

Production Underwriting Agreement

Between The City of Austin and KLRU

1. FINDINGS AND STATEMENT OF PUBLIC PURPOSE

- 1.1. The City of Austin (“City”), a home-rule municipal corporation situated in Hays, Travis, and Williamson Counties, acting through its City Manager or his designee, and the Capital of Texas Public Telecommunications Council, dba KLRU-TV 18/Austin (“KLRU”), a Texas non-profit corporation, wish to enter into this Production Underwriting Agreement (“Agreement”) for the *Austin City Limits* concert series, for the period October 1, 2016 to September 30, 2021.
- 1.2. The mission and model of the City’s Austin Convention Center Department (ACCD) requires it to attract conventions, tradeshow, and conferences to the City in a manner that enhances and promotes tourism and the convention and hotel industry in the City.
- 1.3. KLRU’s mission is to educate, entertain, and engage children and adults in the Greater Austin area and beyond by providing distinctive media experiences that matter, whether on the air, online, or on the ground, and reflecting Austin’s uniqueness and creativity to the world.
- 1.4. KLRU has produced the award-winning *Austin City Limits* television concert series (“Program”) since 1975 – a series that promotes Austin as the “Live Music Capital of the World”, showcases both music legends and new Austin talent, and stimulates interest in visiting Austin. In addition to including the name of the City in its title, each episode portrays the City skyline with indelible images such as the Texas State Capitol and University of Texas Tower as a backdrop.
- 1.5. The City Manager finds that the Program benefits the City and the public by promoting the City’s convention, tradeshow, and conference industry; drawing visitors and promoting the City’s hotel industry; drawing businesses and diversifying the City’s economy; and supporting local musicians.
- 1.6. Because of the above-stated public benefit, the City Manager finds that this Production Underwriting Agreement for support of the *Austin City Limits* concert series between the City and KLRU serves a public purpose.

2. COMMON RESPONSIBILITIES

The City and KLRU agree to the following shared Production Underwriting responsibilities:

- 2.1. Each party will designate a primary contact (“Primary Contact”) for all matters relating to this Production Underwriting Agreement. Primary Contacts are at Section 6.8 below. If either City or KLRU changes Primary Contacts, City or KLRU will identify a qualified and competent replacement and promptly notify the other Party in writing of the change.
- 2.2. Each party will allow the other to use their seal or logo, as outlined below.
 - 2.2.1. Regarding City’s use of the KLRU logo, upon request and with KLRU’s prior written review and approval, the City is permitted to use the *Austin City Limits* logo in a manner consistent with the *Austin City Limits* image and KLRU legal obligations to the Public Broadcasting System.
 - 2.2.2. Regarding KLRU’s use of any City seal or logo, including but not limited to the Austin

Convention Center Department logo, the Austin Convention Center logo, the Palmer Events Center logo, or any other electronic logo, mark, or symbol supplied by the City ("City and ACCD Marks"), KLRU may use any electronic copy of City and ACCD Marks for display in conjunction with other supporter logos in materials exclusively designed to promote the Program. KLRU must comply with the City's requirements as described immediately below and any required design specifications.

- (a) City and ACCD Marks shall only be used as expressly stated in this Agreement to signify the City's Production Underwriting of the Program. KLRU may not:
 - i. modify, alter, or change the words, symbols, graphics, design, or content of City and ACCD Marks for any reason; or
 - ii. copy, reprint, or otherwise use City and ACCD Marks in advertising or promotion in connection with the distribution and promotion of any other event, program, production, or film.
- (b) The City does not grant or transfer any trademark or other intellectual property rights in the seal or logo to KLRU. KLRU acknowledges the City's ownership of the seal and logo. KLRU agrees that it will do nothing inconsistent with the ownership, and that nothing in this Agreement shall give KLRU any right, title, or interest in City and ACCD Marks.
- (c) KLRU agrees not to use City and ACCD Marks in connection with any matter that is or contains any content, data, work, or materials that is inaccurate, offensive, defamatory, harassing, malicious, or that would reflect adversely on the reputation or competence of the City.
- (d) At the City's request, KLRU will immediately make available, at no cost to the City, copies of KLRU's promotional material containing City and ACCD Marks.

