



Commonwealth of Kentucky CONTRACT

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Document Description:
 LFUCG DAY TREATMENT PROGRAM

Cited Authority: FAP111-44-00
 Memorandum of Agreement

Reason for Modification:

Issuer Contact:

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Vendor Name: LEXINGTON FAYETTE URBAN CO GOVERNMENT
 200 EAST MAIN STREET
 LEXINGTON KY 40507

Vendor No.: KY0033801

Vendor Contact Name: NO CONTACT
Phone: 999-999-9999
E-mail:

Effective From: 7/1/18 Effective To: 6/30/20

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0 00000		DAY TREATMENT PROGRAM	\$0 00	\$198,070.60	\$198,070.60

Extended Description:

This contract is to provide a day treatment program/services for school-age juveniles in Fayette County. The Department is unable to provide funding and operate all the day treatment programs across the state. This commodity line is for FY'19.

Shipping Information:	Billing Information:
	DJJ - Fiscal Branch 1025 Capital Center Drive Bldg #3 - 3rd Floor Frankfort KY

Effective From: 7/1/18 Effective To: 6/30/20

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
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2		0 00000	DAY TREATMENT PROGRAM	\$0.00	\$198,070 60	\$198,070 60
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Extended Description:

This contract is to provide a day treatment program/services for school-age juveniles in Fayette County. The Department is unable to provide funding and operate all the day treatment programs across the state. This commodity line is for FY'20.

Shipping Information:	Billing Information:
	DJJ - Fiscal Branch 1025 Capital Center Drive Bldg #3 - 3rd Floor Frankfort KY

TOTAL CONTRACT AMOUNT:	\$396,141.20
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Memorandum of Agreement Terms and Conditions
Revised April 25, 2018

SCOPE OF SERVICES

This Memorandum of Agreement ("MOA") is entered into, by and between the Commonwealth of Kentucky, Justice and Public Safety Cabinet, Department of Juvenile Justice ("the Commonwealth") and Lexington Fayette Urban County Government – Department of Social Services ("the Contractor") to establish an agreement for Day Treatment Services. The initial MOA is effective from 1 July 2018 through 30 June 2020.

MATERIALS INCORPORATED BY REFERENCE

1. Attachment A – Department of Juvenile Justice's Program Application

DEPARTMENT TERMS AND CONDITIONS

The Commonwealth shall

1. Monitor and conduct a service/program audit of the activities of the Contractor and its programs performed pursuant to this contract at times mutually convenient to both parties.
 - 1.1. The Commonwealth's Program Services Division shall perform a monitoring of each contracted day treatment program at a minimum of twice a year, providing the Contractor all monitoring tools for prior review and clarification.
 - 1.2. Technical assistance will be available to the Contractor upon request.
2. Conduct periodic desk audits of the Contractor to assess the progress towards completion of the goals and objectives as deemed necessary by the Commonwealth.
3. Offer training opportunities at no cost for the actual training, but all costs for lodging, travel and meals are at the expense of the Contractor.
4. Notify the Contractor designee of any grievance involving the Contractor educational staff.
 - 4.1. Each agency shall solve the dispute according to their respective policy and procedures.
 - 4.2. If a dispute is not solved within a timely manner the following method shall be used:
 - 4.2.1. The local Juvenile Services District Supervisor (JSDS) or Commonwealth facility Superintendent and the Contractor Program Director will meet to discuss, clarify, and resolve the matter.
 - 4.2.1.1 If the matter cannot be resolved, it will then be referred to the local Community Services Regional Manager or Facilities Regional Administrator.
 - 4.2.2. The local Community Services Regional Manager or the Facilities Regional Administrator will meet with the Contractor Program Director to discuss, clarify, and resolve the matter.
 - 4.2.2.1 If the matter cannot be resolved it will be referred in written form to the Education Branch Manager.
 - 4.2.3. The Education Branch Manager and the Contractor Superintendent of the school will meet to discuss, clarify, and resolve the matter.
 - 4.2.3.1 If the matter cannot be resolved, it will then be referred in written form to the Commonwealth's Program Services Division.
 - 4.2.4. The Commonwealth's Program Service Division and the Contractor's Superintendent will meet within twenty (20) working days or receipt of the notice.
 - 4.2.4.1 They will review the material, discuss it with the individuals they deem appropriate and reach a resolution.
 - 4.2.4.2 This resolution will then be formalized in writing and conveyed to the Commonwealth and the Contractor Program Director.
 5. Notify the Contractor by Certified Mail, Return Receipt Requested, if a request for transfer of all equipment and/or supplies is necessary. If the transfer is required for use by the new service provider, the grantee or subgrantee shall be entitled to be paid any reasonable, resulting shipping or storage costs incurred.

