



FLOYD COUNTY BOARD OF EDUCATION
Danny Adkins, Superintendent
442 KY RT 550
Eastern, KY 41622
Telephone (606) 886-2354 Fax (606) 886-4550
www.floyd.kyschools.us

Linda C. Gearheart - Chair - District 1
William Newsome, Jr., Vice-Chair - District 3
Dr. Chandra Varia, Member - District 2
Keith Smallwood, Member - District 4
Steve Slone, Member - District 5

Date: May 10, 2022

Consent Agenda Item (Action Item): Approve partnership with AppHarvest for instructional use with Floyd County School District for 2022-2023 school year.

Applicable Statute or Regulation: BOE Policy 01.11 General Powers and Duties of the Board.

Fiscal/Budgetary Impact: Title I \$1,200 per year

History/Background: AppHarvest: Cultivating the Next Generation of Farming Now. Joined by the shared belief that we will need the next generation to invest in controlled-environment agriculture. AppHarvest is working with their partners in education to support an Ag Tech ecosystem in our Appalachian region. The program brings cutting-edge agricultural practices into the classroom of Eastern Kentucky high schools, providing the students a foothold into one the fastest growing business segments in the US and the world.

Recommended Action: Approve as presented.

Contact Person(s): Denise Isaac, CIO


Director


Superintendent

Amended and Restated Memorandum of Understanding

This AGREEMENT in the form of a Memorandum of Understanding (“MOU” or this “Agreement”) is entered into as of _____, 2022 (“Effective Date”) between AppHarvest, Inc., a Delaware public benefit corporation (“AppHarvest Parent”), AppHarvest Foundation, LLC, a Delaware limited liability company wholly-owned by AppHarvest (collectively with AppHarvest Parent, “AppHarvest”) and _____, a Kentucky public school (“School”), in connection with AppHarvest’s partnership with the School to develop education and community programs in the region. In this Agreement, AppHarvest and the School are collectively referred to as the “Parties” and each is a “Party”. This Agreement amends, restates and supersedes in its entirety the Memorandum of Understanding previously entered into by AppHarvest and the School.

RECITALS:

- A. The Parties desire to continue to work together to provide students of the School and community members with an interdisciplinary AgTech experience (the “AgTech Program”); and
- B. Whereas, the School is an educational institution committed to providing the youth with educational opportunities, and AppHarvest is planning a significant investment in the food ecosystem of Eastern Kentucky; and the Parties desire to have an even greater impact on the educational opportunities in Eastern Kentucky and Central Appalachia. The Parties further agree that the food systems and education are two essential components of healthy and sustainable lifestyles, and a cooperative effort between the educational community and the food community has been shown to be an effective means of improving health outcomes and attracting business investment; and the leadership of the Parties desire a closer relationship of cooperation to the benefit of the people in the region.

Now therefore; the School and AppHarvest agree to the cooperative items in this document and will do everything in their power to bring them to pass according to the following terms and conditions:

- 1. **RESPONSIBILITIES OF THE PARTIES:** The Parties intend by this Agreement to enter into a cooperation under which the School and AppHarvest jointly agree:
 - a. To cooperate on the development and implementation of the School’s AgTech Program;
 - b. To work collaboratively to identify a talented pool of applicants for the AgTech Program;
 - c. To adopt the AgTech Curriculum (six-unit series of course materials);
 - d. To utilize provided training materials (e.g., curriculum, online training) and to cooperate on professional development opportunities that enhance the skills and dispositions of our employees and program participants;
 - e. To develop outreach and promotional opportunities to highlight the collaboration between AppHarvest and the School;

- f. To host programs to share the AgTech Program with community members, as mutually agreed upon by AppHarvest and the School;
- g. To host or provide access to a container farm in which produce is grown and harvested (the “**Container Farm**”), and, if such Container Farm is located on the campus of the School, to provide a suitable site and annual electric and water utilities;
- h. To utilize the Container Farm to grow produce (the “**Produce**”) to be sold to or otherwise utilized by the School and the community (the “**Utilization Program**”); and
- i. To partner with the AppHarvest staff to ensure effective operations of the Container Farm.

