



Fayette County Public Schools

Executive Summary Fayette County Public Schools Board Meeting Agenda Item

MEETING: Regular

DATE: 6/12/2024

TOPIC: Memorandum of Agreement with Lexington-Fayette Urban County Government

PREPARED BY: Shelley Chatfield

Recommended Action on: 6/24/2024
Action Item for Vote (REGULAR MEETING)

Superintendent Prior Approval: Yes

Recommendation/Motion: A motion is in order to approve the agreement between FCPS and LFUCG.

Background/Rationale: LFUCG and FCPS have previously contracted with one another regarding an agreed-upon framework for the administration of the Day Treatment Program at Audrey Grevious Center. Under the LFUCH/FCPS MOA, FCPS has provided academic services and LFUCG has provided therapeutic and administrative services. Both parties agree that the Day Treatment Program at Audrey Grevious Center is, fundamentally, and educational program with a therapeutic component.

Strategic Priority:

- Student Achievement Diversity, Equity, Inclusion & Belonging
- Highly Effective & Culturally Responsive Workforce
- Stakeholder Engagement & Outreach Organizational Health & Efficiency

Data Considerations: N/A

Policy: 01.11

Fiscal Impact: \$2.00 + insurance cost

Attachments(s): MOA with LFUCG and LFUCG Lease agreement

LEASE AGREEMENT

THIS LEASE, made and entered into this 21st day of October, 2024 by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, having an address of 200 East Main Street, Lexington, Kentucky 40507 (hereinafter referred to as “LFUCG” or “**Landlord**”) and **FAYETTE COUNTY PUBLIC SCHOOLS**, having an address of 450 Park Place, Lexington, Kentucky 40511 (hereinafter referred to as “FCPS” or “**Tenant**”).

WITNESSETH:

Landlord and **Tenant** desire to enter into this Lease Agreement, pursuant to which **Tenant** shall lease from **Landlord**, and **Landlord** shall lease to **Tenant**, certain real property and improvements, upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the Premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the parties hereby agree as follows:

1. LEASED PREMISES:

Landlord hereby leases to **Tenant**, and **Tenant** hereby leases from **Landlord**, for the term stated herein, at the rental amount and upon all of the conditions set forth herein, the following Premises, together with the exclusive use of any common areas of the property, subject to provisions herein: **1177 Harry Sykes Way, Lexington, Kentucky, also known as the Audrey Grevious Center** (hereinafter, “Premises”).

2. TERM:

The term of this Lease shall be for a period of two (2) years, commencing on the 1st day of July 2024 (“Commencement Date”), and ending on the 30th day of June 2026, unless sooner terminated. Such termination shall not constitute a default under this Lease. **Landlord** shall deliver **Tenant** possession on the Commencement Date.

3. **RENT:**

In consideration of the public purposes presented by the continued use of the Premises exclusively for the operation of a day treatment program by **Tenant**, and in recognition of the substantial public purposes inherent in the proposal by FCPS to operate, manage, supervise, and control the Day Treatment Program at the Audrey Grevious Center, **Landlord** hereby agrees to lease the Premises to **Tenant**, and **Tenant** shall pay to **Landlord**, the sum of **ONE DOLLAR (\$1.00) per year** for the two-year term of the Lease Agreement.

4. **OCCUPANCY:**

Tenant shall use and occupy the demised Premises for the following purposes and no others without **Landlord's** prior written consent:

Operation of a Day Treatment Program by Tenant (FCPS)

Tenant shall not use the Premises in any manner which constitutes a violation of any ordinance, statute, regulation, or order of any governmental authority. **Tenant** shall use the Premises in a safe, careful, proper, and lawful manner and shall keep and maintain the Premises in as good a condition as when **Tenant** first took possession thereof, and **Tenant** shall not commit, or allow to be committed, any act of waste, in or about the Premises. **Tenant** shall not create, maintain, or permit any nuisance in the Premises, or permit any objectionable or offensive noise or odors to be emitted from the Premises. **Tenant** shall comply with any and all reasonable rules or regulations of **Landlord** governing the use and occupancy of the Premises, now or hereinafter established for the protection of the subject Premises.

