

Memorandum of Agreement

Project: HEALing Communities Studies – Kentucky (HCS-KY) and Fayette County Detention Center (FCDC)

A. Background

Whereas, the Fayette County HEALing Communities Study Committee of the Fayette Agency for Substance Abuse Police (ASAP) board has requested that the HEALing Communities Study – Kentucky (“HCS-KY”) partner with the Lexington Fayette Urban County Government (“LFUCG”) to expand medications for opioid use disorder (MOUD), the parties enter into this Memorandum of Agreement (“Agreement”).

B. Other Items Incorporated by Reference

Terms and conditions of the University of Kentucky Purchase Order Agreement are incorporated by reference <https://purchasing.uky.edu/sites/default/files/2020-07/general-terms.pdf>. These terms and conditions are in effect unless altered by this Agreement.

C. Deliverables

LFUCG will provide office space, laptop, and license to access local area network.

HCS-KY will pay subcontractor Bluegrass Care Navigators (DBA as Bluegrass HEALing Transitions) reimbursement to hire one care navigator (“Navigator”) with the goal of increasing the number of clients linked to medication for opioid use disorder treatment upon release.

HCS-KY will provide desk, chair, and a stand-alone Wi-Fi device which will allow the Navigator to access the Bluegrass HEALing electronic health records from within the detention center.

D. Task List

Ralishia Howard, Re-entry Coordinator will coordinate and monitor all aspects of the project, with support from Deputy Director Harold Mike Byrne and Major Tina Strange. Gina Dulin at FCDC will coordinate on fiscal issues. The LFUCG agrees to provide feedback on how the support provided by HCS-KY is impacting treatment of clients for opioid use disorder.

E. Out of Scope

Additional services beyond those listed above must be adopted by written amendment to this Agreement signed by the two parties.

F. Payment Terms & Invoicing

Invoice for the supply items set forth in Section G and provided by the LFUCG will be sent to the HCS-KY team. Payment will be made net 30 from the date the invoice is received. Invoices may be e-mailed in PDF format to: Drew Speer, Grant Officer, Drew.Speer@uky.edu and Jennifer Miles, Executive Director, Jennifer.Miles@uky.edu.

G. Budget

Proposed Project Period *June 14, 2021* (or start date of hired staff) through June 30, 2022.

Start Date: June 14, 2021 End Date: *June 30, 2022*

Category	Total	Includes
Supplies	\$1,500	Laptop and license to connect to FCDC network
REQUEST TOTAL	\$1,500	

H. Period of Performance

Services will be performed from the date of signature through *June 30, 2022*. Modifications to period of performance may be made in writing with signature of both parties below.

I. Expected Outcomes

The LFUCG will allow Bluegrass HEALing Transitions subcontracted staff Navigator access to incarcerated clients in order to provide overdose education while incarcerated and offer linkage to treatment for opioid use disorder upon impending release.

J. Project Management

Issues, concerns, modifications, or conflicts with the ability to meet the provision of the services listed above will be discussed with Dr. Sharon L. Walsh, Ph.D. prior to adjustments to be agreed upon in writing.

K. Miscellaneous

1. The LFUCG agrees to:
 - a. Maintain open communication HCS-KY for the duration of this Agreement; and
 - b. Complete all required documentation as outlined in any HCS-KY manuals, instructions, and training procedures.

2. Representations, Warranties and Covenants of the LFUCG.
 - a. Compliance with Laws. The LFUCG represents, warrants and covenants that it and its employees and contractors will perform the services under this Agreement in accordance with: (i) the terms and conditions of this Agreement and the direction of HCS-KY and the University and its duly designated agents and contractors; (ii) all applicable local, state, and federal laws and regulations relating to the conduct of the services, as well as all requirements of the U.S. Department of Health and Human Services, the National Institutes of Health (“NIH”), Food and Drug Administration (“FDA”), any Institutional Review Board reviewing HCS-KY; and (iii) all federal, state, and local laws and regulations governing the privacy and confidentiality of health information.

 - b. Conflicts of Interest. The LFUCG represents that it has a system in place to manage, eliminate, or otherwise resolve conflicts of interest. The LFUCG shall, and shall ensure that all employees and agents, comply with all applicable disclosure requirements related to conflict of interest that are imposed by the NIH, FDA, or other regulatory or governmental authorities.

