

JAIL BED SERVICE AGREEMENT (FEMALE PROGRAM)

THIS JAIL BED SERVICE AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2019 by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, , an urban county government of the Commonwealth of Kentucky created pursuant to KRS chapter 67A, through its Division of Community Corrections, (hereinafter referred to as "Facility,") and **SHEPHERD'S HOUSE, INC.**, a Kentucky not-for-profit corporation (hereinafter referred to as "Shepherd's House,"); and collectively, Shepherd's House and Facility are hereinafter referred to as "Parties" and, individually, as "Party."

RECITALS

WHEREAS, the Facility desires to implement a twenty (20) bed substance abuse treatment (SAP) program within the Fayette County Detention Center for female state offenders;

WHEREAS, the Facility solicited Requests for Proposals from public and private organizations to provide this service through RFP 16-2019 – Substance Abuse Program (Females);

WHEREAS, the Shepherd's House submitted a proposal which was deemed by the Facility to be the best and most responsive proposal to implement the Substance Abuse Program.

WITNESSETH

NOW, THEREFORE, in consideration of the foregoing and their mutual promises and covenants, the Parties hereby agree as follows:

1. This Agreement shall include the following additional documents, which are attached hereto as exhibits and incorporated herein by reference as if fully stated:
 - a) Exhibit "A" – RFP #16-2019, consisting of 44 pages;
 - b) Exhibit "B" – Shepherd's House Formal Response to RFP #16-2019
 - c) Exhibit "C" – Compensation
2. The Facility hereby retains the Shepherd's House for a period of three (3) years beginning the 1st day of September 2019, ("Effective Date") and shall expire on the 31st day of August 2022, unless termination of this Agreement occurs under any of the following termination provisions.

3. Services to be performed. Shepherd's House will provide the services set forth in Exhibit A, which exhibit is attached hereto and incorporated by reference as though fully set forth *verbatim* herein, more specifically described in pages 5-15.
4. Renewal and Termination.
 - a) This Agreement shall be renewed automatically for succeeding terms of three (3) years each unless either party gives written notice to the other at least ninety (90) days prior to the expiration of any term of Facility's or Shepherd's House's intention not to renew.
 - b) Should the monetary amounts for this Agreement be altered by a change in the funding appropriations from any applicable funding entity, or for any other unforeseen reason, either Party may, in its sole discretion, elect to terminate this Agreement upon not less than thirty (30) days prior written notice to the other Party at address designated herein. Upon termination under this provision, neither Party shall have any further obligation under this Agreement except for (i) obligations due and owing which arose prior to the date of termination and (ii) obligations, promises, or covenants contained herein which expressly extend beyond the Term of this Agreement.
 - c) In addition, either Party may, without prejudice to any other remedy it may have under the provisions of this Agreement, at law or in equity, terminate this Agreement at any time and for any reason by giving thirty (30) days prior written notice to the other Party to the address designated herein. Upon termination under this provision, neither Party shall have any further obligation under this Agreement except for (i) obligations due and owing which arose prior to the date of termination and (ii) obligations, promises, or covenants contained herein which expressly extend beyond the Term of this Agreement.
 - d) In the event that a Party is in default in the performance of a material obligation under this Agreement, the Party not in default shall have the right to terminate this Agreement upon not less than thirty (30) days prior written notice to the breaching party at the address designated herein, which notice shall provide the Party in default reasonable time to cure its default. Termination shall be effective on the date specified in writing to the defaulting party by the non-defaulting party and may be effective on the expiration of the cure period specified above or within a reasonable period thereafter. A termination by the Party not in default under this provision shall in no way constitute a waiver of any rights or remedies available to it under this Agreement, at law or in equity.
 - (e) Shepherd's House acknowledges that the Facility is a governmental entity, and the Agreement validity is based upon the availability of public funding under the

authority of its statutory mandate. In the event that public funds are unavailable and not appropriated for the performance of the Facility's obligations under this Agreement, then this Agreement shall automatically expire without penalty to the Facility thirty (30) days after written notice to Shepherd's House of the unavailability and non-appropriation of public funds. It is expressly agreed that the Facility shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Agreement, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations. In the event of a change in the Facility's statutory authority, mandate and mandated functions, by state and federal legislative or regulatory action, which adversely affects the Facility's authority to continue its obligations under this Agreement, then this Agreement shall automatically terminate without penalty to the Facility upon written notice to Shepherd's House of such limitation or change in the Facility's legal authority.

