

PURCHASE OF SERVICE AGREEMENT

This PURCHASE OF SERVICE AGREEMENT, is made and entered into on the 8th day of July, 2022, 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 LEXINGTON HISTORY MUSEUM, INC.**, ("Organization") at P.O. Box 748, Lexington, Kentucky 40508.

WITNESSETH

WHEREAS, the Organization was founded in 1998 at the direction of then-mayor of the Lexington-Fayette Urban County Government, Pam Miller, in order to collect and preserve the history of Lexington;

WHEREAS, the Organization has been unable to secure a permanent home for its exhibits for several years;

WHEREAS, the Organization has suffered from a reduction in community engagement and financial support, due to a number of reasons, including the lack of visibility and a permanent location, the COVID-19 health pandemic, and others;

WHEREAS, the Organization has reorganized and made significant progress in coming up with a plan to maintain its viability and sustainability on a permanent basis with a renewed focus on fundraising within the community;

WHEREAS, the Government believes the Organization's programs and services could appeal to Lexington residents and fulfill community needs;

WHEREAS, the Government desires to re-invigorate public interest in the Organization's mission; and

WHEREAS, Organization has stated that it needs increased public funding to find a permanent home and recruit necessary staff in order to increase public interest and fundraising.

NOW THEREFORE, in consideration of the aforementioned understandings, mutual promises and covenants that are herein expressed, the sufficiency of which are hereby acknowledged, the Government and the Organization agree as follows:

A. **TERM.**

This Agreement shall last for a period not to exceed three (3) years, beginning on July 1, 2022 and ending June 30, 2025 ("Term").

B. **RIGHTS AND OBLIGATIONS OF THE GOVERNMENT.**

1. Government will pay the Organization **Two Hundred Forty-Seven Thousand Four Hundred and Forty Dollars (\$247,440.00)** ("Year 1 Budget") for the initial year of the agreement (July 1, 2022 to June 30, 2023) in four equal quarterly (July 30, October 30, January 30, and April 30) disbursements. If the Agreement is terminated, the Government has no obligation to make any disbursement of Funds on the next scheduled disbursement date. The payments for the additional term starting July 1, 2023, will likewise be made quarterly, subject to the appropriation of sufficient funding each fiscal year, unless the Government terminates the Agreement. The total amount paid to Organization between July 1, 2023 and June 30, 2024 ("Year 2") shall not exceed **Two Hundred Forty-Six Thousand Two Hundred and Forty Dollars (\$246,240.00)** ("Year 2 Budget"). The total amount paid to Organization between July 1, 2024 and June 30, 2025 ("Year 3") shall not exceed **Two Hundred Eleven Thousand Eight Hundred and Twenty Dollars**

(\$211,820.00) (“Year 3 Budget”). Each disbursement shall be equal to one quarter of the Year 1, Year 2, or Year 3 Budget, depending on which budgeted amount applies to that year. In no event will the total dollar amount of disbursements to the Organization during the Term exceed the sum of **Seven Hundred and Five Thousand and Five Hundred Dollars (\$705,500.00)** (“Funds”).

2. Government may terminate this Agreement for any reason by providing sixty (60) days advance written notice of termination, in which case this Agreement shall terminate automatically without need of any additional notice.
3. 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.

C. **RIGHTS AND OBLIGATIONS OF THE ORGANIZATION.**

1. Organization shall perform the activities and services detailed in its Fiscal Year 2023 Business Plan, which is attached to this Agreement as Exhibit A, and incorporated herein by reference. Organization shall use all sums paid to it under this Agreement to fulfill the activities and services referenced in Exhibit A and for no other purposes.
2. Organization shall provide Government, upon request, with timely and

satisfactory evidence that it has fulfilled any underlying lease obligations that it has for the rental or lease of any space related to the provision of its services.

