

## PURCHASE OF SERVICES AGREEMENT

**THIS PURCHASE OF SERVICE AGREEMENT** is made and entered into on or as of the \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes (hereinafter "Government"), 200 East Main Street, Lexington, Kentucky 40507, and the **ROOTS AND HERITAGE FESTIVAL, INC.**, a Kentucky non-profit organization, (hereinafter "Organization"), P. O. Box 11712, Lexington, Kentucky 40544-1712.

### 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 sixth months from that date, unless within that period Government gives the Organization written notice of termination of this Agreement in which this Agreement shall terminate thirty (30) days from the date notice is given to the Organization.

2. Government shall pay Organization the sum of Thirty Five Thousand Four Hundred Fifteen Dollars (\$35,415.00) for performance of the services required by this Agreement, said services being more particularly described in the Addendum A which is attached hereto and incorporated herein by reference. In addition to the aforementioned sum, Government shall also provide the in-kind services being more particularly described in Addendum B which is attached hereto and incorporated herein by reference. Partial payments of the aforementioned sum shall be made by the Government to Vendors

within two weeks of receipt of invoices submitted by Organization for materials or services identified as relating to specific services listed in Addendum A or payments may be made to Organization with appropriate invoices or documentation.

3. 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 thereunder.

4. Organization shall perform all duties and services included in the Addendum A attached hereto 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 local laws, 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 and regulations are mentioned herein, and shall indemnify and hold harmless 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.

5. Organization represents that it has filed all federal, state and local tax returns as required by law in the legally prescribed time and manner. This Agreement shall not become effective unless and until copies of all the executed originals of the aforementioned tax returns filed for the most recent tax year for the Organization have been filed with the Government, and the Organization shall not be compensated unless and until such registration has taken place.

6. Organization shall defend, indemnify, and hold harmless Government from any and all claims, losses, demands, actions, costs and charges to which

Government may be subject or to which Government may have to pay by any reason of any injury to any person or property or loss of life or property, resulting from or in any way incidental to or connected with, that arise or are alleged to have arisen, directly or indirectly, in whole or in part, from the Roots and Heritage Festival, unless said injury or loss arises from the negligence of Government or its employees. If Government or any such persons are made a party to any litigation commenced by or against the Organization, the Organization agrees to protect, defend and hold Government and/or any such persons harmless therefrom and to pay all costs and reasonable attorney fees incurred or paid by Government or any such person in connection with such litigation.

7. Organization shall, at its sole cost and expense, procure and continue in force during the Roots and Heritage Festival, including, but not limited to, (i) commercial general liability insurance which shall cover both participants and spectators, including \$100,000 fire legal liability with reference to Government's premises, in the principal amount of one million dollars (\$1,000,000) per occurrence and two million dollar (\$2,000,000) general aggregate for property damage and bodily injury in respect to each occurrence for a minimum of the following three (3) days: Friday, September 6, 2013; Saturday, September 7, 2013; Sunday, September 8, 2013, as well as for any other date(s) as may be scheduled which include any activities related to the Festival; (ii) hired and non-owned automobile coverage for one million dollars (\$1,000,000) combined single limit, (if Government vehicles will be utilized for the Festival); and, (iii) liquor liability in the amount of one million dollars (\$1,000,000)(if alcohol is to be sold at any event held on Government property). All policies must include, and shall name, the "Lexington Fayette Urban County Government" as an "additional insured" under the

terms of the Policy. Organization shall immediately notify Government upon final determination of remaining to be determined event date.

8. 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 at all reasonable times, and, if it desires, it may have the books and papers of the Organization audited and examined by auditors, accountants, or attorneys. Any examination shall be at the expense of the Government.

9. 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, or to constitute Organization as agent of the Government.

10. Organization will provide equal opportunity in employment for all qualified persons, shall prohibit discrimination in employment because of race, color, creed, national origin, sex, age, disability or sexual orientation, and 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 opportunity shall apply to every aspect of its employment policies and practices.

