

MEMORANDUM OF AGREEMENT

THIS AGREEMENT (hereinafter "Agreement") is made and entered into on the 1st day of October 2021, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the COMMONWEALTH OF KENTUCKY created pursuant to KRS chapter 67A (hereinafter "LFUCG"), 200 East Main Street, Lexington, Kentucky 40507, on behalf of its **DEPARTMENT OF SOCIAL SERVICES** (hereinafter "Sponsor"), and **ARBOR YOUTH SERVICES, INC.**, located at 536 W Third Street, Lexington, Kentucky 40508 (hereinafter "AYS").

RECITALS

WHEREAS, AYS provides non-secured overnight emergency shelter, compassionate care, and supportive services to homeless and at-risk youth ages birth to 17;

WHEREAS, in collaboration with Fayette County's Juvenile Detention Alternative Initiative (JDAI) and with the approval of the Kentucky Administrative Office of the Courts ("AOC"), AYS has also established the need for an alternative to detention for youth under 18 years of age;

WHEREAS, LFUCG has a statutory obligation to pay a per diem rate for the detention of certain juvenile offenders in Fayette County;

WHEREAS, AYS can house these juvenile offenders as an alternative to detention at a reduced per diem rate to LFUCG;

WHEREAS, LFUCG is not obligated to pay for alternative housing of juvenile offenders absent an agreement with AYS;

WHEREAS, LFUCG and AYS also want to prioritize serving youth needing an alternative to detention, as determined by the Steering Committee of Fayette County's JDAI;

WHEREAS, the purpose of this Agreement is to improve the availability of an alternative to detention for youth as identified by Fayette County Judges and Court Designated Workers.

WITNESSETH

NOW, THEREFORE, in consideration of the aforementioned foregoing and mutually agreed upon promises, conditions, and covenants herein expressed, which are fully incorporated herein by reference, LFUCG and AYS agree as follows:

1. This Agreement shall last for an initial term of July 1, 2021, through June 30, 2022, unless the parties exercise their right to terminate the Agreement.
2. LFUCG's Obligations.
 - a. LFUCG's only obligation under this Agreement is to provide \$47.00 to AYS per diem, per youth, for each day of shelter and services AYS provides to those youth, after proper invoicing provided by AYS, in an amount not to exceed \$5,000.00 per year. The parties mutually understand and agree that LFUCG is not otherwise obligated to provide any other fee or service and is in no way responsible, whatsoever, for the health, safety, or conduct of the youth who are sheltered by AYS.

3. AYS' Obligations.

- a. AYS will provide the services designated in the Scope of Work attached as Exhibit "A" hereto faithfully and satisfactorily at the time, place and for the duration prescribed therein. Compensation paid pursuant to this Agreement shall be used exclusively for the services set forth in Exhibit "A" and for no other purpose. Any alteration in the nature of such services and duties constitutes an amendment to this Agreement and must be in writing signed by both parties.
- b. Before LFUCG shall have any obligation to provide a reimbursable payment, AYS shall provide invoices for the services required by this Agreement, said services being more particularly described in Exhibit "A," payable each quarter thereafter upon submission of a quarterly financial report and invoice, and a detailed quarterly program report. Quarterly financial reports, invoices, and detailed program reports shall be submitted by the second Friday in the months of October, January, April and July each year of the Agreement. Both reports shall reflect the services and programs directly related to the funding provided by LFUCG. Forms for both the quarterly financial and program reports are attached as Exhibit "B."
- c. AYS shall maintain records of referral copies from the Court Designated Worker office for each and every youth housed within its facility for whom AYS seeks per diem reimbursement from LFUCG, and said records shall demonstrate how each of these youths qualifies

for shelter services identified in Exhibit "A." AYS expressly acknowledges and agrees that LFUCG has the right to refuse payment for any youth if AYS cannot produce a satisfactory Order demonstrating how that youth qualifies for the services described in Exhibit "A."

- d. AYS shall provide any and all documentation requested by LFUCG.
- e. AYS shall keep itself fully informed of all federal and state laws and all municipal ordinances and regulations in any manner affecting the work or performance of this Agreement, and shall at all times observe and comply with such laws, ordinances and regulations, whether or not such laws, ordinances or regulations are mentioned herein.
- f. AYS shall keep books of accounts and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of AYS. The books of accounts, together with all bonds, notes, bills, letters and other writings belonging to AYS, shall be maintained at the principal place of business of AYS as set forth in this Agreement. LFUCG shall have free and complete access to the books, papers and affairs of AYS that relate to the performance of this Agreement, at all reasonable times, and if it desires, it may have the books and papers of AYS that relate to the performance of this Agreement, audited and examined by auditors, accountants or attorneys. Any examination shall be at the expense of LFUCG.

