

**MEMORANDUM OF UNDERSTANDING
BETWEEN
TRI-COUNTY ECONOMIC DEVELOPMENT CORPORATION
AND
THE NORTHERN KENTUCKY PORT AUTHORITY**

This MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into as of this first day of July 2022, by and between TRI-COUNTY ECONOMIC DEVELOPMENT CORPORATION, a Kentucky non-profit, non-stock corporation, whose mailing address is 300 Buttermilk Pike, Suite 332, Ft. Mitchell, Kentucky 41017 (“Tri-ED”), and THE NORTHERN KENTUCKY PORT AUTHORITY, a Kentucky riverport authority created pursuant to KRS 65.510, et seq., whose mailing address is 300 Buttermilk Pike, Suite 332, Ft. Mitchell, Kentucky 41017 (“Port Authority”).

WHEREAS, Tri-ED actively seeks to enhance the business climate in Boone, Campbell and Kenton Counties and promote Northern Kentucky on a national and international basis as a desirable location for new and/or expanding businesses.

WHEREAS, it is the purpose of the Port Authority to establish, maintain, operate and expand facilities, and to acquire and develop property within its region.

WHEREAS, the parties enter into this MOU for the purpose of working cooperatively to further each parties’ purpose to enhance economic development in Boone, Campbell and Kenton Counties.

WHEREAS, the parties desire to set forth the terms and conditions of their cooperative agreement through this MOU.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth herein, the parties do hereby agree as follows:

1. The term of this MOU shall be for five (5) years, commencing on July 1, 2022, and terminating on June 30, 2027, unless terminated earlier pursuant to the provisions herein. This MOU shall be renewable for separate five (5) year terms upon the written agreement of both parties.

As used herein, the terms “annual” and “yearly” shall mean the 12-month period beginning on July 1 of each year and ending the following June 30 during the term of this MOU.

2. Tri-ED agrees to provide the following services to the Port Authority:
 - a. Assist in the development of current and long-term organizational goals and strategies, as well as policies and procedures for the Port Authority operations.
 - b. Implement and manage programs that are identified and approved by the Port Authority and Tri-ED.

- c. Work with the Port Authority to develop and implement a long-term financial strategy for the Port Authority.
 - d. Prepare an annual budget for the Port Authority (“Port Authority Budget”) a component of which will be a Tri-ED Budget (“Tri-ED Budget”) for the expenditure of the Tri-ED funds as hereinafter defined and provided under Section 3, below.
 - e. Oversee the financial functions of the Port Authority, including financial statements, audits and reporting requirements.
 - f. Assist in the management of the Port Authority Board activities, including scheduling meetings, preparing agendas/minutes and communicating regularly with the Board of the Port Authority.
 - g. Evaluate and manage agreements for support services that are required in order to implement the scope of work herein, including but not limited to legal, accounting, real estate and insurance services.
 - h. Provide an Executive Director and other staffing necessary to perform the duties and activities under this MOU, all as more particularly described under Section 4, below.
3. Tri-ED agrees to commit up to \$400,000 per year for the first term that this MOU is in effect (“Tri-ED Funds”), to be used for projects, products and services approved by Tri-ED and the Port Authority as set forth in the Tri-ED Budget. Each year the parties shall agree on the Tri-ED Budget for the expenditure of the Tri-ED Funds, which budget shall allocate such funds for specific projects and/or areas of development, as mutually agreed to by the parties. The Tri-ED Funds shall be held and maintained by Tri-ED until they are needed. Salaries and benefits will be paid directly by Tri-ED. The Port Authority will pay for all other expenses, with Tri-ED transferring money to the Port Authority’s account as needed. Any amounts not expended by the end of each year during the MOU shall roll over and be included in the next immediately following year Tri-ED Budget. Provided that if this MOU is not extended or is terminated earlier pursuant to the provisions herein, then such unexpended amounts, to the extent the same have not otherwise been committed under the Tri-ED Budget, shall be returned to Tri-ED to be its sole property.
4. Tri-ED agrees to provide staffing necessary to perform its duties and activities under this MOU. The Executive Director and supplied staff will remain employees of Tri-ED (“Tri-ED Employees”). Tri-ED will have exclusive authority to determine the salary and benefits of the Tri-ED Employees. The Port Authority will have authority to approve the Executive Director proposed by Tri-ED, but its approval shall not be unreasonably withheld, delayed, or conditioned. The Port Authority will not have authority to approve other staff of Tri-ED. The parties acknowledge that Tri-ED Funds shall be used for the Executive Director’s salary and benefits and such other personnel costs as determined by Tri-ED. The parties agree that Christine Russell shall serve as the initial Executive Director for the Port Authority. The Executive Director may only be terminated by mutual agreement. The Executive Director shall perform such functions for the Port Authority as are customary in such position.

