PURCHASE OF SERVICE AGREEMENT

THIS PURCHASE OF SERVICE AGREEMENT, made and entered into on the ___28th_ day of September 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 LEXARTS, INC. ("Organization"), with offices located at 161 North Mill Street, Lexington, Kentucky 40507, with an effective date of July 1, 2022.

W I T N E S S E T H

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

1. **Term**. Government hereby retains Organization for the period beginning on July 1, 2022, 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. **Payment**. Government shall pay the Organization the total sum of Three Hundred Twenty Five Thousand Dollars ($325,000.00) for services required by this Agreement, said services being more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. Eighty-One Thousand Two Hundred Fifty Dollars ($81,250) of the total sum amount shall be payable each quarter, within ten (10) days after receipt of the report required in Paragraph 5 herein, July to June, inclusive. Government funds paid under this Agreement may not be used to: provide Cost of Living Increases in fiscal year 2023; hire any additional staff above the current (FY2023) staffing

levels; or pay off Organization's debt. 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 total service required hereunder.

3. **Compliance; Registration; Authority to Sign**. Organization shall perform all duties and services specified in Exhibit "A" faithfully and satisfactorily at the time, place, and for the duration prescribed herein. 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 regulations, whether or not such laws, ordinances or regulations are mentioned herein. Organization represents that it has filed any federal, state or 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's most recent or current tax year are submitted by the Organization to Government, and the Organization shall not be compensated unless and until such registration has taken place. The person signing this Agreement on behalf of Organization is fully authorized to do so.

4. **Insurance; Indemnity**. Organization shall provide Government with a certificate of commercial general liability insurance written through a company with an A.M. Best rating of "A" or better with the minimum amount of $1,000,000.00 per occurrence, listing the Lexington-Fayette Urban County Government as an "additional insured." 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.

5. **Reporting**. Organization shall, at the end of each quarter and by no later than the 10th day of the succeeding quarter (October 10, 2022; January 10,2023; April 10, 2023; and July 10, 2023), complete and return to Government the Quarterly Report form attached hereto and incorporated herein as Exhibit "B", as well as such additional forms as Government may reasonably require. By submitting the Quarterly 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 Quarterly Report shall be submitted to Government electronically, unless otherwise requested by Government. Failure to electronically submit the Quarterly Report by the required date may result in the quarterly payment to Organization being withheld until the next reporting period. 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. **No Membership Required**. At no time shall the Organization require membership in the organization for services paid for in whole or in part with the assistance of funding from the Government.

7. **Records**. 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 relating to the Government 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. Any examination shall be at the expense of the Government.

8. **Access; Monitoring**. 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.

9. **Equal Opportunity; Fairness Ordinance**. 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. 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.

10. **Sexual Harassment**. Organization shall adopt a written sexual harassment policy, and whistleblower policy, which shall, at a minimum, contain statements 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.

11. **Annual Audit**. Organization 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 Government within 10 days of completion.

12. **Investment**. Organization agrees that it shall apply all funds received by it from the 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 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. **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 the Government. This Agreement does not create a contractual relationship with or right of

action in favor of a third party against either the Organization or the Government.

14. **Entire Agreement; Amendments**. 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.

15. **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.

16. **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

[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

BY: _____
LINDA GORTON, MAYOR

ATTEST:

_____
Abigail Allan,
Clerk of the Urban County Council
DATE: _____

LEXARTS, INC.

BY: _____
AME SWEETALL, PRESIDENT & CEO

ATTEST: _____

WITNESS: Red Medley
DATE: 28 Sep 2022

EXHIBIT "A"
Lexington-Fayette Urban County Government

Addendum for Services

LexArts

SCOPE OF WORK - FY 2023

SUPPORT TO THE ARTS COMMUNITY

- Operate ArtsPlace to provide affordable performance, rehearsal, office and studio space for non-profit arts organizations, individual artists and other cultural organizations;
- Lead and manage an annual Fund for the Arts in support of Lexington arts organizations, individual artists and the arts community;
- Distribute a minimum of $500,000 annually to Lexington arts organizations and artists through operating support to Lexington's most accomplished arts organizations and competitive community arts grants to arts organizations and individual artists;
- Provide technical assistance in the arts and arts advocacy for organizations, artists and the community at-large;
- Provide and promote quality arts experiences for the benefit of, and accessible to, all people and districts of Lexington-Fayette Co.;
- Provide leadership in local arts initiatives and develop and maintain collaborations and partnerships with local and state government, local agencies, community leaders, organizations, artists and other stakeholders.

LEXARTS GOVERNANCE AND OPERATION

- Adopt and demonstrate best practices and standards for the governance and financial management of a non-profit arts organization. Utilize the following recommendations including:
  - **32 Board Oversight Recommendations, KY State Auditor,** https://auditor.ky.gov/cpatools/Pages/32BoardOversightRecommendations.aspx, *and*
  - **Kentucky Non-Profit Network Principals and Practices for Non-Profit Excellence,** https://www.kynonprofits.org/learn/best-practices-partnership

RECOGNITION OF THE CITY OF LEXINGTON

- As LexArts largest annual donor, recognition of the City of Lexington should be included in all print materials, digital media and social media, websites, and in public presentations. Recognition for the City of Lexington's contribution for FY 23 should include the Blue Horse / Lexington logo and the following statement: *The City of Lexington is LexArts' largest annual donor, contributing $325,000 in FY 2023.*

LEXINGTON