

PURCHASE OF SERVICE AGREEMENT

THIS PURCHASE OF SERVICE AGREEMENT, made and entered into on the 13th day of June 2025, 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 **LEXINGTON CHILDREN'S MUSEUM, INC.** ("Organization"), a Kentucky non-stock, non-profit corporation, with offices located at 440 W. Short St., Lexington, KY 40507.

WITNESSETH

WHEREAS, the Organization was incorporated in 1990 for the express purpose of providing children with diverse opportunities for learning; to educate, stimulate, challenge, and encourage divergent thinking in children by providing access to objects, artifacts, and experiences that are not found at home and by exposing and connecting them to other cultures to explore and learn without formal instruction; and to enhance Lexington's quality of life and its reputation as a cultural center by providing a facility that will contribute to the city's cultural environment, physically and intellectually accessible to all; and

WHEREAS, by Resolution No. 7-2025, LFUCG provided funding to the Organization for a fundraising Campaign Assessment to engage stakeholders and prospective donors, to determine the most impactful fundraising strategies, and to assess the Organization's readiness to launch a transformational capital campaign, and LFUCG further provided funding to the Organization for a Master Plan and Assessment including leadership and community engagement workshops, project visualization with floor plan diagrams, exterior renderings, and main exhibit renderings, site selection criteria and analysis, and review of architectural planning layouts and design vision for a new facility; and

WHEREAS, LFUCG's funding of these assessments have allowed the Organization to reorganize and mobilize its efforts toward reimagining its programs, services, and facility, and the Organization has made significant progress in coming up with a plan to maintain its viability and sustainability on a permanent basis with a renewed focus on fundraising within the community to support this vision; and

WHEREAS, LFUCG credits the efforts of Organization toward a reimagining of its programs, its services, and its facility and believes that the Organization's programs and services will continue to appeal to Lexington residents and fulfill community needs, and for this reason, LFUCG desires to reinvigorate public interest in the Organization's mission.

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 July 1, 2025 for an initial term of one (1) fiscal year unless terminated by LFUCG at an earlier time. The Agreement is automatically renewable for up to three (3) additional one (1) year terms, on a fiscal year basis, unless the Agreement is terminated as provided in Section 3 herein.

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" – Scope of Work

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. **RIGHTS AND OBLIGATIONS OF THE GOVERNMENT.**

- a. PAYMENT. For the initial term of the Agreement, LFUCG shall pay Organization a total amount not to exceed Four Hundred Thousand Dollars (\$400,000.00). In each successive fiscal year following the initial term, LFUCG shall match the amount of other funds raised by the Organization during the previous fiscal year up to an amount not to exceed Five Hundred and Thirty-Three Thousand, Three Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$533,333.33) each fiscal year, subject to the approval of Urban County Council through an appropriation made to the Organization as part of LFUCG's Annual Budget. In no event will the total dollar amount of disbursements made under this Agreement exceed the sum of Two Million Dollars (\$2,000,000.00), representing the initial contribution of Four Hundred Thousand Dollars (\$400,000.00) and up to three (3) additional annual contributions matching the amount of other funds raised by the organization during the previous fiscal year in an amount of up to Five Hundred and Thirty-Three Thousand, Three Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$533,333.33). In each of the three (3) successive fiscal years following the initial term, one-fourth (1/4) of the amount owed shall be paid each quarter within ten (10) business days after receipt of the quarterly report required in Section 4 herein. The funds are limited to the services provided 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. 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, in which case this Agreement shall terminate automatically without need of any additional notice.

- c. MONITORING. LFUCG may designate such persons as may be necessary to monitor and evaluate the services rendered hereunder by the Organization. LFUCG, its agents, and its employees shall have, at all times, unrestricted access to all places where or in which the services required hereunder are being carried on and conducted. Inspection and monitoring of the work by these authorities shall in no manner be presumed to relieve in any degree the responsibility or obligations of the Organization or to constitute the Organization an agent of LFUCG.
- d. NON-APPROPRIATIONS. The 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.

4. RIGHTS AND OBLIGATIONS OF THE ORGANIZATION.

- a. SCOPE OF SERVICES. The Organization shall perform the services outlined in the attached Exhibit "A" – Scope of Work, attached hereto and incorporated herein by reference, in a timely, workmanlike and professional manner (the "Services"). The Organization shall use all sums paid to it under this Agreement to fulfill the activities and services referenced in Exhibit A and for no other purposes.
- b. COMPLIANCE WITH LAWS. The Organization shall keep itself fully informed of all national and state laws and all municipal ordinances and regulations in any manner affecting the work or performance of this Agreement and shall at all times observe and comply with such laws, ordinances, and regulations, whether or not such laws, ordinances, or regulations are mentioned herein.
- c. REPORTING. The 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. The Organization shall submit various reports to LFUCG on the dates stated herein.
 - i. On January 30 and July 30 of each calendar year, the Organization shall submit a report that reflects the status and progress toward satisfaction of all deliverables identified in Exhibit A.
 - ii. On January 30, April 30, July 30, and October 30 of each calendar year, the Organization shall submit a report detailing all fundraising activities

and sponsorship activities, and it shall also submit a financial statement, which shall include a Profit and Loss Statement or its equivalent.

