

OPERATIONAL SUPPORT
VENDOR NUMBER
CONTRACT NUMBER _____
PURCHASE ORDER NUMBER _____

STATE OF TEXAS * **ARTS AGENCY CONTRACT**
COUNTY OF BEXAR * **WITH**
CITY OF SAN ANTONIO * **AGENCY NAME**

This Contract is entered into by and between the City of San Antonio (“City”), a Texas Municipal Corporation, acting by and through Executive Director for Department of Arts and Culture pursuant to Ordinance No. 2020-09-17-_____ dated September 17, 2020, and **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 is an allocation of funds for a project(s) entitled **Operational Support** (“Project”); and

WHEREAS, City wishes to engage Grantee to carry out the Project(s); 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 Arts Agency Funding Guidelines, incorporated by reference, as well as the List of Allowable Costs, which is affixed and incorporated into this Contract as **Attachment I** and Grantee’s FY21 Contract Renewal Application, which is incorporated into this Contract by reference.

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. The receipt of funds under this Contract does not guarantee Grantee funds in subsequent fiscal years.
- 2.3 Grantee understands that City will not disburse initial funds under this Contract until Grantee has submitted final report with metrics, all invoices and receivables required under the previous fiscal year's contract and City has approved said submittals. This does not excuse Grantee from complying with Section 8.7 requiring all documents and required deliverables be submitted within a period not to exceed ten (10) days from the termination date of the Contract.

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 **Operational Support** and Department 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 Agency Funding Guidelines.
- 3.3 Grantee understands and agrees that this is a contract to provide operational support for FY21, based on formulaic calculations and priorities outlined in the Arts Agency Funding Guidelines and available funding. Investments are made based on a percentage of the Grantee's three-year average of net operating expenses from Grantee's 990 filing at the beginning of the three year grant application cycle. Grantee further agrees to adhere to all requirements outlined in the Arts Agency Funding Guidelines.

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 that 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.") 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 this Contract and as further defined in accordance with **Attachment I**. Funding provided under this Contract may be used for any or all of the Allowable Costs set forth in **Attachment I** and all requested payments must be consistent with the terms and provisions described in **Attachment I** 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"):

October - Initial disbursement of 25% upon receipt and approval by Department of all prior year closeout and receipt of all required documents, and an invoice, all by the 10th of the month.

January – Second disbursement of 25% upon submission of a completed first quarter (Q1) Quarterly Report, required board approved policies, and a report on the results of the agency's board diversity plan submitted in 2018, and an invoice, by the 10th of the month.

April – Third disbursement of 25% upon submission of a completed second quarter (Q2) Quarterly Report, proof of required Leadership Training as described in Section 15.8 of this Contract, and an invoice by the 10th of the month.

July – Fourth disbursement of 15% upon submission of a completed third quarter (Q3) Quarterly Report and submission of FY20 Cultural Data Profile into SMU|DataArts, and an invoice by the 10th of the month. Agencies whose season has already ended may apply for 20% if submitting all closeout documents.

Final payment is a reimbursement of 10% upon closeout of Contract, due no later than the 10th of October, submission of fourth quarter (Q4) Quarterly Report and an invoice.

(C) City shall pay such invoices within fifteen (15) business days, subject to Department approval of all submitted documents and backup materials as set forth in this Contract.

(D) If Grantee fails to timely comply with any of the reporting requirements of this Contract, including but not limited to filing Cultural Data Profiles, invoicing, and submitting Quarterly 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 shall convert to a reimbursement schedule, as determined by the Executive Director of Department, according to standard procedures followed by

City's Finance Department.

(E) Grantee agrees to include job titles in their invoice(s), and additionally must provide to City, upon request, any salary or range increase/decrease, to include total dollar amount of said increase or decrease of salary, for City funded personnel positions.

