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Res. No. 140 - 21 - 22 . By Alderpersons Mitchell and Filicky-Peneski.
February 21, 2022.

A RESOLUTION authorizing the appropriate City officials to execute the Agreement Between the City of Sheboygan, Lakeland University, and Kohler Credit Union regarding the 2022 Memorial Day parade.

RESOLVED: That the Mayor and City Clerk are hereby authorized to execute the Agreement Between the City of Sheboygan, Lakeland University, and Kohler Credit Union, a copy of which is attached hereto and incorporated herein.

FAP

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

AGREEMENT BETWEEN THE
CITY OF SHEBOYGAN, LAKELAND UNIVERSITY, AND KOHLER CREDIT UNION
REGARDING
THE 2022 MEMORIAL DAY PARADE IN SHEBOYGAN, WISCONSIN

This Agreement ("Agreement") is between the City of Sheboygan (the "City"), a municipal corporation, Lakeland University, and Kohler Credit Union ("KCU").

WITNESSETH:

- WHEREAS, Sheboygan has a proud tradition of hosting an annual Memorial Day Parade to honor fallen service members; and
- WHEREAS, traditionally the parade concludes with a ceremony at Fountain Park; and
- WHEREAS, the City desires to contract with an entity to provide the necessary services to organize and conduct the Memorial Day Parade and ceremony at Fountain Park ("Event Management Services"); and
- WHEREAS, the City also desires to obtain a sponsor to fund the costs of the Event Planning Services; and
- WHEREAS, Launch at Lakeland University ("Launch") is willing to provide the City with the necessary Event Management Services under the terms of this Agreement; and
- WHEREAS, KCU is willing to sponsor the costs of the Event Management Services under the terms of this Agreement.

NOW, THEREFORE, the City, Launch, and KCU agree as follows:

1. Kohler Credit Union's Responsibilities

Within 15 days of the execution of this Agreement, KCU shall remit an initial sponsorship payment of \$1,500 to the City.

Within 7 days of May 30, 2022, KCU shall remit a final sponsorship payment of \$1,500 to the City. In the event that it is necessary for the Event to be cancelled due to COVID-19, KCU shall not be responsible for making this final sponsorship payment.

Both sponsorship payments shall be sent to the Mayor's Office (828 Center Ave., Suite 300, Sheboygan, WI 53081).

KCU shall also provide sponsorship support for incidental costs associated with the Event. Any sponsorship payment for incidental costs shall be handled via separate agreement between KCU and Launch.

2. Launch's Responsibilities

Launch shall assume responsibility for organizing, promoting, and executing the Memorial Day Parade and ceremony at Fountain Park (collectively, the "Event").

This includes, but is not limited to:

- a. Coordination and management of all pre-event logistics, on-site management, and post-event functions necessary for the Event to be a success.
- b. Coordination and management of the Memorial Day Parade, including: (1) parade entry, (2) coordination of line-up, (3) route management, (4) on-site management, and (5) official parade announcements.
- c. Negotiation for services and management of all necessary suppliers such as: (1) porta-potty/metro needs for the parade, (2) fencing, (3) seating and logistical setup, (4) electrical fulfillment, and (5) any other supplier relationships that may be necessary to successfully manage the Event.
- d. Coordination and collaboration with the Sheboygan Police Department, Sheboygan Department of Public Works, and any other municipal entities or departments as necessary to ensure public safety and proper use and need for City equipment and services including, but not limited to, public park use, traffic control, trash coordination for parks, street closures, and crowd control.
- e. Handle all permits, requests to the Common Council of the City, reservations to the Sheboygan Department of Public Works, and any other permits, licenses, or permissions necessary to ensure that proper resources and notifications are agreed to in advance by all parties and City departments involved in the Event.

Launch shall be solely responsible for the means, methods, techniques, sequences, and procedures by which it organizes, promotes, and executes the Event.

Launch shall comply, and shall ensure that all participants in the Event comply, with all applicable public health guidance in effect on the day of the Event. This includes, but is not limited to, guidance issued by the Sheboygan County Health Officer, the State of Wisconsin, and the federal government (including, but not limited to, the Centers for Disease Control).

Any and all agreements with third parties for services related to the Event (other than this Agreement) shall be between the third party and Launch.

3. The City's Responsibilities

The City shall, within 30 days of receipt of each sponsorship payment from KCU, pay the amount of the sponsorship payment received by the City to Launch. For the avoidance of doubt, in the event that KCU fails to make one or more of the sponsorship payments set forth in this Agreement, the City's obligation to pay the amount of the unpaid sponsorship payment shall not accrue.

The City recognizes that the Event require use of City land and services. The City agrees to provide the following for the Event at no cost:

- Use of Fountain Park for the ceremony at Fountain Park following the Parade
- Use of City streets and lots, upon approval of a parade permit submitted by Launch and approved by the City (as necessary for parade staging and route commencement).
- Appropriate police aid for traffic control and crowd control throughout the Event.
- Appropriate support and equipment from the Sheboygan Department of Public Works throughout the Event.