3. CITY OF AUSTIN RESPONSIBILITIES

The City agrees to the following responsibilities:

- 3.1 Provide KLRU with the following funding per the schedule in 3.2.2 below, subject to annual City Council budget approval and contingent upon available funding in ACCD's operating budget. KLRU acknowledges that the City has provided this notice that the City's payment obligations to KLRU are payable only from funds appropriated or available for the purpose of this Agreement. If the City does not appropriate funds for this Agreement, or if there are no other lawfully available funds for this Agreement, the Agreement is terminated. City shall provide KLRU notice of the failure of City to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement or the reduction of any appropriation to any amount insufficient to permit City to pay its obligations under the Agreement.
- 3.2 KLRU shall submit to ACCD an invoice that includes the department's name (Austin Convention Center Department), a unique invoice number, the purchase order or delivery order number if applicable, and the ACCD Primary Contact. All invoices shall be received by the City no later than March 1 and September 1 of each year, and will be paid within thirty (30) calendar days of the City's receipt of the invoice and of the required deliverables due, whichever is later.

3.2.1 Invoices shall be mailed to the below address:

The Austin Convention Center
Accounts Payable
P.O. Box 1088
Austin, TX 78767

3.2.2 Schedule

Fiscal Year	Amount
October 1, 2016 – September 30, 2017	\$250,000.00
October 1, 2017 – September 30, 2018	\$250,000.00
October 1, 2018 – September 30, 2019	\$250,000.00
October 1, 2019 – September 30, 2020	\$250,000.00
October 1, 2020 – September 30, 2021	\$250,000.00

3.3 Provide KLRU with the ACCD Credit, as defined and described in 4.1 and 4.8 below.

4. KLRU RESPONSIBILITIES

KLRU agrees to the following responsibilities:

4.1 Include ACCD's fifteen second (00:00:15) underwriting credit ("ACCD Credit") aired and edited into each broadcast episode of *Austin City Limits* during the term of the Agreement.

4.1.1 Frequency: At a minimum, ACCD Credit shall be included at the beginning and at the end of all exhibitions of the domestically televised Program, regardless of the content length.

4.1.2 Versions: KLRU shall make best efforts to include the ACCD Credit in all domestic versions of the Program distributed by PBS, including but not limited to all online/internet and streaming versions, (including all platforms, such as smart TV, tablet, and mobile platforms), and when possible, versions used for pledge programming. The parties acknowledge that the ACCD Credit may not appear when Program content is used in KLRU and PBS specials or clip programs. Inclusion of the ACCD Credit with exhibitions on digital media platforms is subject to PBS Program Underwriting Policies

4.1.3 Order: ACCD Credit shall appear in the first position to other Production Underwriters who have donated at or below ACCD's level of financial support, after the "Viewers Like You" credit. If the ACCD Credit does not identify "The Austin Convention Center" at the top of the credit, KLRU shall package the underwriting pod to include a voiceover that clearly identifies the Austin Convention Center as an underwriter of the Program. "e.g. "Funding for Austin City Limits was provided by Viewers Like You, and by The Austin Convention Center..."

4.2 Provide four (4) tickets to each of the live studio tapings for ACCD business development purposes, provided on an on-going basis. Parties acknowledge that KLRU does not sell tickets to live studio tapings; access to live studio tapings is free to the public.

4.3 Include the Austin Convention Center logo in printed/electronic programs distributed at all studio tapings.

4.4 Verbally acknowledge ACCD underwriting support from the stage at each live studio taping.

4.5 Provide ACCD Primary Contact the *Austin City Limits* Program Schedule by October 1 and updated April 1 of each year of this Agreement.

- 4.6 Include a direct link to the ACCD website on the *Austin City Limits* website on a year-round basis, with the ACCD logo as the linking element.
- 4.7 Provide access to the *Austin City Limits* photo archives for royalty free use in all ACCD facilities during the Production Underwriting Agreement term. ACCD will be responsible for any costs associated with printing, and framing.
- 4.8 Upon execution of this contract, and upon request and at no cost to ACCD, KLRU will create a new ACCD Credit or update the existing ACCD Credit to be included in the next (upcoming) *Austin City Limits* season. Requests for a new or updated underwriting credit may be made by ACCD on an annual basis, but no later than June 1 of each year. The value of the production and/or edits will be limited to \$5,000, or as agreed in writing between the City and KLRU.
- 4.9 Develop and retain the following materials annually for the prior September 1-August 31 period. If requested by ACCD, KLRU shall provide the following materials to ACCD within ten (10) business days:
- 4.9.1 DVD copies of the Program (or a mutually agreed upon format)
- 4.9.2 Copies of KLRU's promotional material containing the City's seal or the Austin Convention Center logo
- 4.9.3 Copies of the printed/electronic programs distributed at the live tapings
- 4.10 Develop and deliver to ACCD the following materials semi-annually (March 1 and September 1) for the prior September 1-August 31 period:
- 4.10.1 Deliver and provide Carriage Summary Reports. Each report will include summaries of channel/penetration coverage; distribution of airings by day and daypart; demographic information of potential audience; distribution information of airings by time zone; penetration by market rank, and aired episodes information
- 4.10.2 Metrics reports summarizing the number of times the Program and the ACCD Credit has been viewed digitally. It is the understanding of both parties that KLRU relies on PBS digital platforms for digital distribution of the *Austin City Limits* series. During the term of this agreement, PBS policies and practices may change. KLRU will use best efforts to ensure that the ACCD Credit is exhibited with the Program in any future digital distribution platforms controlled by PBS, but all exhibitions must adhere to PBS policies.

