

**MADISON COUNTY FISCAL COURT
MADISON COUNTY, KY
RESOLUTION 20-126**

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**A RESOLUTION APPROVING AN MOA BETWEEN LEXINGTON FAYETTE URBAN
COUNTY GOVERNMENT AND THE COUNTY OF MADISON TO AID IN THE
RESTORATION OF PUBLIC SAFETY, HEALTH, AND WELFARE OF A COMMUNITY
STRICKEN BY AN EMERGENCY OR DISASTER**

WHEREAS, both the LFUCG and the county of Madison are both geographically vulnerable to a variety of emergencies and disasters; and

WHEREAS, the parties to this Agreement recognize the importance of having each local entity, which is a signatory of this Agreement, respond in a coordinated and efficient manner to restore the public safety, health, and welfare of a community stricken by an emergency or disaster regardless of whether that community is located in Fayette or Madison Counties; and

WHEREAS, Kentucky Revised Statutes, Chapter 65.220 authorizes local governmental units to cooperate with other localities on a basis of mutual advantage and to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, Kentucky Revised Statutes 65.240 provides for any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of KRS 65.210 to 65.300. Appropriate action by ordinance, resolution or otherwise pursuant to law, of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force; and

WHEREAS, the parties to this Agreement have chosen to become a party to this Agreement and wish to provide mutual aid and assistance to other parties in time of emergency or disaster; which is attached hereto this Resolution.

NOW, THEREFORE, BE IT RESOLVED THAT THE FISCAL COURT DOES HEREBY APPROVE THIS RESOLUTION AND AUTHORIZES THE JUDGE EXECUTIVE TO EXECUTE SAME ON BEHALF OF THE COUNTY.

Motion made by Tom Botkin, seconded by John Tudor.

Vote:

Yes

No

Judge Reagan Taylor
Magistrate Larry Combs
Magistrate John Tudor
Magistrate Roger Barger
Magistrate Tom Botkin

<u>X</u>	<u> </u>
<u> </u>	<u> </u>
<u>X</u>	<u> </u>
<u>X</u>	<u> </u>
<u>X</u>	<u> </u>

Signed:

R-T
Reagan Taylor
Madison County Judge Executive

Attested:

K B BCC
Kenny Barger
Madison County Clerk

INTERLOCAL EMERGENCY MANAGEMENT MUTUAL AID AND ASSISTANCE AGREEMENT

This agreement is between Lexington Fayette Urban County Government (LFUCG) and the Madison County Fiscal Court. Each party agrees to provide mutual aid and assistance to each other under the terms and conditions contained herein. This document is drafted in accordance with KRS 65.210 to 63.300.

WHEREAS, both the LFUCG and the county of Madison are both geographically vulnerable to a variety of emergencies and disasters; and

WHEREAS, the parties to this agreement recognize the importance of having each local entity, which is a signatory of this agreement, respond in a coordinated and efficient manner to restore the public safety, health, and welfare of a community stricken by an emergency or disaster regardless of whether that community is located in Fayette or Madison Counties; and

WHEREAS, Kentucky Revised Statutes, Chapter 65.220 authorizes local governmental units to cooperate with other localities on a basis of mutual advantage and to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities and;

WHEREAS, Kentucky Revised Statutes 65.240 provides for any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of KRS 65.210 to 65.300. Appropriate action by ordinance, resolution or otherwise pursuant to law, of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

WHEREAS, the parties to this agreement have chosen to become a party to this agreement and wish to provide mutual aid and assistance to other parties in time of emergency or disaster;

NOW, THEREFORE, ALL PARTIES TO THIS AGREEMENT AGREE AS FOLLOWS:

SECTION 1. DEFINITIONS

As used in this agreement "Agreement" means this mutual aid agreement.

As used in this agreement "Aid and assistance" means personnel, equipment, facilities, services, supplies and other resources.

As used in this agreement "Authorized representative" means the employee of a party, who has been authorized in writing by that party, to request, to offer, or to otherwise provide aid and assistance under the terms of this agreement.

