

## **PURCHASE OF SERVICE AGREEMENT**

THIS PURCHASE OF SERVICE AGREEMENT, made and entered into on the \_\_\_\_\_ day of July 2019, 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 **THE DOWNTOWN LEXINGTON CORPORATION D/B/A DOWNTOWN LEXINGTON PARTNERSHIP**, a Kentucky corporation, ("Organization") with offices located at 316 West High Street, Lexington, Kentucky 40507, 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, 2019, 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. The Organization agrees to provide the following services through the downtown area and those provided in Exhibit A attached hereto:
  - (a) Facilitate development and redevelopment projects within the downtown Lexington area;
  - (b) Acquire, construct, maintain, add to, and improve any "public project" as defined in KRS 58.010, provided, however, the Organization shall

not acquire, construct, maintain, add to, or improve any "public project" as defined in KRS 58.010 with respect to the Lexington Center Corporation, or its property, without its written consent;

- (c) Coordinate urban county policies and programs relating to public investment for financing development and redevelopment projects with the downtown area of Fayette County;
- (d) Develop and coordinate the implementation of downtown, neighborhood, area-wide and corridor plans and policies of the urban county government, consistent with, and in coordination with, other urban county department and agencies with responsibilities in the same area;
- (e) Establish design and related standards or guidelines for development and redevelopment projects with the downtown area, consistent with, and in coordination with, other urban county departments and agencies with responsibilities in the same area;
- (f) Coordinate the activities of other urban county government supported departments, offices, organizations and corporations involved in development and redevelopment related activities;
- (g) Exercise other related powers and duties consistent with Sections 2-428, *et seq.*, of the Code of Ordinances, Lexington-Fayette Urban County Government;
- (h) Provide event management for the following events:
  - i. Central Bank Thursday Night Live (Fifth Third Bank Pavilion). LFUCG, Division of Parks & Recreation, will absorb its labor costs incurred in the months of June, July and August. Organization will reimburse Division of Parks & Recreation's labor costs for the months of April, May, September and October. Additionally, Organization will reimburse LFUCG Division of Parks & Recreation for all portable services.

- ii. Bike Lexington (Robert F. Stephens Courthouse Plaza). LFUCG, Division of Parks & Recreation, will absorb its costs incurred to support Bike Lexington Family Fun Ride.
- iii. Mayfest Arts Fair (Gratz Park & Transylvania). LFUCG, Division of Parks & Recreation, will absorb its costs incurred to support Mayfest Arts Fair.
- iv. 4<sup>th</sup> of July Pie Contest and Ice Cream Social (Fifth Third Bank Pavilion). LFUCG, Division of Parks & Recreation, will absorb its costs incurred to support 4<sup>th</sup> of July Pie Contests and Ice Cream Social.
- v. 4<sup>th</sup> of July Patriotic Concert (Transylvania University). Held on 3<sup>rd</sup> of July. LFUCG, Division of Parks & Recreation, will absorb its costs incurred to support July 3<sup>rd</sup> Patriotic Concert.
- vi. 4<sup>th</sup> of July Bluegrass 10K (Downtown). LFUCG, Division of Parks & Recreation, will continue to manage race event logistics and operations, including selection of suppliers for the Bluegrass 10k. The Division of Parks & Recreation will seek sponsorships for race specific opportunities that enhance race programming. Such sponsorships will be specific only to the Bluegrass 10k and will not require festival participation or acknowledgement. Organization shall submit final sponsors ninety days prior to race day for inclusion on race materials.
- vii. 4<sup>th</sup> of July Street Festival, Parade and Fireworks (Downtown). LFUCG, Division of Parks & Recreation, will absorb its costs incurred to support 4<sup>th</sup> of July Street Festival, Parade and Fireworks.
- viii. Luminare Lexington Holiday Market, Concert and Tree Lighting (Triangle Park). LFUCG, Division of Parks & Recreation, will absorb its costs incurred to support Luminare Lexington Holiday Market, Concert and Tree Lighting.