5. **ALTERATIONS:**

Tenant shall make no alterations to the leased Premises, including painting, without the prior written consent of the **Landlord**, which may be withheld. All improvements by **Tenant** that

may be authorized by **Landlord** shall be (i) made in a workmanlike manner and utilizing good quality materials; (ii) performed by legal, licensed, and insured contractors naming **Landlord** as an additional insured on an active policy of general liability insurance in an amount of at least \$1,000,000, and a certificate of such policy is delivered to **Landlord** prior to commencing such work; (iii) performed in accordance with all applicable laws and building codes; and (iv) accurately depicted on plans to be provided to **Landlord** together with **Tenant's** request for **Landlord's** consent therefor, with any changes to such plans being first submitted to **Landlord** before performance thereof.

All alterations, decorations, installations, additions, or improvements upon the demised made by either party, including, but not limited to, paneling, partitions, railings and the like, shall, unless **Landlord** elects otherwise, become the property of the **Landlord** and remain upon the demised Premises as a part thereof at the end of the term or any extension thereof. Upon completion of any authorized improvements by **Tenant**, **Tenant** must provide copies of all required governmental approvals and permits and copies of full lien waivers from all contractors and materialmen who performed work on any and all improvements made to the demised Premises. In the event the **Landlord** shall elect otherwise, such alterations, additions or improvements as the **Tenant** may have made shall, to the extent directed by the **Landlord**, be removed by the **Tenant** and the **Tenant** shall restore the Premises to the original conditions prior to the expiration of the lease term and at the cost of the **Tenant**.

6. **MAINTENANCE AND REPAIR:**

Landlord shall generally retain responsibility for maintenance and repair of the Premises, including the subject building on the Premises. Provided, however, that **Tenant** shall take good care of the demised Premises (including the subject building), and any and all damages or injury

thereto caused by **Tenant** or agents, servants, employees, invitees, or licensees of **Tenant**, shall be restored promptly by **Tenant** at the cost of **Tenant** and to the satisfaction of **Landlord**. If **Tenant** shall fail to make such repair and restoration, within thirty (30) days after written notice provided by **Landlord**, such repair and restoration may be made by **Landlord** at the expense of **Tenant**. Intentional damage to the Premises shall entitle **Landlord** to terminate the Lease, to repossess the Premises, and to require **Tenant** to make necessary repairs to the Premises.

7. **INSURANCE:**

Landlord shall maintain, at all times throughout the term of this lease, a policy of self-insurance and such excess policies of insurance as it deems appropriate for the protection of the demised Premises, and proof of appropriate insurance coverage may be inspected by **Tenant** upon request. **Tenant** shall maintain, at all times throughout the term of this lease, appropriate insurance coverage for Commercial General Liability, including Premises and Operations Liability, as well as fire insurance for its own contents, improvements and betterments, and Workers Compensation insurance, with liability limits in an amount not less than \$1,000,000.00 per occurrence with an aggregate of not less than \$2,000,000.00. Proof of appropriate insurance coverage may be inspected by **Landlord** upon request. **Tenant** will comply with all laws and regulations which shall be applicable to the demised Premises for the use thereof and neither **Tenant** nor **Landlord** shall do or permit to be done any act or thing on the Premises which would invalidate any insurance policies covering the subject building or occupancy containing the demised Premises or which may otherwise result in property or casualty or Premises liability claims against appropriate insurance coverages respectively maintained by the parties hereto, and if **Tenant** uses the Premises in such manner, **Landlord** may require **Tenant** to discontinue such use.

8. **PROPERTY LOSS-DAMAGE-REIMBURSEMENT:**

All personal property kept on the Premises shall be kept at the sole risk and responsibility of **Tenant**. This shall include property of contractors or vendors engaged by **Tenant** to conduct approved improvement activities throughout the term of this Agreement. Except insofar as may be caused by the active negligence or willful misconduct of **Landlord**, its agents, employees, licensees, or invitees, **Landlord** shall not be liable for any damage to property of **Tenant**, or agents, employees, licensees, or invitees of **Tenant**, which is housed, stored, held, or placed on the Premises, nor for loss or damage to such property by theft or otherwise. **Landlord** shall not be liable for injuries or damage to person or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow or leaks from any part of the building containing the demised Premises or any other cause whatsoever unless due to the negligence of the **Landlord**; nor shall the **Landlord** be liable for any such damage caused by **Tenant**, its agents, employees, licensees, invitees, or other persons in its building.