3. 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 regulation, whether or not such laws, ordinances or regulations are mentioned herein.
4. Organization shall indemnify, defend and hold harmless Government, its elected and appointed officials, employees, agents, volunteers, and successors in interest, from and against any and all liability, damages, and losses, including but not limited to: demands, claims, liens, suits, notices of violation from governmental agencies, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by Organization's performance of or breach of this Agreement and/or the provision of goods or services; provided that (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the Organization; and (b) not caused solely by willful misconduct of the Government. The Organization's obligation to defend the Government includes the obligation to investigate, handle, respond to, resist, provide a defense for, and defend claims, at Organization's expense, using attorneys approved in writing by the Government, which approval shall not be

unreasonably withheld. The Organization's obligation to indemnify also includes, but is not limited to: attorney fees and expenses, costs of litigation, court and administrative costs, expert witness fees and expenses, judgments, fines, penalties, interest, all environmental cleanups and remediation costs of whatever kind, and any liability arising from death, injury, or damage of any kind, to any person, including employees and agents of Organization and Government, and damage to, or destruction of, any property, including the property of Government. 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 Government is a political subdivision of the Commonwealth of Kentucky and acknowledges and agrees that the Government is unable to provide indemnity or otherwise save, hold harmless, or defend the Organization in any manner. The Organization understands and agrees that it shall demonstrate the ability to assure compliance with the above indemnity provisions and other risk management provisions prior to final acceptance of its proposal and the commencement of any work or the provision of services.

5. The Organization shall procure and maintain for the duration of this Agreement the following or equivalent insurance policies at no less than the limits shown below in order to protect the Government against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by the Organization:

Coverage

Limits

General Liability	\$1 million per occurrence, \$2 million aggregate
Worker's Compensation	Statutory
Excess/Umbrella Liability	\$1 million per occurrence

All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky (DOI). The Government shall be named as an additional insured in the General Liability Policy using the Kentucky DOI approved forms. The General Liability Policy shall be primary to any insurance or self-insurance retained by the Government. The General Liability Policy shall also include Premises and Operations coverage unless it is deemed not to apply by the Government.

6. The Organization shall submit various reports to the Government on the dates stated herein.
 - i. On January 30 and July 30 of each calendar year, the Organization shall submit a report that reflects the status and progress toward satisfaction of all deliverables identified in Exhibit A, which shall include but not be limited to: the Organization's use of Eventbrite to issue invitations, track reservations and attendance at all of Organization's programming; copies of the attendance log for exhibits; data on website traffic, social media research and responses; numbers of event registrations; a roster of members for each group the Organization creates along with the respective group's meeting minutes and any recommendations the groups make.

- ii. On January 30, April 30, July 30, and October 30 of each calendar year, the Organization shall submit a report detailing all fundraising and sponsorship activities, and it shall also submit a financial statement, which shall include a Profit and Loss Statement or its equivalent.
 - iii. On November 15 of each calendar year, Organization shall also submit a completed IRS Form 990.
7. The Organization shall keep books of accounts 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. Government shall have free and complete access to the books, papers and affairs of the Organization relating to the 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 at least once every three years. Any examination shall be at the expense of the Government.
8. 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.

9. 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.
10. The Organization shall have all revenue and expenditures audited at least once every three years 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 Office of the Chief Administrative Officer within ten (10) days of completion.

D. **MISCELLANEOUS TERMS AND CONDITIONS.**

1. Kentucky law shall apply to any dispute over the terms of this Agreement.
2. Any notice or consent required to be given by or on behalf of either party upon the other shall be in writing and shall be given by hand delivery or U.S. Mail. If mailed, such notice shall be via certified mail, return receipt requested.

Notice shall be sent to the Government at the following:

Lexington-Fayette Urban County Government
Attn: Office of the Chief Administrative Officer
200 East Main Street
Lexington, KY 40507

Notice shall be sent to the Organization at the following:

Lexington History Museum
PO Box 748
Lexington, KY 40588

3. 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.

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

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

BY: *Linda Gorton*

LINDA GORTON, MAYOR

ATTEST:

MacKenzie Jack

Clerk of the Urban County Council

THE LEXINGTON HISTORY MUSEUM, INC.

BY: *James Jack*

ITS: *Chair*

ATTEST:

Michelle Nelson

WITNESS/DATE: *July 1, 2022*

EXHIBIT A (FY 23 BUSINESS PLAN)