5. AUDIT

- 5.1. KLRU agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the rights to audit, examine, or reproduce, any and all records of KLRU related to the performance under this Agreement. KLRU shall retain all the records for a period of three years after final payment on this Agreement or until all audit and litigation matters that the City has brought to the attention of KLRU are resolved, whichever is longer.

6. GENERAL TERMS AND RESPONSIBILITIES

- 6.1. The Term of this Agreement shall begin on October 1, 2016 and continue for a one year period, unless terminated earlier in accordance with other provisions of this Agreement. This Agreement shall automatically renew for four successive one year terms, unless terminated earlier in accordance with other provisions of this Agreement.

- 6.2. This Agreement does not abrogate the responsibility of KLRU or their agents, employees, contractors, or volunteers to comply with federal, state, and local laws.
- 6.3. A party is in default under this Agreement if the party (a) fails to fully, timely, and faithfully perform any of its material obligations under the Agreement, and following receipt of notice of such failure as provided in Section 6.8, fails timely to cure the failure or (b) fails to provide adequate assurance of performance. Failure to comply with the requirements of this Agreement will result in the automatic revocation of the Agreement but not of KLRU's or the Program's obligations to the City under this Agreement.
- 6.4. This Agreement is effective on October 1, 2016 and remains in effect until the obligations under this Agreement have been performed.
- 6.5. This Agreement constitutes the entire agreement between the parties regarding the City's Production Underwriting of the Program. This Agreement may not be modified except as agreed to and executed by the parties in writing.
- 6.6. If a term or provision of this Agreement is determined to be void or unenforceable by a court of competent jurisdiction, the remainder of this Agreement remains effective.
- 6.7. To the extent allowed by Texas law, the City agrees that it is responsible to the exclusion of any such responsibility of KLRU for its own proportionate share of liability for its negligent acts and omissions for claims, suits, and causes of action, including claims for property damage, personal injury, and death, arising out of or connected to this Agreement and as determined by a court of competent jurisdiction, provided that the execution of this Agreement will not be deemed a negligent act.
- 6.8. Notice under this Agreement shall be in writing and may be delivered by hand, by certified mail, or by common carrier. Notice by hand-delivery is considered effective immediately, by certified mail is considered effective three days after deposit in U.S. Post Office or in a U.S. Mail Box, and by common carrier, is considered effective upon receipt. Notice to a party shall be addressed as follows:

CITY:
Mark Tester
Director, Austin Convention Center
P.O. Box 1088
Austin, Texas 78767-1088

KLRU:
Bill Stotesbury
CEO, KLRU
P.O. Box 7158
Austin, TX 78713

- 6.9. The Agreement is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Agreement shall be resolved in the courts of Travis County, Texas, and the parties agree to submit to the exclusive personal jurisdiction of the courts. The preceding, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated in this section. KLRU acknowledges that the City is required to comply with Chapter 552 of the Texas Government Code (Public Information Act or Act). Under the Act, this Agreement, and documents related to this Agreement, which are in the City's possession, or to which City has access, are presumed to be public and the City may release these records to the public unless an exception described in the Act applies to a document.
- 6.10. The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, KLRU shall

promptly stop all further work under the Agreement, with the exceptions, if any, named in the notice of termination. The City shall pay KLRU, to the extent of funds appropriated or otherwise legally available for the purposes, for all goods delivered and services performed and obligations incurred before the date of termination in accordance with the terms hereof.

This agreement is executed by, and effective October 1, 2016:

CITY:

Marc Ott, City Manager

Date

KLRU:

Bill Stotesbery, CEO KLRU

Date

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