9. **DESTRUCTION-FIRE OR OTHER CAUSE:**

If the demised Premises or the subject building containing the demised Premises shall be destroyed or damaged by fire or other casualty, within thirty (30) days of such damage, **Landlord** may, at its sole election, elect to make repairs or restore the Premises or may elect to terminate this lease as of the occurrence of such damage and have no further liability to **Tenant** by giving notice in writing of such termination, instead of making the necessary repairs. In the event of such damage, and if **Landlord** does not terminate the lease, **Landlord** shall restore the demised Premises or so much of the building containing said Premises as may be necessary for the use of the demised Premises within a reasonable period of time, unless said damage was caused by the acts or neglect of **Tenant** or agents, employees, licensees or invitees of **Tenant**, in which later

event **Landlord** shall be fully reimbursed by **Tenant**. If the Premises are damaged to such an extent that repairs or restoration cannot be completed within one hundred and twenty (120) days of the occurrence of the damage, either party shall have the right to terminate this Agreement by giving the other party such notice in writing within thirty (30) days from the date of the occurrence. Should the destruction or damage be of such extent that the Premises are entirely unrentable, this lease shall automatically terminate.

10. TERMINATION:

Either party may terminate this Lease Agreement at any time, without penalty, upon a ninety (90) day prior written notice to the other party. **Landlord** may perform ongoing evaluations to determine whether the Premises are being used by **Tenant** as stipulated in this Agreement. If **Tenant** does not utilize the Premises in accordance with the use specified in paragraph 4 ("Occupancy"), **Tenant** shall upon written notice from **Landlord** immediately vacate the Premises and this lease shall be deemed terminated and of no further force or effect.

11. EMINENT DOMAIN:

If the whole or part of the demised Premises, or so much of the building containing the demised Premises as to make the demised Premises unusable shall be taken by eminent domain, the terms of the lease shall cease and terminate as of such taking and **Tenant** shall have no claim against **Landlord** for the value of any unexpired term of the lease, nor any claim to any sums awarded for such taking, nor any damages related to any resulting deprivation of use or occupancy of the Premises.

12. ASSIGNMENT:

Tenant shall not assign or sublet the demised Premises in whole or in part without the consent in writing of the **Landlord**, which may be withheld.

13. **ACCESS:**

Landlord shall have the right to enter the demised Premises at any and all reasonable times for the purpose of inspecting the same and making such repairs and alterations as it may deem necessary or appropriate. **Landlord** shall have free access to the Premises at all reasonable times for the purposes of examining the same, or to make any alterations or repairs to the Premises that **Landlord** deems necessary for its safety or preservation. **Landlord** shall have the right to inspect the Premises outside **Tenant's** normal hours of operation upon 24 hours prior notice.

14. **BANKRUPTCY:**

If the **Tenant** should be adjudged as bankrupt or be the subject of any type of insolvency or other proceedings jeopardizing **Tenant's** ability to perform any of the terms and conditions of this Agreement, which proceedings are not dismissed within fifteen (15) days of the commencement thereof, at the option of **Landlord** this lease shall terminate as of the commencement of such proceedings.

15. **DEFAULT:**

If **Tenant** shall be in default in the performance of any other condition of the lease for ten (10) days after **Landlord** gives notice to correct the same, then on the happening of either of said events the **Landlord** may terminate this lease and retake the demised Premises without further notice. Likewise, if **Landlord** defaults in the performance of any condition of this lease for which **Landlord** is responsible for thirty (30) days after the **Tenant** gives written notice to correct the same, then **Tenant** may terminate this lease without further notice.

16. **QUIET ENJOYMENT:**

Landlord hereby covenants and agrees that if **Tenant** performs all of the covenants and agreements herein stipulated to be performed on **Tenant's** part, **Tenant** shall at all times during

the Lease term and any extensions or renewals thereof have the peaceable and quiet enjoyment and possession of the Premises.