2. FINANCIAL RESPONSIBILITY AND BUILDING OUT THE UTILIZATION PROGRAM:

- a. The School acknowledges that AppHarvest donated a Container Farm to the School for use in the AgTech Program. The School agrees and acknowledges that the School is responsible for the maintenance of the Container Farm and for the continued costs and expenses relating to the AgTech Program and the Container Farm, including, without limitation, the installation and maintenance of the Container Farm, repair costs, and costs for supplies. The School is required to purchase all consumable goods needed for the AgTech Program and the Container Farm.
- b. The Parties acknowledge that the School will use its best efforts to seek and maintain financial independence with respect to the AgTech Program by building out the Utilization Program and selling the Produce. Expectations and suggestions for such Utilization Program and financial independence are set forth on Exhibit A.
- c. The Parties acknowledge that the School may be eligible for a grant from the AppHarvest AgTech Education Fund with the Blue Grass Community Foundation, a nonprofit corporation, if the School needs assistance with respect to supplies and other qualifying needs relating to the AgTech Program and that the School is encouraged to directly contact Blue Grass Community Foundation for more information if the School desires to apply for such assistance.

3. INTELLECTUAL PROPERTY: The Parties acknowledge and agree that all work product or Work Product (as hereinafter defined) created under or related to this Agreement shall be owned by AppHarvest. Accordingly, the School hereby irrevocably assigns to AppHarvest all right, title and interest worldwide it may have in and to any deliverables related to the AgTech program, the Container Farm, and/or this Agreement, and to any ideas, concepts, processes, discoveries, developments, formulae, information, materials, improvements, designs, artwork, content, software programs, other copyrightable works, and any other work product created, conceived or developed by the School (whether alone or jointly with others) for AppHarvest, including all copyrights, patents, trademarks, trade secrets, and other intellectual property rights therein (collectively, the “**Work Product**”). To the extent that the School’s students create or co-create Work Product, then the School shall cause such students to execute a document provided by AppHarvest that would

effectively result in the student (in some cases with parental consent) assigning over to AppHarvest all Work Product as contemplated above.

4. CONFIDENTIAL INFORMATION

During the course of evaluating this cooperation, it is assumed that both Parties shall be provided information of a “confidential” nature. For purposes of this Agreement, “**Confidential Information**” shall mean all information disclosed between the Parties or their authorized representatives that is not generally known and will include, without limitation: concepts and ideas relating to the development and distribution of content in any medium or to the current, future and proposed products or services of AppHarvest or its subsidiaries or affiliates, trade secrets, drawings, inventions, know-how, software programs and software source documents, information regarding plans for research, development, new service offerings or products, marketing and selling, business plans, business forecasts, budgets and unpublished financial statements, licenses and distribution arrangements or agreements between the Parties, and any information regarding the skills and compensation of employees, contractors or other agents of AppHarvest or its subsidiaries or affiliates. “**Confidential Information**” also includes the proprietary or confidential information of any third party who may disclose such information to AppHarvest or the School or any other disclosed information that disclosing Party labels “**Confidential**” or otherwise notifies the receiving Party in writing that the information is confidential.

5. EXCEPTIONS TO CONFIDENTIAL INFORMATION

Notwithstanding any of the foregoing as set forth in Section 4 above, the term “Confidential Information” shall not include any information:

- a. that, at the time of disclosure or thereafter, is generally available to the public (other than as a result of a disclosure directly or indirectly by receiving Party in violation of the terms hereof);
- b. that is or becomes available to receiving Party on a non-confidential basis from a source other than disclosing Party, provided that such source was not prohibited from disclosing such information to receiving Party by a legal, contractual, or fiduciary obligation owed to disclosing Party;
- c. that is already in possession of receiving Party (other than information furnished by or on behalf of disclosing Party); or
- d. that is independently developed by receiving Party without violation of such receiving Party’s obligations hereunder.