(F) Copies of each written job description for personnel positions included in the Planning Detailed List of Expenditures shall be provided to the City upon execution of this Contract. Agency shall note any new positions and/or subsequently added job titles on the quarterly Detailed List of Expenditures and attach the new Job Description as a part of the backup documentation. All such job descriptions must include percentage of time spent creating, supporting, managing or overseeing artistic and cultural activities. The City may not be charged for work time spent outside these activities.

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; such changes shall not necessitate an amendment to this Contract.

4.4 Grantee agrees that all requests for disbursement shall be accompanied with documentation as may be required by the Executive Director of Department.

4.5 Grantee agrees that City shall not be obligated to any third parties (including any subcontractors or third-party beneficiaries of Grantee).

4.6 Grantee shall maintain a financial management system, and acceptable accounting records that provide for:

(A) accurate, current, and complete disclosure of financial support from each Federal, State and locally sponsored project and program in accordance with the reporting requirements set forth in Article **VIII** of this Contract. If accrual basis reports are required, Grantee shall develop accrual data for its reports based on an analysis of the documentation available;

(B) adequate identification of the source and application of funds for City-sponsored activities and Allowable Costs under this Contract. Such records shall contain information pertaining to City funds, required City authorizations, obligations, un-obligated balances, assets, equity, outlays, and income;

(C) effective control over and accountability for all funds, property, and other City-owned assets. Grantee shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;

(D) comparison of actual expenditures with budget amounts for each award. Whenever appropriate or required by City, financial information should be related to performance

and unit cost data;

(E) procedures to minimize the time elapsing between the disbursement of funds from City and the expenditure of said funds by Grantee;

(F) procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, and the terms of the award, grant, or contract, with City;

(G) accounting records that are supported by source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City). Grantee shall maintain records and shall meet necessary requirements under Generally Accepted Accounting Principles [GAAP] (Standard system for all delegate agencies) and

(H) an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project(s). A Receipts and Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each Allowable Cost is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.

4.7 Grantee agrees to comply with the following check procedures:

(A) No blank checks are to be signed in advance;

(B) No checks are to be made payable to cash or 'bearer' with the exception of those for petty cash reimbursement, not to exceed a \$100.00 maximum per check. Grantee agrees that the aggregate amount of petty cash reimbursement shall not exceed \$200.00 for any given calendar month during the term of this Contract unless Grantee receives prior written approval from Department to exceed such limit. Such requests for petty cash must be supported by the submission to Department of an original receipt; and

Checks issued by City to Grantee shall be deposited into the appropriate bank account no later than three (3) business days of Grantee's receipt of each such check, and shall never be cashed for purposes of receiving the face amount back. If such check(s) are not cashed within ninety (90) days from the date of issue, such checks shall be investigated by City and stop-payment orders issued, as applicable. Upon cancellation of any outstanding check, if deemed appropriate by City, Grantee may be reissued such check but, if deemed by City not to be a valid expense, such check shall be immediately returned to City.

4.8 Grantee agrees that costs claimed under this Contract will not be claimed under another contract or grant from another agency or City Department, and Grantee warrants that each invoice submitted for payment does not include any costs paid for by another funding source or submitted for payment to any other funding source.

- 4.9 Upon completion or termination of this Contract, or at any time during the term of this Contract, all unused funds must be returned by Grantee to City within 10 days.
- 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.

V. PROGRAM INCOME

- 5.1 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.
- 5.2 Grantee shall provide Department, through the Quarterly Report, notice of activity that generates program income. Grantee shall provide detail in the Quarterly Report of the type of activity that generated program income.
- 5.3 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.
- 5.4 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.
- 5.5 Grantee shall include Sections 5.1 through 5.4, in their entirety, in all of its subcontracts involving income-producing services or activities.

VI. ADMINISTRATION OF CONTRACT

- 6.1 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 Executive Director of Department, as representative of City, shall have the final authority to render or secure an interpretation. Said interpretation shall become the final governing authority to dispute resolution and shall be appropriately conveyed to the Parties.