4. General Provisions

- Access to Records. The parties recognize that the City is bound by the Wisconsin Public Records Law and, as such, this Agreement is subject to that law. Launch and KCU acknowledge that they are obligated to assist the City in retaining and producing records related to this Agreement, and that the failure to do so shall constitute a material breach of this Agreement, in which case the breaching party must defend and hold the City harmless from liability under the Wisconsin Public Records Law. Launch and KCU shall maintain all records related to this Agreement for a period of not less than 7 years after the termination of the Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the records shall also be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto.
- Assignment. No party shall assign, transfer, convey, pledge, sublet, or otherwise dispose of its interest in this Agreement without the prior consent of the other parties in writing.
- Authority. Each person executing this Agreement on behalf of a party hereto represents and warrants to the other parties: That the execution of this Agreement has been duly authorized, that the person or persons executing this Agreement have the full power, authority, and right to do so, and that such execution is sufficient and legally binding on such party to enable this Agreement to be enforceable in accordance with its terms.
- Compliance with All Laws. In performing the services under this Agreement, the parties shall comply with any and all applicable federal, state, and local statutes, ordinances, plans, and regulations.
- Conflict of Interest. Each party declares that it has no present interest, nor shall it acquire any interest—direct or indirect—which would conflict with the performance of the responsibilities set forth in this Agreement. The parties agree that no person having any such interest shall be employed in the performance of this Agreement.
- Default. Should any party be in default of the terms and provisions of this Agreement, and should such default continue for more than 30 days after written notice of the default from a non-defaulting party, then a non-defaulting party may terminate this Agreement upon written notice to the other parties.
- Governing Law and Venue. This Agreement shall be governed by the laws of the State of Wisconsin. Venue of any disputes arising under this Agreement shall be in the Sheboygan County Circuit Court, Wisconsin.
- Hold Harmless/Indemnification. To the extent permitted by law, Launch shall hold harmless, defend, and/or indemnify KCU and the City from any and all claims, actions, suits, charges, awards, fines, labor disputes, charges or costs of any kind or character including attorney's

fees and court costs that arise, or may arise, out of Launch's performance or non-performance of any term, obligation, service, or condition as set forth in this Agreement.

- i. Independent Contractor. The parties to this Agreement are not partners. During the entire term of this Agreement, the relationship between the parties shall be that of independent contractors. No personnel, agent, or subcontractor of one party shall represent themselves to be an employee or otherwise affiliated with any other party to this Agreement.
- j. Intent to be Bound. Each party binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other parties to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other parties in respect to all provisions of this Agreement.
- k. Limitation of Authority. Except as may be specifically provided for with respect to event management services, Launch shall have: (1) no power to solicit proposals, bids, or contracts on behalf of the City and (2) no authority to bind the City or act on the City's behalf in any manner whatsoever. Launch's authority is hereby limited to those duties and responsibilities specifically enumerated herein.
- l. Modifications. This Agreement may be modified or amended by the parties at any time, provided such changes are mutually agreed to, in writing, and signed by all parties.
- m. Nondiscrimination.
 - a. In connection with the performance of the services under this Agreement, Launch agrees not to discriminate against any employee or applicant for employment on the basis of age, race, religion, color, handicap, sex, physical condition, developmental disability (as defined in Wis. Stat. 51.01(5)), sexual orientation (as defined in Wis. Stat. 111.32(13m)), or national origin. This provision shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training. Launch further agrees to take affirmative action to ensure equal employment opportunities.
 - b. The selection of participants in the Event shall be done on a basis that does not discriminate on the basis of age, race, religion, color, handicap, sex, physical condition, developmental disability, sexual orientation, or national origin.
- n. Notice. Any notice required by this Agreement shall be made in writing to the parties as addressed below:

City
City Clerk
City of Sheboygan
828 Center Ave.
Sheboygan, Wisconsin 53081

KCU
Laura Gabrielse
Kohler Credit Union
5727 Superior Ave.
Sheboygan, WI 53083

Launch
Kym Leibham
Lakeland University
W3718 South Drive
Plymouth, WI 53073

This shall not be construed to restrict the transmission of routine communications between representatives of the parties.

- o. Other Sponsors. The Parties anticipate that KCU will be the only sponsor for the Event. If, during the course of planning the Event, one or more Parties believe that additional sponsors are appropriate, both KCU and the City must consent in writing to any additional sponsor. The Mayor shall have the authority to make this consent on behalf of the City.
- p. Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.
- q. Term. This Agreement shall cover the 2022 Event only. This Agreement shall begin upon its execution by all parties, and shall continue until July 15, 2022, unless it is extended by mutual agreement of all parties.
- r. Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the parties.
- s. Waiver. No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to enforce that term. No waiver by any party of any term of this Agreement—which may only occur in writing—shall be considered to be a waiver of any other term or breach thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized agents as of the dates written below.

CITY OF SHEBOYGAN

BY: _____
Ryan Sorenson
Mayor

ATTEST: _____
Meredith DeBruin
City Clerk

DATED: _____

LAKELAND UNIVERSITY

BY: _____
Kathy Neitzel
Controller

DATED: _____

KOHLER CREDIT UNION

BY: _____
Laura Gabrielse
Senior Vice President of Member Experience

DATED: _____