5. Performance Standards.

- a) Shepherd's House shall perform the Services set forth in this Agreement in a timely manner, in accordance with best practices in accordance with this Agreement and all applicable laws and regulations, including all security rules and regulations promulgated by the Facility, and in accordance with the administrative regulations and departmental policies of the Kentucky Department of Corrections (KYDOC). Facility and KYDOC shall provide Shepherd's House with a copy of the current rules and regulations and KYDOC administrative directives and shall furnish Shepherd's House written notice of any and all updates or amendments thereto in order to assure Shepherd's House's knowledge and compliance therewith.
- b) All employees of Shepherd's House who are providing Services under this Agreement shall be subject to a security review and clearance check administered by Facility. In the event an employee of Shepherd's House is not approved for clearance into the Lexington-Fayette Urban County Government Division of Community Corrections and upon written notice of the same from Facility to Shepherd's House, Shepherd's House shall remove such employee immediately and replace said employee with an alternate employee in a commercially reasonable manner.

6. Compensation. Facility shall pay Shepherd's House the sum of **SIXTY FIVE THOUSAND SEVEN HUNDRED AND 00/100 DOLLARS (\$65,700.00)** for the Services provided. Payments shall be made to Shepherd's House in the amounts described and at the times indicated in Exhibit C, which exhibit is attached hereto and incorporated by reference as though fully set forth *verbatim* herein. Reasonable expenses, if any, incurred by Shepherd's House while performing the Services set

forth under this Agreement shall be subject to the prior written approval of Facility and shall be, upon approval, invoiced separately.

7. Notices. Any notices required or permitted to be given pursuant to this Agreement shall be in writing and sent by certified mail, postage prepaid, return receipt requested. Notice shall be deemed to be given upon the date three (3) days after such notice is deposited in the U.S. mail. Notices may also be delivered by courier, electronic transmission, or by facsimile transmission and shall be deemed to be delivered when received by the Party to whom such notice is directed with a confirmed delivery function or notice. Notices shall be addressed as follows:

If to the Facility:

LFUCG Division of Community Corrections
Attention: Steve Haney, Director
600 Old Frankfort Circle
Lexington, Kentucky 40510

If to Shepherd's House:

Shepherd's House, Inc.
Attention: Jerod Thomas, President/CEO
635 Maxwellton Court
Lexington, Kentucky 40508

8. Confidential and Proprietary Information. The Parties shall treat as confidential all information relating to either Party's operations or the general business affairs or any of the operations or general business affairs of the Party's parent or subsidiary companies (if any) which the other Party may observe, or which may be disclosed through the performance of this Agreement. Neither Party shall disclose any such information to third-parties or use any such information for any purpose other than the performance under this Agreement, without the prior written consent of the other Party, which consent may be given or withheld in that Party's sole and absolute discretion. This Section 6 shall survive the termination of this Agreement.

9. Indemnification and Hold Harmless.

(a) It is understood and agreed by the parties Shepherd's House 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 Shepherd's House or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier 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.

(b) Shepherd's House shall indemnify, save, hold harmless and defend the Facility and its elected and appointed officials, employees, agents, volunteers, and successors in interest 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 Shepherd's House'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 Shepherd's House; and (b) not caused solely by the active negligence or willful misconduct of Facility.

(c) Notwithstanding, the foregoing, with respect to any professional services performed by Shepherd's House hereunder (and to the fullest extent permitted by law), Shepherd's House shall indemnify, save, hold harmless and defend Facility 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 Shepherd's House in the performance of this Agreement.

(d) In the event Facility is alleged to be liable based upon the above, Shepherd's House 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 Facility, which approval shall not be unreasonably withheld.

(e) These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.

(f) Facility is a political subdivision of the Commonwealth of Kentucky. Shepherd's House acknowledges and agrees that Facility is unable to provide indemnity or otherwise save, hold harmless, or defend the Shepherd's House in any manner.

10. Insurance. Each Party shall be solely responsible, at each Party's sole cost and expense, for maintaining its own liability insurance, including any workers'

compensation insurance required under applicable law. Further, Shepherd's House shall obtain and maintain at all times during the term of this Agreement, through companies or agencies approved by and containing provisions satisfactory to the Facility, such liability insurance as will protect Shepherd's House and the Facility from any and all claims for personal injury, including death, and from claims for property damage or loss thereof, which may arise or result from its provision of the services described in the aforementioned Exhibit A or through the failure of Shepherd's House to comply with any of the provisions of this Agreement; and, in furtherance thereof, Shepherd's House shall include the Facility as a covered insured under such policy or policies. Further, Shepherd's House shall produce proof of insurance, by certificate or other suitable evidence that shall remain on file with the Facility; and Shepherd's House shall notify the Facility of any change in coverage within three (3) days after any such change becomes effective. The certificate must include a provision requiring at least sixty (60) days' notice before cancellation may become effective; and such insurance shall be incorporated within this Agreement as a part hereof.

