

FESTIVAL SUPPORT
VENDOR NUMBER
CONTRACT NUMBER _____
PURCHASE ORDER NUMBER _____

STATE OF TEXAS *

COUNTY OF BEXAR *

CITY OF SAN ANTONIO *

ARTS AGENCY CONTRACT WITH

AGENCY NAME

This Contract is entered into by and between the City of San Antonio (“City”), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. **2020-09-17-_____** dated September 17, 2020, and the **Agency Name**, (“Grantee”).

WITNESSETH:

WHEREAS, the Department of Arts and Culture is designated as the managing City department (“Department”) for the City; and

WHEREAS, City has provided certain funds from the Hotel Motel Tax Fund for the promotion of tourism and the convention and hotel industry through the encouragement, promotion, improvement, application and exhibition of the arts; and

WHEREAS, City has provided certain funds from the General Fund for arts and cultural activities; and

WHEREAS, City has adopted a budget for expenditure of such funds, and included therein is an allocation of funds for a project(s) entitled **Festival Support** (“Project”); and

WHEREAS, City wishes to engage Grantee to carry out the Project; NOW THEREFORE:

The Parties agree as follows:

I. SCOPE OF WORK

1.1 Grantee will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to City and in compliance with the Grantee’s Festivals FY21 Contract Renewal Application, incorporated into this Contract by reference and list of Allowable Costs affixed and incorporated into this Contract as **Attachment I**. All work under this Contract shall be completed no later than **September 30, 2021**.

II. TERM

2.1 Except as otherwise provided for pursuant to its provisions, this Contract shall begin on **October 1, 2020**, and shall terminate on **September 30, 2021**.

2.2 Grantee understands that this Contract will terminate as provided in Section 2.1, or sooner as provided in Article XIII.

III. CONSIDERATION

3.1 In consideration of contract obligations, under this Contract, City will pay Grantee for expenses incurred in accordance with the Allowable Costs that are identified as part of **Attachment I** to this Contract. It is specifically agreed that payment shall not exceed \$_____.00.

3.2 The funding level of this Contract is based on the allocation awarded to Department by the City of San Antonio. The allocation is based on an appropriation for the **Festival Support** and Department’s receipt of

said allocation. The budget(s) to this Contract may be adjusted to correspond to the actual allocation awarded. Funds received under this Contract are from the City’s Hotel Occupancy Tax collections. It is the understanding of the Parties that the amount set forth in Section 3.1 may be adjusted at any time to comply with Texas Tax Code Section 351.103(c) and other applicable laws and regulations, including the City of San Antonio City Council approved Arts Funding Guidelines.

- 3.3 Grantee understands and agrees that this is a contract to provide Festival support for FY21, based on formulaic calculations outlined in the Arts Agency Funding Guidelines. Investments are made based on a percentage of the Grantee’s overall event budget at the beginning of the application three-year cycle. Grantee further agrees to adhere to all requirements outlined in the Arts Agency Funding Guidelines.
- 3.4 Grantee shall provide City with 10 full-access passes to the festival.

IV. PAYMENT

- 4.1 Prior to the payment of any funds under this Contract, and throughout the term of this Contract, Grantee shall be financially stable and operate in a fiscally responsible and prudent manner, as determined at the sole discretion of City. Grantee shall provide any records requested by City that City deems necessary to make such a determination.
- 4.2 (A) Grantee agrees City’s liability under this Contract is limited to making payments for allowable costs incurred as a direct result of City-funded services provided by Grantee in accordance with the terms of this Contract. Allowable costs are defined as those costs which are necessary, reasonable and allowable under applicable Federal, State, and local law, for the proper administration and performance of the services to be provided under an agreement. All requested payments must be consistent with the terms and provisions of the approved budget as required by Department of this Contract. In no event shall City be liable for any cost of Grantee not eligible for payment as defined within the Contract.
- (B) All funds received under this Contract shall be subject to the following payment schedule (“Disbursement Schedule”):

