

Woodland Art Fair Contract (2021)

This Memorandum of Agreement (this "Agreement"), made and entered into this ____ day of June, 2021, by and between the Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, Kentucky 40507 ("LFUCG"), and the Lexington Art League, Inc., a non-profit Kentucky Corporation, with its principal office located at 209 Castlewood Drive, Lexington, Kentucky 40505 ("LAL"), witnesseth as follows:

- I. **PURPOSE.** LFUCG and LAL shall coordinate and cooperate to host an art fair (hereinafter the "Fair") in Woodland Park, located at 601 East High Street, Lexington, Kentucky 40502, with dates to be decided upon, in writing, by LAL and LFUCG. This Agreement is intended to fairly allocate the human and financial resources of LAL and LFUCG to benefit both parties and perpetuate the Fair.

- II. **TERM.** This Agreement shall take effect upon execution and continue for two (2) years with two (2) automatic renewals of one (year) each, provided, however, that LAL's duties and obligations established under subsections V of the Agreement shall survive the termination or expiration of the agreement.

- III. **DUTIES**
 - a. LFUCG shall be responsible for the following elements of producing the Fair:
 - i. Soliciting, organizing, and managing all food vendors that participate in the Fair;
 - ii. Taking all reasonable steps necessary to ensure that the Fair receives all required governmental inspections and approvals;
 - iii. Soliciting, organizing, and managing all live entertainment for the Fair;
 - iv. Prescribing the physical layout of the Fair;
 - v. Preparing Woodland Park for the Fair, maintaining the grounds during the Fair, and cleaning and repairing the grounds after the Fair;
 - vi. Providing all equipment necessary for the execution of the Fair, including sound equipment, barricades, traffic cones, 10x10 tents, tables, chairs, portable restrooms, picnic tables, and straw bales, based on availability, current fiscal year funding and the parties' agreed upon budget.
 - vii. Ensuring that sufficient electrical systems are reasonably available at the Fair for artists, vendors, entertainers, staff, volunteers, sponsors, and guests; and
 - viii. Providing designated parking areas for vendors, shuttle services from remote public parking areas, budget permitting, and preferred parking for artists, entertainers, staff, volunteers, and sponsors.

- b. LAL shall be responsible for the following elements of producing the Fair:
 - i. Soliciting and selecting artists to exhibit artwork in the Fair;
 - ii. Coordinating the arrival, set up, operation, and post-Fair clean-up of artist exhibits;
 - iii. Providing appropriate educational art-themed activities for children in attendance at the Fair;
 - iv. Providing guest hospitality services for all attendees;
 - v. Providing hospitality services for all Artists participating in the Fair;
 - vi. Providing all publicity for the Fair, subject to subsection IV, below;
 - vii. Soliciting and managing volunteers to assist with the set-up, operation, and tear-down of the Fair; and
 - viii. Providing artist awards and selecting artists to receive such awards.

- c. The parties' representatives shall meet at least quarterly in order to coordinate their efforts and fulfill the purpose of this Agreement.

IV. ADVERTISING. All promotional materials shall identify the Fair as “The Woodland Art Fair,” and shall identify “Lexington Parks and Recreation” and “Lexington Art League” as co-producers of the Fair. All promotional materials shall bear the official logo of both LAL and Lexington Parks and Recreation or the official name of both LAL and Lexington Parks and Recreation in equal scale and prominence. All use of the Lexington Parks and Recreation logo shall comply with CAO Policy 57: Branding, Graphic and Logo Standards, attached as Exhibit A. LAL shall submit all marketing and advertising materials related to the Fair and intended for public release, along with their proposed release date, to LFUCG for approval as soon as reasonably practicable, but in no case later than fourteen (14) days before the proposed release date, which materials shall not be released to the public unless and until approved by LFUCG. LFUCG shall not unreasonably withhold its approval of any properly submitted materials, and the failure of LFUCG to object to any marketing and advertising materials within fourteen (14) days after their submission shall be deemed an approval thereof.

V. FINANCIAL TERMS

- a. LFUCG shall have the right to solicit and permit professional, licensed mobile food and beverage vendors to offer food and beverages for sale at the Fair. All proceeds from such permits shall be retained by LFUCG;
- b. LAL shall have the right and duty to charge and collect a reasonable fee from each artist exhibiting at the Fair, the amount of which shall be approved by LFUCG in writing prior to imposition, which approval shall not be unreasonably withheld. A sufficient portion of the proceeds from such fees shall be held by LAL subject to subsection V(f), infra;