As used in this agreement "Disaster" means any incident or situation declared as such by executive order of the Governor of Kentucky, or the President of the United States pursuant to federal law, as a result of an occurrence or imminent threat of widespread or severe damage, injury or loss of life or property, resulting from any natural, technological, or man-made emergency situation, including incidents caused by accident, military or paramilitary cause.

As used in this agreement "Emergency" means any incident or situation which poses a major threat to public safety so as to cause, *or* threaten to cause, loss of life, serious injury, significant damage to property, *or* major harm to public health *or* the environment and which a local emergency response agency determines is beyond its capabilities.

As used in this agreement "Local Emergency Declaration" means the written document signed by the chief executive officer of a local entity that specifies and attests that a disaster or emergency has occurred and the resulting emergency situation is beyond the capability of the local entity to manage using all local resources within its geographical limits.

As used in the agreement "Exercise and or planned Community Event" means the drilling, testing, evaluating of emergency plans using field play and or an event planned in advance that may require additional resources to manage.

As used in this agreement "Local Emergency Management Agency", as that term applies within the state of Kentucky, means the organizational unit of a city, county, urban-county, or charter county government, created pursuant to Kentucky Revised Statutes Chapter 39B, with primary jurisdiction, responsibility, and

As used in this agreement "Public Agency" as used in KRS 65.210 to 65.300, unless the context otherwise requires, "public agency" means any political subdivision of this state, any agency of the state government or of the United States, a sheriff, any county or independent school district, and any political subdivision of another state. It also means a state-supported or private institution of higher education and a county or independent public school district for the purposes of entering into a joint agreement to establish and operate a program or facility, including a center for child learning and study, designed to help one (1) or more schools meet any of the goals set forth in KRS 158.6451, or for the investment of funds. If a private institution of higher education proposes to participate in an agreement pursuant to the Interlocal Cooperation Act, the Attorney General shall determine if the proposal is compatible with the United States Constitution, as part of the review of the agreement provided in KRS 65.260(2).

As used in this agreement "Party" means a public agency that has officially approved and adopted this agreement by resolution of its governing body. The term may also include a private organization such as an Emergency Medical Service organization that may enter into the agreement in order to participate in the mutual aid agreement as a provider of mutual aid. Such a private organization must be incorporated or otherwise possess the express power and authority to enter into and execute a contract.

As used in this agreement "Provider" means a party that furnishes, or is requested to furnish, aid and assistance to a recipient pursuant to this agreement.

As used in this agreement "Recipient" means a party that requests or receives aid and assistance from a provider pursuant to this agreement.

As used in this agreement, "Emergency Responder" means a person who is so designated by the public agency and may be required to possess a license, certificate, permit, or other official recognition for the person's expertise in a particular field or area of knowledge; and whose assistance is desirable during an emergency. The term includes, but is not limited to, the following:

1. Firefighters, hazardous materials personnel, specialized rescue personnel, extrication personnel, water rescue personnel, and other specialized personnel;
2. Emergency medical services personnel;
3. Physicians;
4. Nurses;
5. Mental health practitioners, veterinary practitioners, and other public health practitioners;
6. Emergency management personnel;
7. Public works personnel and
8. Law Enforcement officer

SECTION II. INITIAL RECOGNITION OF PRINCIPLES BY ALL PARTIES; AGREEMENT PROVIDES NO RIGHT OF ACTION FOR THIRD PARTIES

As this agreement is a reciprocal contract, it is recognized that any party to this agreement may be requested by another party to be a provider. It is mutually understood that each party's foremost responsibility is to its own citizens. The provisions of this agreement shall not be construed to impose an unconditional obligation on any party to this agreement to provide aid and assistance pursuant to a request from another party. Accordingly, when a party is requested to provide aid and assistance, it may in good faith deem itself unavailable to be a provider when the resources being requested are necessary to provide reasonable and adequate protection for its own citizens. A party unable to honor a request for aid and assistance will so inform the party initiating a request.

Given the finite resources of any party and the potential for each party to be unavailable for aid and assistance at a given point in time, the parties mutually encourage each other to enlist other local entities in mutual aid and assistance efforts and to enter into such agreements accordingly. Likewise, the parties fully recognize that there is ample public purpose for entering into this agreement, and accordingly shall attempt to render assistance in accordance with the terms of the agreement to the fullest extent possible.