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The Contractor shall

1. Perform the functions described with particularity in the Department of Juvenile Justice's Program Application ("Program Application"), on file with the Fiscal Branch of the Department, within the actual budgetary limitations for the period of July 1, 2018 to June 30, 2020.
2. Complete the goals and objectives as set forth in the Program Application within the specifically allotted time frames.
3. Review service delivery goals, objectives, and expenditures and submit to the Commonwealth program reports and expenditures on a monthly basis.
 - 3.1. Funds obligated under this agreement will be available for the provision of services by an agency, organization, or individual other than the Contractor only after the Contractor has executed a written subcontract in accordance with the provisions of this MOA.
 - 3.2. Except for subcontracts, which are specifically identified in the approved plan, the Contractor shall not subcontract any responsibilities described herein without prior written approval of the Commonwealth, subject to such additional conditions and provisions as the Commonwealth deems necessary.
 - 3.3. The Contractor agrees to cite the Commonwealth's contract number in all subcontracts.
4. Provide a minimum of 210 instructional/direct service days during fiscal year 2019 and 210 instructional/direct service days during fiscal year 2020.
5. Provide a school calendar that identifies local school district instructional days, instructional/direct service days beyond the local school district calendar, professional development days, holidays, vacation days and non-instructional days.
6. Provide a daily program schedule for the local school district calendar.
7. Provide a minimum of four (4) hours of instructional/treatment time per day for each day beyond the local school district calendar.
8. Provide a daily program schedule for instructional/direct service days beyond the local school district calendar.
9. Provide counseling for all students in the program according to the following guidelines:
 - 9.1. Counseling shall be provided by persons with a minimum qualification of a Bachelor Degree in Social Work, Psychology, or a Human Service related field;
 - 9.2. Individual treatment ratio of one counselor per ten youths or one counselor and an aide up to fifteen youths based on rated capacity;
 - 9.3. Individual counseling of one (1) scheduled hour per week per youth;
 - 9.4. Group counseling of two (2) scheduled 1-hour sessions per week per youth with a maximum of 12 youth per group session;
 - 9.5. Family counseling if indicated on the student's ITP; and
 - 9.6. Documentation, including dates of counseling sessions, on the Commonwealth's Weekly Treatment Team Summary Form.
10. Provide a yearly organizational chart including lines of supervision, positions, names and titles.
11. Provide a report on the results to date, at the end of each fiscal year.
12. Provide a two-year fiscal budget summary.
13. Maintain and ensure the confidentiality of all information between the Contractor and the Commonwealth, whether written or verbal, provided by or about any youth seeking or receiving services under this contract, except as approved and authorized in writing by the youth, or as otherwise authorized by the law.
14. Comply with the Open Records Law (KRS 61.870 to 61.884) and the Family Educational Rights and Privacy Act of 1974 (as amended) (20 U.S.C. § 1232g).
15. Maintain records to document the total operation of the Contractor pursuant to this contract and submit monthly program reports and expenditures by the 15th of every month on the forms prescribed by the Commonwealth.
 - 15.1. The Commonwealth shall have the right to deny payment for any report not submitted in accordance with this provision.