Disbursement Schedule	
After contract execution but not more than 90 days prior to the first scheduled Festival event.	Performance Plan Completion, submission of the Final Report and receipt of an Invoice
50%	50%

- (1) The Disbursement Schedule takes effect upon Contract execution.
- (2) Grantee shall submit an invoice for all payments along with any other documentation requested by City for all disbursements and payments.
- (3) Grantee shall submit to Department such reports as may be required by City, including the Interim Report and Final Report, which include the Artistic Activity Report, Program Income Report and Detailed Listing of Expenditures, in the form required by City. Said Final Report is to be submitted to Department at the time of closeout of this contract. Additionally, Grantee shall complete a Cultural Data Profile for its FY20 which is due upon closeout. Failure to comply may result in delayed disbursements or loss of future funding.
- (4) If Contract is terminated prior to Performance Plan completion, Grantee shall return any unused funds to City within 15 calendar days of such termination

- (5) Invoice for final payment must include support material for the previous payment as well as all necessary support materials for the final payment. Final payment will be made within 15 calendar days following the approval of all submitted invoices.
- (6) If Grantee fails to timely comply with any of the reporting requirements of this Contract including but not limited to invoicing, submitting Artistic Activity Reports, and any and all documents related to the Contract, as determined by the sole discretion of the Executive Director of Department, funds not yet received under this Contract may convert to a reimbursement schedule, as determined by the Executive Director of Department, according to standard procedures followed by City's Finance Department.
- 4.3 The City Manager, Assistant City Manager or the Executive Director of Department may make changes to the Funding Schedule when doing so is in the best interest of the City and/or serves to promote the tourism and visitor industry and such changes shall not necessitate an amendment to this Contract.
- 4.4 The Executive Director of Department may require the Grantee's submission of original or certified copies of invoices, cancelled checks, and/or receipts to verify invoiced expenses.
- 4.5 Grantee agrees that all requests for payment shall be accompanied with documentation as may be required by the Executive Director of Department.
- 4.6 Grantee shall submit to City all final requests for payment no later than fifteen (15) days prior to the termination of this Contract, unless Grantee receives written authorization from the Executive Director of Department prior to such period allowing Grantee to submit a request for payment after such date.
- 4.7 Grantee agrees that City shall not be obligated to any third parties (including any sub-Grantees or third party beneficiaries of Grantee).
- 4.8 Grantee agrees that Grantee costs claimed as City-approved funding under this Contract will not be claimed under another contract or grant from another agency.
- 4.9 Upon completion or termination of this Contract, or at any time during the term of this Contract, all unused funds, rebates, or credits on-hand or collected thereafter relating to the Project/Projects, must immediately, upon receipt, be returned by Grantee to City.
- 4.10 Upon execution of this Contract or at any time during the term of this Contract, City's Director of Finance, the City Auditor, or a person designated by the Executive Director of Department may review and approve all Grantee's systems of internal accounting and administrative controls prior to the release of funds.
- 4.11 Funds can only be used for the following: **venue rental, contracted services and artist fees, production expenses (production management/staging/sound), lighting and equipment rental all specifically designed for the event, marketing and promotion and liability insurance. Funds may also be used for audit of the agency, if required by this Contract.**
- 4.12 For purposes of this Contract, "program income" shall mean earnings of Grantee realized from activities resulting from this Contract or from Grantee's management of funding provided or received under this Contract. Such earnings shall include, but shall not be limited to, interest income; or any other source of Grantee generated income resulting from fees charged or services rendered to other outside sources, usage or rental/lease fees; income produced from contract-supported services of individuals or employees, or from the use of equipment or facilities of Grantee provided as a result of this Contract, and payments from clients or third parties for services rendered by Grantee pursuant to this Contract.
- (A) Grantee shall provide Department notice of activity that generates program income. Grantee shall provide detail and amounts of Program Income by type in the Final Report .
- (B) Grantee shall fully disclose and be accountable to City for all program income. Failure by Grantee to report program income as required is grounds for suspension, cancellation, or termination of

this Contract.

