

**AGREEMENT BETWEEN
THE KENTUCKY AGRICULTURAL DEVELOPMENT BOARD
AND
KENTON COUNTY FISCAL COURT
FOR A PROJECT
A2023-0020**

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 **Kenton County Fiscal Court** (the “Recipient”), in furtherance of said goals and objectives.
3. The Recipient has submitted an Application (A2023-0020). After full review and consideration during the **March 17, 2023** 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.

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:

1. up to TWO FORTY-FIVE THOUSAND DOLLARS (\$245,000) in state funds, and
2. up to FIVE THOUSAND DOLLARS (\$5,000) in Kenton County funds to the Recipient to build a farmers market pavilion on the condition that total Kentucky Agricultural Development Funds do not exceed FIFTY PERCENT (50%) of the total project costs.

B. Use of State and County Funds

The Recipient agrees to abide by any general restrictions as set forth by the Commonwealth of Kentucky for the use of state and county funds.

C. Voidable Legal 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 Legal Agreement

The Effective Date of this Legal Agreement shall be the date of execution by the Executive Director of the Kentucky Office of Agricultural Policy (the “KOAP”).

B. Availability of Funds

The Board, through its duly authorized officers and representatives, shall make the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (250,000) in state and county funds, as outlined in the budget (Exhibit A), available to the Recipient in the form of a cost-reimbursement grant on the Effective Date of this Agreement.

C. Cost-Reimbursement Grant/Reimbursement Rate

1. The Recipient may request reimbursement for expenses incurred in completing the project for up to EIGHTEEN (18) months after the Effective Date of this Agreement.
2. The Board shall reimburse the Recipient for expenses
 - a. in the form of a cost-reimbursement grant
 - b. after the Recipient requests to be reimbursed and submits itemized receipts/invoices and either a cancelled check or copy of the relevant credit card statement as documentation of payment.
3. The Board shall not reimburse the Recipient for purchases made with cash.
4. The Board shall not reimburse the Recipient for expenses incurred prior to the date the Recipient’s application was filed with the Kentucky Office of Agricultural Policy.
5. The Board shall not reimburse the Recipient if the request is submitted more than EIGHTEEN (18) months after the Effective Date.
6. The Board shall reimburse the Recipient FIFTY CENTS (\$.50) per DOLLAR (\$1.00) of approved documented payments.
7. If applicable, the Recipient shall supply a description, serial number, license plate number, and photograph of any property purchased with Kentucky Agricultural Development Funds at the time of request for reimbursement.

D. Utilization of Funds

1. Purpose

The Recipient shall use the state and county funds to construct a farmers market pavilion in downtown Independence, Kentucky.

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 TWENTY PERCENT (20%) 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. Expiration of Funds

1. If any portion of the funds given by the Board to the Recipient under Section II.B. have not been committed or encumbered within EIGHTEEN (18) months 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 expiration of the Agreement.
2. 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.

F. Moratorium on Sale of Facility (10 years)

1. The Recipient shall own and maintain the facility for at least TEN (10) years from the Effective Date.
2. In the event the Recipient decides to sell the facility prior to the expiration of the TEN (10) year moratorium, the Recipient shall be required within thirty (30) days of the date of sale to:
 - a. notify the Board in writing; and
 - b. refund all disbursed funds to the Board on a pro-rated basis.
3. If the Recipient does not refund the monies in accordance with the terms set forth above, the Recipient shall not be eligible to receive additional Board or Kentucky Agricultural Finance Corporation funds.
4. 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., below.

G. Agricultural Events

The Recipient shall give agricultural events first priority to utilize the farmers market facilities.

H. KOAP Right to Inspect

The Kentucky Office of Agricultural Policy reserves the right to inspect the facilities related to the Kentucky Agricultural Development Board's or the Kentucky Agricultural Finance Corporation's funding associated with this project.

I. Acknowledgement of Funding Source

1. All grants are intended to further the mission of the Kentucky Agricultural Development Fund (KADF) of diversifying and modernizing Kentucky's farm economy.
2. Therefore, the Recipient 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.
3. Furthermore, the Recipient shall utilize where possible, the KADF logo which is available for download at <https://www.kyagr.com/agpolicy/Kentucky-Agricultural-Development-Fund-Administrators.html>. Copies of publications, brochures, etc. shall be submitted in conjunction with the Recipient's Progress Reports as required by Section VI, below.

4. The Recipient shall display signage provided by the KOAP. The Recipient shall keep the signage in place for the remainder of the duration of the project as defined in Section III, below. The Recipient shall include the KADF logo in any additional signage that is displayed promoting the facility.

**SECTION III.
DURATION OF LEGAL AGREEMENT**

The Legal Agreement herein shall be in effect for TEN (10) 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 KOAP with specific suggested modifications or additions to the Agreement.
2. The KOAP 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 final 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 THE RECIPIENT**

A. Project Annual Report

1. Annual Reports

The Recipient shall submit the Progress Reports (Exhibit B) no later than 30 days after the anniversary of the Effective Date of this Agreement for the duration of the Agreement or until the Recipient receives a Completion Letter from the KOAP.