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16. Retain all program and financial records for a period not less than (5) five years after all matters pertaining to this contract (i.e., program audit, settlement of audit exceptions, disputes) are resolved in accordance with applicable state laws and regulations and policies.
17. Maintain records sufficient to identify the results of the service provided each individual and for use in evaluating the effectiveness of the total program, including but not limited to:
 - 17.1. an accurate count of student average daily attendance (ADA);
 - 17.2. administering pre- and post- tests to each student for evaluation purposes per the Individual Treatment Plan (ITP); and
 - 17.2.1. In the event tests are not administered, the Contractor shall document reasons for this.
 - 17.3. responding to the Commonwealth's specific requests for information.
18. Upon request by the Commonwealth, submit a status report on the program's goals and objectives and the critical incident report summary.
19. Submit by the 5th of each month a complete, accurate and cumulative Monthly Medicaid Report for the current fiscal year.
20. Permit Commonwealth employees and agents to monitor and evaluate services being performed.
21. Submit all records and documentation of service provision, in regard to contracted and subcontracted services to the Commonwealth when requested for monitoring purposes.
22. Respond to monitoring, fiscal and/or program exceptions established by evaluation monitoring and/or audit of this MOA, and to promptly settle any monitoring, fiscal and program audit exceptions by making direct payment, or reduction of future reimbursement, or by other methods approved by the Commonwealth.
23. Respond to a Statement of Deficiencies submitted by the Commonwealth by submission of and compliance to a Plan of Correction based on monitoring results.
24. Permit the Commonwealth or auditing firm selected by the Commonwealth, to audit the fiscal records of the Contractor in the format established by the Commonwealth, and to be responsible for fiscal and program exceptions established by audit of this contract, and to promptly settle any audit exceptions by methods approved by the Commonwealth.
25. Assure that a Fidelity Bond has been properly executed to ensure that the employee(s) who are authorized to receive or deposit funds, issue financial documents, checks or other instruments of payment for program costs shall be bonded against loss of sufficient amounts of funds, the bond should be sufficient to cover maximum sums handled monthly under this contract, and a copy shall be submitted to the Commonwealth upon request.
26. Provide the Commonwealth with a current electronic copy of the Contractor's Standard Operating Procedures ("SOP") manual.
 - 26.1. This manual and all subsequent changes must be received and approved by the Commonwealth before procedures are implemented.
27. Review and update Contractor's SOP annually.
28. Document within each employee's training file that they have read and understand the contents of the Contractor's SOP Manual annually.
29. Maintain adequate and competent staff necessary to provide the services described herein, with proper supervision and in conformity with existing standards of the Commonwealth for provision of these services.
30. Maintain training records including initial and on-going training, as well as an annual training plan for each staff based upon position/duties.
31. Develop yearly Facility Training Plans for all staff that includes, but is not limited to:
 - 31.1. Physical Skills Review(s);
 - 31.2. Emergency Procedures/Fire Safety;
 - 31.3. Bloodborne/ Airborne Pathogens;
 - 31.4. Suicide Signs and Symptoms;
 - 31.5. review of new or revised SOP; and

