

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT is made and entered into as of the ____ day of _____, 2024 (the "Effective Date") by and between **FAYETTE COUNTY PUBLIC SCHOOLS**, having an address of 450 Park Place, Lexington, KY 40511 (hereinafter referred to as "FCPS") and the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban-county government pursuant to KRS Chapter 67A, located at 200 East Main Street, Lexington, KY 40507 (hereinafter referred to as "LFUCG"), collectively referred to as the "Parties."

RECITALS

WHEREAS, KRS 605.093 provides that the Kentucky Department of Juvenile Justice ("DJJ") shall provide a day treatment program accessible to every school district in each judicial region of the state, and that day treatment programs shall combine academic and therapeutic services; and

WHEREAS, under the authority of KRS Chapter 605, DJJ has previously contracted with LFUCG to establish an agreement for a Day Treatment Program at the Audrey Grevious Center in Lexington-Fayette County (the "DJJ/LFUCG MOA"), and DJJ has previously contracted with FCPS to establish an agreement to provide educational services for youth committed to, or in the custody of, DJJ, in conjunction with the Day Treatment Program (the "DJJ/FCPS Interagency Agreement"); and

WHEREAS, LFUCG and FCPS have previously contracted with one another regarding an agreed-upon framework for the administration of the Day Treatment Program at the Audrey Grevious Center, pursuant to the aforementioned agreements, which agreement shall hereinafter be referred to as the "LFUCG/FCPS MOA," and under the LFUCG/FCPS MOA, FCPS has provided academic services and LFUCG has provided therapeutic and administrative services; and

WHEREAS, the parties are in agreement that the Day Treatment Program at the Audrey Grevious Center is, fundamentally, an educational program with a therapeutic component, and further agree that the educational services provided to state agency children by FCPS as part of the Day Treatment Program effectively renders the Day Treatment Program at the Audrey Grevious Center to be a school program governed by KRS Chapter 158 and under Kentucky Educational Collaborative for State Agency Children (KECSAC) requirements, including but not limited to 505 KAR 1:080, and other applicable laws; and

WHEREAS, FCPS has proposed to operate, manage, supervise, and control the Day Treatment Program at the Audrey Grevious Center, specifically including but not limited to FCPS management over all interagency agreements and FCPS management of both the educational and therapeutic components of the Day Treatment Program, with an eye toward better aligning the Day Treatment Program at the Audrey Grevious Center with the requirements of the Kentucky Revised Statutes and Kentucky Administrative Regulations related to operation of public schools; and

WHEREAS, LFUCG recognizes the substantial public purpose inherent in the proposal by FCPS to operate, manage, supervise, and control the Day Treatment Program at the Audrey Grevious Center and has agreed to partner with FCPS by undertaking certain obligations as set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutually agreed upon promises, conditions, and covenants hereinafter set forth, FCPS and LFUCG hereby covenant and agree as follows:

(1) **INCORPORATION OF RECITALS.** The above recitals are incorporated herein as if fully set forth.

(2) **UNDERTAKINGS AND CONTRIBUTIONS OF FCPS.** FCPS hereby agrees to the following undertakings and contributions toward the proposed reimagining of the Day Treatment Center at the Audrey Grevious Center:

(a) FCPS shall enter into and manage all necessary inter-agency agreements with the Commonwealth of Kentucky and its agencies in order for FCPS to operate, manage, supervise, and control the Day Treatment Program at the Audrey Grevious Center, which includes but is not limited to: (1) an agreement between DJJ and FCPS to provide day treatment services in Fayette County; (2) an agreement between KECSAC and FCPS related to educational services provided by the Day Treatment Program; (3) a lease agreement between FCPS and LFUCG, leasing the Audrey Grevious Center to FCPS in consideration of the day treatment services provided by FCPS.

(b) FCPS shall, at its expense, with exceptions contained herein, assume responsibility for the operation, management, supervision, and control over the Day Treatment Program at the Audrey Grevious Center, which shall encompass not only the undertaking of all necessary inter-agency agreements for the provision of day treatment services in Lexington-Fayette County pursuant to KRS Chapter 605, but shall also include all day-to-day supervision of the Day Treatment Program at the Audrey Grevious Center. FCPS management, supervision, and control shall extend to, but is not limited to, such matters as staffing, administrative oversight, the provision of educational services, therapeutic services, medical services, security personnel, student intake, discipline of students, the assessment and provision of student needs and access to support services, educational and instructional matters, parent involvement, communications, statutory and regulatory compliance, provision of legal counsel, and other related matters. Except to the extent necessary in order to fulfill the undertakings set forth herein or as otherwise provided herein, LFUCG shall have no control over, responsibility for, or liability for the day-to-day operation, management, supervision or control over the Day Treatment Program.