- g. AYS shall indemnify LFUCG, its officers, agents and employees against any claim or liability arising from and based on AYS' violation of any laws, ordinances or regulations.
- h. AYS shall provide equal opportunity in employment for all qualified persons, shall prohibit discrimination in employment because of race, color, creed, national origin, sex or age, shall promote equal employment, and shall cause each of its subcontracting agencies to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.
- i. AYS shall adopt a written sexual harassment policy, which shall, at a minimum, contain a statement of current law; a list of prohibited behaviors; a complaint process; and a procedure which provides for a confidential investigation of all complaints. The policy shall be given to all employees and clients and shall be posted at all locations where AYS conducts business. The policy shall be submitted to Sponsor for review within thirty (30) days of the execution of this Agreement.
- j. AYS expressly agrees to abide by the General Conditions and Risk Management Provisions included in Exhibit "C" which is attached hereto and incorporated herein by reference.

4. General Conditions.

- a. The parties agree that they have not entered this Agreement for the benefit of any third party(ies), including, but in no way limited to, any youth who are sheltered by AYS.

- b. Either party may terminate this Agreement at any time, for any reason, by providing the other party with at least thirty (30) days' advance written notice of the termination, provided that in the event of termination, AYS shall be entitled to that portion of total compensation due under this Agreement as the services rendered bears to the services required herein.
- c. The relationship created by this Agreement is that of an independent contractor, and nothing contained herein will be construed to be inconsistent with this relationship.
- d. The parties acknowledge that AYS will receive confidential information regarding youths for whom AYS provides shelter. AYS shall notify those youths, LFUCG, and the AOC of any suspected breach of confidential information. Nothing in this Agreement shall be construed to interfere with LFUCG's obligations under the Kentucky Open Records Act.
- e. AYS represents that it has filed all federal, state and local income tax returns required by law in the legally prescribed time and manner, and AYS understand and acknowledges that this Agreement shall not become effective unless and until copies of all of the executed originals of the aforementioned tax returns filed for AYS have been registered for the current tax year by AYS in the office of the Sponsor, and AYS shall not be compensated unless and until such registration has taken place.

- f. LFUCG may designate such persons as may be necessary to monitor and evaluate the services rendered by AYS. LFUCG, its agents and employees, shall, at all times, have unrestricted access to all places where or in which the services required hereunder are being carried on and conducted. This includes access to all data collected by AYS in the course of delivering services under this Agreement. Inspection and monitoring of the work by these authorities shall in no manner be presumed to relieve in any degree the responsibility or obligations of AYS, nor to constitute AYS as an agent of LFUCG.
- g. Should any provision of this Agreement be deemed invalid or unenforceable, it will not affect the other provisions of this Agreement.
- h. This Agreement shall include the following additional documents, which are attached hereto as Exhibits and incorporated herein by reference as if fully stated:
 - i. Exhibit "A" – Scope of Work
 - ii. Exhibit "B" – Invoice and Reporting Form
 - iii. Exhibit "C" – General Conditions and Risk Management Provisions
- i. This Agreement and all documents attached hereto, which are incorporated herein by reference, contain the entire agreement between the parties, and no statement, promises or inducements made by either party or agent of either party that is not contained in this written Agreement shall be valid and binding; and this Agreement may not be

enlarged, modified or altered except in writing signed by the parties and endorsed hereon.

- j. While the parties understand and acknowledge that the Kentucky Administrative Office of the Court ("AOC") is not a party to this Agreement and therefore is not bound by its terms and conditions, the parties agree that AYS shall provide a copy of this Agreement, any and all Amendments and any and all Addenda to this Agreement, along with all documents attached to this Agreement, Amendments, and Addenda, to the AOC promptly after the parties' execution.
- k. Notice -- All written notice required by the Agreement shall be delivered by certified mail, return receipt requested, to each of the following:

For AYS:

Arbor Youth Services
536 W Third Street
Lexington, Kentucky 40508
Attn: Lori Clemons, Executive Director

For Government:

Lexington-Fayette Urban County Government
200 East Main Street, 6th Floor
Lexington, Kentucky 40507
Attn: Kacy Allen-Bryant, Commissioner
Department of Social Services

For the AOC:

Attn: _____

IN WITNESS WHEREOF, the parties have executed this Agreement at Lexington,
Kentucky, the day and year first above written.

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

ARBOR YOUTH SERVICES, INC.

BY: Linda Gorton
Linda Gorton, Mayor

BY: Pari Clema
Title: EXECUTIVE DIRECTOR

Have seen:

BY: _____
Title: _____
Date: _____

KENTUCKY ADMINISTRATIVE OFFICE OF THE COURTS

Exhibit A

Scope of Work

Arbor Youth Services Alternative to Detention

Purpose:

Arbor Youth Services' (AYS) emergency shelter will serve as an alternative to detention for justice-involved youth who need assistance but do not need to be detained at the juvenile detention center. AYS services are provided on-site 24 hours a day, 7 days a week, at 536 W Third Street.

