

## MEMORANDUM OF AGREEMENT

This **Agreement**, made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government pursuant to KRS Chapter 67A and located at 200 East Main Street, Lexington, Fayette County, Kentucky 40507 (hereinafter referred to as "GOVERNMENT"), and **LEXINGTON-FAYETTE COUNTY HEALTH DEPARTMENT**, whose post office address is 650 Newtown Pike, Lexington Kentucky 40508 (hereinafter referred to as "LFCHD").

**WHEREAS**, the GOVERNMENT owns property at 498 Georgetown Street, Lexington, Kentucky 40508, also known as the Black and Williams Center (hereinafter referred to as "Premises");

**WHEREAS**, the LFCHD needs space to operate a training/ satellite office for temporary staff in response to COVID-19;

**WHEREAS**, the LFCHD and GOVERNMENT wish to enter into an agreement which grants LFCHD temporary access to the Premises;

**NOW, THEREFORE**, in consideration of the foregoing and mutually agreed upon promises, conditions, and covenants hereinafter set forth, the parties hereto agree as follows:

1. **PREMISES.** The Black and Williams Center, hereinafter called the "Premises", is identified and described as follows: 1,721 square feet of area consisting of space identified as room 210, 213 and 211B, located at 498 Georgetown Street, in Lexington, Kentucky, commonly known as the "Black and Williams Center," and more specifically identified on Exhibit A of this Agreement.
2. **USE.** The Premises shall be used by LFCHD for training and office space related to COVID-19 response and shall not be used for any other purpose without the prior written consent of the GOVERNMENT. LFCHD shall not use the Premises in any manner constituting a violation of any ordinance, statute, regulation, or order of any governmental authority. LFCHD 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 LFCHD first took possession thereof, and LFCHD shall not commit, or allow to be committed, any act of waste in or about the Premises or the Building. LFCHD shall not create, maintain, or permit any nuisance in the Premises or the Building, or permit any objectionable or offensive noise or odors to be emitted from the Premises.
3. **TERM.** The initial term of this Agreement shall be for a period of six (6) months beginning on November 1, 2020, and ending April 30, 2021. The initial term of this Agreement may be renewed for six (6) subsequent terms of one (1) month subject to the termination provision stated in Section 13.
4. **RENT.** GOVERNMENT agrees to waive all rent payments for the term of this Agreement.
5. **UTILITIES AND SERVICES.** GOVERNMENT shall be responsible for providing and paying for all utilities to the Premises.
6. **SECURITY DEPOSIT.** LFCHD shall not be required to pay a Security Deposit. Upon the expiration or earlier termination of this Agreement, LFCHD shall immediately

surrender the Premises to the GOVERNMENT in broom clean condition and in good order, condition, and repair, except for ordinary wear and tear and damage which LFCHD is not obligated to repair.

7. COMPLIANCE WITH ORDINANCES, STATUTES, STATE AND FEDERAL LAWS.  
LFCHD shall comply and cause its employees and agents to comply with all ordinances, statutes, state and federal laws, including without limitation all applicable local planning and zoning rules and regulations.

8. INSPECTIONS. The GOVERNMENT shall have the right to inspect the Premises at any time during LFCHD's normal hours of operation. GOVERNMENT shall have free access to the Premises at all reasonable times for the purpose of examining the same, or to make any alterations or repairs to the Premises that GOVERNMENT deems necessary for its safety or preservation. GOVERNMENT shall have the right to inspect the Premises outside LFCHD's normal hours of operation with 24 hours prior notice.

9. ALTERATIONS TO THE PREMISES AND FIT-UP COSTS.

Any and all improvements once installed, affixed or located in or on the Premises shall be and remain on the Premises and belong to GOVERNMENT as further consideration of this Agreement. LFCHD, at GOVERNMENT'S request, shall remove its personal property and shall restore the Premises to the condition existing prior to the items so removed.

10. MAINTENANCE AND USAGE OF THE PREMISES.

- a. LFCHD shall maintain the Premises in clean and sanitary conditions, but otherwise GOVERNMENT shall be solely responsible for maintaining the Premises, as identified in exhibit A, and the building in which the Premises is located, which it shall keep in good order, condition and repair at all times.
- b. LFCHD shall reimburse GOVERNMENT for any fines, penalties and costs and all liability for violation or non-compliance with any requirements related to the Premises imposed as a result of LFCHD's failure to maintain or repair.

12. INDEMNIFICATION AND INSURANCE.

- a. Indemnification – LFCHD agrees to indemnify, defend and hold harmless the GOVERNMENT 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 LFCHD's or its invitees' use of the Premises, except to the extent resulting from the negligence or willful misconduct of GOVERNMENT or GOVERNMENT'S breach of this Lease. GOVERNMENT shall not be liable to LFCHD for any loss or damage to persons or property of the LFCHD or others located on the Premises or the loss of or the damage to any property of LFCHD or others by theft or otherwise from the Premises. GOVERNMENT 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 resulting from the negligence or willful misconduct of GOVERNMENT or GOVERNMENT's breach of the Lease. Any property of LFCHD kept for

storage at the Premises shall be so kept or stored at the exclusive risk of LFCHD.