All functions and activities performed under this agreement are hereby declared to be governmental functions. Functions and activities performed under this agreement are carried out for the benefit of the general public and not for the benefit of any specific individual or individuals. Accordingly, this agreement shall not be construed as or deemed to be an agreement for the benefit of any third parties or persons and no third parties or persons shall have any right of action under this agreement for any cause whatsoever. All immunities provided by law shall be fully applicable.

KY political subdivisions wishing to enter into an agreement for interlocal cooperation must provide in writing at the time of the request; for its duration, its purpose, the manner of financing, staffing, and supplying the joint undertaking and of establishing and maintaining a budget therefore, the methods that may be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon partial or complete termination

SECTION III. PROCEDURES FOR REQUESTING ASSISTANCE

Mutual aid and assistance shall not be requested unless the resources available within a recipient's disaster or emergency-stricken area are deemed inadequate by a recipient. In these instances, a recipient may request mutual aid and assistance by communicating a request to a provider, indicating the request is made pursuant to this mutual aid agreement.

A request shall be followed as soon as practicable by a written confirmation of the request, including a copy of a local emergency declaration, if applicable, and a statement or completed form describing the specific aid and assistance needed. All requests for mutual aid and assistance shall be transmitted by a recipient's authorized representative or local emergency management agency as set forth below. A list of authorized representatives for each party shall be attached to the officially-approved and adopted copy of this agreement. In the event of a change in personnel, unless otherwise notified, the presumption will be that the successor to that position will be the authorized representative.

A. METHOD OF REQUEST FOR MUTUAL AID AND ASSISTANCE A recipient shall initiate a request as follows:

1. **REQUESTS ROUTED THROUGH A RECIPIENTS LOCAL EMERGENCY MANAGEMENT AGENCY:** A recipient may directly contact the local emergency management agency that serves the recipient's geographical area of operation and provide the information referenced in paragraph B of Section III. The local emergency management agency shall then contact provider parties on behalf of a recipient to coordinate the provision of mutual aid and assistance.
2. **REQUESTS MADE DIRECTLY TO A PROVIDER:** A recipient may directly contact a provider's authorized representative, setting forth the information referenced in paragraph B of Section III. All communications shall be conducted directly between a recipient and provider. A provider and a recipient using this option shall be responsible for keeping their respective local emergency management agencies advised (within an hour of the request) of the request, deployment time, status of response activities, return to service.

B. REQUIRED INFORMATION: Each request for aid and assistance shall be accompanied by the following information, in writing or by other available means, to the extent known:

1. **Stricken Area and Status:** A general description summarizing the condition of the community (i.e., whether the disaster or emergency is imminent, in progress, or has already occurred) and of the damage sustained to date;
2. **Services:** Identification of the service function(s) for which assistance is needed and the particular type of assistance needed;
3. **Infrastructure Systems:** Identification of the type(s) of the public infrastructure system for which assistance is needed and the type of work assistance needed;
4. **Aid and Assistance:** The amount and type of personnel, equipment, materials and supplies needed and a reasonable estimate of the length of time they will be needed;
5. **Provider's Traveling Employee Needs:** Unless otherwise specified by a recipient, it is mutually understood that a recipient will provide for the basic needs of provider's traveling employees, including but not limited to food, water and sanitary facilities. A recipient shall pay for all reasonable and documented out-of-pocket costs and expenses of a provider's personnel, including transportation expenses for *travel* to and from the stricken area, via a detailed invoice to be provided to the recipient from the provider within 30 days of the completion of the particular mission. Further, if an overnight stay is required, a recipient shall house in addition to feeding the provider's personnel at the recipient's sole cost and expense. If a recipient cannot provide such food and/or housing at the disaster

oremergency area, a recipient shall specify in its request for assistance that self-sustained and supported personnel are needed.

6. Facilities: The need for sites, structures or building outside a recipient's geographical limits to serve as relief centers or staging areas for incoming emergency goods and services; and
7. Meeting Time and Place: An estimated time and a specific place for a representative of a recipient to meet the personnel and resources of any provider.