- (C) Under the provisions and of this Contract, grantee shall be permitted to retain such program income to be added to the Projects) and used to further eligible Project(s) and/or Grantee objectives including its operations.

V. ADMINISTRATION OF CONTRACT

- 5.1 In the event that any disagreement or dispute should arise between the Parties pertaining to the interpretation or meaning of any part of this Contract or its governing rules, regulations, laws, codes or ordinances, the City Manager, or the Executive Director of Department, as representative(s) of City, the party ultimately responsible for all matters of compliance with City of San Antonio rules and regulations, shall have the final authority to render or secure an interpretation.

VI. AUDIT

- 6.1 If Grantee expends \$200,000.00 or more of City dollars, then during the term of this Contract, Grantee is required to complete an independent audit of its financial statements and utilize the audited information to complete its Cultural Data Profile. Grantee understands and agrees to furnish Department a copy of the audit report if requested by the City.
- 6.2 Grantee agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of Grantee or its programs of any findings about accounting deficiencies, or violations of Grantee's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to Department within 10 calendar days of Grantee's receipt of the report.
- 6.3 City reserves the right to conduct, or cause to be conducted an audit of all funds received under this Contract at any and all times deemed necessary by City. City staff, a Certified Public Accounting firm, or other auditors as designated by City, may perform such audit(s). City reserves the right to determine the scope of every audit. In accordance herewith, Grantee agrees to make available to City all accounting and Project records.
- 6.4 Grantee shall, during normal business hours, and as often as deemed necessary by City and/or the applicable state or federal governing agency or any other auditing entity, make available to the auditing entity books, records, documents, reports, and evidence with respect to all matters covered by this Contract and shall continue to be so available for a minimum period of four (4) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Contract. Said records shall be maintained for the required period beginning immediately after Contract termination, save and except if there is litigation or if the audit report covering such agreement has not been accepted, Grantee shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by Grantee in accounting for expenses incurred under this Contract, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.
- 6.5 City may, at its sole discretion, require Grantee to use any and all of City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Contract, and Grantee shall abide by such requirements.
- 6.6 When an audit or examination determines that Grantee has expended funds or incurred costs which are questioned by City and/or the applicable state or federal governing agency, Grantee shall be notified and provided an opportunity to address the questioned expenditure or costs.
- 6.7 Should any expense or charge that has been paid be subsequently disapproved or disallowed as a result of any site review or audit, Grantee will immediately refund such amount to City no later than 10 calendar days from the date of notification of such disapproval or disallowance by City. At its sole option, Department may instead deduct such claims from subsequent payments; however, in the absence of prior notice by City

of the exercise of such option, Grantee shall provide to City a full refund of such amount no later than 10 calendar days from the date of notification of such disapproval or disallowance by City. If Grantee is obligated under the provision hereof to refund a disapproved or disallowed cost incurred, such refund shall be required and be made to City by cashier's check or money order. If Department elects to deduct such claims from subsequent payments, during such time, Grantee is forbidden to reduce Project expenditures and Grantee must use its own funds to maintain the Project.

- 6.8 Grantee agrees and understands that all expenses associated with the collection of delinquent debts owed by Grantee shall be the sole responsibility of Grantee and shall not be paid from any Project funds received by Grantee under this Contract.
- 6.9 If City determines, in its sole discretion, that Grantee is in violation of the above requirements, City shall have the right to dispatch auditors of its choosing to conduct an audit and to have Grantee pay for such audit from non-City resources. If applicable, Grantee's failure to comply with this section may result in the loss of funding in future years.

