

## **PURCHASE OF SERVICE AGREEMENT**

THIS AGREEMENT is made and entered into on or as of the 1st day of July, 2013, by and between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, an urban county government created pursuant to KRS Chapter 67A ("LFUCG"), with its principal offices located at 200 East Main Street, Lexington, Kentucky 40507, and LEXINGTON'S CHILDREN'S MUSEUM, INC. d/b/a EXPLORIUM OF LEXINGTON ("Explorium"), a Kentucky non-stock, non-profit corporation, with offices located at 440 West Short Street, Lexington, Kentucky 40507.

### **W I T N E S S E T H**

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

1. LFUCG hereby retains Explorium for an initial period beginning on July 1, 2013, and ending on June 30, 2014, unless within that period LFUCG gives Explorium 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. The agreement is automatically renewable for up to four (4) additional fiscal years, unless the above termination notice is provided. In return for the following base services, LFUCG shall pay Explorium the sum of One Hundred Seventy Seven Thousand Five Hundred Dollars (\$177,500.00) during the initial term. During each of the other fiscal years, the amount shall be based upon the amount which is approved by the Urban County Council as part of the LFUCG's Annual Budget. During each fiscal year, one fourth (1/4<sup>th</sup>) of the amount owed shall be payable each quarter, within ten (10) days after receipt of the

report required in Paragraph 4 herein. The Explorium agrees to provide the following base services for these payments:

- a. Manage the Explorium facility currently located in Victorian Square, including but not limited to providing and managing the exhibits and programming from the Explorium facility at Victorian Square in order to provide education and cultural experience for children and their care-givers.
- b. Submit quarterly reports to the Commissioner of Finance as set forth herein.
- c. Submit an annual report each year to the Mayor and the Urban County Council, which report shall contain a summary of its activities for the preceding year including attendance, revenues, community outreach, and fundraising activities and an audit of all receipts, expenditures and funds on hand.
- d. Adhere to and comply with any and all federal, state and local safety and environmental laws, regulations and ordinances, and with all safety and loss control rules, regulations, and policies of LFUCG, Division of Risk Management, and permit the Division of Risk Management or the Office of Internal Audit to review, audit, and inspect any and all of its records and operations to ensure compliance with the provisions of this Agreement.

2. The parties acknowledge and agree that there are significant funds as further described in this paragraph, which were previously in dispute as to their ownership. In return for each party releasing any and all claims which it has related to those funds, and in return for the additional services described herein, the parties further agrees as follows. Each fiscal year Explorium will provide, for a minimum of twelve (12) and a maximum of twenty four (24) events, programming assistance to the LFUCG's Division of Parks and Recreation. Such events may take place at the Explorium or off-site in conjunction with LFUCG-related events such as Free Friday Night Flicks or Little Goblins. Other examples may include, but are not necessarily limited to, visits to the Explorium by children affiliated with community centers or events

at LFUCG swimming facilities. Each fiscal year the Explorium and the LFUCG's Director of Parks and Recreation will finalize the list of events, and that list will become an Addendum to this Agreement and part of each quarterly report. All personnel utilized by Explorium as part of any event must undergo appropriate background checks at the expense of Explorium and otherwise comply with any applicable LFUCG policies, procedures, and guidelines, and codes of conduct. In return for these additional services LFUCG shall pay Explorium \$30,600 each fiscal year for the first three fiscal years of this Agreement and forego collection of \$38,850 for each of the five (5) fiscal years of this Agreement. If all of the additional services in this paragraph have been performed to the satisfaction of LFUCG, Explorium will have no obligation to continue to provide these services absent an additional agreement.

3. Explorium represents that it has filed any federal, state or local income tax returns required by law in the legally prescribed time and manner.

4. Explorium shall, at the end of each quarter and by no later than the 10<sup>th</sup> working day of the succeeding quarter, submit to LFUCG a report containing, for each of the services enumerated herein which were provided in the preceding quarter (a) a description of the service provided, including the quantity and quality of the service provided; (b) the personnel costs, administrative costs, fixed costs, and any other direct or indirect costs in providing the service; and, (c) an invoice requesting compensation for the services provided during the preceding quarter. For the initial quarter of this Agreement, LFUCG shall advance the quarterly payment in July 2013, upon Explorium providing all reporting, except financials, for year ending June 30, 2013.

5. In the event of termination of this Agreement by LFUCG as provided for in

Paragraph 1 above, Explorium 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. Explorium agrees to keep books of accounts in which entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of Explorium. The books of accounts, together with all bonds, notes, bills, letters and other writings belonging to Explorium, shall be maintained at the principal place of business of Explorium as set forth in this Agreement. LFUCG shall have free and complete access to the books, papers and affairs of Explorium at all reasonable times, and if it desires, it may have the books and papers of Explorium audited and examined by auditors, accountants or attorneys. Any examination shall be at the expense of LFUCG.

7. LFUCG may designate such persons as may be necessary to monitor and evaluate the services rendered by the Explorium. LFUCG, 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 Explorium, or to constitute Explorium an agent of the LFUCG.

8. Explorium 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 Explorium shall indemnify LFUCG, its officers, agents and employees

against any claim or liability arising from and based on Explorium's violation of laws, ordinances or regulations,

9. Explorium 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.

10. Explorium 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 Explorium conducts business.

11. Explorium 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 LFUCG within ten (10) days of completion.

12. Explorium agrees that it shall apply all funds received by it from LFUCG 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.

13. This Agreement 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.

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: \_\_\_\_\_  
Jim Gray, Mayor

ATTEST:

\_\_\_\_\_  
Susan Lamb, Council Clerk

LEXINGTON CHILDREN'S MUSEUM, INC.

BY: \_\_\_\_\_

ATTEST:

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