

AMERICAN RECUE PLAN ACT OF 2021 SUBRECIPIENT AGREEMENT

THIS AGREEMENT, is made and entered into on ____ day of _____, 2021, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government pursuant to KRS Chapter 67A, and located at 200 East Main Street, Lexington, Fayette County, Kentucky 40507 (hereinafter referred to as "GOVERNMENT"), and **LYRIC THEATRE AND CULTURAL ARTS CENTER CORPORATION**, whose post office address is 300 E. Third Street, Lexington, Ky. 40508 (hereinafter referred to as "SUBRECIPIENT");

WHEREAS, the GOVERNMENT has been awarded federal funds from the U.S. Department of Treasury, under the American Rescue Plan Act of 2021 (referred to hereinafter as "ARPA") to provide for payment of eligible uses;

WHEREAS, ARPA provides that grants to small businesses and nonprofits to mitigate financial hardship due to the COVID-19 public health emergency is an eligible use;

WHEREAS, the SUBRECIPIENT is a nonprofit that has sustained a financial hardship due to the COVID-19;

WHEREAS, the GOVERNMENT's responsibility for ensuring compliance with all grant requirements necessitates a written agreement with the SUBRECIPIENT;

NOW, THEREFORE, in consideration of the foregoing and mutually agreed upon promises, conditions and covenants hereinafter set forth, the parties hereto agree as follows:

I. STATEMENT OF PURPOSE

A. Mitigation of Financial Hardship

The SUBRECIPIENT will be responsible for providing documentation to demonstrate that is experienced a financial hardship due to the COVID-19 public health emergency. That documentation may include things such as gross receipts or a statements of profits and losses. The SUBRECIPIENT understands and acknowledges that no invoices will be paid until the SUBRECIPIENT produces sufficient documentation to document this financial hardship.

B. Monitoring

The GOVERNMENT shall monitor the SUBRECIPIENT as necessary and in accordance with regulations on SUBRECIPIENT Monitoring and Management, 2 CFR 200.330 – 2 CFR 200.332, to ensure SUBRECIPIENT complies with all of the requirements of this Agreement, including the timeframes and performance goals associated with the activities. Substandard performance as determined by the GOVERNMENT will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the SUBRECIPIENT within 30 days after being notified by

the GOVERNMENT, the GOVERNMENT may impose additional conditions on the SUBRECIPIENT and its use of funds consistent with 2 CFR 200.207, suspend or terminate this Agreement, or initiate other remedies for noncompliance as appropriate and permitted under 2 CFR 200.338.

C. Budget and Use of Funds

The SUBRECIPIENT understands and agrees that grant funds provided under this Agreement will be in an amount not to exceed \$127,500.00 (“Funds”), and that the total Funds provided under this Agreement shall not exceed an amount equal to the amount of the financial hardship demonstrated by the SUBRECIPIENT, as required by Paragraph A. The SUBRECIPIENT agrees that it shall only use the Funds to pay payroll and benefit costs, costs to retain employees, rent, utility costs, and operating costs. The SUBRECIPIENT understands and agrees that no other uses of the Funds are permitted unless agreed to by the parties in an Addendum to this Agreement. The SUBRECIPIENT is prohibited from charging to the subaward the costs of ineligible activities and from using funds provided herein or personnel employed in the administration of activities under this Agreement for political activities, inherently religious activities, or lobbying.

D. Matching Funds

No matching funds are required for funding awarded under ARPA.

E. Payment

It is expressly agreed and understood that the total amount to be paid by the GOVERNMENT under this Agreement shall not exceed \$127,500.00. The SUBRECIPIENT shall invoice the GOVERNMENT on a monthly basis for the reimbursement of actual expenditures incurred. SUBRECIPIENT's invoice must be for the eligible expense specified in Paragraph C. SUBRECIPIENT's invoice must include copies of employee timesheets, payroll reports, documentation of payment of payroll taxes and fringe benefits, and copies of competitive quotations for all expenses as applicable.

The SUBRECIPIENT agrees that it shall use spend the entire amount of funds provided under this Agreement during the Time of Performance specified in Section I.F of this Agreement. If the SUBRECIPIENT fails to use any amount of funds provided under the Agreement within that Time of Performance, then the SUBRECIPIENT agrees to return the balance of the funds to the GOVERNMENT within 30 days of the termination of this Agreement.