VII. RECORDS, REPORTING, AND COPYRIGHTS

- 7.1 Department is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by Department, Grantee shall furnish to Department, if applicable, such statements, records, data, and information and permit City, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Contract.
- 7.2 Grantee shall submit to Department such reports as may be required by City, including the Final Report form electronically through the online system required by the Department within 60 days of completion of Performance Plan or September 30, 2021 whichever is earlier. Failure to comply may result in delayed disbursements or loss of funding.
- 7.3 The Public Information Act, Government Code Section 552.021, requires City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Grantee receives inquiries regarding documents within its possession pursuant to this Contract, Grantee shall within 24 hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to State or Federal law, Grantee shall submit to City the list of specific statutory authority mandating confidentiality no later than 3 calendar days of Grantee's receipt of such request.
- 7.4 In accordance with Texas law, Grantee acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003(8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code.

Grantee acknowledges and agrees that all local government records, as described in this Contract, produced in the course of the work required by this Contract, shall belong to and be the property of City and shall be made available to the City at any time. Grantee agrees that it shall not, under any circumstances, release any records created during the course of performance of the Contract to any entity without the written permission of the Executive Director of Department, unless required to do so by a court of competent jurisdiction. Department shall be notified of such request as set forth in Article VII., Section 7.3 of this Contract.

Grantee agrees to comply with official records retention schedules in accordance with the Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slr/recordspubs/gr.html> and any amendments.

- 7.5 City and Grantee agree that should City wish to obtain a license to use the Project for commercial or non-commercial purposes, the parties shall negotiate such a license, upon mutually agreeable terms, at no cost to City. Grantee agrees to execute all documents reasonably requested by City to enable City to utilize all such property.
- 7.6 No later than 30 calendar days prior to contract completion or September 30, Grantee shall submit all final fiscal reports and all required deliverables to City.
- 7.7 Grantee agrees to comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto, referenced in Section 10.4 of this Contract.
- 7.8 Grantee shall input all information required by City into City's required reporting software system.

VIII. INSURANCE

- 8.1 Prior to the commencement of any work under this Contract, Grantee shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Department of Arts & Culture, which shall be clearly labeled "**Festivals**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Contract until such certificate and endorsements have been received and approved by City's Department of Arts & Culture. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.
- 8.2 City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. In no instance will City allow modification whereby City may incur increased risk.
- 8.3 A grantee's financial integrity is of interest to City; therefore, subject to Grantee's right to maintain reasonable deductibles in such amounts as are approved by City, Grantee shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Grantee's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: Premises/Operations Products/Completed Operations Personal/Advertising Injury Contractual Liability e. Sexual Abuse / Molestation**	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage. ** Required for projects involving services to children
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.

- 8.4 Grantee agrees to require, by written contract, that all subcontractors providing goods or services under

this Contract obtain the same categories of insurance coverage required of Grantee herein, and provide a certificate of insurance and endorsement that names the Grantee and City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Grantee. Grantee shall provide City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the Contract for all purposes.

8.5 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Grantee shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Grantee shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Contracts Manager
Department of Arts & Culture
P.O. Box 839966
San Antonio, Texas 78283-3966

8.6 Grantee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

8.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.

8.8 In addition to any other remedies City may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order Grantee to stop work hereunder, and/or withhold any payment(s) which become due to Grantee hereunder until Grantee demonstrates compliance with such requirements.

8.9 Nothing contained in this Contract shall be construed as limiting in any way the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Contract.

8.10 It is agreed that Grantee's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by City for liability arising out of operations under this Contract.

- 8.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Contract and that no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 8.12 Grantee and any subcontractors are responsible for all damage to their own equipment and/or property.

