

## **MEMORANDUM OF AGREEMENT**

THIS MEMORANDUM OF AGREEMENT (“Agreement”), 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 **NEW LIFE DAY CENTER, INC.**, a Kentucky nonprofit corporation, (“Organization”) with offices located at 224 North Martin Luther King Boulevard, Lexington, Kentucky 40507.

### **WITNESSETH**

**WHEREAS**, the Organization is a 501(c)(3) nonprofit organization, as defined by the Internal Revenue Code, that has been a long-term leaseholder of property located at 224 North Martin Luther King Boulevard, in Lexington, Kentucky (“Property”);

**WHEREAS**, the Organization provides day shelter on the Property to residents of Fayette County who are experiencing homelessness or at risk of homelessness;

**WHEREAS**, LFUCG desires that the Organization expand its hours of operation so that it can provide day shelter for longer periods of time;

**WHEREAS**, the Organization requires additional funding to support the extra operational costs associated with extended hours, and also requires additional funding for operational and capital improvements on the Property to accommodate the additional use;

**WHEREAS**, LFUCG intends to provide additional funding to the Organization for the expansion of its hours and improvements on the Property, in order to provide more day shelter services to residents of Fayette County;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth herein, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

**1. EFFECTIVE DATE; TERM.** This Agreement shall commence on October 1, 2023 and shall last until June 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 herein by reference as if fully stated:

a. Exhibit “A” – Final Approved Budget and Project List

To the extent that there is any conflict between or among any of these documents, the terms and provisions of this Agreement shall prevail, followed by terms and provisions of Exhibit “A.”

**3. SCOPE OF SERVICES.** During the term of this Agreement, the Organization shall ensure that day shelter services are open and available on the Property each day of the week from Monday to Friday, between the hours of 8 a.m. and 4:30 p.m., and on Saturdays from 8 a.m. to 12 p.m. LFUCG recognizes that the Organization is closed on the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. The Organization's failure to comply with this provision of the Agreement shall be considered a material breach of this Agreement. Before the termination of this Agreement, the Organization shall also complete each project outlined in the attached Exhibit "A" (the "Project(s)"), and further specified in Numbered Paragraph 4 of this Agreement. The Organization shall complete these Projects in a timely, workmanlike and professional manner, as specified herein.

**4. PAYMENT.** LFUCG shall pay Organization a total amount not to exceed **ONE HUNDRED FIFTY-FOUR THOUSAND NINE HUNDRED FIFTY NINE DOLLARS (\$154,959)** ("Funds") for the completion of all of the sixteen (16) Project(s) listed below. The total amount of the Funds that the Organization shall receive is divided in separate amounts, and these amounts shall be allocated for each Project. Thus, the total amount paid for each Project ("Sum") shall not exceed the amounts stated herein:

<b>DESCRIPTION OF PROJECT</b>	<b>SUM</b>	<b>OPERATIONAL/CAPITAL</b>
1) Personnel costs	1) \$57,990.00	1) Operational
2) Supplies	2) \$13,500.00	2) Operational
3) Facilities	3) \$9,000.00	3) Operational
4) Utilities	4) 13,500.00	4) Operational
5) Security and surveillance	5) \$3,600.00	5) Operational
6) Portable toilet (standard)	6) \$810.00	6) Operational
7) Portable toilet (handicapped accessible)	7) \$1485.00	7) Operational
8) Portable hand-wash station	8) \$1,125.00	8) Operational
9) Daily cleaning of portable toilets and hand-wash station	9) \$2,925.00	9) Operational
10) Roof	10) \$33,000.00	10) Capital
11) Picnic Tables	11) \$2,571.00	11) Operational

12) Outdoor benches	12) \$1,000.00	12) Operational
13) Heavy duty trashcans	13) \$2,208.00	13) Operational
14) Outdoor planters	14) \$1,770.00	14) Operational
15) Outdoor water fountain with bottle filling station	15) \$7,475.00	15) Capital
16) Fence modifications	16) \$3,000.00	16) Capital

The uses of the Funds are limited to the Projects described in this numbered Paragraph and may not be spent by the Organization 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 invoice(s) from Organization specifying that 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. CONSTRUCTION TERMS.** The following terms shall apply to any of the Project(s) above that are described as Capital and which require construction costs (Project #10, #15, and #16).

a. Project to be Completed in Workmanlike Manner.

Organization shall bid, contract for, and cause to prosecute to completion, the Projects described herein in a good, safe and workmanlike manner, and in compliance with all applicable codes, ordinances, laws and regulations. Organization shall take necessary action to protect the life, health, safety, and property of all personnel on the job site, members of the public, and personnel.

b. Permits.

Organization agrees to obtain all necessary local, state, and federal permits, encroachments, permissions, approvals, etc. in a timely manner and prior to start of construction.

c. Building Regulations.