11. Representations and Warranties.

- a) Shepherd's House hereby represents, covenants, and warrants to Facility as a material part of the consideration for Facility entering into this Agreement as follows: (i) Shepherd's House is a non-profit corporation, duly organized and validly existing under the laws of the Commonwealth of Kentucky; and (ii) the execution of this Agreement has been duly authorized by all necessary corporate action on behalf of Shepherd's House.
- b) Shepherd's House affirmatively states that there are no actions, suits or proceedings of any kind pending against Shepherd's House or, to the knowledge of Shepherd's House, threatened against the Shepherd's House 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 Shepherd's House to perform its obligations under this Agreement, or which question the legality, validity or enforceability hereof or thereof.
- c) Facility hereby represents and warrants to Shepherd's House as follows: (i) Facility is duly organized and validly existing under the laws of the Commonwealth of Kentucky; and (ii) the execution of this Agreement has been duly authorized by all appropriate governmental entities on behalf of Facility.

12. Intellectual Property and Proprietary Information. Neither Party to this Agreement shall be deemed to be granted any right, title, or interest in or to the trademarks, trade names, service marks, copyrights, patents, or other intellectual property of the other Party, or of any proprietary information of the other Party. Facility and Shepherd's

House expressly acknowledge and agree that, under this Agreement, neither Party is granted the right to use, refer to, or incorporate into any materials; including, without limitation, marketing materials; the name, logos, trademarks, or copyrights of the other Party.

13. Miscellaneous.

- a) Time is of the essence of this Agreement.
- b) This Agreement, together with all documents incorporated herein by reference, if any, constitutes the entire agreement between the Parties. There are no terms, conditions, or provisions, either oral or written, between the Parties other than those contained in this Agreement.
- c) No amendment to this Agreement shall be enforceable, unless in writing and executed by the Parties.
- d) Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neutral forms, and the singular form of nouns and pronouns shall include the plural and vice versa. Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Agreement or of any provision herein.
- e) This Agreement shall be executed in triplicate originals, but all of which shall constitute one and the same agreement.
- f) Any term or provision of this Agreement which now or hereafter is declared contrary to any law, order, ordinance, requirement, ruling, or regulation of any governmental authority, whether federal, state, or local, whether now in force or enacted or promulgated in the future, or which is otherwise invalid, shall be deemed stricken from this Agreement without impairing the validity of the remainder of this Agreement.
- g) This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the Fayette County Circuit Court or the U.S. District Court for the Eastern District of Kentucky, Lexington Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

- h) Neither Party shall be entitled to recover special damages in the nature of loss of profits or consequential damages.
- i) The Parties to this Agreement are acting as independent contractors and independent employers. Nothing contained in this Agreement shall create or be construed as creating a partnership, joint venture, or agency relationship between the Parties. Neither Party shall have the authority to bind the other Party in any respect beyond the terms of this Agreement..
- j) Shepherd's House shall perform all of the Services under this Agreement in compliance with all applicable federal, state, and local laws, ordinances, rules, regulations, codes, or orders.
- k) Any failure by either Party, at any time, to enforce or require the other Party's compliance with any of the terms and conditions in any way, or the right of the non-defaulting Party at any time to avail itself of any and all remedies it may have for any breach of said terms and conditions, including, without limitation, any right to terminate this Agreement, shall not constitute a waiver by such party of its right to exercise any such or other right, power, or remedy or to demand such compliance. The remedies of the Parties provided for in this Agreement shall be cumulative with all other remedies that either Party may have against the other Party at law or in equity.
- l) All the covenants and agreements contained in this Agreement shall be extended to and be binding upon the successors and assigns of the Parties.
- m) The Shepherd's House shall not assign or subcontract any portion of the Agreement without the express written consent of Facility. Any purported assignment or subcontract in violation hereof shall be void. It is expressly acknowledged that Facility 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 Facility.

(SIGNATURE PAGE TO FOLLOW)

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties by their duly authorized representatives, have executed this Agreement in triplicate originals as of the day and year first above written.

<p><u>"FACILITY"</u></p> <p>Lexington-Fayette Urban County Government</p> <p>BY: _____</p> <p>Name: Linda Gorton, Mayor</p> <p>Attest. _____ Urban County Council Clerk</p>	<p><u>"SHEPHERD'S HOUSE"</u></p> <p>Shepherd's House, Inc. A Kentucky not-for-profit corporation</p> <p>BY: _____</p> <p>Name: Jerod M. Thomas President/CEO Shepherd's House, Inc.</p>
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Exhibit C

Compensation

In exchange for and in consideration for the services to be provided by Shepherd's House under the terms of this Agreement, Facility agrees to pay the following amount upon monthly invoice from Shepherd's House:

- \$9.00 per Client per day.

Shepherd's House shall invoice the Lexington-Fayette Urban County Government Department of Community Corrections on a monthly basis for all Clients served during the prior calendar month. Such invoices shall be due and payable not less than quarterly. Shepherd's House shall cooperate and assist Facility in submitting monthly invoices to the Kentucky Department of Corrections for services rendered by Shepherd's House.