- c. LAL and LFUCG shall have the right to solicit and contract with event sponsors, provided that LAL and LFUCG shall not enter any legally binding sponsorship agreement unless such agreements are first approved in writing by both LAL and LFUCG, which approval shall not be unreasonably withheld. Proceeds from such sponsorship fees shall be property of the entity which secured the sponsorship. Prior to April 1st of each year, and in order to avoid competition for potential event sponsors, LAL and LFUCG will agree upon, in writing, a list of potential sponsors from which LFUCG agrees to not seek sponsorships.
- d. For the 2021 Fair, LFUCG and LAL shall agree on a proposed budget no later than June 1, 2021. The budget shall be agreed upon, in writing, by representatives of both LFUCG and LAL and shall not be amended unless approved by both parties, in writing. For the years following the 2021 fair, subsection V(e) shall apply.
- e. By no later than sixty (60) days from the last day of the prior year's Fair, LFUCG and LAL shall exchange an itemized statement of revenues received and expenses incurred in co-producing the Fair. Within thirty (30) days after receipt of the itemized revenues and expenses from LFUCG, LAL shall prepare and provide to LFUCG a proposed budget for the following year's Fair (the "Budget"). LFUCG shall have thirty (30) days to review and suggest changes to the Budget. Within thirty (30) days thereafter, the parties shall confer and mutually agree to a Budget, in writing, for production of the following year's Fair.
- f. Beginning with the 2021 Fair, and for the remainder of this Agreement, LAL will hold in escrow the sum of \$10,000 for the purpose of reimbursing LFUCG for the expenses incurred which were mutually agreed upon in the budget negotiation process. Reimbursement of LFUCG's expenses is without limitation and may include personnel expenses computed as a pro rata portion of the LFUCG employee's annual compensation. LFUCG will receive reimbursement for such expenses within thirty (30) days after receipt of an itemized statement of revenues and expenses incurred by LFUCG for the Fair out of the Escrow Account established in Section (V)(f). If the amount in Escrow does not cover the full amount of LFUCG's expenses, LAL will reimburse LFUCG the remainder of the expense amount within 30 days after receipt of the itemized expense statement. LAL's duty to reimburse LFUCG for expenses incurred in co-producing the Fair shall survive the termination of this agreement.
- g. If reimbursement payment is not received within 30 days of providing LAL with the itemized statement of expenses for the Fair, LFUCG reserves the right to require up to fifty (50%) percent of proceeds received by LAL for the following year's Fair, including but not limited to artist fees, booth rentals or sponsorship agreements, to be deposited into an Escrow Account, at an institution agreed upon by both parties in writing, in anticipation for reimbursement of expenses for the following year's Fair. LAL will be entitled to the remaining balance of the Escrow Account after LFUCG is reimbursed for expenses of the Fair. LAL and LFUCG both reserve the right to pursue all other legal remedies available to them for non-compliance with this document.

VI. INSURANCE & LIABILITY

- a. LAL assumes full responsibility and liability for any and all damages to LFUCG persons or property it, or its agents, employees, or officers may cause during the Fair on LFUCG property while this Agreement is in effect. This provision shall survive the termination of this Agreement.
- b. LAL shall provide LFUCG 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 per occurrence, listing the Lexington-Fayette Urban County Government as an "additional insured." LAL shall provide such certificate at least fourteen days before the first scheduled Fair date, or LFUCG may terminate this Agreement immediately. A Declaration Page shall not be considered a valid substitute for a Certificate of Insurance.
- c. LAL shall defend, indemnify, and hold harmless LFUCG, its officers, agents, employees, and officials from and against any and all liability loss, expense (including reasonable attorney's fees) or claims for injury or damages arising out of or in connection with the actions or omissions of LAL, its agents, employees or officers in the performance of this Agreement. Nothing herein shall be interpreted as or deemed a waiver of any defenses available to LFUCG, including sovereign immunity. This provision shall survive the termination of this Agreement.
- d. In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, health pandemics, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt written notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

VII. MISCELLANEOUS

- a. All communications related to this Agreement that are directed to LFUCG shall be communicated in writing to DIRECTOR OF PARKS AND RECREATION
469 PARKWAY DRIVE, LEXINGTON, KY 40504.
- b. All communications related to this Agreement that are directed to LAL shall be communicated in writing to Lori Houlihan, Executive Director, 209 Castlewood Drive, Lexington KY 40505.
- c. This Agreement constitutes the entire agreement between parties. There

are no covenants, agreements, promises, terms, provisions, conditions, undertakings, or understandings, oral or written, between the parties other than as set forth herein.

- d. The headings, captions, numbering system, etc., are inserted only as a matter of convenience and may under no circumstances be considered in interpreting the provisions of the Agreement.
- e. LAL shall not sublet, assign, or otherwise transfer any interests, duties, obligations, or rights acquired under this contract without prior, written approval from LFUCG, except that LAL may enlist third-party contractors to perform certain of its duties, including but not limited to the creation and execution of publicity for the Fair.
- f. Time is of the essence in the performance of this agreement. In the computation of any period of time provided for in this Agreement or by law, any date falling on a Saturday, Sunday, or legal holiday shall be deemed to refer to the next day which is not a Saturday, Sunday, or legal holiday.
- g. If any provision hereof is for any reason unenforceable or inapplicable, the other provisions hereof will remain in full force and effect in the same manner as if such unenforceable or inapplicable provision had never been contained herein.
- h. This Agreement shall be construed under and in accordance with the laws of the Commonwealth of Kentucky. Any action arising, in whole or in part, from or in connection with this Agreement, shall be brought in Fayette County, Kentucky.
- i. This Agreement may only be modified by a writing signed by both parties.
- j. This Agreement, having been negotiated in good faith between the parties, shall not be construed against one party or the other.
- k. It is understood and agreed that nothing herein contained shall be construed in any way to constitute a partnership or joint venture between the parties.
- l. Nothing contained herein shall create any relationship, contractual or otherwise, with or any rights in favor of any third party.

LEXINGTON-FAYETTE URBAN COUNTY
COUNTY GOVERNMENT

LEXINGTON ART LEAGUE, INC.

By: _____
LINDA GORTON, MAYOR

By: *Louie Hanlikan*
EXECUTIVE DIRECTOR

Date: _____

Date: 06/04/21