

**MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING (“Agreement”), is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_ 2023, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the COMMONWEALTH OF KENTUCKY created pursuant to KRS Chapter 67A (“LFUCG”), 200 East Main Street, Lexington, Kentucky 40507, and **HOPE CENTER, INC.**, (“Organization”) with offices located at 298 W. Loudon Avenue, Lexington, Kentucky 40508.

**WITNESSETH**

**WHEREAS**, LFUCG, through its wholly-owned corporate entity Lexington-Fayette Urban County Government Public Facilities Corporation, owns property located at 360 W. Loudon Avenue (“Facilities”);

**WHEREAS**, the Organization provides emergency shelter services to individuals experiencing homelessness or at risk of experiencing homelessness and has agreed to provide additional temporary warming shelters for the unsheltered homeless during the winter months;

**WHEREAS**, LFUCG has determined that providing funding to the Organization will improve access to warming facilities for unhoused persons, and previously provided federal funding, awarded to LFUCG via the American Rescue Plan Act of 2021 (ARPA), to Organization for this purpose through an agreement executed on October 16, 2023, which terminated December 31, 2023;

**WHEREAS**, the Organization has expressed need for additional funding to complete the services contemplated in the First Agreement and LFUCG has determined that providing additional funding for these services via this Agreement will serve a public purpose;

**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. **EFFECTIVE DATE; TERM.** This Agreement shall have an effective date of January 1, 2024, and shall last until April 30, 2024, unless terminated by LFUCG at an earlier time.
2. **RELATED DOCUMENTS.** This Agreement shall consist of the terms herein as well as the following additional documents, which are attached hereto as exhibits and incorporated by reference as if fully stated herein:

A. Exhibit 1 – Scope of Work

To the extent that there is any conflict between or among any of these documents, the terms and conditions of this Agreement shall govern, followed by the terms and conditions of Exhibit 1.

3. **SCOPE OF WORK.** Organization shall complete the project(s) specified within the attached Exhibit 1 (“Project(s)”) and as further specified in this Agreement. The Organization shall complete the Projects in a timely, workmanlike and professional manner, as specified herein.

4. **PAYMENT.** LFUCG shall pay Organization a total amount not to exceed **SIX HUNDRED NINETY-THREE THOUSAND SIX HUNDRED AND FIFTY-SEVEN DOLLARS (\$693,657.00)** (“Funds”) for the completion of the Project(s). Further, the total amount of the Funds used for any goods or services related to an expense category detailed in the approved budget, included below (“Budget”), shall not exceed the allowable cost for that expense category, unless LFUCG provides advanced written consent for a deviation in the budgeted allowable cost for that expense category:

<b>EXPENSE CATEGORY</b>	<b>ALLOWABLE COST</b>
Set-up for shelter	\$140,338.00
Security guards	\$129,600.00
Fuel	\$2,000.00
Shelter staff	\$227,186.00
Utilities	\$60,200.00
Food	\$131,333.00
Linens and laundry service	\$3,000.00

The uses of the Funds are limited to payment for goods and services directly related to fulfilling the services described in Exhibit 1. Funds may not be spent for any other purpose without the prior written consent of LFUCG. Absent any additional written agreement stating otherwise, any travel or other expenses are excluded from the above payment schedule.

a. LFUCG shall make payment under this Agreement upon timely submission of an approved invoice(s) from Organization specifying the nature of work performed, accompanied by data satisfactory to LFUCG to document entitlement to payment for work completed to date. LFUCG shall have thirty (30) days from the date of receipt of the invoice to pay the invoice amount. LFUCG reserves the right to refuse payment if it is determined by LFUCG that any of the work performed on the Projects is inadequate or defective.

b. LFUCG also reserves the right to reject any invoice submitted for services more than sixty (60) days after the services were rendered.

5. **TERMINATION.** LFUCG, through the Mayor or the Mayor’s designee, may terminate this Agreement for any reason whatsoever by providing Organization with at least thirty (30) days

advance written notice. Organization shall be entitled for payment of all work performed up to that period of time, calculated on a reasonable basis.

a. In the event of a termination based upon a material condition of non-performance or default by Organization, LFUCG shall provide Organization with advance written notice and a reasonable period of time to cure the breach.

b. Organization may only terminate this Agreement based upon LFUCG's failure to timely pay for properly invoiced and accepted work. Organization shall provide LFUCG with at least thirty (30) days' advance written notice and an opportunity to cure prior to termination.

c. Organization acknowledges that LFUCG is a governmental entity, and that the validity of this Agreement is based upon the availability of appropriated funding. In the event that such funding is not appropriated in a future fiscal year, LFUCG's obligations under this Agreement shall automatically expire without penalty to the LFUCG thirty (30) days after written notice to Organization. LFUCG shall exercise any application of this provision in good faith.

**6. REPORTING.** Organization shall provide LFUCG with timely quarterly reports and updates related to the completion of the Projects in the form and manner reasonably specified by LFUCG.

**7. REGISTRATION; COMPLIANCE; AUTHORITY TO SIGN.** Organization shall be lawfully registered or authorized to do business in the Commonwealth of Kentucky and Lexington-Fayette County and shall at all times comply with any and all applicable federal, state, and local laws, ordinances, and regulations. LFUCG may request proof that Organization has timely filed federal, state, or local tax forms which shall be provided by Organization on a timely basis. The person signing this Agreement on behalf of Organization is fully authorized to do so.

