

**HARDIN COUNTY FISCAL COURT
RESOLUTION NO. 2012-082**

BE IT RESOLVED, upon recommendation of Judge/Executive Harry L. Berry, to approve an agreement between the Kentucky Agricultural Development Board and the Hardin County Fiscal Court for the Deceased Farm Animal Disposal Assistance Program.

ADOPTED, by Hardin County Fiscal Court in its regular meeting on 12 June, 2012.



Harry L. Berry
Hardin County Judge/Executive

ATTEST




Kenneth L. Tabb
Hardin County Clerk

RECEIVED

JUN 14 2012

A2012-0071

GOVERNOR'S OFFICE OF
AGRICULTURE POLICY

**LEGAL AGREEMENT BETWEEN
THE KENTUCKY AGRICULTURAL DEVELOPMENT BOARD
AND
THE HARDIN COUNTY FISCAL COURT
FOR THE DECEASED FARM ANIMAL DISPOSAL ASSISTANCE PROGRAM
A2012-0071**

WHEREAS, the **Kentucky Agricultural Development Board** ("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; and

WHEREAS, 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 a Legal Agreement with the Hardin County Fiscal Court ("Recipient") in furtherance of said goals and objectives; and

WHEREAS, Recipient has submitted an Application (A2012-0071) which after full review and consideration during the May 18, 2012 Board meeting, the Board has approved said Application and now seeks to enter into a Legal Agreement with the Recipient to set forth the rights and obligations of the parties.

WITNESSETH

That the Board and Recipient, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby agree as follows:

I. FUNDING

A. Amount of Funding

The Board, subject to the terms, conditions and restrictions set forth herein, agrees to provide up to the sum of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500) in Hardin County funds to the Hardin County Fiscal Court in consideration to implement a Deceased Farm Animal Disposal Assistance Program (DFADAP) for Hardin County pursuant to the Application filed by the Recipient. Recipient shall be required to document matching funds applicable to the specific program. Funds shall be available upon execution of the Legal Agreement herein; and

B. Use of County Funds

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

C. Voidable Legal Agreement

Notwithstanding any other provision in this Legal Agreement, this Agreement shall be voidable upon the notification by the Board of its inability to fund any project for any reason. 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.

II. PROGRAM GUIDELINES

A. Applicable Guidelines

The Recipient agrees to abide by and follow the minimum *DFADAP Guidelines (2012)*, which are available at <http://agpolicy.ky.gov> and incorporated by reference herein; and

B. Conflict Between Guidelines and Legal Agreement

Should a conflict exist, either real or perceived, between this Legal Agreement and the Board's Program Guidelines, said conflict shall be submitted to the Board for review. The Board shall then resolve the issue and transmit its resolution to the appropriate Parties in writing; and

C. 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 Recipient shall acknowledge in any grants awarded, publications, brochures, articles, advertising, correspondence, or promotional projects and activities that a portion of the funding for this project was provided by the Kentucky Agricultural Development Fund. Furthermore, the Recipient shall utilize where possible the KADF logo which is available for download at <http://agpolicy.ky.gov>. Copies of said publications, brochures, etc. shall be submitted in conjunction with the Recipient's reporting.

III. DURATION OF LEGAL AGREEMENT

A. Duration

The Legal Agreement herein shall be in full force and effect for twelve months from the date of execution of the Legal Agreement herein, which is defined as the date of signature by the Executive Director of the Governor's Office of Agricultural Policy. The Recipient agrees to continue to comply with the reporting requirements set forth in Section VI below, upon completion of the program; and

B. Disbursement of Funds

The Recipient shall disburse these funds in accordance with the *DFADAP Guidelines (2012)*, specifically for expenses incurred throughout the duration of the Legal Agreement herein. Said funds shall be utilized as outlined in the Budget in the Recipient's Application; and

C. Return of Unused Funds

Recipient shall return all unused funds, including but not limited to, unused administrative funds and unearned interest to the Board or its duly authorized representative on or before the expiration of the Legal Agreement herein. Other paragraphs such as the record keeping Section shall remain in effect after said date.

IV. MODIFICATION

A. Procedure for Amendment

No modification or amendment of this Legal Agreement shall be binding unless made by a written instrument executed by both parties of equal formality with this Legal Agreement.

