

PURCHASE OF SERVICE AGREEMENT

2nd THIS PURCHASE OF SERVICE AGREEMENT, made and entered into on the day of May 2023, 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 LEXARTS, INC. ("Organization"), with offices located at 161 North Mill Street, Lexington, Kentucky 40507, with an effective date of _____ 2023.

WITNESSETH

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the receipt and sufficiency of which are acknowledged, the LFUCG and the Organization hereby agree as follows:

1. **TERM.** This Agreement shall commence on June 1, 2023, 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. **SCOPE OF SERVICES.** Organization shall perform the services outlined in the attached Exhibit "A" – Scope of Work for LFUCG in a timely, workmanlike and professional manner (the "Services"). Furthermore, the Organization shall include the City of Lexington's logo and the following funding statement in all print materials, digital and social media, websites, and in public presentations:

FUNDING STATEMENT: Funding for the Arts & Culture Master Plan has been provided to LexArts from the City of Lexington.

3. **PAYMENT.** LFUCG shall pay Organization a total amount not to exceed Three Hundred Thousand Dollars (\$300,000.00) for the performance of the Services. Seventy-five Thousand Dollars (\$75,000.00) of the total sum shall be payable in quarterly installments on July 30, 2023, January 1, 2024, April 30, 2024, and August 30, 2024. 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.

- a. LFUCG shall make payment under this Agreement upon timely submission of an invoice(s) from Organization specifying that the Services have been performed, accompanied by data satisfactory to LFUCG to document entitlement to payment for the Services performed to date. LFUCG shall

have thirty (30) days from the date of receipt of the invoice to pay the invoice amount. LFUCG reserves the right to refuse payment if it is determined by LFUCG that the Services performed or materials provided for the Services are inadequate or defective.

- b. LFUCG also reserves the right to reject any invoice submitted for services more than sixty (60) days after the services were rendered.

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, calculated on a reasonable basis.

- 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 may only terminate this Agreement based upon LFUCG's failure to timely pay for properly invoiced and accepted work. Organization shall provide LFUCG with at least thirty (30) days advance written notice and an opportunity to cure prior to termination.
- c. 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.

5. REPORTING. Organization shall complete and return to Government the Quarterly Report form attached hereto and incorporated herein as Exhibit "B", as well as copies of deliverables, requested attachments, and invoices on or before the following dates: July 30, 2023, January 1, 2023, April 30, 2024, and August 30, 2024. By submitting the Quarterly Report form and any additional forms reasonably required therewith, the Organization verifies and affirms that all information submitted is true, accurate, and complete to the best of its knowledge. The Quarterly Report shall be submitted to Government electronically, unless otherwise requested by Government. Failure to electronically submit the Quarterly Report by the required date may 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.

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. **INDEMNITY.** Organization shall indemnify, defend, and hold harmless 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. This provision shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this Agreement. 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.

8. **INSURANCE.** Organization shall maintain, for the duration of this Agreement, appropriate insurance coverage through a company with an A.M. Best rating of "A" or better as follows:

- a. Commercial General Liability (CGL) insurance written with the minimum amount of \$1,000,000.00 per occurrence with an aggregate of not less than \$2,000,000.00.
- b. Automobile Liability insurance with the minimum amount of \$1,000,000.00 per occurrence
- c. Workers Compensation insurance within the statutory limits
- d. Employers' Liability insurance written with the minimum amount of \$100,000.00
- e. Excess/Umbrella Liability insurance with the minimum amount of \$1,000,000.00 per occurrence
- f. Professional (E&O) Liability with the minimum amount of \$1,000,000.00 per claim

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; NO THIRD PARTY RIGHTS.** Organization may not assign any of its rights and duties under this Agreement without the prior written consent of LFUCG. This Agreement does not create a contractual relationship with or right of action in favor of a third party against either Organization or LFUCG.

17. **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.

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

For Organization:

LexArts, Inc.
161 North Mill Street
Lexington, Kentucky 40507
Attn: Ame Sweetall, President & Chief Executive Officer
(or as otherwise designated in writing by Organization)

For Government:

Lexington-Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507
Attn: Heather Lyons, Director, Arts & Cultural Affairs, Mayor's Office

19. 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.

20. ENTIRE AGREEMENT; AMENDMENTS. 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. 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.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement at Lexington,
Kentucky, the day and year first above written.

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

LEXARTS, INC.