VII. AUDIT

- 7.1 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.
- 7.2 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, and said reviews and/or audits resulted in findings of 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 ten (10) days of Grantee's receipt of the report.
- 7.3 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.

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. 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 copies of excerpts, transcripts, books, records, documents and evidence, including all books and records used by Grantee in accounting for expenses incurred under this Contract, all other non-City executed contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.

- 7.4 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.
- 7.5 When an audit or review determines that Grantee has expended funds or incurred costs which are questioned by City, Grantee shall be notified by City and provided an opportunity to address the questioned expenditure or costs.

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 ten (10) 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 ten (10) days from the date of notification of such disapproval or disallowance by City. If Grantee is obligated 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 or agreed upon performance measures under this Contract. Grantee must also use its own non-City funds to maintain the Project(s) and to comply with any and all agreed upon performance measures under this Contract.

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.

- 7.6 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.

VIII. RECORDS, REPORTING, AND COPYRIGHTS

- 8.1 Department is assigned monitoring, fiscal control, and evaluation of project(s). 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 applicable information and documents. Grantee shall permit City, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Contract.
- 8.2 Grantee shall submit to Department such reports as may be required by City, including the Quarterly Reports which shall include the Artistic Activity Report, statement of Program Income, proof of payroll to a paid administrator, and a Detailed Listing of Expenditures to account for all expenditures equal to the amount of previous disbursement, utilizing the forms as requested by Department, submission of back-up materials (including copies of invoices, cancelled checks, and/or receipts to verify invoiced expenses) for all expenditures equal to the amount of previous disbursement, and any other special requirements for that quarter, in a form directed by City. Said Quarterly Reports are to be submitted to Department no later than the 10th day of January, April, July, and upon closeout. Additionally, Grantee shall complete a Cultural Data Profile for its FY20 which is due on or before July 10, 2021. Failure to comply may result in delayed disbursements or the loss of funding under this Contract.
- 8.3 Grantee shall input all information required by City into City's required reporting

software system(s).

- 8.4 The Public Information Act, Government Code Section 552.021, requires the 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 twenty-four (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 three (3) business days of Grantee's receipt of such request.
- 8.5 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 further agrees to turn over to City all such records upon termination of this Contract. 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. Under said circumstances, the Executive Director for Department shall be notified of such request as set forth in Article VIII., Section 8.4 of this Contract.
- 8.6 City and Grantee agree that should City wish to obtain a license to use the Project(s) or any part of the Project(s), 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.
- 8.7 Within a period not to exceed ten (10) days from the termination date of the Contract, Grantee shall submit all final fiscal reports and all required deliverables to City.
- 8.8 Prior to execution of Contract document, Grantee shall provide to Department all information requested by Department relating to the Grantee's Board functions. Information required for submission shall include, but may not be limited to:

- (A) Roster of current Board Members including the terms of each Officer;
- (B) Current Bylaws and Charter including any Amendments to Bylaws or Charter; and
- (C) Schedule of anticipated board meetings for current Fiscal Year.

In addition, Grantee shall maintain and provide to City upon written request:

- (D) Minutes of board meetings which if approved by the Grantee's board will become part of Grantee's Project records; and shall be submitted within ten (10) days after board approval.
- (E) Board Agenda, must be submitted at least five (5) business days prior to each Board meeting.

8.9 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.

IX. INSURANCE

- 9.1 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 "**Operational Support**" 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.
- 9.2 City reserves the right to review the insurance requirements of this Article during the effective period of this Contract, and any extension or renewal, 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.
- 9.3 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, 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: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. 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	

9.4 Grantee agrees to require, by written contract, that all subcontractors providing goods or services hereunder 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.