3. Records and Inspections. In connection with the services performed hereunder, the LFUCG will and will cause its employees and contractors to maintain records relating to the services provided hereunder in accordance with applicable laws and any specific record-keeping obligations identified by the University for the services.
4. Regulatory Compliance. The parties agree that the consideration provided herein reflects fair market value and has been determined in arm's-length bargaining, is made pursuant to an agreement that is commercially reasonable for identifiable services, and such consideration is not and has not been determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare, any state health care program, or any other payor program. The parties further acknowledge and agree that the arrangement under this Agreement is not a solicitation, receipt, offer, payment, or remuneration for referring business payable by any third party, including federal health care programs.
5. Changes in the Law. This Agreement shall be construed to be in accordance with any and all federal and state laws. In the event there is a change in such laws, whether by statute, regulation, agency, or judicial decision that has any material effect on any term of this Agreement, then the applicable term(s) of the Agreement shall be subject to renegotiation and either affected party may request renegotiation of the affected term or terms of this Agreement, upon written notice to the other party, to remedy such condition. The parties expressly recognize that upon request for renegotiation, each party has a duty and obligation to the other only to renegotiate the affected term(s) in good faith and, further, each party expressly agrees that its consent to proposals submitted by the LFUCG during renegotiation efforts shall not be unreasonably withheld or delayed. Should the parties be unable to renegotiate the term or terms so affected so as to bring it/them into compliance with the statute, regulation, or judicial opinion that rendered it/them unlawful or unenforceable within ten (10) days of the date on which notice of a desired renegotiation is given, then either party shall be entitled, after the expiration of said ten (10)-day period, to terminate this Agreement upon ten (10) additional days' written notice to the other party.
6. Notices. Any notice to either party must be in writing, signed by the party giving it, and served to the addresses indicated below by personal delivery, recognized overnight courier service, or by the U.S. mail, first-class, certified or registered, postage prepaid, return receipt requested. All such notices will be effective when received but in no event later than three (3) days after mailing. Notices will be sent to the following addresses:

If to University:
University of Kentucky
Center on Drug and Alcohol Research
c/o Jennifer Miles
845 Angliana Ave
Lexington, KY 40508

If to Fayette County Detention Center:
600 Old Frankfort Circle
Lexington, KY 40510

7. Entire Agreement. This Agreement, and the University Purchase Order terms and associated terms and conditions, constitute the entire understanding between the parties with respect to the subject matter.
8. Severability. The terms of this Agreement are severable. If any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions will continue to be valid and enforceable.
9. Force Majeure. Either party shall be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from third party strikes, third party lockouts, third party labor troubles, restrictive Regulatory Authority actions, orders or decrees, riots, insurrection, war, Acts of God, epidemics or pandemics, severe inclement weather or other similar reason or cause which is unforeseeable or beyond the reasonable control of such party. In such event, performance of such act shall be excused for the period of such delay; provided that, in order to be excused from delay or failure to perform, such party must: (a) immediately notify the LFUCG in writing of such force majeure event and its expected duration and (b) act diligently to remedy the cause of such delay or failure.
10. Postponement or Delay. Outside of a Force Majeure event under Section K.9 above, University may postpone or delay services rendered under this Agreement upon written notice to the LFUCG. In the event of such postponement or delay pursuant to this Section K.10, University shall pay the LFUCG for all services satisfactorily rendered through the date of such postponement or delay. Upon receipt of written notice of postponement or delay of the services, the LFUCG agrees to use the LFUCG's best efforts to immediately curtail its efforts and make no subsequent commitments for expenditures under this Agreement. University shall reimburse the LFUCG for any pre-approved, non-cancelable costs reasonably incurred by the LFUCG for services that were ordered prior to the LFUCG's receipt of a notice of postponement or delay. The LFUCG shall have no claim against University for lost profits or any other damages that may arise as a result of postponement or delay. In the event of resumption of services, University shall notify the LFUCG in writing, at which time the LFUCG will resume the services under the terms of this Agreement upon a mutually agreed, revised timetable.
11. Waiver. No delay or omission by either party to exercise any right or remedy under this Agreement will be effective unless provided in writing by the party agreeing to such delay or omission and no single delay or omission will construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.
12. Captions. The captions of the sections of this Agreement are for convenience only and will not influence the construction or interpretation of this Agreement.
13. Survivability. Provisions surviving termination or expiration of this Agreement are those that on their face affect rights and obligations after termination or expiration and also include provisions concerning indemnification, confidentiality, warranty, and choice of law, jurisdiction, and venue.
14. No Third-Party Rights. Nothing in this Agreement will be construed as creating or giving rise to any rights in third parties or persons other than the named parties to this Agreement.