F. Schedule – Time of Performance

The term of this Agreement shall be from July 1, 2021, until June 30, 2022.

G. Timeliness

SUBRECIPIENT must invoice the GOVERNMENT for funds expended at least quarterly beginning no later than three months from the effective date of this agreement. Failure to submit an invoice in two or more consecutive quarters may result in termination of the agreement and reallocation of unspent funds at the discretion of the GOVERNMENT.

II. RECORDS AND REPORTS

A. SUBRECIPIENT agrees to comply with any reporting obligations established by the U.S. Department of Treasury, including the Treasury Office of Inspector General, as relates to this subaward, including but not limited to: (i) reporting of information to be used by the Treasury to comply with its public reporting obligations under ARPA; (ii) any reporting of information to be used by the Treasury to comply with its public reporting obligations under Section 501 of the Consolidated Appropriations Act of 2021 (hereinafter “Section 501”); and (iii) any reporting to Treasury and the Pandemic Response Accountability Committee that may be required pursuant to Section 15011(b)(2) of Division B of the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. No. 116-136), as amended by Section 801 of Division O of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260). SUBRECIPIENT acknowledges that any such information required to be reported pursuant to this section may be publicly disclosed.

B. Records to be Maintained

The SUBRECIPIENT shall maintain all records documenting its compliance with ARPA, its accompanying regulations, and any and all interpretive guidance issued by the U.S. Treasury. SUBRECIPIENT shall also maintain records showing how the SUBRECIPIENT prevented Duplication of Benefits, as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5155) and in accordance with Section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115–254; 132 Stat. 3442), which amended section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5155). SUBRECIPIENT further agrees to maintain all records identified in Addendum 1, attached hereto and incorporated herein by reference.

C. Client Data and Other Sensitive Information

The SUBRECIPIENT agrees to establish data privacy and security requirements as required by ARPA and Section 501, to the extent applicable. The SUBRECIPIENT must develop and implement written procedures to ensure:

- i) All records containing personally identifying information (as defined in the U.S. Department of Housing and Urban Development's standards for participation, data collection, and reporting) of any individual or family who applies for and/or receives rental assistance will be kept secure and confidential;
- ii) The address or location of any domestic violence, dating violence, sexual assault, or stalking shelter project assisted under this Agreement will not be made public, except with written authorization of the person responsible for the operation of the shelter; and

- iii) The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of the GOVERNMENT or SUBRECIPIENT and consistent with state and local laws regarding privacy and obligations of confidentiality.

The confidentiality procedures of SUBRECIPIENT must be in writing and must be maintained in accordance with this section. The SUBRECIPIENT understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the GOVERNMENT's responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

D. Retention

The SUBRECIPIENT shall retain all records identified in Addendum 1 and all documents pertinent to expenditures incurred under this Agreement for a period of five (5) years after the termination of all activities funded under this Agreement. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five -year period, whichever occurs later.

E. Reporting

The SUBRECIPIENT shall submit to the GOVERNMENT monthly reports for each month during which these federal funds are used for program operations. Monthly reports are due by the 10th of each month.

Monthly reports shall provide information on the activities accomplished. Specifically, monthly reports shall provide information on the number of individuals served by the SUBRECIPIENT and other such information as required by the U.S. Department of Treasury and the GOVERNMENT.

F. Project Close-out

The SUBRECIPIENT's obligation to the GOVERNMENT shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials), equipment, unspent cash advances, program income balances, and accounts receivable to the GOVERNMENT and determining the custodianship of records.

G. Audits, Inspections and Monitoring

1. Single Audit

The SUBRECIPIENT must be audited as required by 2 CFR part 200, subpart F when it is expected that the SUBRECIPIENT's federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.

SUBRECIPIENT shall submit a copy of the audit report to the federal Audit Clearinghouse within 30 days after receipt of the audit report, but not later than nine months after the end of the audit period. Concurrently with the submission of the audit report to the federal Audit Clearinghouse, SUBRECIPIENT shall submit a copy of the audit report to the GOVERNMENT'S Division of Grants and Special Programs. Any deficiencies noted in audit reports must be fully cleared by the SUBRECIPIENT within 30 days after receipt by the SUBRECIPIENT. Failure of the SUBRECIPIENT to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments.

