

PURCHASE OF SERVICE AGREEMENT

THIS PURCHASE OF SERVICE AGREEMENT, made and entered into on the 1st day of September 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 July 1, 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 July 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” – Addendum for Services for LFUCG in a timely, workmanlike and professional manner (the “Services”).
3. **PAYMENT.** LFUCG shall pay Organization a total amount not to exceed One Hundred Thousand Dollars (\$100,000.00) for the performance of the Services. Twenty-five Thousand Dollars (\$25,000.00) of the total sum shall be payable in quarterly installments. 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 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 a Final Report form, as provided by the Director of Arts & Cultural Affairs, by June 30, 2024. By submitting the Final 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 Final Report shall be submitted to Government electronically, unless otherwise requested by Government. 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:  _____
CAMDEN SKIDMORE, CHAIR
LEXARTS BOARD OF DIRECTORS

BY:  _____
AME SWEETALL, PRESIDENT AND
CHIEF EXECUTIVE OFFICER

ATTEST:

ATTEST:

Abigail Allan
Clerk of the Urban County Council
DATE: _____

WITNESS: _____
DATE: _____

EXHIBIT “A”

Lexington/Fayette Urban County Government Addendum for Services

SCOPE OF WORK

- \$50,000 allocated to supporting Diversity, Equity, Inclusion and Accessibility through Arts Equity Grants - direct funding to projects and programs specifically focused on arts opportunities and initiatives for underserved artists and audiences
- \$50,000 allocated to the first year salary to the Grants Specialist position at LexArts – responsible for managing the Grants Procurement processes (managing Grants database, researching, writing inquiries, requests and applications, and submitting reports), whose annual procurement goals will ultimately provide funding to continue the position.