

**PURCHASE OF SERVICE AGREEMENT**

THIS PURCHASE OF SERVICE AGREEMENT, made and entered into on the 31<sup>st</sup> day of August 2020, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the COMMONWEALTH OF KENTUCKY created pursuant to KRS Chapter 67A ("Government"), 200 East Main Street, Lexington, Kentucky 40507, on behalf of the Chief Development Officer ("CDO") and **LYRIC THEATRE & CULTURAL ARTS CENTER, INC.**, ("Organization") with offices located at 300 East Third Street, Lexington, Kentucky 40508, with an effective date of July 1, 2019.

**WITNESSETH**

That for and in consideration of the mutual promises and covenants herein expressed, the Government and the Organization agree as follows:

1. Government hereby retains Organization for the period beginning on July 1, 2020, and continuing for a period of twelve (12) months from that date unless within that period Government gives the Organization thirty (30) days written notice of termination of this Agreement in which case this Agreement shall terminate thirty (30) days from the date notice is given to the Organization.

2. Government shall pay the Organization the total sum of One Hundred Twenty-Seven Thousand Five Hundred Dollars (\$127,500.00) for services required by this Agreement, said services being more particularly described in Exhibit A attached hereto and incorporated herein by reference. Thirty-One Thousand Eight Hundred Seventy-Five Dollars (\$31,875.00) of the total sum amount shall be payable each quarter, within 10 days after receipt of the report required in Paragraph 6 herein, July to June,

inclusive. Lexington-Fayette Urban County Government funds may not be used to provide Cost of Living Increases in fiscal year 2021. Additionally no LFUCG funds may be used to hire any additional staff above the current (FY2020) staffing levels (3 full-time and 3 part-time). Said services shall include: Oversight and management of and programming for the Lyric Theatre and Cultural Arts Center, Operation of the Lyric Theatre and Cultural Arts Center in a manner consistent with the purpose set forth within the 1997 Memorandum of Understanding between the Commonwealth of Kentucky and Lexington-Fayette Urban County Government and with the mission of the Lyric as stated below as well as those services listed on Exhibit A, which is attached hereto. The mission of the Lyric Theatre and Cultural Arts Center is to preserve, present and celebrate diverse cultures with special emphasis on African-American cultural heritage through artistic presentations of the highest quality, educational programming and outreach, film and opportunities for community inclusion.

3. In the event of termination of this Agreement by Government as provided for in Paragraph 1 above, Organization shall be entitled to that portion of total compensation due under this Agreement, as the service rendered bears to the total service required hereunder.

4. Organization shall perform all duties and services specified in Exhibit A faithfully and satisfactorily at the time, place, and for the duration prescribed herein. 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

and shall indemnify Government, its officers, agents and employees against any claim or liability arising from and based on Organization's violation of any such laws, ordinances or regulations.

5. Organization represents that it has filed any federal, state or local income tax returns required by law in the legally prescribed time and manner. This Agreement shall not become effective unless and until copies of all of the executed originals of the aforementioned tax returns filed for the Organization's most recent or current tax year are registered by the Organization in the CDO, and the Organization shall not be compensated unless and until such registration has taken place.

6. The Organization shall, at the end of each quarter and by no later than the 10<sup>th</sup> day of the succeeding quarter (October 10, 2020; January 10, 2021; April 10, 2021 and July 10, 2021), on such forms as the Director of Arts & Cultural Affairs shall provide, submit electronically to the Director of Arts & Cultural Affairs: (a) the information requested in and submitted on the form attached hereto as Exhibit B and incorporated herein by reference (or a similar form created and provided to Organization by the Government); and (b) an invoice requesting compensation for the services provided during the preceding quarter. Failure to electronically submit the quarterly report and invoice described herein by the required date shall result in the quarterly payment to Organization being withheld until the next reporting period. In addition, Organization shall be required to present a progress report as to its activities annually, or as additionally required, before the Urban County Council's Budget, Finance & Economic Development Committee, or as otherwise instructed by the Government.

7. At no time shall the Organization require membership in the organization for services paid for in whole or in part with the assistance of funding from LFUCG.

8. Books of accounts shall be kept by the Organization and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of the Organization. The books of accounts, together with all bonds, notes, bills, letters and other writings belonging to the Organization, shall be maintained at the principal place of business of the Organization as set forth in this Agreement. Government shall have free and complete access to the books, papers and affairs of the Organization relating to the LFUCG funds provided hereunder at all reasonable times, and if it desires, it may have said books and papers of the Organization audited and examined by auditors, accountants or attorneys. Any examination shall be at the expense of the Government.

9. Government may designate such persons as may be necessary to monitor and evaluate the services rendered hereunder by the Organization. The Government, its agents and employees, shall, at all times, have 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 Organization, or to constitute Organization an agent of the Government.

10. Organization shall provide equal opportunity in employment for all qualified persons, shall prohibit discrimination in employment because of race, color, creed, national origin, sex, age, sexual orientation or gender identity, or handicap, shall promote equal

employment through a positive, continuing program of equal employment, and shall cause each of its subcontracting agencies to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

11. Organization shall adopt 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 submitted to the Director for Arts & Cultural Affairs for review within thirty (30) days of the execution of this Agreement.

12. The Organization agrees that all revenue and expenditures 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 shall be submitted to the Director of Arts and Cultural Affairs within 10 days of completion.