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- 31.6. any other training deemed necessary by the second party or the Commonwealth.
32. Provide and/or secure appropriate orientation and in-service training for staff responsible for the services delivered under this contract.
33. Assist the Commonwealth upon request, in training involving such contracted services and related agency skills and resources.
34. Comply with all state licensing requirements and standards for all contract services.
35. Ensure that youths aggrieved by actions rising from service rendered under this MOA shall have the right to a hearing.
- 35.1. The Contractor is responsible for setting up procedures to deal with grievances.
36. Ensure no employee or representative of the Contractor with procurement authority shall participate either directly or indirectly in any activities that are in conflict with the provisions stated in KRS 45A.455 Conflict of Interest – Gratuities and Kickbacks – Use of Confidential Information.
37. Acknowledge that the Contractor is responsible for fulfillment of the terms of this MOA with the Commonwealth whether or not subcontractors are used.
38. Transfer all items of equipment and or supplies to a new provider, if a new provider is selected as a result of competition, or if the contract is terminated by the provider, or the Commonwealth and a new provider is secured.
- 38.1. In the event of termination of the contract or the selection of a new provider, the transfer shall be made within 30 days from the date of receipt of notice from the Commonwealth, such notice to be by Certified Mail, Return Receipt Requested.
39. Ensure that all equipment purchased or leased under this contract having a unit acquisition value of \$500 or more and with a useful life of more than 1 year, remain the property of the Commonwealth.
- 39.1. All property is subject to an inventory and the Contractor is responsible for keeping an up to date and accurate inventory list on equipment that is purchased with the Commonwealth funds and has an acquisition value of \$500 or more.
40. Ensure that a monthly staff meeting is held and that documentation includes agenda, roster, time and place of meeting.
41. Develop policies and procedures incorporated into programming that promote a zero tolerance environment against sexual abuse, sexual harassment, sexual contact or any type of sexual offense.
42. Submit documentation regarding Contractor's zero tolerance environment policies to the Commonwealth.

The Contractor may

1. Request an amendment as needed to adjust the service delivery goals and objectives.

PRICING

The Commonwealth shall

1. Reimburse the Contractor for day treatment services pursuant to this MOA. The total value of this MOA for fiscal year(s) 2019 and 2020 shall not exceed \$198,070.60 per fiscal year.

The Contractor shall

1. Not allow or authorize Contractor personnel to financially obligate Commonwealth funds.
2. Bill the Commonwealth for goods and services tendered and rendered from the first to last day of each calendar month and provide any and all supporting documentation used to constitute the invoice.
 - 2.1. Supporting documentation shall include salary statements and operating expenditure receipts.
 - 2.2. The documentation must be detailed and contain copies of actual receipts.
3. Provide any and all invoices to the Commonwealth no later than 30 calendar days after the end of the billing period.

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4. Provide any and all supplemental supporting documentation and invoice corrections discovered through self-auditing no later than 60 days after the end of the billing period, no later than 90 days after the end of the billing.
5. Provide any and all supplemental supporting documentation and invoice corrections upon receipt of notice of deficiency from the Commonwealth no later than 90 days after the end of the billing.
6. Send any and all electronic and physical invoices to the following address(es):

Department of Juvenile Justice
Attn: Brian Huffman
1025 Capital Center Dr, 3rd Floor
Frankfort, KY 40601

Email: bhuffman@ky.gov

JUSTICE AND PUBLIC SAFETY CABINET TERMS AND CONDITIONS

1. Contractor shall comply at all times with the federal and state constitutions; federal, state, and local law; federal and state executive orders; federal and state attorney general opinions; federal and state case law; Commonwealth of Kentucky Executive Department policy and procedures; Commonwealth Office of Technology policy and procedures; and Commonwealth policy and procedures.
2. The Contractor shall report any and all acts and omissions constituting a violation of applicable federal, state, or local law; applicable Commonwealth policies and procedures; or this MOA to the Commonwealth in writing within one business day of the discovery of the violation.
3. The Contractor shall provide any and all policy and other directives governing the Contractor as applicable to this MOA.
4. The Contractor certifies that the Contractor is legally entitled to enter into this MOA with the Commonwealth, and by holding and performing this MOA, the Contractor will not be violating any conflict-of-interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), nor KRS 11A.040 of the executive branch code of ethics relating to the employment of former public servants.
5. To the extent permitted by law, the Contractor agrees to indemnify and hold harmless the Commonwealth against any and all claims, losses, demands, obligations, and litigation, including attorneys' fees, that result from or by: (1) services rendered by the Contractor performing or supplying services in connection with performance of this MOA, (2) the erroneous or negligent acts of the Contractor, its officers, or employees in the performance of this MOA, (3) the Contractor's creation of a hazardous condition or exacerbation of a pre-existing hazardous condition; (4) the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under the contract in a manner not authorized by the contract, or by federal or Commonwealth regulations or statutes by the Contractor, (5) any and all acts and omissions of the Contractor, (6) the policies and procedures specifically involving all the Contractor employment practices used by the Contractor during the term of this MOA, and (7) any failure of the Contractor, its officers, or employees to observe federal, state, and local laws, including but not limited to labor laws and minimum wage laws.
6. The Contractor acknowledges and agrees that the Contractor acts as an agent of the Commonwealth in fulfillment of any and all terms and conditions within this MOA and any and all lawful associated acts and omissions by the Contractor necessary to fulfill the terms and conditions within this MOA. Under no circumstance does the Commonwealth approve, authorize, or ratify any and all acts or omissions of the Contractor in violation of federal and state constitutions; federal, state, and local law; federal and state executive orders; federal and state attorney general opinions; federal and state case law; Commonwealth of Kentucky Executive Department policy and procedures; Commonwealth Office of Technology policy and procedures; Commonwealth policy and procedures; or this MOA.
7. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity,