2. Inspections and Monitoring

All SUBRECIPIENT records with respect to any matters covered by this Agreement shall be made available to the GOVERNMENT, grantor agency, their designees or the federal government, at any time during normal business hours, as often as the grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data to meet the requirements of 2 CFR part 200. The SUBRECIPIENT must submit to monitoring of its activities by the GOVERNMENT as necessary to ensure that the subaward is used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of this Agreement.

H. Access to Records

The SUBRECIPIENT shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by GOVERNMENT, the U.S. Department of Treasury or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

III. PROGRAM INCOME

“Program Income” means, as provided by 2 CFR 200.80, gross income received by the SUBRECIPIENT directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. For purposes of this Agreement, program income will also include any amount of a security or utility deposit returned to the SUBRECIPIENT.

The SUBRECIPIENT shall use all income received from this Agreement only for the same purposes for which said funds may be expended pursuant to the terms and conditions of this Agreement.

IV. SUSPENSION AND TERMINATION

This Agreement, in accordance with 24 CFR 85.43 can be terminated if SUBRECIPIENT fails to comply with any term of the award. This Agreement may be terminated for convenience in accordance with 24 CFR 85.44 upon written notice by the GOVERNMENT.

Either party may terminate this Agreement with thirty (30) days written notice to the other party, in which case the Agreement shall terminate on the thirtieth day. In the event of termination, the SUBRECIPIENT shall be entitled to that portion of total compensation due under this Agreement as the services rendered bears to the services required. Either party may terminate this Agreement for good cause shown with forty-five (45) days written notice, which shall explain the party's cause for the termination. If the parties do not reach a settlement before the end of the 45 days, then the Agreement shall terminate on the forty-fifth day.

V. REVERSION OF ASSETS

SUBRECIPIENT will return to the GOVERNMENT, upon expiration or termination of this Agreement, any funds that have not been expended, all Program Income, and any accounts receivable resulting from the use of funds, including Program Income, within thirty (30) days after the end of the Agreement term. Any funds held by the GOVERNMENT at the end of the Agreement term or refunded to the GOVERNMENT shall be reallocated by the GOVERNMENT.

The use and disposition of equipment under this Agreement shall be in compliance with the requirements of 2 CFR Part 200.

VI. UNIFORM ADMINISTRATIVE REQUIREMENTS

The SUBRECIPIENT shall comply with the applicable provisions in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. These provisions include:

A. Financial & Program Management

The SUBRECIPIENT shall expend and account for all funds received under this agreement in accordance with 2 CFR part 200, including 2 CFR part 200, subpart D, which covers Standards for Financial and Program Management and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary source documentation for all costs incurred.

B. Cost Principles

Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with 2 CFR part 200, subpart E. All items of cost listed in 2 CFR part 200, subpart E, that

require prior federal agency approval are allowable without prior approval of the GOVERNMENT to the extent they comply with the general policies and principles stated in 2 CFR part 200, subpart E and are otherwise eligible under this Agreement.

C. Procurement and Contractor Oversight

The SUBRECIPIENT shall comply with the procurement standards in 2 CFR 200.318 - 200.326 when procuring property and services under this Agreement and shall subsequently follow property management standards as provided by 2 CFR 200.344.

1. Equipment

The SUBRECIPIENT shall comply with current GOVERNMENT policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein.

2. Debarment Certification

The SUBRECIPIENT acknowledges that it has not been debarred or suspended and further acknowledges and agrees that it must comply with regulations regarding debarred or suspended entities in accordance with 24 CFR 570.489(i). Funds may not be provided to excluded or disqualified persons.

3. Contractor Oversight

The SUBRECIPIENT shall maintain oversight of all activities under this Agreement and shall ensure that for any procured contract or agreement, its contractors perform according to the terms and conditions of the procured contracts or agreements, and the terms and conditions of this Agreement. The SUBRECIPIENT shall impose the SUBRECIPIENT'S obligations under this Agreement on its contractors, specifically or by reference, so that such obligations will be binding upon each of its contractors.