13. Organization agrees that it shall apply all funds received by it from the Urban County Government in accordance with the following investment policy guidelines:

- A. Objectives--Capital preservation with surety of income. Reasonable competitive income consistent with high investment quality and purpose of funds. All investments shall conform with state and local law and regulations and these Policies.
- B. Investment Funds Management--The governing board may elect to either:
  - (1) manage its investments through its executive director where the size or complexity of funds to be managed is deemed by the board to be within the training, expertise and/or available time capacity of the executive director and the operating staff;

-or-

- (2) utilize the professional investment management facilities of a local bank trust department acting in a fiduciary capacity within the same approved investment policies and federal, state, local and trust laws and regulations. The trust department may utilize its regular short-term 100% U.S. Treasury Fund for daily funds investment. The election of option 1 or 2 should be made consistent with the relative cost incurred and in the case of option 2 the cost shall be competitive among local trust departments.

C. Investment Policies--Safety and Prudence.

- (1) Short-term liquidity funds shall be invested in "riskless" investments, i.e., deposits in Kentucky commercial banks or savings and loan associations that are fully federally insured or deposits collateralized by U.S. Treasury securities with a current market value of at least 100%, or in direct obligations of U.S. Treasury securities.

Investments shall be diversified according to maturity in order to meet projected cash flow needs.

Collateral pledged to secure uninsured deposits shall be held at a federal reserve bank with the receipt providing absolute control by the agency.

- (2) Retirement funds, endowment funds, long-term capital reserve funds and any other special funds may be held and invested by a local bank trust department under investment objectives and diversification in accordance with the individual nature of the funds and pursuant to the "prudent man" investment rule as well as general trust law.
- (3) All investments shall be reviewed monthly by a finance or investment committee of the agency.
- (4) Local brokerage firms may hold and invest funds provided that investments are located within Kentucky and are fully insured.

D. Audit--All investments shall be audited at least annually by independent certified public accountants who shall express an opinion

as to whether or not investments during the year audited have conformed with state and local law and regulation and with the approved investment policies.

14. Organization shall enter into a separate management agreement with Government to set forth the responsibilities of both parties pertaining to the building, its grounds and equipment. All programming costs incurred by the Lyric are the responsibility of the Organization.

15. The Organization will provide the Government with use of the Lyric Theatre up to six times within each fiscal year at no additional cost to the Government. Requests for mutually agreeable times and dates will be submitted in writing from the Government to the Lyric, as needed. Reasonable accommodations will not be withheld.

16. This instrument contains the entire agreement between the parties, and no statement, promises or inducements made by either party or agent of either party that is not contained in this written Agreement shall be valid and binding; and this Agreement may not be enlarged, modified or altered except in writing signed by the parties and endorsed hereon.

17. Notice – Any written notice required by the Agreement shall be delivered by certified mail, return receipt requested, to the following:

For Organization:

Lyric Theatre & Cultural Arts Center  
300 East Third Street  
Lexington, Kentucky 40508  
Att: Whit Whitaker, Executive Director  
(or as otherwise designated in writing by Organization)

For Government: Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, Kentucky 40507  
Att: Heather Lyons, Director of Arts & Cultural Affairs

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

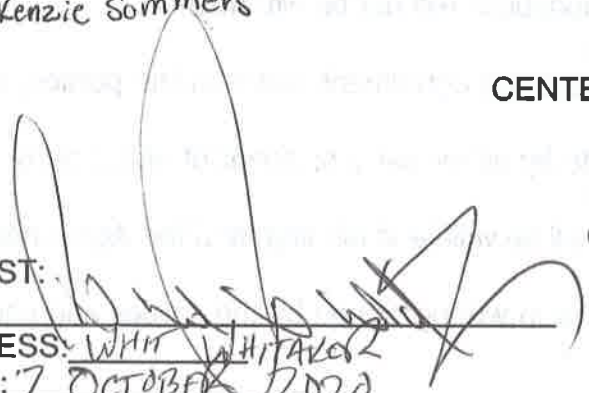
ATTEST:

  
Abigail Allan, Clerk of the Urban County Council  
Mackenzie Sommers

LYRIC THEATRE & CULTURAL ARTS  
CENTER

BY:   
OLIVIA DAVIS, CHAIRPERSON

ATTEST:

  
WITNESS: WHIT WHITAKER  
DATE: 7 OCTOBER 2020



## EXHIBIT "A"

Lexington/Fayette Urban County Government  
Addendum for Services  
Lyric Theatre & Cultural Arts Center  
**Scope of Work**

### Local Contribution:

During fiscal year 2021 (July 1, 2020 through June 30, 2021) Lyric Theatre & Cultural Arts Center will use these funds from Lexington-Fayette Urban County Government to:

- Support Facility Operation
- Provide a venue for community groups and organizations presenting, cultural entertainment including music concerts, performing arts, plays and other events
- Provide the LFUCG with free use of the Lyric Theatre for up to six purposes, at mutually agreed upon times.
- Present Signature Programming.  
*\*Due to Covid-19 guidelines and restrictions, it is understood that scheduled events may have to be cancelled or re-configured as virtual events.*
  - Back to School Carnival
  - Fall Fundraising Event
  - Miracle on Third Street
  - Kwanza Celebration
  - New Year's Eve Cocktail and Breakfast Social Fundraiser
  - Martin Luther King, Jr. Holiday Celebration
  - Black History Convocation
  - Lyric Black Love Celebration
  - Message Theatre Production
  - Youth Spring Break Programming
  - Lyric Theatre Youth Talent Showcase
  - Camp Lyric Youth Summer Programming
  - Feed the Soul Artist Showcase
  - Gallery Exhibits
  - Courtyard music recitals
  - LexPhil/Lyric Traveling Community Artist Performance Collaborations