IX. INDEMNITY

- 9.1 **GRANTEE covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, property damage and intellectual property right infringement made upon CITY directly or indirectly arising out of, resulting from or related to GRANTEE'S activities under this CONTRACT, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 9.2 **The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**
- 9.3 **GRANTEE shall advise CITY in writing within 24 hours of any claim or demand against CITY or GRANTEE known to GRANTEE related to or arising out of GRANTEE'S activities under this CONTRACT.**
- 9.4 **Defense Counsel – City shall have the right to select or to approve defense counsel to be retained by Grantee in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Grantee shall retain City approved defense counsel within 7 calendar days of City's written notice that City is invoking its right to indemnification under this Contract. If Grantee fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Grantee shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.**
- 9.5 **Employee Litigation – In any and all claims against any party indemnified by any employee of Grantee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Grantee or any subcontractor under worker's compensation or other employee benefit acts.**

X. APPLICABLE LAWS

- 10.1 All of the work performed under this Contract by Grantee shall comply with all applicable Federal, State and local laws, rules, regulations as amended from time to time including but not limited to:

- worker's compensation;
- unemployment insurance;
- timely deposits of payroll deductions;
- Occupational Safety and Health Act regulations;
- Employee Retirement Income Security Act of 1974, P.L. 93-406.
 - Drug-Free Workplace Act of 1988 and the Texas Worker's Compensation Commission Drug-Free Workplace Rules effective April 17, 1991 (Failure to comply with these may subject the Grantee to suspension of payments, termination of Contract, debarment and suspension actions);
- American with Disabilities Act P.L. 101-336, enacted July 26, 1990, and all regulations thereunder; and
- City of San Antonio and Bexar County charter, ordinances and bond ordinances.

10.2 Non-Discrimination. As a party to this Contract, Grantee understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established in this Contract. Additionally, Grantee agrees to comply fully with all applicable nondiscrimination, minimum wage, and equal opportunity policies, laws and regulations.

10.3 Grantee warrants that all taxes, which Grantee may be obligated for are current, and paid to the fullest extent liable as of the execution date of the Contract. This includes if applicable the filing of:

- Information on Tax Return form 990, 990N or 990T,
- Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, and
- Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc.

Grantee shall also maintain and submit to Department upon written request form 990, 990N or 990T.

XI. NO SOLICITATION/CONFLICT OF INTEREST

11.1 Grantee warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of Grantee or City. For breach or violation of this warrant, City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.

11.2 Grantee covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Grantee further covenants that in the performance of this Contract, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

11.3 Grantee further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

11.4 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Contract shall:

- (A) Participate in any decision relating to this Contract which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest;
- or

(B) Have any direct or indirect interest in this Contract or the proceeds thereof.

11.5 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

(i) a City officer or employee;

(ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subgrantee on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

11.6 Grantee warrants and certifies as follows:

(i) Grantee and its officers, employees and agents are neither officers nor employees of City.

(ii) Grantee has tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

(iii) Grantee acknowledges that City’s reliance on the above warranties and certifications is reasonable.

XII. TERMINATION

12.1 Termination for Cause – Should Grantee fail to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by City, or if this Grantee should violate any of the covenants, conditions, or stipulations of the Contract, City shall have the right to terminate this Contract by sending written notice to Grantee of such termination and specify the effective date (which date shall not be sooner than the end of 10 calendar days following the day on which such notice is sent). Grantee shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by City alone, and its decision shall be final. It is further expressly understood and agreed by the Parties that Grantee’s performance upon which final payment is conditioned shall include, but not be limited to, Grantee’s complete and satisfactory performance, of its obligations for which final payment is sought. Should Grantee be debarred by City pursuant to a debarment policy currently existing or hereafter adopted, said debarment shall be grounds for termination for cause.

12.2 Termination for Convenience – This Contract may be terminated in whole or in part when City determines that continuation of the Project or Projects would not produce beneficial results commensurate with the further expenditure of funds. Such termination by City shall specify the effective date, which date shall not be sooner than 30 calendar days following the day on which notice is sent. Grantee shall also have the right to terminate this Contract and specify the effective date, which date shall not be sooner than the end of 30 calendar days following the day on which notice is sent. Grantee shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Grantee’s performance upon which final payment is conditioned shall include, but not be limited to, Grantee’s complete and satisfactory performance of its obligations for which final payment is sought.