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gender presentation, age, or genetic information. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, gender presentation, age, genetic information, or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

- 7.1. In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will state that all qualified applicants will receive consideration for employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, gender presentation, age, genetic information, or disability.
- 7.2. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part; the Contractor may be declared ineligible for further contracts; and such other sanctions that may be imposed and remedies invoked as provided in or as otherwise provided by law.
8. Both parties, including any subcontractors or agents of each, agree to comply with all applicable state and federal confidentiality laws, including the Health Insurance Portability and Accountability Act, and to protect the security, confidentiality, and integrity of health information. The Contractor acknowledges and agrees that the Commonwealth shall be entitled, without waiving any other rights or remedies, to injunctive or equitable relief to enforce the requirements of this provision of this MOA.
9. Vendors and other state agencies that receive Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq. ("the Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set for in the Act.
 - 9.1. "Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one(1) or more of the following data elements:
 - 9.1.1. An account, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account;
 - 9.1.2. A Social Security number;
 - 9.1.3. A taxpayer identification number that incorporates a Social Security number;
 - 9.1.4. A driver's license number, state identification card number, or other individual identification number issued by an agency;
 - 9.1.5. A passport number or other identification number issued by the United States government; or
 - 9.1.6. Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec. 1232g.
 - 9.2. As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects, or maintains) personal information from the Commonwealth pursuant to the contract or agreement."
 - 9.3. The Contractor agrees to cooperate with the Commonwealth in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

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- 9.4. The Contractor shall notify as soon as possible, but not to exceed seventy-two (72) hours, the Commonwealth, the Commissioner of the Kentucky State Police, the Auditor of Public Accounts, and the Commonwealth Office of Technology of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2) applies and the Contractor abides by the requirements set for in that exception. Notification shall be in writing on a form developed by the Commonwealth Office of Technology
- 9.5. The Contractor agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.
- 9.6. Upon conclusion of an investigation of a security breach of Personal Information as required by KRS 61.933, the Contractor agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.
- 9.7. In accordance with KRS 61.932(2)(a), the Contractor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth Office of Technology.
10. The parties acknowledge that records, data extracts, information, metadata, and/or data provided by the Commonwealth to the Contractor are the property of the Commonwealth. In order for the Commonwealth to maintain control and integrity of its records, the Contractor agrees that any Freedom of Information Act request, Kentucky Open Records request, or other request seeking access to information or data provided by the Commonwealth will be reported to the Commonwealth, and if the requestor will agree to do so, the request will be forwarded to the Commonwealth. If the requestor will not agree to withdraw the request and instead submit it to the Commonwealth, then the Commonwealth shall direct the Contractor in answering the request.
11. The Contractor agrees that it will not distribute, divulge, publish, or release any data or information obtained from or owned by the Commonwealth without the prior written approval of the Commonwealth unless compelled to do so by law or by a judicially signed order from a court of competent jurisdiction. The Contractor acknowledges that it receives the Commonwealth's data or information solely for the purposes of this MOA, and that its receipt of the Commonwealth's data or information in no way creates any ownership interest in the Commonwealth's data or information, unless explicitly provided otherwise within the terms and conditions of this MOA.
12. The Contractor shall ensure that any and all access to Commonwealth data by Contractor personnel is limited to only those Contractor personnel with a necessary and essential purpose to fulfill the terms and conditions within this MOA.
13. The Contractor shall not utilize Commonwealth data for the Contractor's benefit except as contemplated within and pursuant to the terms and conditions of this MOA.
14. The Contractor shall not sell or resell any and all Commonwealth data.
15. The Contractor shall ensure that any and all data transmitted and received on behalf of and as directed by the Commonwealth is transmitted and received only via secure methods and protocols.
16. **The Contractor shall be responsible for the proper custody and care of any Commonwealth-owned property furnished for Contractor's use in connections with the performance of this MOA. The Contractor shall reimburse the Commonwealth for its loss or damage, normal wear and tear excepted.**
17. The parties agree that they receive all information communicated between them before the execution of this MOA in strict confidence and that the receiving party, its agents, or employees shall not, without prior written consent of the other party, disclose any such information, subject to Commonwealth of Kentucky and federal disclosure laws.
18. The Contractor shall not represent that a working copy, draft, or the finalized version of this MOA is identical to a previous iteration of this MOA if the Contractor has made edits since the last iteration. The Contractor shall clearly present all edits either through editing functions