17. **UTILITIES AND SERVICES:**

Landlord shall at its expense (a) furnish heat to the demised Premises and air conditioning in the appropriate season; (b) furnish water and electric current; (c) furnish all janitorial service necessary to keep the demised Premises clean and orderly, including all common area maintenance; and (d) provide ordinary building maintenance. **Landlord** does not warrant that any services provided by **Landlord** will be free of interruption due to causes beyond **Landlord's** reasonable control. All stains shall be reported to the **Landlord** immediately, so that proper cleaning might be accomplished. All boxes, large books, etc., shall be removed from the offices by **Tenant**. Janitorial service will remove all general office trash from trash receptacles daily but will not remove accumulated heavy trash. Dumpsters are available on the Premises. All building maintenance issues shall be reported to **Landlord** immediately, so that appropriate maintenance can be performed. **Landlord** reserves the right to stop service of the heating, air conditioning, plumbing, and electrical systems when necessary, by reason of accident, emergency, or for repairs, alterations, replacement or improvements in the judgment of the **Landlord** until said repairs, alteration, replacements or improvement, shall have been completed. The temporary interruption of services or delay in the making of repairs will not be deemed an eviction or disturbance of **Tenant's** use and possession of the Premises or render **Landlord** liable to **Tenant** for damages, nor will it relieve **Tenant** from performance of **Tenant's** obligations under this Agreement. **Landlord** shall have no responsibility, or liability for failure to supply heat, air conditioning, plumbing and electrical service, when prevented from doing so by strike, accidents or by any cause beyond **Landlord's** control. **Landlord** shall be responsible for snow removal on parking lots and

sidewalks during inclement weather; provided, however, that **Tenant** is responsible for coordinating snow removal activity by keeping **Landlord** apprised of school closings or school activity on inclement weather days by providing such notice to **Landlord** at earliest opportunity.

18. CAPTIONS:

Captions are inserted only for convenience and in no way define, limit, or describe the scope of this lease or any provision thereof.

19. HAZARDOUS MATERIALS:

Tenant will not discharge, release, dispose of, store, or deposit on the Premises any waste, including any pollutants or hazardous materials ("Hazardous Materials"), in violation of any federal, state, or local law or regulation. Any Hazardous Materials generated by **Tenant** will be removed from the Premises at **Tenant's** expense in the manner required by law and disposed of in compliance with federal, state, and local laws and regulations. If at any time **Tenant** fails to comply with the terms of this section, **Landlord** may remedy such default and **Tenant** must fully reimburse **Landlord** for any cost or expense it incurs within ten (10) days of written notification from **Landlord**.

20. SUCCESSORS:

This lease shall be binding upon each of the Parties hereto and their successors and assigns.

21. COMPLIANCE WITH APPLICABLE LAW:

Tenant shall comply and cause its employees, agents, licensees, and invitees to comply with all ordinances, statutes, state and federal laws, and with reasonable rules, regulations, and operational procedures and standards established by **Landlord** for the use of the Premises.

22. PARKING:

Landlord shall provide space for parking to **Tenant** on the Premises.

23. **SECURITY:**

Tenant shall have adequate procedures in place to ensure that, if needed, office doors are secured at the end of the business day and that outside doors are secured and keys are distributed to personnel only as necessary. **Landlord** shall maintain a master key or keys in its possession for emergency access to the Premises.

24. **SIGNAGE:**

Tenant will be allowed to place, at its sole expense, its name or sign on the Premises, provided that such signage complies with any applicable guidelines set by **Landlord** and with local sign ordinances. All signs installed by **Tenant** must be removed by **Tenant**, at its own expense, no later than the expiration or termination of this Lease, and the Premises must be restored to their original condition.

25. **VACATION OF PREMISES:**

Upon the expiration or earlier termination of this Lease, **Tenant** shall immediately surrender the Premises to **Landlord** in broom clean condition and in good order, condition, and repair as the Premises were at the time of the Agreement (the elements, ordinary wear, and deterioration excepted).

26. **INDEMNIFICATION:**

Tenant agrees, to the extent permitted by law, to indemnify, defend, and hold harmless **Landlord** and its agents, officials, and employees, from any and all claims, liabilities, loss, damages, actions of whatever kind or expense including defense costs and attorney fees that are in any way incidental or connected with or that arise or alleged to have arisen, directly or indirectly, in whole or in part from **Tenant**'s or its employees', licensees', or invitees' use of the Premises. **Landlord** agrees, to the extent permitted by law, to indemnify, defend, and hold harmless **Tenant**

and its agents, officials, and employees, from any and all claims, liabilities, loss, damages, actions of whatever kind or expense including defense costs and attorney fees that are in any way incidental or connected with or that arise or alleged to have arisen, directly or indirectly, in whole or in part from **Landlord's** or its employees', licensees', or invitees' use of the Premises. **Landlord** shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling material, steam, gas, electricity, water, rain, snow, leaks from any part of the Premises, pipes, appliances or plumbing works, or any other cause of any nature, except to the extent that such injury or damage results from a negligent or willful act or failure to act of the **Landlord**. Any property of **Tenant**, its employees, agents, licensees, invitees, or others kept for storage at the Premises shall be so kept or stored at the exclusive risk of **Tenant**.