C. STATE AND FEDERAL ASSISTANCE: A recipient shall be responsible for coordinating all requests for state or federal assistance with the local emergency management agency with the jurisdiction.

SECTION IV. PROVIDER'S ASSESSMENT OF AVAILABILITY OF RESOURCES AND ABILITY TO RENDER ASSISTANCE.

When contacted by a recipient or a local emergency management agency regarding a request for aid and assistance, a provider's authorized representative shall assess the provider's own local situation in order to determine the availability of personnel, equipment and other resources. If a provider's authorized representative determines that the provider has available resources, a provider's authorized representative shall so notify the recipient and/or the local emergency management agency (whichever communicated the request). A Provider shall submit a written acknowledgment of a request for aid and assistance received from a recipient or a local emergency management agency. The written acknowledgment must indicate a provider's decision to either render aid and assistance or to reject a request; the answer shall be transmitted by the most efficient and practical means to a recipient or a local emergency management agency. A provider's acknowledgment shall contain the following information:

- a. In response to the items contained in the request, a description of the personnel, equipment and other resources available;
- b. The projected length of time such personnel, equipment and other resources will be available to serve a recipient particularly if the period is projected to be shorter than one week (as provided in the "Length of Time for Aid and Assistance" section (Section VI) of this agreement).
- c. The estimated time when the assistance provided will arrive at the location designated by the authorized representative of the recipient; and
- d. The name of the person(s) to be designated as the provider's supervisory personnel (pursuant to the Supervision and Control" section (Section V) of this agreement).

When a provider submits a written acknowledgement to a local emergency management agency, the local emergency management agency shall notify a recipient's authorized representative and forward the information received from a provider. A recipient or a local emergency management agency shall respond to a provider's written acknowledgment by executing and returning a copy of the request form to a provider by the most efficient practical means, maintaining a copy for its file.

SECTION V. SUPERVISION AND CONTROL

A provider shall designate supervisory personnel among its employees sent to render aid and assistance to a recipient. As soon as practical, a recipient shall assign work tasks to a provider's supervisory personnel and, unless specifically instructed otherwise, a recipient shall have the responsibility for coordinating communications between a provider's supervisory personnel and a recipient. A recipient shall provide necessary credentials to a provider's personnel authorizing them to operate on behalf of a recipient.

Based upon the assignments set forth by a recipient, a provider's supervisory personnel shall:

- a. Have the authority to assign work and establish work schedules for a provider's personnel. Further, have direct supervision and control of a provider's personnel, equipment and other resources which shall, at all times, remain with a provider's supervisory personnel. A provider should be prepared to furnish communications equipment sufficient to maintain communications among its respective operating units, and if this is not possible, a provider shall notify a recipient accordingly. It is expressly understood that this may involve a recipient providing radio frequencies to a provider while a provider is assisting a recipient;
- b. Maintain daily personnel time records, material records and a log of equipment hours; and;
- c. Report work progress to a recipient at mutually agreed upon intervals.

SECTION VI. LENGTH OF TIME FOR AID AND ASSISTANCE; REVIEWABILITY; RECALL

The duration of a provider's assistance shall be for the period agreed upon by the authorized representatives of a provider and a recipient.

As noted in Section II of this agreement, a provider's personnel, equipment and other resources shall remain subject to recall by a provider to provide for its own citizens if circumstances so warrant. A provider shall make a good faith effort to provide at least twenty-four (24) hours advance notice to a recipient of its (provider's) intent to terminate a mission, unless such notice is not practicable. In such a case, as much notice as is reasonable under the circumstances shall be provided.

SECTION VII. REIMBURSEMENTS

Except as otherwise provided below, it is understood that a recipient shall pay to a provider reasonable and documented expenses incurred by a provider as a result of extending assistance to a recipient, such reimbursement obligation as detailed below to commence 12 hours after the provider support is on scene, except travel expenses, and only if the recipient has signed a local emergency declaration for the event for which mutual aid is requested. The terms and conditions governing reimbursement for any assistance provided under this agreement shall be in accordance with the following provisions, unless otherwise agreed in writing by a recipient and a provider. A recipient shall be ultimately responsible for reimbursement of all eligible reasonable and documented expenses.