- b. Insurance –LFCHD shall procure and maintain, at its cost, throughout the term of this Agreement and annually for any extension thereof, commercial general liability insurance, including premises and operations liability, special form contractual coverage, and fire legal liability for said Premises, and any other appropriate insurance deemed proper and necessary for its use and occupation of the Premises. Liability limits should be in an amount not less than \$1,000,000.00 per occurrence with an aggregate of not less than \$2,000,000.00. It is agreed and understood that the Lexington-Fayette Urban County Government, its agents, employees, officers and elected officials, as their interests may appear, are additional insured, under the provisions of this Agreement.” LFCHD shall furnish to the GOVERNMENT’S Division of Risk Management a certificate of insurance and make available for inspection a copy of the policy.

- 13. TERMINATION. After the expiration of the initial Agreement term, either party may terminate any Agreement extension at any time, without penalty, upon thirty (30) days prior written notice to the other party. GOVERNMENT may perform ongoing evaluations to determine whether the Premises are being used by LFCHD as stipulated in this Agreement. If LFCHD does not utilize the Premises in accordance with the use specified in Paragraph 2 of this Agreement, LFCHD upon written notice from GOVERNMENT shall immediately vacate the Premises and this Agreement will be terminated and of no further force and effort.
- 14. SIGNAGE. LFCHD may place, at its sole expense, its name or sign on the Premises, provided such signage complies with the applicable guidelines as set forth by GOVERNMENT and applicable local sign ordinances.
- 15. AGREEMENT IS NOT ASSIGNABLE. This Agreement is not assignable and LFCHD may not sublease or grant any other individual, agency or organization use or occupancy of Premises.
- 16. PROPERTY ON PREMISES IS RESPONSIBILITY OF LFCHD. All personal property kept upon the Premises shall be kept at the sole risk and responsibility of LFCHD.
- 17. DESTRUCTION OF PREMISES. If the Premises should be destroyed or damaged by fire or other casualty covered by the GOVERNMENT’S policy of fire and extended coverage insurance, GOVERNMENT may, at its sole option and expense, elect to make repairs or restore the building and Premises or to cancel this Agreement.
- 18. HAZARDOUS MATERIALS. LFCHD 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 LFCHD will be removed from the Premises at LFCHD’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 LFCHD fails to comply with the terms of this section, GOVERNMENT may remedy such default and LFCHD must fully reimburse

GOVERNMENT for any cost or expense it incurs within ten (10) days of written notification from GOVERNMENT.

19. DEFAULT AND REMEDIES

- a. If LFCHD shall abandon the Premises or fail to perform any of its obligations under the terms, conditions, and covenants of the Agreement, then LFCHD shall be in default and breach of the Agreement.
- b. In the event of a default and the continuance of such default ten (10) days after written notice thereof is given by GOVERNMENT to LFCHD, in addition to GOVERNMENT's rights and remedies allowed by law, GOVERNMENT may, without further notice to or demand upon LFCHD, re-enter the Premises and cure any default of LFCHD. LFCHD shall reimburse GOVERNMENT in curing such default, and GOVERNMENT shall not be liable to LFCHD for any loss or damage which LFCHD may sustain by reason of GOVERNMENT's actions. Further, in addition to any other rights and remedies allowed by law, GOVERNMENT may terminate the Agreement as of the date of such default and LFCHD shall immediately thereafter surrender the Premises to GOVERNMENT.
- c. 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 Agreement 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 Agreement shall not be held to be a waiver of any other default and breach.

24. 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.

**Notice shall be sent to the GOVERNMENT at the following:**

Lexington-Fayette Urban County Government  
Attn: Commissioner of General Services  
200 East Main Street  
Lexington, KY 40507

**Notice shall be sent to the LFCHD at the following:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

25. WAIVER. No waiver of any condition of legal right shall be implied by the failure of either party to declare forfeiture, or for any other reason, and no waiver of condition or covenant shall be valid unless it be in writing signed by party so waiving. The waiver of a

breach by either party of any condition shall not excuse, or be claimed to excuse, a future breach of the same condition or covenant or any other condition or covenant.

27. INTERPRETATION. If any clause, sentence, paragraph or part of the 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 aspects this Agreement shall continue in full force and effect. The Agreement, having been negotiated in good faith between the parties with advice of their respective counsel, shall not be construed against one party or the other.
29. NON-DISCRIMINATION. LFCHD will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or handicap and will state in all solicitations or advertisements for employees placed on behalf of LFCHD that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, sex, age, national origin or handicap.
30. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties with respect to LFCHD's occupancy, and use of the Premises, and there are no other promises or conditions in any other agreement either oral or written. The Agreement may be amended only in writing and only if such writing is signed by both parties. The parties acknowledge that any amendment to the Agreement must be approved by the Lexington-Fayette Urban County Council.
32. APPLICABLE LAW AND 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.
34. SUCCESSORS AND ASSIGNS. This Agreement shall be binding on both parties and their successors and assigns.

**IN WITNESS WHEREOF**, the parties hereto have set their hands the date first above written.

LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT:

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\_\_\_\_\_  
LINDA GORTON, MAYOR

\_\_\_\_\_  
DATE

LEXINGTON-FAYETTE COUNTY  
HEALTH DEPARTMENT:

BY: \_\_\_\_\_

\_\_\_\_\_  
DATE