

PURCHASE OF SERVICE AGREEMENT

THIS PURCHASE OF SERVICE AGREEMENT (hereinafter "Agreement"), made and entered into on the _____ of July, 2013, 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, and **THE LYRIC THEATRE AND CULTURAL ARTS CENTER, INC.** ("Organization") with offices located at 300 East Third Street, Lexington, Kentucky 40508.

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, 2013, 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 Organization the sum of One Hundred Sixty Thousand Dollars (\$160,000.00) made in four quarterly payments of \$40,000.00 for the services required by this Agreement. 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:

The mission of the Lyric Theatre and Cultural Arts Center is to preserve promote, 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. 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.

4. Organization shall submit a mid-year report, no later than January 31, 2014, to Government, containing, for each of the services enumerated which were provided during the previous months: a description of the service provided, including the quantity and quality of the service provided.

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 service required herein.

6. Organization shall perform all duties and services included in this Agreement faithfully and satisfactorily at the time, place and for the duration prescribed herein. Compensation paid pursuant to this Agreement shall be used exclusively for the services set forth and for no other purpose. Any alteration in the nature of such services and duties constitutes an amendment to this Agreement and must be in writing signed by both parties. Organization shall keep itself fully informed of all federal 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 the Organization's violation of any such laws, ordinances or regulations.

7. Organization represents that it has filed all federal, state and 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 have been registered for the current tax year by the Organization in the office of the Government, 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 10th working day of the succeeding quarter, on such forms as the MOED shall provide, submit to the MOED: a report containing, for each of the services enumerated in this Agreement which were provided in the preceding quarter (a) a description of the service provided, including the quantity and quality of the service provided, and (b) the personnel costs, administrative costs, fixed costs, and any other direct or indirect costs in providing the service; (c) the information requested in and submitted on the form attached hereto as Exhibit A and incorporated herein by reference (or a similar form created by the Government); and (d) an invoice requesting compensation for the services provided

during the preceding quarter. Any and all provisions of this Agreement to the contrary notwithstanding, the compensation of Organization for each quarter of the Agreement shall not be paid unless and until Organization submits the quarterly report and invoice required hereunder. In addition, Organization shall be required to present a progress report as to its activities a minimum of two (2) times per fiscal year before the Urban County Council's Economic Development Committee, or as otherwise instructed by the Government.

9. 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, that relate to the performance of this Agreement, at all reasonable times, and if it desires, it may have the books and papers of the Organization, that relate to the performance of this Agreement, audited and examined by auditors, accountants or attorneys. Any examination shall be at the expense of the Government.

10. Government may designate such persons as may be necessary to monitor and evaluate the services rendered 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, nor to constitute the Organization as an agent of the Government.

11. Organization shall allow LFUCG to use the facility up to seven (7) times per year at no charge, permitting the space is available on the date and time requested and is mutually agreeable between the Lyric management and LFUCG. Any costs associated with the use of the facility outside rental fees and basic accommodations that would be provided already will be incurred by LFUCG. This would include items such as any additional sound or lightening equipment needed beyond what is typically provided by the Lyric. The number of times the facility is made available to LFUCG, at no cost, may be increased upon mutual agreement of the parties. The parties understand that LFUCG's self-insurance policy shall provide coverage and LFUCG shall not be required to obtain additional insurance coverage

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 or age, 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 Government for review within thirty (30) days of the execution of this Agreement.

14. 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.

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 investment 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 regulation. The trust department may utilize its regular short-term one hundred percent (100%) US 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" investment, 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 one hundred percent (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 full insured.

D. Audit - - All investments shall be audited at least annually by independent certified public accountant 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. Notice – Any written notice required by the Agreement shall be delivered by certified mail, return receipt requested, to the following:

For Organization:

Lyric Theatre and Cultural Arts Center, Inc.
300 East Third Street
Lexington, Kentucky 40508
Attention: Chris Ford, Chair of Board

For Government:

Lexington-Fayette Urban County Gov.
200 East Main Street
Lexington, Kentucky 40507
Attention: Jamie Emmons, Mayor's Office

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

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

LYRIC THEATRE AND CULTURAL
ARTS CENTER, INC.

BY: _____
Jim Gray, Mayor

BY: _____
Chris Ford, Chairman of the Board

ATTEST:

WITNESS: _____

Clerk of the Urban County Council
00393905