9.5 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: Department of Arts & Culture
P.O. Box 839966
San Antonio, Texas 78283-3966

- 9.6 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.
- 9.7 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.
- 9.8 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 and/or withhold any payment(s) which become due to Grantee until Grantee demonstrates compliance with such requirements.
- 9.9 Nothing 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.
- 9.10 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.
- 9.11 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.
- 9.12 Grantee and any Subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNITY

- 10.1** 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 and property damage, 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 THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.
- 10.2** 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.
- 10.3** 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.
- 10.4** Defense Counsel – City shall have the right to select or to approve defense counsel to be retained by Grantee in fulfilling its obligation to defend and indemnify City, unless such right is expressly waived by City in writing. Grantee shall retain City-approved defense counsel within seven (7) business 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.
- 10.5** 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.

XI. APPLICABLE LAWS

- 11.1 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.
- 11.2 Non-Discrimination. As a party to this Contract, Grantee understands and agrees to comply with the City of San Antonio *Non-Discrimination Policy* 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.
- 11.3 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.

XII. NO SOLICITATION/CONFLICT OF INTEREST

- 12.1 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 an employee or Grantee of 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.
- 12.2 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.

- 12.3 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.
- 12.4 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.
- 12.5 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) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.
- 12.6 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.

XIII. TERMINATION

- 13.1 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 ten (10) 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.
- 13.2 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 thirty (30) 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 thirty (30) 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.
- 13.3 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.
- 13.4 If an employee of Grantee is discharged or otherwise leaves employment with Grantee, then Grantee shall pay in full to such employee all of such employee’s earned salaries and wages, within the timeframe specified in Chapter 61 of the Texas Labor Code. Under applicable Texas Unclaimed Property laws, Grantee shall remit any such unpaid funds to

the State of Texas, Comptroller of Public Accounts;
<https://mycpa.cpa.state.tx.us/up/Search.jsp>.

- 13.5 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.

XIV. PROHIBITION OF POLITICAL ACTIVITIES

- 14.1 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.
- 14.2 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.
- 14.3 The prohibitions set forth in Article XIV., Sections 14.1 and 14.2 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.
- 14.4 Grantee agrees that in any instance where an investigation of the above is ongoing or has

been confirmed, payments to Grantee under this Contract may, at City's discretion, be withheld until the situation is resolved.

- 14.5 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.
- 14.6 Grantee shall submit its Political Activity policy to the Department by January 10th .

XV. PERSONNEL MANAGEMENT

- 15.1 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).
- 15.2 Grantee shall have a salaried full-time or part-time administrator or manager who is responsible for the business management of the organization on staff at all times during the term of this Contract. Grantee shall supply such manager's job description at the time of Contract negotiation and provide proof of continued employment with each disbursement scheduled in 4.2 of this Contract.
- 15.3 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. Grantee shall submit its Employee Grievance policy to the Department by January 10th .
- 15.4 Grantee is permitted to pay its full time employees for the total number of holidays authorized by City Council for City employees. If Grantee elects to observe more than the total number of holidays, authorized by the City Council for City employees, then such additional days are not eligible for payments under this Contract. Grantee shall provide City with a list of all agency Board approved holidays upon execution of this Contract.
- 15.5 In accordance with Board approved policies on Employee Leave, which must be submitted to the department by January 10th , Grantee may be paid by City for the cost of pay granted to full time, permanent employees that is not chargeable to annual or personal leave only for the reasons listed below:
- (A) To attend annual training in a branch of the Armed Services, not to exceed fifteen (15) business days during the term of this Contract;
 - (B) To serve as a juror;
 - (C) To attend the funeral in accordance with Grantee's Board approved policies and procedures; and