4. Subcontracts

The SUBRECIPIENT shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the GOVERNMENT prior to the execution of such agreement. The SUBRECIPIENT will monitor all subcontracted services on a regular basis to assure compliance with this Agreement. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance. The SUBRECIPIENT shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement. The SUBRECIPIENT shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition

basis. Executed copies of all subcontracts shall be forwarded to the GOVERNMENT along with documentation concerning the selection process.

VII. ADHERENCE TO FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS

A. General

The SUBRECIPIENT understands that it is responsible for reviewing all applicable federal laws and regulations, as well as any guidance issued by any federal agency, and agrees that it shall comply with the requirements of ARPA, Treasury interpretive guidance, and all other applicable federal statutes, regulations, and executive orders. SUBRECIPIENT shall also provide for such compliance in any agreements it enters with other parties relating to this subaward.

Federal regulations applicable to this subaward include, without limitation, the following:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, other than such provisions as Treasury may determine are inapplicable to this subaward and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25 and pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the subaward term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180 (including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts) described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury’s implementing regulation at 31 C.F.R. Part 19.
- Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
- Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- New Restrictions on Lobbying, 31 C.F.R. Part 21.

B. Economic Opportunities

Economic Opportunities for Low- and Very Low-income Persons. The SUBRECIPIENT shall ensure that employment and other economic opportunities generated by the Program shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701u, and regulations at 24 CFR part 135 apply, except that homeless individuals have priority over other Section 3 residents in accordance with § 576.405(c).

C. Civil Rights, Nondiscrimination and Equal Opportunity in Participation

The SUBRECIPIENT agrees to comply with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 109 of the Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975, and 41 CFR Chapter 60, including 41 CFR § 60-1.4.

The requirements in 24 CFR part 5, subpart A are applicable, including the nondiscrimination and equal opportunity requirements at 24 CFR § 5.105(a).

The SUBRECIPIENT shall not discriminate against any participant on the ground of race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, sexual orientation, or any other basis prohibited by applicable law. The SUBRECIPIENT shall, through affirmative outreach, make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. The SUBRECIPIENT must take appropriate steps to ensure effective communication with persons with disabilities.

D. Nondiscrimination and Equal Employment Opportunity

During the performance under this Agreement, the SUBRECIPIENT shall not discriminate against any employee or applicant for employment based on race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, sexual orientation, or any other basis prohibited by applicable law.

The SUBRECIPIENT shall take affirmative action to ensure that all applicants and employees are treated without regard to race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, and sexual orientation.

The SUBRECIPIENT shall comply with all provisions of Executive Order 11246, Equal Employment Opportunity, as amended by Executive Orders 11375 and 12086. The SUBRECIPIENT will, in all solicitations or advertisements for employees placed or on behalf of the SUBRECIPIENT, state that it is an Equal Opportunity or Affirmative Action employer.

E. Americans with Disabilities Act

The SUBRECIPIENT agrees to comply with any federal regulations issued pursuant to compliance with the Americans with Disabilities, Act which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and Local government services, and public accommodations.

F. Contract Work Hours and Safety Standards Act

If the SUBRECIPIENT's activities discussed in Section 1.C of this Agreement will

involve the employment of mechanics or laborers, then the SUBRECIPIENT agrees to comply with 40 U.S.C. § 3702 and § 3704.

G. Clean Air Act and Federal Pollution Control Act

The SUBRECIPIENT agrees that all activities carried out pursuant to this Agreement shall comply with the Clean Air Act (42 U.S.C. § 7401) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). The SUBRECIPIENT also agrees that it shall report any violations to the GOVERNMENT and to the Environmental Protection Agency.

H. Rights to Inventions Made Under a Funding Agreement

The SUBRECIPIENT agrees to comply with all requirements stated in 37 CFR Part 401, to the extent applicable.

I. Hatch Act

The SUBRECIPIENT agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of the Hatch Act, 5 U.S.C §§ 1501 et seq.