Specifically, any and all proposed changes or amendments shall be made in writing and submitted to the Board for approval.

B. Incorporation of Amendment

Upon receipt of approval said modification or amendment shall be incorporated as an Amendment to the original Legal Agreement.

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; and

B. Business Records Defined

For purposes of this Legal 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; and

C. Format of Business Records

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

D. Substantiation of Expenditures

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

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 Legal Agreement herein; and

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.

VI. REPORTS REQUIRED FROM RECIPIENT

A. Deadlines for Submittal

At the conclusion of the project, Recipient shall submit a final report within thirty (30) days of the completion date. (Eg., if the execution date of the Legal Agreement is March 30, 2012, the final report is due on or before April 30, 2013.) Said final report shall include the information specified in Subsection VI.B below. Recipient agrees to supply any additional information necessary for a complete accounting of the expenditure of Kentucky Agricultural Development Funds for the project herein; and

B. Substance of Reports

Reports shall include an accounting, including receipts, for use of all funds, including match funds, along with any other information requested by the Board or its authorized representative. Reports shall be submitted electronically and can be found on the Governor's Office of Agricultural Policy's website: http://agpolicy.ky.gov/funds/program_reporting.shtml. Reports should be e-mailed to: GovKYAGPolicy@ky.gov; and

C. 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.

VII. ASSIGNMENT

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

VIII. SUB-CONTRACTS

A. Board Approval Required

The Recipient shall receive approval from the Kentucky Agricultural Development Board's Recipient Review Committee prior to entry of an agreement between the Recipient and a subcontractor. At the time of the request for approval, the Recipient shall provide the necessary documentation (in paper or electronic form) to aide the committee members, including, but not limited to, details regarding the scope of the subcontract and cost estimates.

B. Terms of Agreement

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

IX. AUDIT of RECORDS

The Recipient, the contractor, as defined in KRS 45A.030(9) 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 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 contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject the Kentucky Open Records Act, KRS 61.870 to 61.884.

In the event of a dispute between the contractor 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.

X. COMPLIANCE WITH STATE AND FEDERAL LAWS

A. Recipient's Compliance

The Recipient submits that, to the best of its knowledge, it complies with all state and federal laws and regulations.

B. Conflict of Laws

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

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 Kentucky Agricultural Development Board's Recipient Review Committee for approval as an Addendum to the Legal Agreement herein.

XII. RELATED PARTY TRANSACTIONS

The Recipient shall seek prior approval from the Kentucky Agricultural Development Board's Recipient Review Committee for all business transactions or agreements with related parties. For purposes of this Legal 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.

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.

XIV. WAIVER OF LIABILITY

In accepting the grant funds offered and approved by the Board, the Recipient, its agents, employees, representatives, 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.

XV. TERMINATION

The Board shall have the right to terminate this Legal Agreement upon thirty (30) days written notice via certified mail, return receipt requested, to the Recipient. Specifically, the Board may terminate this Legal 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 for Convenience of the Commonwealth

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

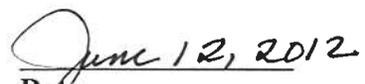
B. Board Not Liable for Damages

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 Legal Agreement with the Recipient.

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

HARDIN COUNTY FISCAL COURT

By: 
HARRY BERRY
Hardin County Judge Executive
Authorized Representative

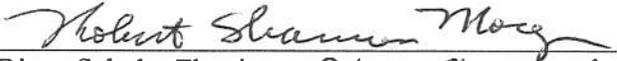

Date

**COMMONWEALTH OF KENTUCKY
KENTUCKY AGRICULTURAL DEVELOPMENT BOARD**

By: 
ROGER THOMAS
Executive Director
Governor's Office of Agricultural Policy
Authorized Representative of KADB


Date

APPROVED AS TO FORM AND LEGALITY:


~~Diane Schuler Fleming~~ Robert Shannon Morgan
~~General Counsel~~
Governor's 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 Hardin County Fiscal Court was mailed via U.S. Mail, first class, postage prepaid on this 20th day of June, 2012 to:

Hardin County Fiscal Court
c/o Hon. Harry Berry
P.O. Box 568
Elizabethtown KY 42702
Recipient

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


~~Diane Schuler Fleming~~ Robert Shannon Morgan
~~General Counsel~~

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