11. Organization acknowledges and agrees that its employees or agents are not employees of Government any purpose whatsoever. Organization is an independent contractor at all times during the performance of the services specified.

12. Organization will not assign the performance of its services under this agreement without the prior written approval of Government.

13. The terms of this Agreement shall be governed by the laws of the Commonwealth of Kentucky, both as to interpretation and performance. Any ambiguity is to be construed in favor of Government. The venue for any litigation related to this Agreement shall be in the court of competent jurisdiction in Fayette County, Kentucky.

14. This Agreement does not create a contractual relationship with or right of action in favor of a third party against either Organization or Government.

15. If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken.

16. The failure of either party to enforce any right reserved to it in this Agreement shall not be a waiver of any such right to which the party is entitled.

17. With respect to this Agreement, Government and Organization bind themselves, their partners, successors, assigns and legal representatives to the other party and to the partners, successors, assigns and legal representatives of the other party.

18. This instrument, and the Addendum incorporated herein, 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 at Lexington, Kentucky, the day and year first above written.

**LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT**

BY: \_\_\_\_\_  
JIM GRAY, MAYOR

**THE ROOTS AND HERITAGE  
FESTIVAL, INC.**

BY: Kimberly H. Baird  
KIMBERLY HENDERSON BAIRD  
CHAIR

## ADDENDUM A – 2013

The description of the purpose and services provided by the Roots & Heritage Festival, Inc. is as follows:

The purpose of the Roots & Heritage Festival is to create an atmosphere for the celebration of cultural diversity. By exposing the community to the history and achievements of African-Americans, and by offering a variety of art, educational and cultural activities, the Festival serves as a forum to unite people while promoting cross-cultural communication and understanding.

More specifically, the Roots and Heritage Festival, Inc. will provide the following community events during the months of September, 2013:

### Friday, September 6, 2013

Jazz and Blues – Stage 1  
African-American Street Bazaar

### Saturday, September 7, 2013

Street Parade  
Stage 1 Entertainment  
Stage 2 Entertainment  
African-American Street Bazaar  
KidsFest Activities

### Sunday, September 8, 2011

Stage 2 – Gospel  
African-American Street Bazaar

### TBA

Comedy Show

## ADDENDUM B - 2013

In addition to payment in the amount of \$35,415.00, the Government also agrees to commit, upon request, the following additional in-kind services from its department and divisions:

1. **Division of Streets and Roads**  
Services: Street Festival - Labor (Friday 9/6 and Saturday 9/7 only)  
Estimated Cost: Not to exceed \$646  
Staff Hours: Up to 4 hours
  
2. **Division of Solid Waste**  
Services: Street Festival - Labor, Equipment and Porta Johns (Friday 9/6 and Saturday 9/7 only)  
Estimated Cost: Not to exceed \$11,325  
Staff Hours: Up to 500 hours
  
3. **Division of Parks and Recreation**  
Services: Street Festival - Labor and Equipment (Friday 9/6, Saturday 9/7, Sunday 9/8)  
Estimated Costs: Not to exceed \$10,000  
Staff Hours: N/A (3 days)
  
4. **Division of Police**  
Services: Street Festival - Labor (Patrol/Traffic Control) (Friday 9/6, Saturday 9/7, Sunday 9/8)  
Estimated Costs: Not to exceed \$34,020  
Staff Hours: Up to 1266 hours
  
5. **General Services-Mail Room**  
Services: Mailings, etc. (July through September 2013)  
Estimated Costs: \$400-\$500 (Mail Code #65)  
Staff Hours: NA
  
6. **Division of Fire & Emergency Services, Emergency Medical Services**  
Services: Street Festival (Friday 9/6, Saturday 9/7, Sunday 9/8)  
Estimated Costs: Not to exceed \$6,450  
Staff Hours: Up to 129 hours