- A. Personnel - During the period of assistance, a provider shall continue to pay its employees according to its then prevailing ordinances, rules and regulations. A

recipient shall reimburse a provider for all direct and indirect payroll costs and expenses including travel expenses incurred during the period of assistance, including, but not limited to, employee retirement benefits as provided by Generally Accepted Accounting Principles (GAAP). However, as stated in Section IX of this agreement, a recipient shall not be responsible for reimbursing any amounts paid or due as benefits to a provider's personnel under the terms of the applicable Kentucky Worker's Compensation Law.

- B. Equipment - A provider shall be reimbursed by a recipient for the use of its equipment during the period of assistance according to either a pre-established local or state hourly rate or according to the actual replacement, operation and maintenance expenses incurred. For those instances in which costs are reimbursed by the Federal Emergency Management Agency (FEMA), the FEMA-eligible direct costs shall be determined in accordance with 2 C.F.R. 200 subpart E. A provider shall pay for all repairs to its equipment as determined necessary by its on-site supervisor(s) to maintain such equipment in safe and operational condition. At the request of a provider, fuels, miscellaneous supplies and minor repairs may be provided by a recipient, if practical. The total equipment charges to a recipient shall be reduced by the total value of the fuels, supplies and repairs furnished by a recipient and by the amount of any insurance proceeds received by a provider. Administrative and management costs for major disasters and emergencies will be paid in accordance with 44 CFR part 207.
- C. Materials and Supplies - A provider shall be reimbursed for the reasonable and documented costs of all materials and supplies furnished by it and used or damaged during the period of assistance, except for the costs of equipment, fuel and maintenance materials, labor and supplies, which shall be included in the equipment rate established in subsection B of Section VII, unless such damage is caused by gross negligence, willful and wanton misconduct, intentional misuse or recklessness of a provider's materials and supplies used by them during the period of assistance. The measure of reimbursement shall be determined in accordance with 2 C.F.R. 200 subpart E. In the alternative, the parties may agree that a recipient will replace, with like kind and quality as determined by a provider, the materials and supplies used or damaged. If such an agreement is made, it shall be in writing.
- D. Record Keeping - A recipient or its representative local emergency management agency, shall provide information, directions and assistance for record keeping to provider's personnel. A provider shall maintain records and submit invoices for reimbursement by a recipient in accordance with the procedures and format used or required by FEMA publications, including 44 C.F.R. Part 13 and applicable Office of Management and Budget (OMB) Circulars.
- E. Payment; Other Miscellaneous Matters as to Reimbursement - The reimbursement costs and expenses with an itemized notice shall be forwarded as soon as practicable after the costs and expenses are incurred, but not later than sixty (60) days following the period of assistance, unless the deadline for identifying damage is extended in accordance with 44 C.F.R. Part 206. A recipient shall pay the bill or advise of any disputed items, not later than sixty (60) days following the billing date. These time frames may be modified in writing by mutual agreement.

SECTION VIII. RIGHTS AND PRIVILEGES OF PROVIDER'S EMPLOYEES

In accordance with Kentucky Revised Statutes, 65.240 (1) whenever a provider's employees are rendering aid and assistance pursuant to this agreement, such employees shall retain the same powers, duties, immunities and privileges they would ordinarily possess if performing their duties within the geographical limits of a provider.

SECTION IX. PROVIDER'S EMPLOYEES COVERED AT ALL TIMES BY PROVIDER'S WORKER'S COMPENSATION POLICY

- A. In accordance with Kentucky Revised Statutes Chapter 39B, all pension, relief, disability, death benefits, worker's compensation benefits, and other benefits enjoyed by emergency responders rendering mutual aid under this mutual aid agreement extend to the services the emergency responders perform outside their respective jurisdictions, as if those services had been rendered in their own jurisdiction.