Policies:

- Youth are deemed appropriate for a detention alternative as determined by the DRSI (Detention Risk Screening Instrument) screening tool, DRSI, administered by the Fayette County Court Designated Workers office.
- AYS has last right of refusal if a referred youth does not meet eligibility requirements or if AYS is at capacity.
- This is a voluntary program for youth, and this is not a secure facility.
- CDW's office is responsible for coordinating transportation for youth, unless AYS receives guardian signatures to provide transportation.
- Once youth are referred to AYS by a Court Designated Worker, AYS staff will complete an assessment over the phone to determine eligibility for program services.

Services:

Arbor Youth Services (AYS) will provide justice-involved youth identified by the Fayette County Judicial System and Juvenile Court Designated Workers with;

1. Temporary 24/7 Shelter
2. Compassionate Care Services including but not limited to:
 - basic needs,
 - crisis intervention,
 - risk assessment,
 - safety planning,
 - emotional support,
 - educational support,
 - skill development,
 - enrichment activities,
 - referrals and advocacy, and
 - case management.
3. Provide a safe and private location for Partners to meet with youth, as needed.
4. Provide transportation to court, if guardian approval received.

GENERAL PROVISIONS AND RISK MANAGEMENT PROVISIONS

1. AYS shall comply with all Federal, State & Local regulations concerning this type of service or good. AYS agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, *29 U.S.C. 650 et. seq.*, as amended, and KRS Chapter 338. AYS also agrees to notify LFUCG in writing immediately upon detection of any unsafe and/or unhealthful working conditions at the job site. AYS agrees to indemnify, defend and hold the LFUCG harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.
2. Failure to submit ALL forms and information required by this Agreement may be grounds for termination.
3. No Assignments: AYS shall not assign or subcontract any portion of the Agreement without the express written consent of LFUCG. Any purported assignment or subcontract in violation hereof shall be void. It is expressly acknowledged that LFUCG shall never be required or obligated to consent to any request for assignment or subcontract; and further that such refusal to consent can be for any or no reason, fully within the sole discretion of LFUCG.
4. No Waiver: No failure or delay by LFUCG in exercising any right, remedy, power or privilege hereunder, nor any single or partial exercise thereof, nor the exercise of any other right, remedy, power or privilege shall operate as a waiver hereof or thereof. No failure or delay by LFUCG in exercising any right, remedy, power or privilege under or in respect of this Agreement shall affect the rights, remedies, powers or privileges of LFUCG hereunder or shall operate as a waiver thereof.
6. Authority to do Business: AYS must be a duly organized and authorized to do business under the laws of Kentucky. AYS must be in good standing and have full legal capacity to provide the services specified under this Agreement. AYS must have all necessary right and lawful authority to enter into this Agreement for the full term hereof and that proper corporate or other action has been duly taken authorizing AYS to enter into this Agreement. AYS will provide LFUCG with a copy of a corporate resolution authorizing this action and a letter from an attorney confirming that the proposer is authorized to do business in the State of Kentucky if requested. All proposals must be signed by a duly authorized officer, agent or employee of AYS.
7. Ability to Meet Obligations: AYS affirmatively states that there are no actions, suits or proceedings of any kind pending against AYS or, to the knowledge of AYS, threatened against AYS before or by any court, governmental body or agency or other tribunal or authority which would, if adversely determined, have a materially adverse effect on the authority or ability of AYS to perform its obligations under this Agreement, or which question the legality, validity or enforceability hereof or thereof.

9. AYS will not appropriate or make use of the LFUCG 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 government. If such consent is granted LFUCG reserves the unilateral right, in its sole discretion, to immediately terminate and revoke such use for any reason whatsoever. AYS agrees that it shall cease and desist from any unauthorized use immediately upon being notified by LFUCG.

INSURANCE AND INDEMNIFICATION

INDEMNIFICATION AND HOLD HARMLESS PROVISION

- (1) It is understood and agreed by the parties that AYS hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of AYS or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter "Contractor") under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.
- (2) Contractor shall indemnify, save, hold harmless and defend the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter "LFUCG") from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by Contractor's performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the Contractor; and (b) not caused solely by the active negligence or willful misconduct of LFUCG.
- (3) Notwithstanding, the foregoing, with respect to any professional services performed by Contractor hereunder (and to the fullest extent permitted by law), Contractor shall indemnify, save, hold harmless and defend LFUCG from and against any and all liability, damages and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees, for any damage due to death or injury to any person or injury to any property (including the loss of use resulting therefrom) to the extent arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of Contractor in the performance of this agreement.
- (4) In the event LFUCG is alleged to be liable based upon the above, Contractor shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by LFUCG, which approval shall not be unreasonably withheld.
- (5) These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.
- (6) LFUCG is a political subdivision of the Commonwealth of Kentucky. Contractor acknowledges and agrees that LFUCG is unable to provide indemnity or otherwise save, hold harmless, or defend the Contractor in any manner.

