rode

ATTEST:

[Signature]

WITNESS:

DATE: 11-7-2022

EXHIBIT "A"

Lexington/Fayette Urban County Government
Addendum for Services
SCOPE OF WORK

Scope of Work

Local Contribution

During fiscal year 2023, the Bluegrass Area Development District (BGADD) will use these funds to promote regional solutions to local issues. The Lexington-Fayette Urban County Government (LFUCG) contribution of \$61,288.30 is commingled with contributions from other member governments to create a unique fund. The resulting fund is used to match state and federal grants and to pay expenses deemed necessary by the BGADD Board of Directors for which no state/federal grant monies are available.

EXHIBIT "B"

Lexington/Fayette Urban County Government
Addendum for Services
Annual Report

Lexington-Fayette Urban County Government
Annual Report
Fiscal Year 2023

Economic Development Partner Agency:
Bluegrass Area Development District

Date _____

Outcome Evaluation

Using the Exhibit "A" to the Bluegrass Area Development District's Purchase of Service Agreement, please demonstrate progress towards stated goals and initiatives.

NOTE: If there have been changes to your LFUCG funded program(s) necessitating amendment of your approved outcomes, please contact Kacy Allen-Bryant, Department of Social Services at kallenbryant@lexingtonky.gov or at 859-258-3804 to discuss the proposed amendments.

Workforce Activity within Lexington-Fayette County

Please describe how BGADD has worked with LFUCG's Director of Workforce & Business Engagement on matters impacting employment and company workforce needs to increase workforce activity within Lexington-Fayette County during the current fiscal year, July 1, 2022 – June 30, 2023.

Bluegrass Workforce Innovation Board

Please describe what the Bluegrass Workforce Innovation Board has done to aid workforce development in Lexington-Fayette County during the current fiscal year, July 1, 2022 – June 30, 2023.

Work of the BGADD Local Elected Officials Governing Board

Please describe how the BGADD has assisted the Mayor of Lexington-Fayette County in her role as Co-Chief Local Elected Official within the BGADD Local Elected Officials Governing Board during the current fiscal year, July 1, 2022 – June 30, 2023.

LFUCG Coordination

Please provide a detailed list of all projects the BGADD has worked on in coordination with LFUCG within the current fiscal year, July 1, 2022 – June 30, 2023.

Certification

As the Chief Executive Officer (or equivalent) of this agency, I certify that the information provided in this Quarterly Report is true and complete to the best of my knowledge and belief.

I further agree that funds received from LFUCG will be used for the purposes for which they were requested and approved, and that the agency will comply with the requirements set forth in the application and the approved Purchase of Service Agreement and Addendum.

_____ Printed Name

_____ Signature

_____ Title

_____ Date

THIS REPORT AND REQUIRED ATTACHMENT(S) ARE DUE BY:

May 31, 2023

**THIS REPORT SHOULD BE COMPLETED AND SUBMITTED
ELECTRONICALLY TO:**

**THERESA MAYNARD
ADMINISTRATIVE OFFICER SENIOR, DEPARTMENT OF SOCIAL
SERVICES THERESAM@LEXINGTONKY.GOV**