12.3 Notwithstanding any other remedy contained in this Contract or provided by law, City may delay, suspend, limit, or cancel funds, rights or privileges given Grantee for failure to comply with the terms and provisions

of this Contract. Specifically, at the sole option of City, Grantee may be placed on probation during which time City may withhold payments in cases where it determines that Grantee is not in compliance with this Contract. Grantee shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract, and City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to City.

- 12.4 Grantee must be designated and remain in good standing with the State of Texas as a 501(c)(3) organization during the term of this Contract. If during the course of this Contract, the Grantee's 501(c)(3) status is no longer in effect, City shall consider that change as grounds for suspension or termination of this Contract.

XIII. PROHIBITION OF POLITICAL ACTIVITIES

- 13.1 Grantee agrees that no funds provided from or through City shall be contributed or used to conduct political activities, including political activities for the benefit of any candidate for elective office, political party, organization or measure, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity.

- 13.2 Grantee agrees that no funds provided under this Contract may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.

- 13.3 The prohibitions set forth in Article XIII., Sections 13.1 and 13.2 of this Contract include, but are not limited to, the following:

(A) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;

(B) working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;

(C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and

(D) using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.

- 13.4 Grantee agrees that in any instance where an investigation of the above is ongoing or has been confirmed, payments to the Grantee under this Contract may, at City's discretion, be withheld until the situation is resolved.

- 13.5 This Article shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, Grantee and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with City funds.

XIV. PERSONNEL

- 14.1 Grantee's primary and secondary contacts for this Contract will be identified upon contract negotiation and will have the ability to access agency files in order to function seamlessly during the course of business with the City. Grantee shall notify the City upon any change in contact information within 5 calendar days of the change.

- 14.2 Grantee shall promptly inform (within 5 business days) City of any key employee status changes, whether or not such positions are funded under this Contract. Said key employees are defined as Executive Director, Artistic Director, Program Manager, Administrator, Chief Financial Officer (CFO), and Chief Executive Officer (CEO).
- 14.3 If Grantee has employees, Grantee agrees to establish internal procedures that assure employees of an established complaint and grievance policy. The grievance policy will include procedures to receive, investigate, and resolve complaints and grievances in an expeditious manner. If Grantee has employees, Grantee shall submit its policy on Employee Grievances to the Department upon Contract execution.
- 14.4 If Grantee employs Chief Executive Officers (CEOs), directors, and other supervisory personnel, such personnel of Grantee may not supervise a spouse, parents, children, brothers, sisters, and in-laws standing in the same relationship, (“Relatives”) who are involved in any capacity with program delivery supported through City funds. Relatives, however, may be co-workers in the same Project in a non-supervisory position.
- 14.5 It is the policy of the City of San Antonio to provide a work environment to all employees and applicants free of *employment discrimination, harassment* and *sexual harassment*. In addition, any behavior, regardless of intent or severity, that could be deemed inappropriate workplace behavior, but may not legally constitute *employment discrimination, harassment, or sexual harassment*, is prohibited. *Harassment* and *sexual harassment* are forms of discrimination that violate Title VII of the Civil Rights Act of 1964, (as amended), the Civil Rights Act of 1991, the American with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and related State of Texas statutes. Retaliation against employees for opposing alleged *employment discrimination, harassment, or sexual harassment* or for filing a charge, testifying, assisting, or participating in any manner in an Equal Employment Opportunity (EEO) investigation, proceeding, or hearing is prohibited. Grantee shall comply with this policy in all interactions with Grantee’s employees, subcontractors, artists, and volunteers, if any, under this Contract. If Grantee has employees, Grantee shall submit its policy on Workplace Behavior to the Department upon Contract execution.
- 14.6 Grantee is required to pay its professional artists either as staff or as subcontractors. Agency shall provide its Board-approved policy on Paying Artists upon Contract execution.