2. Content

a. Annual Report Form: Provides the minimum information required to assess the success of this KADF investment. The form is available on-line at the web address in A.3. above.

b. Additional Information: The Recipient shall provide the Board with any additional information, data, and statistics to allow the Board to sufficiently evaluate the impact of this investment, including but not limited to detailing:

- i.** the number and types of vendors,
- ii.** market sales, and
- iii.** other events held at the market.

3. Submission

The Recipient shall submit the Project Annual Report form by email to: KADF@ky.gov or upload to our secure FTP site at <https://go.usa.gov/xmTBP> (user ID: kadf reports / password: Admin23@). Additional information submitted that may be difficult to electronically transmit may be mailed to KOAP, 404 Ann Street, Frankfort, KY 40601 (Attn: Compliance Dept.).

B. 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. Additionally, non-compliance may affect the Recipient's ability to access other grant programs operated using Kentucky Agricultural Development Funds.

**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 Kentucky 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 KOAP, 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 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 Kentucky 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 KOAP 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,
2. If the Recipient desires to negotiate a settlement, a written request must be received in the KOAP offices within the thirty (30) day timeframe. A meeting will be scheduled and the settlement offer communicated to the Board for review, and
3. Submit its last Progress Report (Exhibit B).

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.

KENTON COUNTY FISCAL COURT

By: _____
Scott Gunning _____
Assistant County Administrator **Date**
Authorized Representative of the Kenton County Fiscal Court

**COMMONWEALTH OF KENTUCKY
KENTUCKY AGRICULTURAL DEVELOPMENT BOARD**

By: _____
Brian Lacefield _____
Executive Director **Date**
Kentucky Office of Agricultural Policy
Authorized Representative of the Kentucky Agricultural Development Board

APPROVED AS TO FORM AND LEGALITY:

Brian Murphy
General Counsel
Kentucky Office of Agricultural Policy

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Legal Agreement between the KADB and the Kenton County Fiscal Court was mailed via U.S. Mail, first class, postage pre-paid on this _____ day of _____, 2023, to:

Kenton County Fiscal Court
c/o Scott Gunning
1840 Simon Kenton Way
Covington, KY 41011
Recipient

And the original shall be maintained on file at the Kentucky Office of Agricultural Policy

KOAP Staff

Exhibit A

Section 1: Project Budget

Note: Only project expenses incurred **after** receipt of the application by the Kentucky Office of Agricultural Policy are eligible for funding.

Budget Category/Item	Description	Total Item Amount	Other Funds** (Match)	KADB Funds Requested*
<i>Example: Cooler</i>	<i>10'x20' double door walk-in</i>	<i>\$12,000</i>	<i>\$6,000</i>	<i>\$6,000</i>
	General building construction	325,000		162,500
	Site development	175,000		87,500
	HVAC Construction	30,000		
	Electrical construction	45,000		
	Safety and security	15,000		
	Plumbing construction	55,000		
	Construction contingency	32,250		
	Market escalation	64,500		
	Budget Totals:	741,750		250,000

* In general, KADF funds should be 50% or less of the total project costs.

Exhibit B

Retain all records for 7 years. Contact us at KADF@ky.gov for additional forms.



Kentucky Agricultural Development Fund PROJECT PROGRESS REPORT *Farmers Market*



Date: _____ Application Number: _____ Amount KADF Grant/Loan approved \$ _____

County: _____ Reporting Period: _____ to _____

Recipient/Organization: _____

Reporting Contact: _____ Telephone: _____

E-mail: _____

1. Progress: Estimate the percentage of project completion to date: _____ %
If not 100% complete, then please provide a timeline for completion of the project:

2. Type of Vendors:	Number of Vendors:
a. Type: _____	# _____
b. Type: _____	# _____
c. Type: _____	# _____
d. Type: _____	# _____
e. Type: _____	# _____
f. Type: _____	# _____
g. Type: _____	# _____

3. Total Market Sales for the year \$ _____

4. The number of farmers you have impacted this year _____

5. If applicable, according to your legal agreement, have you included the required Annual Financial Statements with balance sheet of profit/loss? Yes _____ No _____

Other Events held at the market other than a Farmers Market? If yes, include event and total market sales for the year:

All reporting forms must be sent electronically to the compliance department either at KADF@ky.gov or through the Secure Report Submission site: <https://go.usa.gov/xmTBP> :

- UserName: kadf reports
- Password: Admin23@
- Select "Program Reports" folder, select "Upload Files" and follow directions.
- Only KOAP staff will be able to view/access your submitted reports.
- Please name files in the format county_program_app#_type (e.g. Adair_CAIP_18-0130_6-month)

Reporting Record:

6-month Report ___ Year 1 Report ___ Year 2 Report ___ Year 3 Report ___ Year 4 Report ___ Year 5 Report ___

Reporting is required even if the project is complete.