J. Labor and Employment Restrictions

The SUBRECIPIENT shall comply with the labor standards in Section 110 of the Housing and Community Development Act of 1974, as amended and ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this Agreement shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. §§ 3141, et seq.), and 29 CFR part 1, 3, 5, 6, and 7, provided. SUBRECIPIENT agrees that all of SUBRECIPIENT's contractors and subcontractors will pay laborers and mechanics not less than once a week, in accordance with the Davis-Bacon Act and the accompanying regulations.

The SUBRECIPIENT agrees to comply with the Copeland Anti- Kick Back Act (18 U.S.C. § 874) and its implementing regulations of the U.S. Department of Labor at 29 CFR part 3 and part 5. The SUBRECIPIENT shall maintain documentation that demonstrates compliance with applicable hour and wage requirements. Such documentation shall be made available to the GOVERNMENT for review upon request.

The SUBRECIPIENT further agrees to comply with the applicable provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), and the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. et seq.). SUBRECIPIENT further agrees that it will report all suspected or reported violations of any of the laws identified in this paragraph to the GOVERNMENT.

K. Conflict of Interest

The SUBRECIPIENT shall comply with 2 CFR 200.112 with respect to the use of program funds to procure services, equipment, supplies, or other property. With respect to all other decisions involving the use of program funds, the following restriction shall apply: No person who is an employee, agent, consultant, officer, or elected or appointed official of the SUBRECIPIENT and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds there under, either for himself or herself, or for those with who he or she has family or business ties, during his or her tenure or for one (1) year thereafter.

All contractors of the SUBRECIPIENT must comply with the same requirements that apply to the SUBRECIPIENT under this section.

L. Lobbying

The SUBRECIPIENT hereby certifies that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and
- d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

M. Religious Activities

The SUBRECIPIENT agrees that funds provided under this Agreement will not be used for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the federal regulations specified in 24 CFR 570.200(j).

N. Drug Free Workplace

The SUBRECIPIENT shall administer a policy designed to ensure that the facilities providing services under the terms of this Agreement are free from the illegal use, possession, or distribution of drugs or alcohol by its employees and beneficiaries.

O. Insurance & Bonding

The SUBRECIPIENT shall comply with the bonding and insurance requirements of 24 CFR 200.325 and 24 CFR 200.310.

P. FFATA

The SUBRECIPIENT shall comply with the requirements of 2 CFR part 25 Universal Identifier and System for Award Management (SAM). The SUBRECIPIENT must have an active registration in SAM in accordance with 2 CFR part 25, appendix A, and must have a Data Universal Numbering System (DUNS) number. The SUBRECIPIENT must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, and 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

Q. In accordance with 41 U.S.C. § 4712, SUBRECIPIENT may not discharge, demote, otherwise discriminate against an employee as a reprisal for disclosing information to any of the list of persons or entities provided below that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant. SUBRECIPIENT shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce. The persons and entities referenced in this paragraph include:

- A member of Congress or a representative of a committee of Congress;
- An inspector General;
- The Government Accountability Office;
- A Treasury employee responsible for contract or grant oversight or management;
- An authorized official of the Department of Justice or other law enforcement agency;
- A court or grand jury; and/or
- A management official or other employee of SUBRECIPIENT, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

R. Duplication of Benefits

SUBRECIPIENT agrees that the funds provided under this Agreement are intended to supplement, not supplant any other form of federal assistance. SUBRECIPIENT agrees that it shall develop and maintain adequate procedures to prevent a duplication of benefits to assess whether the funds received under this Agreement duplicate any other federal benefit. SUBRECIPIENT agrees that it shall develop and maintain adequate procedures to ensure that all assistance the SUBRECIPIENT provides using funding under this Agreement shall not exceed any person's total need.

The SUBRECIPIENT further agrees that it shall maintain records showing how the SUBRECIPIENT prevented Duplication of Benefits, as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5155) and in accordance with Section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115-254; 132 Stat. 3442), which amended section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5155).

If the SUBRECIPIENT at any time uses funds provided under this Agreement in any manner that results in a duplication of any other federal benefit, it shall repay to the GOVERNMENT an amount equal to the amount of funds it received under this Agreement that were used in duplication of any other federal benefit.

- S. Pursuant to Executive Order 13043, 62 FR 19217 (April 8, 1997), the SUBRECIPIENT should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- T. Pursuant to Executive Order 13513, SUBRECIPIENT should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and should establish workplace safety policies to decrease accidents caused by distracted drivers.