XV. ADVERSARIAL PROCEEDINGS

- 15.1 Grantee agrees to comply with the following provisions:
- (A) Under no circumstances will the funds received under this Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against City or any other public entity City may conduct an audit under Article VI to make such determination; and
 - (B) Grantee, at City’s option, could be ineligible for consideration to receive any future funding, under this Contract or under another existing or future agreement, while any adversarial proceeding against City remains unresolved.
 - (C) This Contract may be terminated by City under Section 12.1 should Grantee have a pending lawsuit against City or file a lawsuit against City during the term of this Contract.

XVI. CITY-SUPPORTED PROJECT

- 16.1 Grantee shall identify all events and activities funded in whole or in part by this Contract by stating that the Project is “supported by the City of San Antonio’s Department of Arts and Culture” and by utilizing the official Department logo. The list of events and activities to be funded as part of this Project is included in **Attachment I** to this Contract.
- 16.2 This requirement shall apply to all print and electronic media and any other media related to events and activities funded in whole or in part by City.

- 16.3 Grantee shall not identify City as a funding provider for any events and activities for which City has not authorized funding. Only events and activities identified within **Attachment I** of this Contract shall be considered to be authorized for funding by City.
- 16.4 If Grantee identifies City as a funding provider for any events and activities for which City has not authorized funding, City may require Grantee to issue a retraction in a format and timeframe directed by City. All costs for retractions shall be the responsibility of Grantee and such costs shall not be eligible for payment under this Contract.
- 16.5 Grantee shall have all City-supported programs, events and services open to the public and be ADA compliant.
- 16.6 All City-supported events must take place within the City of San Antonio city limits.
- 16.7 Additionally, Grantee's website shall include a hot link to www.sanantonio.gov/arts_home page.

XVII. SPECIAL PROVISIONS

- 17.1 Indecency. The following is City's policy statement regarding material and/or performances funded under Department's Arts Agency Contracts:
 - (A) Grantee is instructed to make the public aware that sensitive subject matter of graphically violent and/or sexually explicit nature may be performed, sponsored or exhibited by displaying at all times during the term of this Contract an English/Spanish bilingual notice that viewer and/or parental discretion should be exercised. Grantee shall forward to the City a copy of the content of the notice to be displayed along with the notification required by Section 17.1 (B).
 - (B) Grantee must make Department's aware in writing of the intent to perform, sponsor or exhibit the proposed event no less than thirty 30 calendar days prior to the actual activity.
 - (C) The City Council shall have the right to terminate this Contract upon finding that Grantee's activities are not in compliance with the above provisions.

Grantee shall not knowingly encourage, foster, promote or fund any project, production, workshop or program that includes obscene material as defined by Section 43.21 of the Texas Penal Code.

XVIII. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

- 18.1 Grantee agrees that none of the performance rendered under this Contract shall involve, and no portion of the funds received shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

XIX. ASSIGNMENT

- 19.1 Grantee shall not assign or transfer Grantee's interest in this Contract or any portion thereof without the approval of the City of San Antonio and if applicable, the Grantor of the grant source. Any attempt to transfer, pledge or otherwise assign shall be void ab initio and shall confer no rights upon any third person or party.

XX. AMENDMENT

- 20.1 Any alterations, additions or deletions to the terms of this Contract shall be by amendment in writing executed by both City and Grantee and evidenced by passage of a subsequent City ordinance, as to City's approval; provided, however, the Executive Director of Department shall have the authority to execute an amendment of this Contract without the necessity of seeking any further approval by the City Council of the

City of San Antonio, if permitted by all applicable local, state and federal laws in the following circumstances:

- A. an increase in funding of this Contract in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Contract or (b) \$25,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments executed without City Council approval pursuant to this Subsection during the term of this Contract shall not exceed the foregoing amount;
- B. modifications to the insurance provisions described in Article IX of this Contract that receive the prior written approval of the City of San Antonio's Risk Manager and the Executive Director of Department;
- C. adjustments to the funding awarded under this Contract in order to comply with Texas Tax Code Section 351.103(c) and other applicable laws and regulations, including the Arts Funding Guidelines, so long as any increases in funding comply with Section 20.1(A) above;
- D. any modifications to Attachment I necessary to correspond with funding adjustments made under Subsections 20.1(A).