(3) **UNDERTAKINGS AND CONTRIBUTIONS OF LFUCG.** LFUCG hereby agrees to the following undertakings and contributions toward the proposed reimagining of the Day Treatment Center at the Audrey Grevious Center by FCPS:

(a) In consideration of the mutual promises and respective undertakings of the parties hereto, and in further consideration of the public purposes promoted by this agreement in supporting the mission of the Day Treatment Program at the Audrey Grevious Center, and

commensurate with the undertakings of FCPS in the operation, management, supervision, and control over the Day Treatment Program at the Audrey Grevious Center, LFUCG shall lease the Audrey Grevious Center to FCPS, for the purpose of continuing to house the operations of Day Treatment Program undertaken by FCPS, which lease agreement is attached hereto and incorporated herein by reference. As part of the lease agreement, LFUCG retains responsibility for providing custodial services (to be provided by one (1) custodian who shall be employed by LFUCG and stationed at the Audrey Grevious Center) and building maintenance services at the Audrey Grevious Center.

(b) In consideration of the mutual promises and respective undertakings of the parties hereto, and in further consideration of the public purposes promoted by this agreement in supporting the mission of the Day Treatment Program at the Audrey Grevious Center, LFUCG shall employ four (4) full-time program aides, one (1) part-time program aide, and one (1) transportation coordinator, for the purpose of providing morning and afternoon transportation of students to and from the Audrey Grevious Center for the purposes of day treatment services provided by FCPS and providing classroom supports between transportation routes. Transportation services shall be provided using LFUCG vehicles and equipment. Program aides and the transportation coordinator shall act at the direction of and report to FCPS personnel in the provision of these transportation services and other school duties on a day-to-day basis. Notwithstanding that these aides and the custodian are employed by LFUCG, LFUCG shall require these employees to follow the FCPS Employee Code of Conduct. LFUCG shall retain all authority to discipline these employees in accordance with KRS Chapter 67A, the LFUCG Code of Ordinances, and the LFUCG Uniform Disciplinary Code, as appropriate, but LFUCG shall work in collaboration with FCPS in any disciplinary matters involving these aides. Further, any and all LFUCG employees who are working in or around Audrey Grevious students must undergo all background checks required by FCPS; FCPS shall provide LFUCG with all information necessary to conduct appropriate background checks and all FCPS criteria regarding those backgrounds. LFUCG shall bear the cost of background checks for its employees assigned to the Audrey Grevious Center.

(c) In consideration of the mutual promises and respective undertakings of the parties hereto, and in further consideration of the public purposes promoted by this agreement, in supporting the mission of the Day Treatment Program at the Audrey Grevious Center, LFUCG shall contribute funding to FCPS, pursuant to the terms and conditions of this agreement, in an amount not to exceed **THREE HUNDRED THOUSAND DOLLARS (\$300,000.00)** each fiscal year, for the term of this agreement, on the condition that FCPS appropriate and dedicate such funding to expenses necessary for the operation of the Day Treatment Program at the Audrey Grevious Center.

(4) **TERM.** This Memorandum of Agreement shall continue in full force and effect for two (2) fiscal years, subject to sufficient funding being appropriated in future fiscal years, or until such time as this MOA is terminated pursuant to Section (6) of this MOA.

(5) **TRANSITION OF DAY TREATMENT SERVICES; CONTINUITY OF SERVICES.** FCPS intends, with the concurrence of LFUCG, to pursue responsibility for the provision of Day Treatment Program services under KRS Chapter 605 pursuant to the terms of a

proposed agreement with the Kentucky Department of Juvenile Justice (DJJ). In the event that DJJ's continuing obligation to provide for day treatment services under KRS Chapter 605 for Lexington-Fayette County were to be fulfilled by a subsequent MOA between FCPS and DJJ, LFUCG shall cooperate fully in the transition of the Day Treatment Program at the Audrey Grevious Center to FCPS, in order to provide for continuity of services.

(6) **TERMINATION.** FCPS and LFUCG each retain the right to terminate this MOA or the related LFUCG/FCPS MOA, relating to the Day Treatment Program at the Audrey Grevious Center, with or without cause, upon sixty (60) days written advance notice to the other party by registered or certified mail. Provided, however, that this MOA shall terminate automatically upon the execution of a subsequent MOA mutually agreed to by the parties.