5. With regard to any grant application and the administration of any grants that are received, the Port Authority agrees to reasonably cooperate with and assist Tri-ED with regard to the grant applications and the administration of the grant. The Port Authority will be asked to approve and sign any grant agreements proposed by Tri-ED and any other contracts with third parties proposed by Tri-ED. Tri-ED will be responsible for the work and services entered into under any grant agreement or third-party contract. Tri-ED agrees to administer the project and expend any grant funds consistent with the terms of the grant agreement. Grant proceeds that are received shall be in addition to the annual financial commitment by Tri-ED.
6. The Port Authority agrees to perform the following:
 - a. The Port Authority shall procure and maintain directors' and officers' insurance and commercial general liability insurance. Both such policies shall include Tri-ED as an additional insured. Such commercial liability insurance shall be in an amount not less than \$2,000,000 for each occurrence. If the general commercial liability insurance contains a general aggregate limit, it shall apply separately to the operations under this MOU.
 - b. The Port Authority shall pay for the annual audit of the Port Authority and any required governmental filings.
 - c. The Port Authority shall pay an annual amount of \$10,000 to Tri-ED for management and accounting services.
7. Each party agrees to appoint a representative who shall attend the other respective party's board meetings. Such member shall be chosen in the sole discretion of each party.
8. This MOU may be terminated by either party upon not less than 30 days' written notice to the other party. Provided that for any outstanding grant agreement or third-party contract, Tri-ED agrees to perform the work and pay for the services under any such grant agreement or third-party contract until it expires or terminates. The parties shall cooperate with each other in finishing any ongoing projects that extend beyond the effective termination date.
9. Miscellaneous.
 - A. Notices. All notices, requests, demands or other communications hereunder shall be in writing unless otherwise noted and shall be deemed to have been duly given if delivered in person, by electronic means, or deposited in the United States mail, postage prepaid, certified, with return receipt requested to the address set forth above. Either party hereto may change the address at which it receives written notice by so notifying the other party hereto in writing.

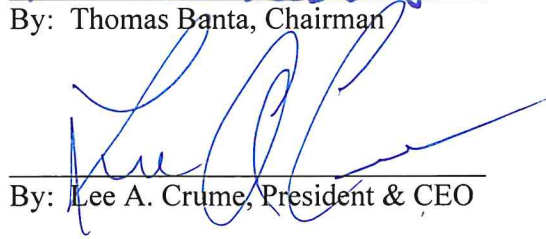
- B. Severability. In the event that any covenant, condition or provision herein contained is held to be invalid by any Court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained will not affect the validity of any other covenant, condition or provision; provided that the validity of any such covenant, condition or provision does not materially prejudice either Tri-ED or the Port Authority in its prospective rights and obligations contained in the valid covenants, conditions or provisions of this MOU.
- C. Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties, or by any third party, as creating a relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the parties. The parties intend to create the relationship of independent contractors.
- D. Amendment. This MOU may not be amended and/or modified unless such amendment and/or modification is in writing and signed by both parties to this MOU.
- E. Waiver of Rights. Neither any failure nor any delay in exercising any rights, power or privilege hereunder, or under any document or instrument delivered or executed pursuant hereto, shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any right, power or privilege.
- F. Successors and Assigns Bound. This MOU shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Neither party may assign this MOU without the express written approval of the other party which may be withheld in the other party's sole discretion.
- G. Joint Cooperation. The closest collaboration and cooperation shall be maintained between the parties.
- H. Governing Law. This MOU shall be governed and interpreted under the laws of the Commonwealth of Kentucky.
- I. Entire Agreement. The drafting, execution and delivery of this MOU by the parties have been induced by no representations, statements, warranties, or contracts other than those expressed herein. This MOU including all attachments embodies the entire understanding of the parties and there are no further contracts or understandings, written or oral, in effect between the parties relating to this subject matter unless expressly referred to herein.

[Signatures begin on the following page]

Tri-County Economic Development Corporation



By: Thomas Banta, Chairman



By: Lee A. Crume, President & CEO

The Northern Kentucky Port Authority



By: Roger Peterman, Chairman