

**2019 FESTIVAL LATINO DE LEXINGTON
MEMORANDUM OF AGREEMENT**

This Memorandum of Agreement, made and entered into this 29 day of August, 2019, by and between the Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, Kentucky 40507 ("LFUCG"), and the Foundation for Latin American Culture and Art (FLACA), a non-profit Kentucky Corporation, with its principal office located at 373 Virginia Ave, Suite 140, Lexington, KY 40504 ("FLACA"), witnesseth as follows:

- I. **PURPOSE.** LFUCG and FLACA shall coordinate to host a Festival Latino De Lexington (hereinafter "festival") for the City of Lexington to showcase and celebrate the culture and heritage of Latin America, to be held during the National Hispanic Heritage Month (September 15 – October 15), with exact dates to be determined by the Lexington Festival Commission.

- II. **TERM.** This Agreement shall take effect upon execution and be in effect for one (1) year. This Agreement shall be automatically renewed for four (4) subsequent terms of one (1) year each unless either party provides written notice to the other party within sixty (60) days prior to the expiration of the initial or an extension term of its intent not to renew the Agreement. Either party will respond to written notice within thirty (30) days of the receipt of the request, provided, however, that FLACA's duties and obligations established under subsections V(E), VI(A), and VI(C) 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 festival:
 - a. Filing Special Event Permit application and serve as liaison to Mayor's office on event details;
 - b. Coordinate with other necessary city agencies and Robert F. Stephens Courthouse Plaza Management Group;
 - c. Soliciting, organizing, and managing all food vendors that participate in the festival;
 - d. Taking all reasonable steps necessary to ensure that the festival receives all required governmental inspections and approvals;
 - e. Soliciting, organizing, and managing all merchant vendors for the festival;
 - f. Soliciting, organizing, and managing all information vendors for the festival;
 - g. Prescribing the physical layout of the festival, including activities, vendors, booths, staging, and sponsors;
 - h. Coordinate and manage contracts for all Parks paid professional services;
 - i. Preparing for the festival, maintaining the grounds during the festival, and cleaning and repairing the grounds after the festival;
 - j. Coordinate rental equipment necessary for the festival, including sound equipment, barricades and traffic cones.
 - k. Provide a limited number of 10x10 tents, tables, chairs, portable restrooms, and picnic tables;

- l. Ensuring that sufficient electrical systems are reasonably available at the festival for artists, vendors, entertainers, staff, volunteers, sponsors, and guests; and
- m. Providing on-site event management during the festival.

B. FLACA shall be responsible for the following elements of producing the festival:

- a. Soliciting and selecting entertainment for the festival;
- b. Serve as liaison between Parks & Recreation and the activity participants to coordinate logistics and participation details;
- c. Coordination of community meetings to draw support and gather input for event content;
- d. Establish a planning committee to hold regular scheduled meetings with Parks & Recreation Special Event Manager to determine final event content;
- e. Advise Parks & Recreation on cultural relevance and variety of submitted vendor applications;
- f. Serve as liaison between Parks & Recreation and the festival participants and sponsors;
- g. Coordinate, purchase, install and break-down/dispose of all event decorations;
- h. Arrange for, and pay, overnight security from Friday at close to staff arrival on Saturday;
- a. Coordinate with Parks and Recreation on scheduling and location for portable staging. FLACA is responsible to pay for any portable staging used other than Parks and Recreation Showmobile.

C. FLACA and LFUCG agree to work together to achieve the following:

- a. Abide by usage rules set forth by Meridian Management Company and the Officer of the Courts for events taking place in the Robert F. Stephens Courthouse Plaza;
- b. Develop mutual goals and objectives for the festival;
- c. Develop event timeline and checklist for necessary tasks to be completed prior to, during and after the event;
- d. Coordinate and develop sponsorship packages, sponsor fulfillment and fundraising;
- e. Development of artwork design for all advertising;
- f. Creation of event marketing and promotions.

IV. **ADVERTISING.** All promotional materials shall identify the festival as the “Festival Latino De Lexington” and shall identify “Lexington Parks and Recreation” and “Foundation for Latin American Culture and Art” as co-producers of the festival. All promotional materials shall bear the official logo of both FLACA and Lexington Parks and Recreation, as provided by LFUCG, or the name of both FLACA and Lexington Parks and Recreation in equal scale and prominence. FLACA shall submit all marketing and advertising materials related to the Festival 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.

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 festival. All proceeds from such permits shall be retained by LFUCG in an account which will be paid to FLACA pursuant to subsection V(E).
- B. LFUCG Parks and Recreation will provide funds from the current fiscal year budget allocation for operating support (TBD annually with city's approved budget) following the event and after all Parks and Recreation expenses have been paid.
- C. FLACA shall have the right to solicit and contract with event sponsors, provided that FLACA shall not enter any legally binding sponsorship agreement unless such agreement is first approved in writing by LFUCG, which approval shall not be unreasonably withheld. All proceeds from such fee shall be held by FLACA subject to subsection V(E & F), *infra*.
- D. By no later than sixty (60) days from the last day of the festival, FLACA shall submit to LFUCG an itemized statement of all expenses incurred in co-producing the festival and all revenue received or owed it from or in connection with the festival, including without limitation all revenue received or owed as fees, as required under subsection V(B), or under sponsorship agreements, as permitted in subsection V(C). LFUCG shall have thirty (30) days from receipt to review FLACA's statement and request any additional information it may deem necessary to verify the information contained therein, which additional information FLACA shall provide in a timely manner.
- E. FLACA is to set aside all funds raised for and through the festival to exclusively benefit the festival.

VI. INSURANCE & LIABILITY

- A. FLACA 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 any event on LFUCG property while this Agreement is in effect. This provision shall survive the termination of this Agreement.
- B. FLACA 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 performance of this Agreement. Nothing herein shall be interpreted as or deemed a waiver of any defense available to LFUCG, including sovereign immunity. This provision shall survive the termination of this Agreement.

VII. MISCELLANEOUS

- A. All communications related to this Agreement that are directed to LFUCG shall be communicated in writing to Special Event Manager, 545 N. Upper St., Lexington, KY 40508. All communications related to this Agreement that are directed to FLACA shall be communicated in writing to Chair, FLACA Festival Committee, PO Box 23050, Lexington, KY 40523.
- B. 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.

- C. 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.
- D. FLACA shall not sublet, assign, or otherwise transfer any interests, duties, obligations, or rights acquired under this contract without prior, written approval from LFUCG.
- E. 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.
- F. 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.
- G. 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.
- H. This Agreement may only be modified by a writing signed by both parties.
- I. This Agreement, having been negotiated in good faith between the parties, shall not be construed against one party or the other.
- J. 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.
- K. Nothing contained herein shall create any relationship, contractual or otherwise, with or any rights in favor of any third party.

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

THE FOUNDATION FOR LATIN AMERICAN
CULTURE AND ART

By: *Linda Gordon*
Linda Gordon, Mayor

By: *Jackie Arakaki*
President, FLACA

Date: 9/3/2019

Date: 07/10/2019