(7) **INDEMNIFICATION AND HOLD HARMLESS.** It is understood and agreed by the Parties that FCPS hereby assumes 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 FCPS, its officers, employees, agents, servants, owners, principals, licensees, or assigns, in connection with the day treatment services provided in connection with this Memorandum of Agreement and/or the provision of services and the performance or failure to perform any work required thereby. To the extent permitted by law, FCPS shall indemnify, save, hold harmless, and defend 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, 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 connect with, or that arise or are alleged to have arisen, directly or indirectly, from FCPS's operation, management, supervision, and control over the Day Treatment Program at the Audrey Grevious Center and/or the provision of goods or services by FCPS, its officers, employees, agents, servants, owners, principals, licensees, or assigns, 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 FCPS, its officers, employees, agents, servants, owners, principals, licensees, or assigns, and (b) not caused solely by the active negligence or willful misconduct of LFUCG.

It is further understood and agreed by the Parties that LFUCG hereby assumes 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 LFUCG, its officers, employees, agents, servants, owners, principals, licensees, or assigns, in connection with undertakings of LFUCG in this agreement, including but not limited to the provision of transportation services to students participating in the day treatment services provided by FCPS and/or the provision of services and the performance or failure to perform any work required by LFUCG herein. To the extent permitted by law, LFUCG assumes a reciprocal obligation to indemnify, save, hold harmless, or defend FCPS and its 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, 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 connect with, or that arise or are alleged to have arisen, directly or indirectly, from the undertakings of LFUCG in this agreement, including but not limited to the provision of transportation services to students participating in the day treatment

services provided by FCPS and/or the provision of services and the performance or failure to perform any work required by LFUCG herein.

These provisions shall in no way be limited by any financial responsibility or insurance requirements and shall survive any termination of this Agreement.

(8) **DEFAULT.** No party shall be in default under this MOA unless and until the non-defaulting party shall have given the defaulting party written notice of such default and the defaulting party shall have failed to cure the default within thirty (30) days after written receipt of such notice.

(9) **BINDING EFFECT.** This MOA shall be binding upon, and shall inure to the benefit of, the executors, heirs, successors, and assigns of the parties hereto, and no party shall assign, sublet, or transfer its interests in this MOA without the written consent of the other party.

(10) **NON-WAIVER.** The failure or delay on the part of FCPS or LFUCG to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.

(11) **ENTIRE AGREEMENT.** With the sole exception of the lease agreement between LFUCG and FCPS for the Audrey Grevious Center that is contemplated under numbered paragraph (3)(a), this MOA constitutes the entire agreement and understanding between the Parties with respect to the subject matter contained herein and supersedes all prior offers, negotiations, and other agreements concerning the subject matter contained herein. There are no promises, terms, conditions, or obligations other than those contained herein. No part of this Agreement may be altered, modified, or changed in any way except in writing signed by the Parties hereto or signed by the duly authorized representatives of said Parties.

(12) **AMENDMENTS.** This MOA may only be amended by a written agreement of all the parties hereto. No revision of this MOA shall be valid unless made in writing and signed by an authorized officer of FCPS and an authorized signatory on behalf of LFUCG.

(13) **SEVERABILITY.** In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this MOA.

(14) **NO THIRD PARTY RIGHTS.** Nothing in this MOA, expressed or implied, is intended or shall be construed to confer upon or give to any person other than the parties hereto any right, remedy, or claim under or by reason of such agreement or covenant, condition, or stipulation herein contained. Nothing expressed or mentioned in or to be implied from this MOA is intended or shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy, or claim under or in respect to this MOA.

(15) This MOA may be executed in duplicate counterparts, each of which shall be deemed an original. In the event that any signature is delivered by facsimile or by email of a “.pdf” format data file, such signature shall create a valid and binding obligation of such party with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

(16) The execution, delivery and performance of this MOA and any related agreements have been duly authorized by all necessary parties, and this MOA is enforceable in accordance with its terms. FCPS and LFUCG have full power and authority to enter into this MOA, to execute and deliver all instruments and documents referred to herein and to consummate the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties by their authorized representative have executed this Memorandum of Agreement as of the Effective Date.

**LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT**

BY: _____
Linda Gorton, Mayor

ATTEST:

Clerk of the Urban County Council

FAYETTE COUNTY PUBLIC SCHOOLS

BY: _____



Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF)
)
COUNTY OF FAYETTE)

On the _____ day of _____, 202_, before me personally appeared _____, and acknowledged under oath that he/she is the authorized representative of **FAYETTE COUNTY PUBLIC SCHOOLS**, and as such was authorized to execute this Memorandum of Agreement.

My Commission Expires: _____

NOTARY PUBLIC