Organization asserts that it is in full compliance with all applicable provisions of the Lexington-Fayette Urban County Government's Code of Ordinances Chapter 5 – Buildings

and Building Regulations, Chapter 7 – Finance and Taxation, Chapter 12 – Housing, and Chapter 16 – Sewage, Garbage, Refuse, and Weeds, or in compliance with Kentucky Department of Housing Buildings and Construction rules and requirements as is appropriate for those state institutions, parcels, or buildings which are subject to state regulations and oversight as opposed to local ordinances and regulations. If the Organization becomes out of compliance with any of these provisions, it will provide written notice to LFUCG immediately. Failure to notify LFUCG and resolve any such matters to the satisfaction of LFUCG may lead to termination of the Agreement for cause.

d. No Liens.

Organization will cause all work to be performed, including all labor, materials, supervision, supplies, equipment, architectural, and engineering services necessary to complete the improvements, in accordance with all applicable standards in the construction industry. The Organization will complete the improvements free from all materialmen's liens and all mechanic's liens and claims. All contracts with subcontractors and materialmen will contain, upon the request of LFUCG, a provision for not less than ten percent (10%) retainage to ensure adequate and complete performance in connection with interim or progress payments hereunder.

e. Right of Inspection.

Organization will permit access by LFUCG to the books and records of Organization related to the Project at reasonable times. In the event LFUCG determines that any work or materials are not substantially in conformance with applicable standards in the construction industry, or are not in conformance with any applicable laws, regulations, permits, requirements or rules of any governmental authority having or exercising jurisdiction thereover or are not otherwise in conformity with sound building practices, LFUCG may stop the work and order replacement or correction of any such work or materials. Such inspection will not be construed as a representation or warranty by LFUCG to any third party that the improvements are, or will be, free of faulty materials or workmanship.

f. Nonliability.

This Agreement will not be construed to make LFUCG liable to materialmen, contractors, craftsmen, laborers or others for goods and services delivered by them to or upon the property on which the Project is constructed, or for debts or claims accruing to said parties against the Organization. There are no contractual relationships, either express or implied, between LFUCG and any materialman, contractors, craftsmen, laborers or any other persons supplying work, labor or materials on the job, nor will any third person or persons, individual or corporate, be deemed to be beneficiaries of this Agreement or any term, condition or provisions hereof or on account of any actions taken or omitted by LFUCG pursuant hereto.

6. **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, 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.

7. **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.

8. **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.

9. **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.

**10. 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.

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



**12. 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.

**13. 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.

**14. 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.

**15. DISPOSITION OF PROPERTY.** Organization agrees that it shall not sell or otherwise dispose of any goods, property, or equipment acquired and/or improved with any portion of the Funds for ten (10) years from the effective date of this Agreement, without first obtaining the written consent of LFUCG. Further, the Organization agrees it will not abandon the Property or re-locate from the Property in order to select another location for its services before January 1, 2026, without first obtaining the written consent of LFUCG. Organization agrees that this provision shall survive termination of the Agreement. If Organization breaches this provision, Organization may be liable to LFUCG for that breach in an amount that shall not exceed the fair market value of the goods, property and/or equipment that it sold or otherwise transferred. In the case of Organization's abandonment of the Property or re-location from the Property before January 1, 2026, to a new location without LFUCG's consent, the Organization may be liable to LFUCG for the full amount paid by LFUCG for any Capital Projects, identified in Numbered Paragraph 4. LFUCG further reserves the right to enforce this provision through any remedy available at law, equity, or in bankruptcy.

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

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

**18. 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.

**19. 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.

**20. 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.

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

For Organization:

Phil Miller, Board Chair  
New Life Day Center  
224 North Martin Luther King Boulevard  
Lexington, Kentucky 40507  
[jennie@newlifedaycenter.org](mailto:jennie@newlifedaycenter.org)

For Government:

Jeff Herron, Manager  
Office of Homelessness Prevention & Intervention  
Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, Kentucky 40507  
[jherron@lexingtonky.gov](mailto:jherron@lexingtonky.gov)

**22. 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.

**23. 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.

**THE REMAINDER OF THIS AGREEMENT IS INTENTIONALLY LEFT BLANK**



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

LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT

BY: \_\_\_\_\_  
Linda Gorton, Mayor

ATTEST:

\_\_\_\_\_  
Clerk of the Urban County Council

NEW LIFE DAY CENTER, INC.

BY: \_\_\_\_\_  
Phil Miller  
Chair of the Board of Directors

COMMONWEALTH OF KENTUCKY)  
COUNTY OF FAYETTE )

The foregoing instrument was acknowledged before me this the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Phil Miller, Chair of the Board of Directors of New Life Day Center, Inc., a Kentucky nonprofit organization.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State-at-Large, Kentucky

**EXHIBIT “A”**