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- in word processing software or as a list provided contemporaneously with the most recently edited iteration.
19. **The Contractor shall not in any and all manners in any and all mediums to any and all individuals or entities state or imply that the Contractor is endorsed or preferred by the Commonwealth.**
 20. The Contractor shall perform only the work duties explicitly authorized in this MOA. Any invoice Contractor submits that seeks payment for work other than the work explicitly authorized in this MOA will be rejected in whole or part at the discretion of the Commonwealth. The Commonwealth reserves the right to withhold payment in part or in whole for invoicing submitted by the Contractor that is not in accordance with the terms or conditions set forth in this MOA.
 21. The Contractor shall ensure that any and all deliverables meet requirements and standards previously established in delivery orders prior to billing and acceptance of reimbursement.
 22. If the Commonwealth determines that deliverables due under this MOA are not in conformance with the terms and conditions of this MOA, the Commonwealth may request that the Contractor deliver assurances in the form of additional Contractor resources and demonstrate that other major schedules will not be affected. The Commonwealth shall determine the quantity and quality of such additional resources and failure to comply may constitute default by the Contractor.
 23. The Contractor agrees that noncompliance with the terms and conditions within this MOA may result in delayed reimbursements, partial reimbursements, or no reimbursement if the Commonwealth is unable to substantiate the goods and services tendered and rendered by the Contractor through the required documentation. Implicit in the submission of each invoice is a certification that the Contractor has included all supporting documentation for each charge; failure to include all supporting documentation constitutes cause to withhold payment.
 24. For all invoices submitted more than 30 calendar days after the end of the final billing period of the applicable fiscal year, the Contractor may be required to pursue payment under KRS 45.231, which shall be the sole responsibility of the Contractor.
 25. The Contractor shall implement internal controls to ensure accurate billing and invoicing. In the event that the billing and invoicing error rate exceeds 10% of the total amount billed during a billing cycle, the Commonwealth may withhold the actual amount of the cost to meet its due diligence requirement regarding the mitigation of fraud, waste, and abuse through correct reimbursement of the Contractor.
 26. The Contractor shall reimburse the Commonwealth for any grants or other funding lost as a direct result of Contractor's failure to comply with the requirements set forth by the terms of any grant of which the Commonwealth is the grantee that requires, explicitly or implicitly, the Contractor to adhere to the terms and conditions, including but not limited to the special conditions, of the grant.
 27. The Contractor agrees that the Commonwealth, and its duly authorized agents and designees, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this MOA for the purpose of a financial audit or program review. The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act.
 28. In the event that the Commonwealth experiences a change in its budget status, Contractor agrees to renegotiate this MOA in good faith upon request of the Commonwealth.
 29. **In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this MOA may be subject to the rights of a trustee in bankruptcy to assume or assign this MOA. The trustee shall not have the right to assume or assign this MOA unless the trustee (a) promptly cures all defaults under this MOA; (b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default; and (c) provides adequate assurance of future performance, as determined by the Commonwealth.**
 30. The Contractor represents and warrants, and the Commonwealth relies upon such representation and warranty, that it presently has no interest and shall not acquire any interest,