**8. INSURANCE; INDEMNITY.**

a. At all times relevant to the performance of this Agreement, Organization shall maintain insurance coverages in at least the following amounts, which shall be properly filed and approved by the Kentucky Department of Insurance. Evidence of such coverage shall be made available to LFUCG upon request. General Liability (\$1 million per occurrence, \$2 million aggregate or \$2 million combined single limit); Commercial Automobile Liability (combined single, \$1 million per occurrence); (if applicable) Professional Liability (\$1 million per occurrence, \$2 million aggregate); Worker's Compensation (Statutory); and Employer's Liability (\$1 million).

b. Organization shall indemnify, defend and hold harmless LFUCG and its elected and appointed officials, employees, agents, volunteers, and successors in interest, from and against any and all liability, damages, and losses, including but not limited to: demands, claims, liens, suits, notices of violation from governmental agencies, 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 Organization's performance of, or breach of this 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 Organization or its officials, employees, or agents; and (b) not caused solely by willful misconduct of LFUCG.

c. Organization understands and agrees that its obligation to defend LFUCG includes the obligation to investigate, handle, respond to, resist, provide a defense for, and defend claims, at Organization's expense, using attorneys approved in writing by the LFUCG, which approval shall not be unreasonably withheld.

d. Organization further understands and agrees that its obligation to indemnify includes, but is not limited to: attorney fees and expenses, costs of litigation, court and administrative costs, expert witness fees and expenses, judgments, fines, penalties, interest, all environmental cleanups and remediation costs of whatever kind, and any liability arising from death, injury, or damage of any kind, to any person, including employees and agents of Organization and LFUCG, and damage to, or destruction of, any property, including the property of LFUCG.

e. This provision shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this Agreement.

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

**9. RECORDS.** Organization shall keep and make available to LFUCG any records related to this Agreement as are necessary to support its performance of the services for a period of at least five (5) years following the expiration or termination of this Agreement, or as otherwise required depending upon the source of funds. Books of accounts shall be kept by Organization and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of Organization related to this Agreement and shall be made available to LFUCG upon request.

a. LFUCG shall be the owner of all final documents, data, studies, plans, reports, and information prepared by Organization under this Agreement.

b. Organization understands and agrees that this Agreement and any related documents may be subject to disclosure under the Kentucky Open Records Act and will comply with any reasonable request by LFUCG to provide assistance with such a request.

**10. ACCESS.** Organization shall allow LFUCG any necessary reasonable access to monitor its performance under this Agreement.

**11. CONTRACTUAL RELATIONSHIP ONLY.** In no event shall the parties be construed, held or become in any way for any purpose the employee of the other party, or partners, associates or joint ventures in the conduct of their respective endeavors or otherwise.

12. **EQUAL OPPORTUNITY; FAIRNESS ORDINANCE.** Organization shall provide equal opportunity in employment for all qualified persons, and shall (a) prohibit discrimination in employment because of race, color, creed, national origin, sex, age, sexual orientation, gender identity, or handicap, (b) promote equal employment through a positive, continuing program of equal employment, and (c) cause any subcontractor or agency receiving funds provided pursuant to this Agreement to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices. Organization agrees to comply with LFUCG's Fairness Ordinance (Ordinance No. 201-99) and all sources of applicable law, including those specified in any Exhibit attached to this Agreement and incorporated herein by reference.

13. **SEXUAL HARASSMENT.** Organization must adopt or have adopted 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 Organization conducts business. The policy shall be made available to LFUCG upon request.

14. **KYHMIS.** Organization agrees that it shall ensure that data on all persons served and/or all activities assisted with using any amount of Funds provided under this Agreement shall be entered into the applicable Kentucky Homeless Management Information System (KYHMIS) in accordance with standards of the U.S. Department of Housing and Urban Development and the Continuum of Care. The Organization further agrees that this provision shall survive termination of this Agreement.

15. **INVESTMENT.** Any investment of the Funds received pursuant to this Agreement must fully comply with any restrictions imposed by law.

16. **NO ASSIGNMENT.** Organization may not assign any of its rights and duties under this Agreement without the prior written consent of LFUCG.

17. **NO THIRD PARTY RIGHTS.** This Agreement does not create a contractual relationship with or right of action in favor of a third party against either Organization or LFUCG.

18. **KENTUCKY LAW AND VENUE.** This Agreement shall be governed in all respects by the laws of the Commonwealth of Kentucky and venue for all actions shall lie in the Circuit Court of Fayette County, Kentucky.

19. **AMENDMENTS.** By mutual agreement, the parties to this Agreement may, from time to time, make written changes to any provision hereof. Organization acknowledges that LFUCG may make such changes only upon approval of its legislative authority, the Lexington-Fayette Urban County Council, and the signature of its Mayor.

20. **NOTICE.** Any written notice required by the Agreement shall be delivered by certified mail, return receipt requested, to the following:

For Organization:  
Rufus Friday,

Executive Director of HOPE Center  
PO Box 6  
Lexington, Ky. 40588

For Government:  
Jeff Herron  
Office of Homelessness Prevention and Intervention  
200 E. Main Street  
Lexington, KY 40507

**21. WAIVER.** The waiver by either party of any breach of any provision of this Agreement shall not constitute a continuing waiver or waiver of any subsequent breach by either party of either the same or another provision.

**22. ENTIRE AGREEMENT.** This Agreement shall constitute the entire agreement between the parties and no representations, inducements, promises or agreements, oral or otherwise, which are not embodied herein shall be effective for any purpose. This Agreement shall replace any previous agreement between the parties on the same subject matter.

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

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**SIGNATURE PAGE TO FOLLOW.**



**EXHIBIT "1"**