- ix. Christmas Parade (Main Street/Downtown). LFUCG, Division of Parks & Recreation, will absorb its costs incurred to support Christmas Parade.
  - i. Event participation and management will be approved by the Director of Arts and Cultural Affairs in the Office of the Mayor.
  - j. All revenues from the events shall be retained by the Organization;
  - k. Event evaluation to determine if events in whole or part are sensible to continue, and report to Special Events Commission with recommendations. Special Events Commission will maintain authority to approve, deny or cancel event applications;
  - l. Sponsor recognition to Government on all events that Organization produces;
  - m. Reimbursement to Government for labor services on events listed in 2(h) above, other than as provided therein;
3. Government will provide Organization:
- a. Personnel from Divisions of Parks and Recreation, Street and Roads, Police, Fire, Public Information and Waste Management to produce events listed in 2(h), with exception noted to Bluegrass 10K in Sec. 2(h)(iv).
  - b. The Division of Parks and Recreation's personnel costs and operating costs for the Bluegrass 10K will be reimbursed to Parks from the entry fees from the Bluegrass 10k by Organization. Organization will reimburse Parks for its personnel costs up to the amount of \$20,000.
  - c. Director of Arts and Cultural Affairs in the Office of the Mayor will work with Organization's staff for event support

4. Government shall pay the Organization the total sum of One Hundred Forty-Seven Thousand Fifty-Five Dollars (\$147,055.00) for services required by this Agreement, said services being more particularly described in Exhibit A attached hereto and incorporated herein by reference. Payment related to the Economic Development Manager will be made monthly toward reimbursement of actual expenses related to the Economic Development Manager (Salary, Direct Benefits, Actual Office Expenses) totaling \$107,055.00 per year. July to June, inclusive. Request for reimbursement shall occur by the 10<sup>th</sup> day of each month by invoice with verification of salary and benefit payments and shall not exceed Eight Thousand Nine Hundred Twenty-One Dollars and Twenty-Five cents (\$8,921.25) per month. Reimbursement shall not occur if the position of Economic Development Manager is vacant, not full-time or combined with any other position. Payments for any period where Economic Development Manager position is vacant may not be recovered once position is filled. Additionally payment related to events managed by DLP will be Forty Thousand Dollars (\$40,000.00) of the total sum amount and shall be payable each quarter, within 10 days after receipt of the report required in Paragraph 8 herein, July to June, inclusive. Lexington-Fayette Urban County Government funds may not be used to provide Cost of Living Increases in fiscal year 2020. Additionally no LFUCG funds may be used to hire any additional staff above the current (FY2019) staffing levels (7 full-time and 1 part-time)

5. 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.

6. 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.

7. 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.

8. 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, 2019; January 10, 2020; April 10, 2020 and July 10, 2020), on such forms as the CDO shall provide, submit electronically to the CDO: (a) a report containing, for each of the services enumerated Section 2, above, and in Exhibit A, which were provided in the preceding quarter, a description of the services provided, including the costs of providing services and the quantity and quality of the services provided; (b) the additional 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 (c) 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.

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

10. 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.

11. 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.

12. 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.

13. 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 CDO for review within thirty (30) days of the execution of this Agreement.

14. 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 CDO within 10 days of completion.

15. 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.

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:           Downtown Lexington Corporation dba Downtown Lexington  
Partnership  
  
  316 West High Street  
  Lexington, Kentucky 40507

Att: Terry Sweeney, President & Chief Executive Officer (or as otherwise designated in writing by Organization)

For Government: Lexington-Fayette Urban County Gov.

200 East Main Street

Lexington, Kentucky 40507

Att: Kevin Atkins, Chief Development Officer

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

DOWNTOWN LEXINGTON PARTNERSHIP

BY: \_\_\_\_\_  
PAULA HANSON, CHAIRPERSON

ATTEST:

\_\_\_\_\_  
WITNESS: \_\_\_\_\_

DATE: \_\_\_\_\_

## **EXHIBIT “A”**

Lexington/Fayette Urban County Government  
Addendum for Services  
Downtown Lexington Partnership

### **Scope of Work**

#### **Local Contribution:**

During fiscal year 2020 (July 1, 2019 through June 30, 2020) Downtown Lexington Partnership will use these funds from Lexington-Fayette Urban County Government to:

- Work to create a successful, vibrant downtown proactively and strategically in coordination with community partners;
- Work to attract new businesses, development and residences in downtown, increase sales activity and street level occupancy and improve existing buildings and urban design;
- Create a cleaner, safer, more beautiful and accessible downtown;
- Increase sales, visitorship and downtown investment through strategic marketing and developing/managing events;

Downtown Lexington Partnership will provide event management for the following events for Lexington-Fayette Urban County Government:

- Central Bank Thursday Night Live
- Mayfest Arts Fair
- Bike Lexington
- 4<sup>th</sup> of July Pie Contest and Ice Cream Social
- 4<sup>th</sup> of July Patriotic Concert
- 4<sup>th</sup> of July Blue Grass 10K, Street Festival, Parade and Fireworks
- Holiday Market, Concert, Tree Lighting
- Christmas Parade

**EXHIBIT “B”**

Lexington/Fayette Urban County Government

Addendum for Services

Downtown Lexington Partnership

**Quarterly Report Questionnaire**

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**  
 Economic Development Partner Agency Quarterly Report  
 Fiscal Year 2020

**Partner Agency:** Downtown Lexington Partnership  
**Date of Quarterly Report:** X  
**Fiscal Year 2020 Report Period:** Quarter #  
**Report Completed By:** X

**ATTENDANCE BY EVENT THIS QUARTER (EXCLUDING THURSDAY NIGHT LIVE)**

<u>Name of Event:</u>	<u>Estimated Attendance:</u>
x	#

**THURSDAY NIGHT LIVE ATTENDANCE THIS QUARTER**

Estimated Total Attendance for Quarter:	#
Average Weekly Attendance for Quarter:	#
Average Weekly Attendance Year to Date	#

**TOTAL ATTENDANCE AT ALL DOWNTOWN LEXINGTON PARTNERSHIP EVENTS THIS QUARTER**

Total Estimated Attendance at all Events This Quarter:	#
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**DOWNTOWN LEXINGTON PARTNERSHIP MEMBERSHIP**

Membership as of July 1, 2019:	#
Membership as of End of Current Quarter:	#
Current Corporate Membership Total:	#
Current Individual Membership Total:	#

**ECONOMIC DEVELOPMENT PROJECTS CONSULTED ON DURING CURRENT QUARTER**

<u>Type of Project:</u>	<u>Estimated Project Cost:</u>
	\$
	\$

**NUMBER OF HOURS (ESTIMATED) EXPERTISE DEVOTED TO PUBLIC PROJECTS**

Total Estimated Public Project Hours: #  
 Total Estimated LFUCG Project Hours: #

**GRANT DOLLARS RAISED FOR DOWNTOWN PROJECTS THIS QUARTER**

Non-LFUCG Grant Dollars Raised This Quarter: \$  
 % of Overall DLP Budget Grant Accounts For This  
 Quarter: %

**INFILL PROJECT OPPORTUNITIES WORKED THIS QUARTER**

Number of Infill Projects Consulted On This Quarter: #  
 Number of Infill Projects Announced This Quarter: #  
 Number of Infill Projects Began This Quarter: #

**NEW DEVELOPMENT OPPORTUNITIES WORKED THIS QUARTER**

Number of New Development Projects Consulted on This Quarter: #  
 Number of New Development Projects Announced This Quarter: #  
 Number of New Development Projects Began This Quarter: #

**LIST ALL PUBLIC OR TAX PAYER SUPPORTED SOURCES OF FUNDING OTHER THAN LFUCG ECONOMIC DEVELOPMENT PURCHASE OF SERVICE AGREEMENT THAT DOWNTOWN LEXINGTON PARTNERSHIP RECIEVES (EX: DLMD FUNDING)AND THE AMOUNT OF EACH INDIVIDUAL SOURCE**

<u>Name of Funding Source:</u>	<u>Amount of Funding:</u>
X	\$

**BUDGET PARTICIPATION**

Total Budget of Downtown Lexington Partnership for Current Quarter: \$  
 LFUCG Funding for Current Quarter: \$  
 Downtown Management District Funding for Current Quarter: \$  
 Administrative Cost/Salary Expenses for Current Quarter: \$  
 LFUCG Funds % of Downtown Lexington Partnership Current Quarter: %  
 LFUCG Funds % of Downtown Lexington Partnership Year-to-Date: %

**WHAT ACTIONS HAS DOWNTOWN LEXINGTON PARTNERSHIP TAKEN IN THE PAST QUARTER TO INCREASE ITS FINANCIAL SUSTAINABILITY WITH LESS RELIANCE ON FUNDS FROM LFUCG?**

Place response here

*Submit this form via Email in Excel format by the dates required in the PSA to the Chief Development Officer: [katkins@lexingtonky.gov](mailto:katkins@lexingtonky.gov)*