27. **NON-WAIVER:**

The failure or delay by either party to insist upon the strict performance by the other of any of the terms, conditions, or covenants of this Lease or to exercise any right or remedy consequent upon a breach thereof, shall not be construed to be a waiver or affect the right of either party to thereafter enforce each and every such provision of right. The waiver of any default and breach of this Lease shall not be held to be a waiver of any other default and breach. No waiver of condition or covenant shall be valid unless it be in writing signed by the party so waiving.

28. **ENTIRE AGREEMENT; AMENDMENTS:**

With the sole exception of the Memorandum of Agreement between LFUCG and FCPS related to the provision of day treatment services by FCPS, which in part provides for the execution of this lease, this Lease Agreement constitutes the entire agreement between the parties with respect to **Tenant's** occupancy, use, and lease of the Premises, and supersedes all previous understandings and agreements between the parties, and no oral or implied representation or

understandings shall vary its terms. It may not be amended except by a written instrument executed by both parties. The parties acknowledge that any amendment to this Agreement must be approved by the Lexington-Fayette Urban County Council.

29. HOLDOVER TENANCY:

Unless the parties to this Agreement otherwise agree, if the **Tenant** hold over after the expiration of the lease term or following the termination of the lease and fail to promptly vacate the Premises, the Lease shall be extended on a month-to-month lease subject to termination only upon thirty (30) days written notice to the other party. Monthly rent for the holdover tenancy shall be set at fair market value as calculated by **Landlord**, and **Tenant** shall further be responsible for paying operating expenses, including utilities, insurance, maintenance, janitorial services, and repairs, during the holdover tenancy.

30. INTERPRETATION:

If any clause, sentence, paragraph, or part of this Agreement shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement, but be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered, and in all other respects, this Agreement shall continue in full force and effect. This Agreement, having been negotiated in good faith between the parties hereto with the advice of their respective counsel, shall not be construed against one party or the other.

31. APPLICABLE LAW; VENUE:

This Agreement shall be governed by the laws of the Commonwealth of Kentucky and any action will be brought in a court of competent jurisdiction situated in Fayette County, Kentucky.

32. NO THIRD PARTY RIGHTS:

Nothing contained herein, expressed or implied, is intended to create nor shall be construed to create any relationship, contractual or otherwise, or any rights in favor of any third party.

33. ATTORNEYS FEES:

Should either party to this Agreement expend attorney's fees and costs to enforce any provision of this Agreement, the prevailing party shall recover its attorney's fees and costs from the other party.

34. NON-DISCRIMINATION:

Tenant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disability, and will state in all solicitations or advertisements for employees placed on behalf of **Tenant** that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, sex, age, national origin, or disability.

35. NOTICES:

Any notice or consent required to be given by or on behalf of either party upon the other shall be in writing and shall be given by hand delivery or U.S. mail. If mailed, such notice shall be via certified mail, return receipt requested. Notices shall be sent to the follows:

TO LANDLORD:

Lexington-Fayette Urban County Government
Commissioner, Department of Social Services
200 East Main Street
Lexington, KY 40507

TO TENANT:

Fayette County Public Schools
Superintendent's Office
450 Park Place
Lexington, KY 40511

IN WITNESS WHEREOF, the parties by their authorized representative have executed this Lease Agreement as of the date first above written.

LANDLORD:

**LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT**

BY: *Linda Gorton*
Linda Gorton, Mayor

ATTEST:

Mastenzie Jack
Clerk of the Urban County Council

Deputy

TENANT:

FAYETTE COUNTY PUBLIC SCHOOLS

BY: [Signature]
Name: _____
Title: Superintendent

ACKNOWLEDGMENT

STATE OF)
)
COUNTY OF FAYETTE)

On the ____ day of _____, 202_, before me personally appeared _____, and acknowledged under oath that he/she is the authorized representative of **FAYETTE COUNTY PUBLIC SCHOOLS**, and as such was authorized to execute this Lease Agreement.

My Commission Expires: _____

NOTARY PUBLIC