VIII. GENERAL PROGRAM CONDITIONS

- A. The SUBRECIPIENT agrees to use funds available under this Agreement to supplement rather than supplant funds otherwise available.
- B. GOVERNMENT may designate such persons as may be necessary to monitor and evaluate the services rendered by the SUBRECIPIENT. 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 SUBRECIPIENT, or to constitute SUBRECIPIENT an agent of the GOVERNMENT.
- C. SUBRECIPIENT understands that false statements or claims made in connection with this subaward may result in fines, imprisonment, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

- D. SUBRECIPIENT agrees that to the greatest extent practicable, it will prefer the purchase, acquisition, and use of goods, products or materials produced in the United States.
- E. Any publications produced with funds from this subaward must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number _____ awarded to the Lexington Fayette-Urban County Government by the U.S. Department of Treasury.”
- F. It is understood and agreed by the parties that SUBRECIPIENT hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of SUBRECIPIENT or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.
- G. SUBRECIPIENT shall indemnify, save, hold harmless and defend the GOVERNMENT and its elected and appointed officials, employees, agents, volunteers, and successors in interest from and against 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 SUBRECIPIENT’S performance or breach of the 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 SUBRECIPIENT; and (b) not caused solely by the active negligence or willful misconduct of the GOVERNMENT. The parties understand and agree that the SUBRECIPIENT’S obligation to defend the GOVERNMENT includes the obligation to investigate, handle, respond to, resist, provide a defense for, and defend claims, at SUBRECIPIENT’S expense, using attorneys approved in writing by GOVERNMENT, which approval shall not be unreasonably withheld. The parties also understand and agree that the SUBRECIPIENT’S obligation to indemnify 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 SUBRECIPIENT and GOVERNMENT, and damage to, or destruction of, any property, including the property of GOVERNMENT.
- H. These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.
- I. GOVERNMENT is a political subdivision of the Commonwealth of Kentucky. SUBRECIPIENT acknowledges and agrees that the GOVERNMENT is unable to provide indemnity or otherwise save, hold harmless, or defend the SUBRECIPIENT in any

manner.

- J. SUBRECIPIENT 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.
- K. SUBRECIPIENT shall procure and maintain for the duration of this Agreement the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to the GOVERNMENT 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 SUBRECIPIENT. The cost of such insurance shall be included in any bid:

<u>Coverage</u>	<u>Limits</u>
General Liability (Insurance Services Office Form CG 00 01)	\$1 million per occurrence, \$2 million aggregate (or \$2 million combined single limit)
Worker's Compensation	Statutory
Employer's Liability	\$1 million

The policies above shall contain the following conditions:

- a. 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.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by the GOVERNMENT.
- c. The General Liability Policy shall include Premises and Operations coverage unless it is deemed not to apply by the GOVERNMENT.
- d. The General Liability Policy shall include Employment Practices Liability coverage or an endorsement in a minimum amount of \$1 million unless it is deemed not to apply by LFUCG.
- e. The GOVERNMENT shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.
- f. Said coverage shall be written by insurers acceptable to the GOVERNMENT and shall be in a form acceptable to the GOVERNMENT. Insurance placed with insurers

with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

After insurance has been approved by the GOVERNMENT, evidence of renewal of an expiring policy must be submitted to the GOVERNMENT, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

Self-insurance programs, deductibles, and self-insured retentions in insurance policies are subject to separate approval by the GOVERNMENT's Division of Risk Management, upon review of evidence of SUBRECIPIENT's financial capacity to respond to claims. Any such programs or retentions must provide SUBRECIPIENT with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage. If SUBRECIPIENT satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retentions, SUBRECIPIENT agrees to provide the GOVERNMENT's Division of Risk Management, the following data prior to the final acceptance of bid and the commencement of any work:

- a. Latest audited financial statement, including auditor's notes.
- b. Any records of any self-insured trust fund plan or policy and related accounting statements.
- c. Actuarial funding reports or retained losses.
- d. Risk Management Manual or a description of the self-insurance and risk management program.
- e. A claim loss run summary for the previous five (5) years.
- f. Self-Insured Associations will be considered.