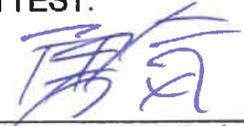
BY: _____
LINDA GORTON, MAYOR

BY: 
GREG PADGETT, CHAIR
LEXARTS BOARD OF DIRECTORS

BY: 
AME SWEETALL, PRESIDENT AND
CHIEF EXECUTIVE OFFICER

ATTEST:

Abigail Allan
Clerk of the Urban County Council
DATE: _____

ATTEST:

WITNESS: Red Medley *KINP56047
DATE: 2 May 2023 exp 28 Jul 2028

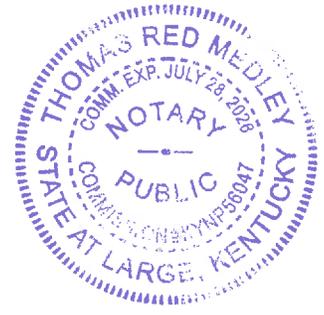


EXHIBIT "A"

**Lexington/Fayette Urban County Government
Addendum for Services**

Scope of Work: Arts and Culture Master Plan PSA details for the City of Lexington

- Detail about the intent of the RFP and expected deliverables
 - **Intent** is for LexArts to serve as the lead organization and facilitate the formation of an Arts and Culture Master Plan Task Force comprised of arts, community and business stakeholders. These stakeholders currently include representatives from VisitLex, Downtown Lexington Management District, Downtown Lexington Partnership, Town Branch Park, the Fund for Greater Lexington, Central Bank Center, numerous arts organizations, Commerce Lexington and the Forum. The Task Force will assess and hire a qualified consultant to develop a comprehensive plan, as well as, the initial priority projects from the plan. The plan and ensuing projects are intended to not only leverage Lexington's existing arts and culture economy, but significantly expand it to better support artists, retain talent and compete with both regional and national cities in this rapidly growing sector of the economy. The overall intent is to advance existing mapping and policy work completed by LexArts and the city of Lexington over the past few years, while significantly accelerating equitable and inclusive development of Lexington's wider creative economy, inclusive of all its artforms and disciplines.
 - **Deliverables** from LexArts include:
 - Formation of the Task Force
 - Development and posting of the RFP to engage a consultant
 - Review, assessment and hiring of consultant
 - Oversight and engagement throughout the extent of the project
 - LFUCG work reports submitted on contracted schedule – July 15, 2023, December 15, 2023, April 15, 2024, August 15, 2024
 - Tracking, payment and reporting of expenses
 - **Deliverables** from the Master Plan include:

- a robust asset and infrastructure map of all arts and culture assets in Lexington and a clear framework outlining how they benefit economic development and quality of life
- comprehensive and globally relevant data and evidence to understand the city's creative economy, including at least visual arts, music, dance, theater and performing arts across the for-profit and nonprofit sectors
- needs assessment for any potential infrastructure (new venues, refurbishes, new festival, etc)
- lead project recommendations and a 3-to-5 year strategic plan for LexArts and the City of Lexington
- a proposed set of implementable, global-leading policies to attract, retain and support talent, with a focus on women, minority owned and very small businesses, as well as wider workforce development
- extensive community engagement to hear from a wide variety of stakeholders working in, related to, and affected by Lexington's cultural and creative economy will be essential for delivering on these objectives

- **Timeline** for the RFP selection process

- | | |
|---------------------------------|----------------|
| o posting | April 28, 2023 |
| o deadline for proposals | May 31, 2023 |
| o selection of service provider | June 15, 2023 |
| o contract initiation | July 1, 2023 |

- **Timeline** of work phases as determined by LexArts

- | | |
|-----------------------------------------------|---------------|
| o formation of Task Force and RFP development | in process |
| o selection of service provider | June 15, 2023 |
| o contract initiation | July 1, 2023 |
| o Literature Review & Research Completion | December 2023 |

- Stakeholder Engagement Completed February 2023
- Economic Impact and Mapping Completed April 2023
- First Draft Submitted June 2024
- Final Draft Submitted August 2024

- **LexArts Budget** for project: LexArts will follow this schedule for the amount and distribution of funds to selected firm/individual:
 - Estimated \$275,000 for contracted services paid by LexArts in four (4) installments: July 15, 2023, December 15, 2023, April 15, 2024, August 15, 2024
 - Estimated \$25,000 for operational needs to be paid according to receipts in work reports

EXHIBIT "B"

**Lexington/Fayette Urban County Government
Report Form**