XXI. SUBCONTRACTING

- 21.1 Any work or services subcontracted under this Contract shall be subcontracted only by written contract and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Contract. Compliance by subcontractors with this Contract shall be the responsibility of Grantee. City shall in no event be obligated to any third party, including any subcontractors of Grantee, for performance of services or payment of fees.

XXII. OFFICIAL COMMUNICATIONS

- 22.1 For purposes of this Contract, all official communications and notices among the parties shall be deemed sufficient if in writing, through electronic mail (e-mail) or mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

City:

City of San Antonio
Department of Arts and Culture
ATTN: Contract Manager
P.O. Box 839966
San Antonio, Texas 78283-3966

Grantee:

Agency Name
Agency Contact
Address
San Antonio, Texas 782__

Notices of changes of address by either Party must be made in writing delivered to the other Party's last known address within 5 calendar days prior to the change.

XXIII. VENUE

- 23.1 Grantee and City agree that this Contract shall be governed by and construed in accordance with the laws of the State of Texas. Any action or proceeding brought to enforce the terms of this Contract or adjudicate any dispute arising out of this Contract shall be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas.

XXIV. GENDER

- 24.1 Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXV. AUTHORITY

- 25.1 The signer of this Contract for Grantee represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of Grantee and to bind Grantee to all of the terms, conditions, provisions and obligations contained. Grantee warrants and attests that upon execution of this Contract that it is operating as a non-profit entity with a current Internal Revenue Code Section 501(c)(3) status. Additionally, Grantee warrants and attests that it is authorized to do business in the State of Texas and be formed under and operating in accordance with all applicable laws of the State of Texas.

XXVI. INDEPENDENT CONTRACTOR

- 26.1 It is expressly understood and agreed that the Grantee is and shall be deemed to be an independent Grantee, responsible for its respective acts or omissions and that City shall in no way be responsible therefore, and that neither Party has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 26.2 Nothing contained in this Contract shall be deemed or construed by the Parties or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the Parties.
- 26.3 Any and all of the employees of Grantee, wherever located, while engaged in the performance of any work required by City under this Contract shall be considered employees of Grantee only, and not of City, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of Grantee.

XXVII. SEVERABILITY

- 27.1 If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of City, then and in that event it is the intention of the Parties that such invalidity, illegality or unenforceability shall not affect any other clause or provision and that the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained; it is also the intention of the Parties that in lieu of each clause or provision of this Contract that is invalid, illegal or unenforceable, there be added as a part of this Contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXVIII. ENTIRE CONTRACT

- 28.1 This Contract and its attachments constitute the entire and integrated Contract between the Parties and contain all of the terms and conditions agreed upon, and supersede all prior negotiations, representations, or contracts, either oral or written.

In witness of which this Contract has been executed effective the 1st day of October, 2020.

CITY OF SAN ANTONIO:

CONTRACTING AGENCY:

Debbie Racca-Sittre, Executive Director
Department of Arts and Culture

Name, Title
Agency Name

APPROVED AS TO FORM:

City Attorney

ATTACHMENTS: Attachment I, Allowable Costs

Attachment I

Allowable Costs

List of Allowable Costs for Festivals include:

1. Contractual Services/Artist(s) Fees* - (may include Travel Expenses, Per Diem and Lodging included in Artist(s) Fees)
 2. Production Expenses (Production Management Fees)
 3. Venue/Space Rental
 4. Rental (Staging, Sound and Lighting Equipment Rental) - purchase is not an allowable expense
 5. Security and barricades
 6. Marketing and Promotion (Media Ads, Graphic Design, Website Management and Promotional Materials/Printing costs)
 7. Liability Insurance (required)
 8. Audit, if required under this contract
- *Requires written contract with subcontractor; includes subcontractor out-of-town travel & lodging, if applicable