

**MEMORANDUM OF AGREEMENT**

**THIS MEMORANDUM OF AGREEMENT**, made and entered into on the 21<sup>nd</sup> day of October 2024, 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 **GREENHOUSE 17, INC.** (“Organization”), a Kentucky nonprofit corporation, with offices located at P. O. Box 55190, Lexington, Kentucky 40555.

**WITNESSETH**

**WHEREAS**, LFUCG has seen an increase in the public’s need for emergency shelter for people experiencing homelessness in Fayette County, Kentucky;

**WHEREAS**, LFUCG now desires to provide additional options for shelter to accommodate the needs of persons experiencing homelessness during the winter months, within hotels selected by LFUCG;

**WHEREAS**, the Organization has experience providing services to individuals experiencing homelessness or at risk of experiencing homelessness, and has agreed to assist LFUCG in identifying and placing individuals who need shelter during the winter months in the hotels selected by LFUCG;

**WHEREAS**, LFUCG has determined that providing funding to the Organization will help fulfill the public purpose of improving access to warming facilities for unhoused persons.

**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 November 1, 2024 (the “Effective Date”) and shall last until April 1, 2025 (the “Term”), unless terminated by LFUCG at an earlier time.
2. **SCOPE OF SERVICES.** Organization shall perform the following services in a timely, workmanlike, and professional manner (the “Services”).
  - a. Transition individuals who are experiencing homelessness and are unsheltered into a hotel, as prioritized by the Office of Homelessness Prevention and Intervention, including facilitating transportation services for the individuals, as necessary;
  - b. Obtaining all necessary information to identify each individual transitioning into a hotel;
  - c. Provide an initial resource package to individuals at the time of entry into the hotel and at any check-ins thereafter;

- d. Facilitate linkages for the individuals to housing, food and case management services, as appropriate;
- e. Participate in coordination calls or meetings whenever requested by LFUCG; and,
- f. Provide daily inventory tracking in whatever format requested by LFUCG.

3. **PAYMENT.**

- a. **RETAINER.** LFUCG shall pay Organization a fee not to exceed to **TWELVE THOUSAND FIVE HUNDRED DOLLARS AND 00/100 CENTS (\$12,500.00)** (the “Retainer”), either on the Effective Date or immediately thereafter, for the Organization’s performance of the Services during the Term. The use of the Retainer shall be limited to the Services specified herein 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 included in the above payment.
- b. **AGREED RATE.** The Organization shall be paid **TWO THOUSAND AND FIVE HUNDRED DOLLARS AND 00/100 CENTS (\$2,500.00)** per occupied room. The Retainer reflects the amount of the Agreed Rate that LFUCG anticipates owing to Organization for its Services in placing individuals in at least five (5) rooms per night during the Term.
- c. **RECONCILIATION AND FINAL CLOSE-OUT.** At the end of the Term, the Organization shall provide a final invoice reconciling all amounts owed, which shall be calculated using the Agreed Rate. The final invoice must attach sufficient documentation, as determined in the sole discretion of LFUCG, to support the Organization’s calculation of the total number of rooms in which the Organization placed participant(s) during the Term. The final invoice shall be submitted within five (5) days of the end of the Term. LFUCG shall pay the amount that it owes Organization, as documented in the approved invoice, within thirty (30) days of receipt of same. The Organization shall pay the remaining balance of the Retainer to LFUCG within thirty (30) days of the Termination of this Agreement. The failure of Organization to pay the balance of the Retainer to LFUCG within the time specified herein shall be considered a material breach of this Agreement, and the parties understand and agree that LFUCG may pursue appropriate legal action against Organization for the collection of that balance. If LFUCG files legal action against the Organization pursuant to this provision, then LFUCG shall be entitled to recover any costs and attorney fees incurred in pursuit of that action. The parties agree that this provision shall survive termination of this Agreement.

4. **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.

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

5. **REPORTING.** Organization shall provide LFUCG with timely reports and updates related to the provisions of the Services in the form and manner reasonably specified by LFUCG.

6. **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.

7. **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. **ANNUAL AUDIT.** Organization agrees that all revenue and expenditures related to this Agreement shall be audited at least annually by independent certified public accountants who shall express an opinion as to whether or not revenue and expenditures during the year audited have conformed to state and local law and regulation. A copy of this audit, or clean audit opinion letter from an independent certified public accountant, shall be submitted to LFUCG each year of the 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. **HMIS.** Organization must ensure maintenance of a database that collects client-level data over time (longitudinal data) and generates unduplicated aggregate reports based on the data collected. This database shall be comparable to the community-wide HMIS (homeless management information system); however, information entered in a comparable database must not be entered directly into or provided to an HMIS.
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:  
GreenHouse17, Inc.  
P. O. Box 55190  
Lexington, Kentucky 40555  
ATTN: Darlene Thomas

For Government:  
Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, Kentucky 40507  
ATTN: Jeff Herron, Office of Homelessness Prevention and Intervention

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.

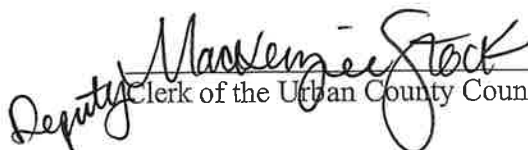
23. **ENTIRE AGREEMENT.** This Agreement shall constitute the entire agreement between the parties and no representations, inducements, promises or agreements, oral or otherwise, which are not embodied herein shall be effective for any purpose. This Agreement shall replace any previous agreement between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

**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

GREENHOUSE17, INC.

BY:

Darlene B Thomas  
Printed name: Darlene B Thomas  
Title: Executive Director

COMMONWEALTH OF KENTUCKY )  
 ) SCT  
COUNTY OF FAYETTE )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this the 22nd day of October, 2024, by Darlene Thomas, as Executive Director of GreenHouse17, Inc.

Letitia A Marshall  
Notary Public, State At Large, Kentucky  
My Commission Expires: 10/24/2026  
Commission Number: KY NP 61118