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direct or indirect, which would conflict in any manner or degree with its provision of goods or its performance of services. The Contractor further represents and warrants that in the performance of this MOA, no person, including any subcontractor, having any such interest shall be employed.

31. The Contractor shall not knowingly allow any official or employee of the Commonwealth who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this MOA to voluntarily acquire any ownership interest, direct or indirect, in the contract prior to the completion of this MOA.
32. During the term of this MOA, Contractor shall be authorized in its sole discretion to discipline, terminate or take any other personnel action against Contractor personnel. Upon communication by Commonwealth of an issue with Contractor personnel, Contractor shall have the sole authority to take action to effect a solution.
33. At no point shall any Contractor personnel be considered an employee of the Justice and Public Safety Cabinet, for any purpose, including but not limited to unemployment, taxes, withholding, health insurance, liability, retirement, workers' compensation, vacation, sick or other leave, the Family Medical Leave Act, accrued benefits, evaluations, or any other purpose. At all times, any such individual shall be considered and deemed to be an employee of the Contractor.
34. Nothing in this MOA shall be construed, in any way, as granting to any individual providing services under this MOA any of the claims, privileges, or rights established or recognized under KRS Chapter 18A or KAR Title 101.
35. In no event shall any Contractor personnel be deemed to be a third-party beneficiary of this MOA.
36. Pursuant to the Executive Branch Code of Ethics, Kentucky Revised Statutes Chapter 11A, and in order to avoid conflicts of interest more generally, dual-status personnel may not manage or administer this MOA or any of its individual terms and conditions. Dual-status personnel is defined as any and all individuals who are employed by or receive a tangible benefit from the Commonwealth and the Contractor simultaneously.
37. Dual-status personnel shall be considered Commonwealth personnel and shall not be considered Contractor personnel for the purposes of this MOA, except for the terms and conditions of this MOA that apply to dual-status personnel by virtue of their dual status.
38. The Contractor acknowledges that the Commonwealth may execute agreements with other vendors for additional or related goods and services that address, interact with, or otherwise regard this MOA. The Contractor shall fully cooperate with such other vendors and vendor personnel, agents, and designees. The Contractor shall not commit any act; allow any omission; or permit its personnel, agents, or designees to commit any act or allow any omission that will interfere with the performance of work by any other vendor or any other vendor's personnel, agents, or designees.
39. The Contractor shall comply, at a minimum, with the Records Retention Schedule promulgated by the State Archives and Records Commission applicable to the agency to which it is providing goods, services, revenue, or any and all combinations thereof pursuant to this MOA.
40. Within ten business days of employing a subcontractor, Contractor shall provide to the Commonwealth: (1) the name of the subcontractor; (2) the subcontractors EIN; and (3) a copy of a written agreement between Contractor and subcontractor requiring subcontractor to agree to the terms of any non-disclosure agreement to which Contractor is subject under this MOA.
41. The documents and materials listed in the MATERIALS INCORPORATED BY REFERENCE section are incorporated by reference and made a part of this MOA to the same extent and with the same force as if fully set forth in this MOA.
42. Each party shall provide a contact to resolve any and all issues related to this MOA and promptly update the contact information as necessary.
43. All notices under this MOA shall be given in writing. Electronic mail constitutes a writing.
44. No change, waiver, or discharge of any liability or obligation under this MOA on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