SECTION X. AMENDMENTS

- (1) Before any agreement made pursuant to KRS 65.210 to 65.300 shall become operative or have force and effect, a certified copy thereof shall be filed with the county clerk of the county which is party to the agreement, the county clerk of the county wherein any other political subdivision of the state is located which is party to such agreement, and with the Secretary of State; and
- (2) Provided that the terms of the agreement are not being substantively changed, whenever an existing agreement that complies with the requirements of KRS 65.210 to 65.300 is amended to join new parties or to remove existing parties, approval of the Attorney General or the Department for Local Government under KRS 65.260 and approval of the agency or officer with jurisdiction under KRS 65.300 shall not be required for the amendment to be effective.

SECTION XI. INITIAL DURATION OF AGREEMENT; RENEWAL; TERMINATION

This agreement shall be binding for not less than one (1) year from its effective date, unless terminated upon at least thirty (30) days written notice by a party as set forth below. Thereafter, this agreement shall continue to be binding upon the parties in subsequent years and shall be considered to renew automatically from year to year, unless terminated by written notification as provided above. A party terminating their participation in this agreement shall submit a copy of their written termination notice to the other party or parties to the agreement. A party's termination of this agreement shall not affect a party's reimbursement obligations or any other liability or obligation incurred under the terms of this agreement. Once a termination is effective, a terminated entity shall no longer be a party to this agreement, but this agreement shall continue to be in force among the remaining parties.

SECTION XII. HEADINGS

The headings of various sections and subsections of this agreement have been inserted for convenient reference only and shall not be construed as modifying, amending or affecting in any way the express terms and provisions of this agreement.

SECTION XIII. SEVERABILITY

Should any clause, sentence, provision, paragraph or other part of this agreement be judged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this agreement. Each of the parties declares that it would have entered into this agreement irrespective of the fact that any one or more of this agreement's clauses, sentences, provisions, paragraphs or other parts have been so declared invalid. Accordingly, it is the intention of the parties that the remaining portions of this agreement shall remain in full force and effect without regard to the clause(s), sentence(s), provision(s), paragraph(s) or other part(s) invalidated.

SECTION XIV. EFFECTIVE DATE, APPROVAL AND ADOPTION

This agreement shall take effect upon approval and adoption of the following resolution by each of the entities seeking to become a party to the agreement and when such agreement is approved by the Kentucky Attorney General/Department for Local Government as required under KRS 65.260 is recorded with the applicable Kentucky county clerks offices .

Now, therefore, be it resolved and hereby approved by

Lexington Fayette Urban County Government

Madison County

That the foregoing Interlocal Mutual Aid and Assistance between the Lexington Fayette Urban County and the Madison County Fiscal Court is hereby approved and adopted, and that Commissioner of Public Safety _____ Lexington Fayette Urban County Government Emergency Management and Madison County Emergency Management Agency are hereby authorized to execute the agreement and to request, offer, or otherwise provide aid and assistance under the terms of the agreement for and on behalf of Lexington Fayette Urban County Government and Madison County, public entity established under the laws of the Commonwealth of Kentucky and to file a copy of this resolution with the Kentucky Department of Local Government.

Primary Representative, Official Title
Lexington Fayette Urban County Government

Name of Alternate Representative
Lexington Fayette Urban County Government

Dustin Heiser, Director
Primary Representative, Official Title
Madison County Emergency Management Agency

Jennifer Hitch, Deputy Director
Name of Alternate Representative
Madison County Emergency Management Agency

Passed and approved this 24th day of November 2020

Name and Title (Lexington Fayette Urban County Government)

Name and Title (Madison County)

CERTIFICATION

I, _____ duly appointed _____
(Title)
of _____, do hereby certify that the above is true and correct
(City, County, or Other Entity)
copy of a resolution passed and approved by the _____, of
(City, County, or Other Entity)
_____ on the _____ day of _____, _____.
(Public Entity)

(Official Position)

(Signature)

CERTIFICATION

I, _____ duly appointed _____
(Title)
of _____, do hereby certify that the above is true and correct
(City, County, or Other Entity)
copy of a resolution passed and approved by the _____, of
(City, County, or Other Entity)
_____ on the _____ day of _____, _____.
(Public Entity)

(Official Position)

(Signature)