- iii. On November 15 of each calendar year, the Organization shall also submit a completed IRS Form 990.
- d. **REGISTRATION; AUTHORITY TO SIGN.** The Organization shall be lawfully registered or authorized to do business in the Commonwealth of Kentucky and Lexington-Fayette County. LFUCG may request proof that the 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.
- e. **INDEMNITY.** The 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. The Organization's 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. The Organization's 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. This provision shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement. The 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.

- f. **INSURANCE.** The Organization shall procure and maintain for the duration of this Agreement 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); Employer's Liability (\$1 million); Excess/Umbrella Liability (\$1 million per occurrence). LFUCG shall be named as an additional insured on the General Liability Policy using the Kentucky DOI approved forms. The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG. The General Liability Policy shall also include Premises and Operations coverage unless it is deemed not to apply by LFUCG.

- g. **RECORDS.** The 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. The books of accounts shall be maintained at the principal place of business of the Organization. LFUCG shall have free and complete access to the books, papers, and affairs of the Organization relating to the funds provided hereunder at all reasonable times. LFUCG shall be the owner of all final documents, data, studies, plans, reports, and information prepared by the Organization and submitted to LFUCG under this Agreement. 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 assist with such a request.
- h. **ANNUAL AUDIT.** The 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.
- i. **EQUAL OPPORTUNITY; FAIRNESS ORDINANCE.** The 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.

- j. **SEXUAL HARASSMENT.** The 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.

5. MISCELLANEOUS TERMS AND CONDITIONS.

- a. **CONTRACTUAL RELATIONSHIP ONLY.** In no event shall the parties be construed, held, or become in any way or for any purpose the employee of the other party, or partners, associates or joint ventures in the conduct of their respective endeavors or otherwise.
- b. **INVESTMENT.** Any investment of the funds received pursuant to this Agreement must fully comply with any restrictions imposed by law.
- c. **NO ASSIGNMENT.** The Organization may not assign any of its rights and duties under this Agreement without the prior written consent of LFUCG.
- d. **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 the Organization or LFUCG.
- e. **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.
- f. **AMENDMENTS.** By mutual agreement, the parties to this Agreement may, from time to time, make written changes to any provision hereof. The 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.

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

For Organization:

J. Colby Ernest
440 W. Short Street
Lexington, KY 40507

For Government:

Lexington-Fayette Urban County Government
Attn: Office of the Chief Administrative Officer
200 East Main Street
Lexington, Kentucky 40507

- i. 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*
LINDA GORTON, MAYOR

ATTEST:

Deputy
Martine Stack
Clerk of the Urban County Council

LEXINGTON CHILDREN'S MUSEUM, INC.

BY: *J. Colby Ernest*
J. COLBY ERNEST
EXECUTIVE DIRECTOR

ATTEST:

Abby Thompson
WITNESS: Abby Thompson
DATE: 5-28-2025

EXHIBIT "A"

Lexington/Fayette Urban County Government Scope of Services

The Lexington Children's Museum (LCM) is embarking on the early-phase development of a new, world-class children's museum in downtown Lexington. LFUCG's investment will play a critical role in establishing the foundational elements of the project, setting the stage for construction and a successful public-private partnership.

LFUCG's financial support will be directed exclusively toward the following scope of services and project development expenses:

I. Site Control and Pre-Development Activities

- **Land Lease Payments:** LFUCG's support will cover the initial five-year portion of a long-term (100-year) land lease agreement for the museum site.
- **Insurance and Maintenance Costs**
- **Estimated Combined Cost:** \$150,000

II. Development Plan and Pre-Construction Planning

- **Zoning Analysis and Assessment:** Evaluate current zoning and land use regulations to ensure compliance and identify potential adjustments.
- **Preparation of Revised Development Plan:** Update site plans and related materials required for city approvals.
- **Permit Applications and Authority Coordination:** Prepare and submit permit documentation and engage with city agencies and stakeholders.
- **Estimated Combined Cost:** Included within design and professional service fees below

III. Architectural Design and Planning

- **Schematic Design Phase (Pre-Groundbreaking):** Develop initial design concepts including site layout, exhibit space planning, and visitor experience elements.
- **Estimated Cost:** \$750,000

- **Design Development and Construction Documents:** Further refine plans to produce construction-ready documentation, including architectural, structural, mechanical, electrical, and plumbing systems.
- **Estimated Cost:** \$1,850,000

IV. Professional Services

- **Legal Representation and Consultation:** Support negotiations, lease agreements, zoning, and pre-development legal matters.

- **Project Management and Pre-Construction Coordination:** Engage professionals to guide and coordinate the development process.
- **Estimated Cost:** \$400,000

Projected Total Initial Start-Up Costs: \$3,150,000

LFUCG's initial investment of **\$400,000** in FY26 will help initiate these early-phase activities, with anticipated LFUCG continued investment to support subsequent architectural and site development milestones. Future funding allocations received by LFUCG pursuant to this agreement will additionally fund project costs toward the fulfillment of the project as described herein.

This partnership demonstrates a shared commitment to making Lexington a regional family destination and providing transformative educational experiences for children of all ages.