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45. No party shall assign its respective rights or obligations under this MOA without prior written consent of the other party. Any purported assignment or delegation in violation of this MOA is void.
46. The terms and conditions of this MOA may only be amended by mutual written consent of both parties.
47. The Contractor shall agree and acknowledge that any and all violations of this MOA may result in the immediate termination of this MOA, as well as the imposition of civil or criminal sanctions as applicable.
48. The Commonwealth shall have the right to terminate and cancel this MOA at any time not to exceed 30 days' written notice served on the Contractor by registered or certified mail.
49. This MOA shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky.
50. The parties agree that any claim, action, or lawsuit arising under this MOA must be brought in Franklin Circuit Court in the Commonwealth of Kentucky.
51. If any term or provision or any part of this MOA is declared invalid or unenforceable, the remainder of this MOA shall not be affected, and each term and provision of this MOA shall be valid and enforceable to the fullest extent permitted by the law.
52. This MOA is the final and exclusive agreement between the parties. All prior negotiations and agreements are superseded by this MOA.

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Memorandum of Agreement Standard Terms and Conditions

1.00 Cancellation clause:

The state agency shall have the right to terminate and cancel this contract at any time not to exceed thirty (30) days' written notice served on the Contractor by registered or certified mail.

2.00 Funding Out Provision:

The state agency may terminate this agreement if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the agreement. The state agency shall provide the Contractor thirty (30) calendar days written notice of termination of the agreement due to lack of available funding.

3.00 Reduction in Contract Worker Hours:

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the agreement will be reduced by the amount specified in that document. If the contract funding is reduced, then the scope of work related to the contract may also be reduced commensurate with the reduction in funding. This reduction of the scope shall be agreeable to both parties and shall not be considered a breach of contract.

4.00 Access to Records:

The state agency certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The Contractor, as defined in KRS 45A.030, agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this agreement for the purpose of financial audit or program review. The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. Records and other prequalification information confidentially disclosed as part of the bid process shall not be

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deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

5.00 Effective Date:

All Memorandum of Agreements are not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the agreement and until the agreement has been submitted to the government contract review committee. However, in accordance with KRS 45A.700, memoranda of agreement in aggregate amounts of \$50,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes.

KRS 45A.695(7) provides that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

6.00 Violation of tax and employment laws:

KRS 45A.485 requires the Contractor and all subcontractors performing work under the agreement to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to corporate and utility tax, sales and use tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the Contractor and all subcontractors performing work under the agreement shall report any such final determination~~(s)~~ of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the Contractor and all subcontractors performing work under the agreement shall be in continuous compliance with the provisions of those statutes, which apply to their operations, and that their failure to reveal a final determination as described above, or failure to comply with the above statutes for the duration of the agreement shall be grounds for the Commonwealth's cancellation of the agreement and their disqualification from eligibility for future state contracts for a period of two (2) years.

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[Check box section below need only be included for Contractors that are quasi-governmental entities or 501(c)3 non-profit entities.]

Contractor must check one:

The Contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

_____ The Contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). Attached is a list of such determination(s) , which includes the KRS violated, the date of the final determination, and the state agency which issued the final determination.

7.00 Discrimination:

This section applies only to agreements disbursing federal funds, in whole or part, when the terms for receiving those funds mandate its inclusion. Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this agreement, the Contractor agrees as follows:

The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will, state that all qualified applicants will receive consideration

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for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this agreement or with any of the said rules, regulations or orders, this agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

The Contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency,

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the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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Approvals

This contract is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this contract and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single contract.

1st Party:

Carey D. Cokerell
Signature

Commissioner
Title

Carey D. Cokerell
Printed Name

5/31/18
Date

2nd Party:

Signature

Title

Printed Name

Date

2ND PARTY REV
Other Party:

[Signature]
Signature

Mayor
Title

Jim Gray
Printed Name

5/23/18
Date

Approved as to form and legality:

[Signature]
Attorney

[Signature]
Attorney