6. NON-DISCLOSURE

- a. The Confidential Information shall be used solely for the purposes of evaluating this cooperation, and shall not be used in any way, directly or indirectly, that is detrimental to disclosing Party.

- b. The Confidential Information shall be kept strictly confidential and shall not be disclosed by receiving Party, except:
 - i. as required by applicable law, regulation, or legal process; or
 - ii. that receiving Party may disclose the Confidential Information or portions thereof to those of its representatives who need to know such information for purposes of evaluating the Project, provided that such representatives are informed of the confidential and proprietary nature of the Confidential Information and agree to keep such information strictly confidential.
7. **PROHIBITION ON USE OF NAME:** The School will not use, directly or indirectly, the name “AppHarvest” or any AppHarvest trademarks, trade names, corporate names, symbols or other identification or any derivatives thereof with respect to the labeling of any Produce, on any signage, publications, materials or for any other purpose without the prior written consent of AppHarvest. Notwithstanding the foregoing, the Parties agree and acknowledge that, as of the date of this Agreement, the Container Farm displays certain names and logos, including the name and logo of AppHarvest (or its affiliates). AppHarvest expressly permits and requests that the School continue to display the name and logo of AppHarvest (or its affiliates) on the Container Farm until such time that AppHarvest provides a written request to the School to remove such name and logo of AppHarvest (or its affiliates) from the Container Farm.
8. **INDEMNIFICATION:** Each Party shall each indemnify, defend, and hold harmless each other Party and each of the other Parties’ affiliates, partners, and representatives, and each of their respective officers, directors, and employees (collectively, “**Indemnitees**”) from and against any and all demands, claims, taxes, obligations, losses, liabilities, damages, costs, and expenses whatsoever sustained or incurred by an Indemnitee resulting from or arising in connection with any breach by such Party of any of its covenants, obligations, or agreements contained in this Agreement. In addition, the School will use its reasonable best efforts to ensure that all students (or parents or legal guardians thereof) of the School participating in the AgTech Program promptly execute and deliver to the School an Assumption of Risk, Release and Waiver of Liability and Indemnification Agreement (each, a “**Release**”) in the form attached hereto as Exhibit B, which Releases shall be maintained at the principal offices of the School and available to AppHarvest upon its request. AppHarvest and the School will jointly use their reasonable best efforts to ensure that all community member participants in the AgTech Program, or any events or programs related thereto, promptly execute and deliver to the School a Release, which Releases shall be maintained at the principal offices of the School and be available to AppHarvest upon its request.
9. **MISCELLANEOUS:**
- a. Subject to applicable law, this Agreement may be amended, modified, or supplemented only by mutual written agreement of all of the Parties.
 - b. Except as otherwise provided in this Agreement, any failure of any of the Parties to comply with any obligation, covenant, agreement, or condition herein may be

waived by the Party(ies) entitled to the benefits thereof only by a written instrument signed by the Party(ies) granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

- c. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by facsimile transmission, or mailed by registered or certified mail (return receipt requested), postage prepaid, to the Parties at the address set forth in the signature page hereto.
- d. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns; provided, however, that neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by any Party without the prior written consent of the other Parties, nor is this Agreement intended to confer upon any other person except the Parties any rights or remedies hereunder.
- e. This Agreement shall in all respects be governed by, and construed and interpreted in accordance with, the internal substantive laws of the Commonwealth of Kentucky without giving effect to the principles of conflicts of law thereof.
- f. This Agreement may be executed in one or more counterparts, including via electronic means (e.g., transmission of .pdf files) or via facsimile, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- g. This Agreement, including the documents, instrument, writings, and exhibits referred to herein, embody the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants, or undertakings, other than those expressly set forth or referred to herein or therein. This Agreement supersedes all prior agreements and understandings between the Parties with respect to such transactions.

[Signature Page Follows]

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[Signature Page to Amended and Restated MOU]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

AppHarvest, Inc.