- (D) To attend seminars or workshops relevant to supporting or improving organization's overall operational performance.
- 15.6 Chief Executive Officers (CEOs), directors, and other supervisory 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. Grantee shall submit its Nepotism policy to the Department by January 10th.
- 15.7 Grantees must have a policy in place to perform annual employee appraisals for City-funded positions and shall provide such Employee Appraisal policy to the City by January 10th.
- 15.8 Leadership Training. Grantee agrees that each of its executive director, chief executive officers, deputy directors, chief financial officers, artistic directors, board officers and board executive committee members, as applicable, will receive training by April 10, 2021, covering the key legal, fiscal and ethical responsibilities of its leadership as outlined or provided by the Department.
- 15.9 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. Grantee shall submit its policy on Workplace Behavior to the Department by January 10th.
- 15.10 Grantee is required to pay its professional artists either as staff or as subcontractors. Agency shall provide its Board-approved policy on Paying Artists by January 10th.
- 15.11 Grantee's primary and secondary contacts for this Contract shall have the ability to access agency files in order to function seamlessly during the course of business with City. Grantee shall notify City upon any change in contact information within 5 business days of the change.

XVI. ADVERSARIAL PROCEEDINGS

16.1 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 and City may conduct an audit under Article VII to make such determination;

(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 13.1 should Grantee have a pending lawsuit against City or file a lawsuit against City during the term of this Contract.

XVII. CITY-SUPPORTED PROJECT

17.1 Grantee's website shall reflect that a portion of its operations are funded by City by posting the official Department of Arts & Culture logo as provided by the Department, on its website and in its printed season program, printed annual program, and main program printed material. The logo is not required on specific project/exhibit/performance rack cards or social media advertisement.

17.2 Additionally, Grantee's website shall include a hot link to www.sanantonio.gov/arts home page.

17.3 Grantee shall not identify City as a funding provider for any events of sensitive nature, as described in Section 18.1(A) of this Contract.

17.4 If Grantee identifies City as a funding provider for any events and activities for which City has not authorized funding, such as events described in Section 18.1(A) of this Contract; 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 by City.

17.5 Grantee shall have all City-supported programs, events and services open to the public and said venues must be accessible in accordance with the 1990 American Disabilities Act (ADA) compliance.

XVIII. SPECIAL PROVISIONS

18.1 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 18.1(b).

(B) Grantee must make Department aware in writing of the intent to perform, sponsor or exhibit the proposed event no less than thirty (30) 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.

XIX. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

- 19.1 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.

XX. ASSIGNMENT

- 20.1 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.

XXI. AMENDMENT

- 21.1 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) \$50,000.00, 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 21.1(a) above; and

(D) any modifications to Attachment I necessary to correspond with funding adjustments made under Subsections 21.1(A) and (D) above.

XXII. SUBCONTRACTING

- 22.1 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 subcontractor of Grantee, for performance of services or payment of fees.

XXIII. OFFICIAL COMMUNICATIONS

- 23.1 For purposes of this Contract, all official communications and notices among the Parties shall be deemed sufficient if in writing and received either by 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 & Culture Attention:
Contract Manager
P.O. Box 839966
San Antonio, Texas 78283-3966

Grantee:

Name, Title
Address
San Antonio, TX, 782__

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

XXIV. VENUE

- 24.1 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.

XXV. GENDER

- 25.1 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.

XXVI. AUTHORITY

- 26.1 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 currently 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.

XXVII. INDEPENDENT CONTRACTOR

- 27.1 It is expressly understood and agreed that the Grantee is and shall be deemed to be an independent contractor, 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.
- 27.2 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.
- 27.3 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.

XXVIII. SEVERABILITY

- 28.1 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.

XXIX. ENTIRE CONTRACT

29.1 This Contract and any 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:

GRANTEE:

Debbie Racca-Sittre
Executive Director
Department of Arts and Culture

Name
Title
Agency Name

Approved as to Form:

Board President:

City Attorney

(If required by Grantee)

Attachments: Attachment I List of Allowable Costs

Attachment I
ALLOWABLE COSTS

Personnel Section

1. Salaries and Benefits

Contractual Services

1. Professional Services Contracts
2. Artists Fees
3. Audited Financial Statements

Supplies, Materials and Computer Software

1. To support overall operations of agency

Rental

2. Facility
3. Equipment

**Non-Professional Services Advertising –
Marketing – Printing Liability Insurance
Utilities (Gas and Electricity, Telephone-Internet, Water)**