FINANCIAL RESPONSIBILITY

Contractor understands and agrees that it shall, prior to final acceptance of its proposal and the commencement of any work or services, demonstrate the ability to assure compliance with the above Indemnity provisions and these other risk management provisions.

INSURANCE REQUIREMENTS

YOUR ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW, AND YOU MAY NEED TO CONFER WITH YOUR INSURANCE AGENTS, BROKERS, OR CARRIERS TO DETERMINE IN ADVANCE OF SUBMISSION OF A RESPONSE THE AVAILABILITY OF THE INSURANCE COVERAGES AND ENDORSEMENTS REQUIRED HEREIN. IF YOU FAIL TO COMPLY WITH THE INSURANCE REQUIREMENTS BELOW, THIS AGREEMENT MAY BE TERMINATED.

Required Insurance Coverage

Contractor shall procure and maintain for the duration of this Agreement the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to LFUCG in order to protect LFUCG against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by Contractor. The cost of such insurance shall be included in any bid:

| <u>Coverage</u> | <u>Limits</u> |
|---|---|
| General Liability aggregate (Insurance Services Office Form CG 00 01) | \$1 million per occurrence, \$2 million or \$2 million combined single limit |
| Commercial Auto Liability | \$1 million per occurrence |
| Excess/Umbrella Liability | \$2 million per occurrence |
| Professional Liability | \$1 million per occurrence |
| Worker's Compensation | Statutory |
| Employer's Liability | \$100,000 |

The policies above shall contain the following conditions:

- a. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky. LFUCG shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the Kentucky DOI approved forms.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG.
- c. The General Liability Policy shall include a Products and Completed Operations

endorsement or Premises and Operations Liability endorsement and a Products Liability endorsement unless they are deemed not to apply by LFUCG.

- d. The General Liability Policy shall have a Professional Liability endorsement (including Errors and Omissions) for any services performed pursuant to the Agreement, and/or a separate Professional Liability Policy shall be obtained unless it is deemed not to apply by LFUCG.
- e. The Professional Liability policy shall be maintained for a minimum of three years beyond the completion date of the project, to the extent commercially available. If not commercially available, Contractor shall notify LFUCG and obtain similar insurance that is commercially available and acceptable to LFUCG.
- f. LFUCG shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.
- g. Said coverage shall be written by insurers acceptable to LFUCG and shall be in a form acceptable to LFUCG. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

Renewals

After insurance has been approved by LFUCG, evidence of renewal of an expiring policy must be submitted to LFUCG, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

Deductibles and Self-Insured Programs

IF YOU INTEND TO SUBMIT A SELF-INSURANCE PLAN IT MUST BE FORWARDED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, DIVISION OF RISK MANAGEMENT, 200 EAST MAIN STREET, LEXINGTON, KENTUCKY 40507 NO LATER THAN A MINIMUM OF FIVE (5) WORKING DAYS PRIOR TO THE RESPONSE DATE. Self-insurance programs, deductibles, and self-insured retentions in insurance policies are subject to separate approval by Lexington-Fayette Urban County Government's Division of Risk Management, upon review of evidence of Contractor's financial capacity to respond to claims. Any such programs or retentions must provide LFUCG with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage. If Contractor satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retentions, Contractor agrees to provide Lexington-Fayette Urban County Government, Division of Risk Management, the following data prior to the final acceptance of bid and the commencement of any work:

- a. Latest audited financial statement, including auditor's notes.
- b. Any records of any self-insured trust fund plan or policy and related accounting statements.

- c. Actuarial funding reports or retained losses.
- d. Risk Management Manual or a description of the self-insurance and risk management program.
- e. A claim loss run summary for the previous five (5) years.
- f. Self-Insured Associations will be considered.

Safety and Loss Control

Contractor shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement and take necessary action to protect the life, health and safety and property of all of its personnel on the job site, the public, and LFUCG.

Verification of Coverage

Contractor agrees to furnish LFUCG with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, and if requested, shall provide LFUCG copies of all insurance policies, including all endorsements.

Right to Review, Audit and Inspect

Contractor understands and agrees that LFUCG may review, audit and inspect any and all of its records and operations to insure compliance with these Insurance Requirements.

DEFAULT

Contractor understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default and that LFUCG may elect at its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging Contractor for any such insurance premiums purchased, or suspending or terminating the work.