School:

By: _____

By: _____

By: Loren Eggleton
Title: Chief Financial Officer

By:
Title: Principal

Address:

School Address:

AppHarvest, Inc.
500 Appalachian Way
Morehead, Kentucky 40351

[Need School Address]

AppHarvest Foundation, LLC

[Need School Name]

By: Loren Eggleton
Title: Chief Financial Officer

By:
Title: Superintendent

EXHIBIT A

**EXPECTATIONS AND SUGGESTIONS FOR THE UTILIZATION PROGRAM AND
FINANCIAL INDEPENDENCE**

The School shall strive to spark, foster and further entrepreneurialism among participants of the AgTech Program in order to ensure financial independence of the AgTech Program, including through the sale of Produce and the establishment of a robust Utilization Program. Participants and advisors to the AgTech Program should implement a strategy to establish customers for the sale of the Produce and then increase such customer base and sales. The School may consider using the Produce in the School's food service program or selling Produce to local restaurants and stores. Note that selling of the Produce at "farmers' markets" or similar markets is discouraged. Also note that in no event shall the School or any participants use the "AppHarvest" name or other AppHarvest intellectual property in violation of the MOU, including Section 7 of the MOU.

The School shall also seek other resources to support the AgTech Program, including through fundraising from community partners and donors. In addition, resources may be available through various Farm to School programs and grants sponsored by organizations that support educational agricultural programs.



**ASSUMPTION OF RISK, RELEASE AND WAIVER OF
LIABILITY AND INDEMNITY AGREEMENT**

Event: _____ (the “Event”)

Participant’s Name (Please print): _____ (the “Participant”)

In consideration for permitting Participant to participate in the Event, the undersigned, for themselves, and for their respective heirs, personal representatives, successors and assigns, agrees as follows:

Assumption of Risk: The undersigned hereby assumes all risks of participating in the Event and the undersigned hereby certifies that the Participant has no health-related reasons or problems which could preclude the Participant from participating in the Event.

Release and Waiver: The undersigned hereby releases, waives, discharges and covenants not to sue AppHarvest, Inc. and its subsidiaries and affiliates (“**AppHarvest**”) and its officers, directors, employees, contractors and agents (collectively, the “**Releasees**”) from and for any liability resulting from any personal injury, accident or illness (including death), and/or property loss, however caused, arising from, or in any way related to, Participant’s participation in the Event.

Indemnification and Hold Harmless: The undersigned also hereby agrees to indemnify, defend and hold the Releasees harmless from any and all claims, actions, suits, procedures, costs, expenses, damages and liabilities including, but not limited to, attorney’s fees, arising from, or in any way related to, Participant’s participation in the Event.

Photographic Release: The undersigned further agrees, grants and conveys to AppHarvest all right, title, and interest in any and all photographs, images, video or audio recordings of the Participant or his or her likeness or voice made by AppHarvest in connection with the Participant’s involvement in the Event, including but not limited to, any royalties, proceeds, or other benefits derived from such photographs or recordings.

Severability: The undersigned expressly agrees that this Assumption of Risk, Release and Waiver of Liability and Indemnity Agreement (“**Agreement**”) is intended to be as broad and inclusive as is permitted by the laws of the Commonwealth of Kentucky and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

Governing Law and Jurisdiction: This Agreement shall be governed by the laws of the Commonwealth of Kentucky, and any disputes arising out of or in connection with this Agreement shall be under the exclusive jurisdiction of the courts of the Commonwealth of Kentucky.

Acknowledgment of Understanding: The undersigned has read this Agreement, and has had the opportunity to ask questions about the same. The undersigned fully understands this Agreement, that the undersigned is giving up substantial rights in connection therewith, and that its terms are

contractual, and not a mere recital. The undersigned acknowledges that they are signing this Agreement freely and voluntarily.

Signature of Participant _____ Date _____

(If the Participant is a minor) I, the parent/legal guardian of the Participant, hereby agrees to the above on behalf of the Participant.

Parent/Guardian Name (print) _____

Signature of Parent/Guardian _____ Date _____