SUBRECIPIENT agrees to furnish GOVERNMENT with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, and if requested, shall provide the GOVERNMENT copies of all insurance policies, including all endorsements. SUBRECIPIENT understands and agrees that GOVERNMENT may review, audit and inspect any and all of its records and operations to insure compliance with these Insurance Requirements.

SUBRECIPIENT shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement and take necessary action to protect the life, health and safety and property of all of its personnel on the job site, the public, and the GOVERNMENT.

- L. SUBRECIPIENT understands and agrees that the failure to comply with any provision of this Agreement regarding indemnification, insurance, safety, or loss control shall constitute a material breach of this Agreement and that GOVERNMENT may elect at its option any remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging SUBRECIPIENT for any such insurance premiums purchased, or suspending or terminating the work.

- M. SUBRECIPIENT acknowledges that, pursuant to ARPA, funds provided pursuant to this Agreement shall remain available only through December 31, 2024, unless in the case of reallocation made by the U.S. Treasury to GOVERNMENT. Reallocation of funds by the U.S. Treasury to GOVERNMENT does not guaranty reallocation of funds to SUBRECIPIENT.
- N. The SUBRECIPIENT agrees to comply with any and all terms and conditions included within each and every Addendum to this Agreement, said Addendums being attached hereto and incorporated herein by reference.
- O. The SUBRECIPIENT acknowledges and agrees that expenditures of these funds will be in accordance with all pertinent regulations and interpretive guidance issued now or in the future by agencies of the federal government, and will be in accordance with any and all relevant provisions of ARPA, any regulations enacted pursuant to that Act, and any interpretive guidance issued by the U.S. Treasury.
- P. The SUBRECIPIENT must ensure that data on all persons served and all activities assisted are entered into the Neighborly program software.
- Q. If this Agreement results in any copyrightable material or inventions, the GOVERNMENT and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for the GOVERNMENT'S purposes.
- R. This Agreement, or any part hereof, may be amended from time to time hereafter only in writing executed by the GOVERNMENT and the SUBRECIPIENT.
- S. The SUBRECIPIENT shall not assign or transfer any interest in this Agreement without the prior written consent of the GOVERNMENT thereto; provided, however, that claims for money due or to become due to the GOVERNMENT under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the GOVERNMENT.
- T. GOVERNMENT and the SUBRECIPIENT each binds himself and his partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of the Agreement.
- U. If the SUBRECIPIENT breaches any term of this Agreement or any addendum hereto, then GOVERNMENT is entitled to pursue legal action against SUBRECIPIENT to the fullest extent of the law, including but not limited to: termination of the Agreement; disgorgement of all funds provided to SUBRECIPIENT pursuant to this Agreement; specific performance; injunctive relief; and a civil action for monetary damages. The parties agree that any waiver of a term in this Agreement shall not constitute an ongoing waiver of that term, nor shall it be interpreted as a waiver of any other terms of this Agreement. Further, the GOVERNMENT's failure to act with respect to a breach by the

SUBRECIPIENT does not waive its right to act with respect to subsequent or similar breaches. The failure of the GOVERNMENT to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

- V. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally to the individuals identified in paragraph J below; (ii) upon receipt, when sent by email (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party) to the email addresses identified in paragraph J below; or (iii) when delivered or mailed by certified mail, postage prepaid, or return receipt requested to the addresses set forth in paragraph J below.

Notices required by this Agreement shall be sent to:

Charlie Lanter
Director, Grants & Special Programs
200 E. Main Street, Lexington, KY 40507
clanter@lexingtonky.gov
GOVERNMENT

Christian Adair
Board Chair and Authorized Agent
Lyric Theatre
300 E. Third Street
Lexington, Ky. 40508
SUBRECIPIENT

- W. All headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any provision of this Agreement.
- X. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.
- Y. This Agreement constitutes the entire agreement between the parties for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the parties relating to the GOVERNMENT'S allocation of funding to SUBRECIPIENT.

[INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW]

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

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

Linda Gorton, Mayor

ATTEST:

Clerk of Urban County Council

LYRIC THEATRE AND CULTURAL ARTS
CENTER CORPORATION

Christian Adair, Board Chair and Authorized Agent