15. Execution. This Agreement may be executed in one or more counterparts, including by fax or by transmission of signed and electronically scanned copies, or via the use of electronic signatures, each of which will constitute an original but all of which together will constitute one and the same Agreement.

16. Termination.

- a. By the University. In addition to the allowances for termination contained in the terms and conditions of the University associated with the Purchase Order to which this Agreement relates, the University may terminate this Agreement immediately upon written notice to the LFUCG.
- b. By the LFUCG. If the services to be performed hereunder by the University are not performed in an acceptable manner to the LFUCG, the LFUCG may cancel this Agreement for cause by providing written notice to the University, giving at least thirty (30) days written notice of the proposed cancellation and the reasons for same. During that time period, the University may seek to bring the performance of services hereunder to a level that is acceptable to the LFUCG, and the LFUCG may rescind the cancellation if such action is in its best interest.

- i. Termination for Cause.

1. The LFUCG may terminate this Agreement because of the University's failure to perform its contractual duties.
 2. If the University is determined to be in default, the LFUCG shall notify the University of the determination in writing, and may include a specified date by which the University shall cure the identified deficiencies. The LFUCG may proceed with termination if the University fails to cure the deficiencies within the specified time.

- ii. At Will Termination.

1. Notwithstanding the above provisions, the LFUCG may terminate this Agreement at will in accordance with the law upon providing thirty (30) days written notice of that intent. Payment for services or goods received prior to termination shall be made by the LFUCG provided these goods or services were provided in a manner acceptable to the LFUCG. Payment for those goods and services shall not be unreasonably withheld.

- iii. Termination Pursuant to the LFUCG Non-Appropriation Clause

1. University acknowledges that the LFUCG is a governmental entity, and the Agreement validity is based upon the availability of public funding under the authority of its statutory mandate.

In the event that public funds are unavailable and not appropriated for the performance of the LFUCG's obligations under this Agreement, then this Agreement shall automatically expire without penalty to the LFUCG thirty (30) days after written notice to University of the unavailability and non-appropriation of public funds. It is expressly agreed that the LFUCG shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Agreement, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations.

In the event of a change in the LFUCG's statutory authority, mandate and mandated functions, by state and federal legislative or regulatory action, which adversely affects the LFUCG's authority to continue its obligations under this Agreement, then this Agreement shall automatically terminate without penalty to the LFUCG upon written notice to University of such limitation or change in the LFUCG's legal authority.

17. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be Franklin County, Kentucky. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

18. Use of Marks. University will not appropriate or make use of the LFUCG's name or any of its trade or service marks or property (including but not limited to any logo or seal), in any promotion, endorsement, advertisement, testimonial or similar use without the prior written consent of the LFUCG. If such consent is granted the LFUCG reserves the unilateral right, in its sole discretion, to immediately terminate and revoke such use for any reason whatsoever. University agrees that it shall cease and desist from any unauthorized use immediately upon being notified by the LFUCG.

19. Indemnification.

The LFUCG is a political subdivision of the Commonwealth of Kentucky. The University acknowledges and agrees that LFUCG is unable to provide indemnity or otherwise save, hold harmless, or defend the University in any manner.

The University of Kentucky is an agency and instrumentality of the Commonwealth of Kentucky and is unable to indemnify or otherwise save, hold harmless, or defend the LFUCG in any manner.

In Witness hereof, the parties have executed this Agreement as of the dates indicated below and effective as of the last signature date.

Lexington-Fayette Urban County Gov.	HEALing Communities Study - KY
Printed name: _____	Printed name: <u>Jennifer Miles</u>
Title: _____	Title: <u>Executive Director</u>
Date: _____	Date: <u>05/27/2021</u>
Signed: _____	Signed: <u>Jennifer Miles</u>