

ADDENDUM TO FACILITY/PARK EVENT AGREEMENT

ARTIST ACCESS PROGRAM AGREEMENT

This agreement relating to PARD's Artist Access Program (AAP) is made this day of (date) between the City of Austin's Parks and Recreation Department and (Partner.)

RECITALS

The purpose of the Artist Access Program is provide free or low-cost use of Cultural Center space, available equipment and staff expertise to artists and musicians through an annual adjudicated process. Space may be used for rehearsals, performances, workshops or to create smaller works of visual art in exchange for educational programming offered to the public.

ARTICLE 1

DEFINITIONS

The following definitions are applicable to this addendum and all other addendums that follow.

- 1.01 "Approved Purpose" means the preparation and production of an art work for public presentation at a designated PARD facility and the offering of an arts education opportunity for the benefit of the public.
- 1.02 "Artists Roster" means a directory of artists associated with the Partner's team members.
- 1.03 "Collaboration" means the direct participation of the Partner's principal(s) in at least two aspects of the production of an artwork for public presentation such as writing, acting, dramaturgy, scenic design, choreography, musical arrangements, etc. of the proposed production, with roles defined in the AAP application.
- 1.04 "House" means the areas that the audience occupies on the site during a performance.
- 1.05 "Load-In" means the scheduled time-period in which materials and equipment are brought onto the site for the purposes of preparing an artwork for public presentation.
- 1.06 "Load-out" means the scheduled time-period in which materials and equipment are removed from the site.
- 1.07 "PARD" means City of Austin Parks and Recreation Department.
- 1.08 "Partner" means an individual or organization participating in the Artist Access Program of the Austin Parks and Recreation Department.
- 1.09 "Premises" means all structures and parkland associated with the City of Austin PARD facility.
- 1.10 "Presenting" means the contractual relationship of the Partner and a third party artist or arts organization unassociated with the Artist Access Program in which the Partner engages the third party to present an art work for performance or presentation in their stead
- 1.11 "Principal(s)" are the main artists that operate and participate in the arts organization as listed on their website, their grant applications or their 501c3 paperwork.
- 1.12 "Room" means any space on the Premises used for rehearsals, classes, and performances.

- 1.13 “Technical Request Form” is a document provided by PARD that describes the Partner’s technical requirements above and beyond the equipment and materials that come with the designated space for their performance and schedule for a given production. (Attachment A).
- 1.14 “Trip Hazards” means an item on the floor or in the vicinity of the floor that may cause a person to trip. This might include pipes, wires, garbage, props, costumes, etc.
- 1.15 “Donor” and “Sponsor” means a person or organization who is solicited by the Partner to provide funds or in-kind donations for the art product or the Partner’s operations.

ARTICLE 2

TERM

- 2.01 This agreement between (Partner) and the City of Austin (City) will be effective (date) This agreement between (Partner) and the City of Austin will expire after one year on (date). Extensions or renewals are not available without participating in a subsequent selection process for the Artist Access Program.

ARTICLE 3

APPROVED PURPOSE

Partner’s Roles and Responsibilities:

- 3.01 Partner will provide an art product, rehearsed or prepared to a professional quality consistent with the Partner’s artistic history and submitted proposal for the AAP program. The art product shall be produced in a timely manner at the established place, date and time for public presentation, as confirmed by a PARD signed document (Attachment B—Room Reservation Request Form.) Partners may change the genre of the artwork presented upon approval by the Site Manager.
- 3.02 Partner will pay all related costs for the preparation of art work and production support including labor, materials, rights, permits and any associated taxes with the exception of facility supported costs.
- 3.03 Partner will provide an arts education product for public consumption of a commensurate value with the cost of using the Premises as determined by the Site Manager and as proposed in Attachment C (Workshop/Class Proposal Form). Partner will be responsible for all materials, supplies and labor needed for all produced events and educational programs, and additional technical equipment that is not part of the Room’s inventory. Partners will adhere to the Local Standards of Care (including staff to youth ratios) as mandated by the City Council of the City of Austin (see Attachment G) when providing educational programs to children.

- 3.04 Failure by the Partner to meet production or education program deadlines or cancellations beyond the allowable thresholds named in Addendum C may result in termination of this agreement.
- 3.05 Partner will provide to PARD the title of the art work, if available, and a short paragraph describing the work and any adult-related subject matter no later than three months prior to the presentation for marketing purposes. Failure to provide the title and description will result in fewer marketing outlets reached for Partner's production.
- 3.06 Partner's participation in the AAP allows requests for space assignment which when granted provide the use of specifically designated sites and rooms. This privilege of assigned space use is not transferable to other Parks & Recreation Department properties or any other City of Austin property or facility. Site Managers of Cultural Centers participating in AAP may provide ad hoc space assignments at PARD Cultural Centers with a request from the APP Partner of at least 48 hours prior to need and before 3pm on a Friday.
- 3.07 Space assignment and usage is only allowed for the Partner and its principal artists (as named on the submitted with the Room Reservation Request forms (Attachment B **Room Reservation Request Form**). The Partner is to be the point of contact for any/all items related to that group's requests. Privileges related to the AAP are not transferrable to other organizations or artists. Partners may not use their space assignment to present other artists or arts organizations. Production and cast lists shall be submitted to PARD staff no later than 1 month prior to the initial date of performance.
- 3.08 Partners may use the AAP for collaboration, as defined in 1.03, with other artists or arts organizations as long as the Partner's Principal(s) artists and team members contribute to at least two aspects of the production. Collaborators must be accompanied by Partners if using City property under the Artist Access Program
- 3.09 Partner must take into account the Premise's audience and context when considering how adult content will be presented. Adult content should be presented with all due sensitivity to parents who may not wish to expose their children to this content. Adult content should be presented in the context of legitimate art practices as evidenced by similar practices in other professional theaters or galleries in the area of Austin, Texas.
- 3.10 Partner agrees to provide signage at the entrance to the designated Room and marketing materials providing accurate warnings of adult content, use of strobes or stage firearms for every instance that applies.
- 3.11 Partner agrees to abide by all Facility Rules and to follow Scheduling and Technical Guidelines (See Addendum A and Addendum B.) Partner agrees to discuss any short-term amendments to the Scheduling and Technical Guidelines to meet the needs of the artists. Site Managers have the right to make changes to the Guidelines in writing on an ad hoc basis.
- 3.12 The PARD site will provide designated room(s) as agreed to in Attachment B **Room Reservation Request Form**, with listed equipment and furniture, Attachment D (Room and

Equipment Inventory) for the purposes of preparing and presenting an art work for public benefit at a reduced rental rate at the agreed upon dates and times.

ARTICLE 4

PAYMENTS

Partner's Roles and Responsibilities:

4.01 Partner is responsible for the payment pursuant to the rental contract of a Damage Deposit commensurate with PARD's Deposit as published in the City's fee schedule pursuant to the rental contract.

4.02 Once the Deposit is received and facility use requests have been approved, Partner may present a public presentation of work for a ticket fee to be determined by the Partner. A deposit for production may roll over to apply to the next production if the deposit has not been debited for damages sustained during the Partner's production or if the deposit is the same amount for the Room designated for subsequent performances.

4.03 Failure to meet the guidelines of facility use as designated in the rental contract and this contract addendum will result in forfeiture of deposit.

4.04 If a deposit is forfeited the Partner is responsible for paying the appropriate deposit again for an upcoming presentation.

4.05 Of that determined ticket fee Partner will pay the PARD site a rental fee of \$1 per ticket fee collected.

4.06 Private presentations to donors or sponsors are considered fundraisers and Partner will be responsible for paying the full rental fee.

4.07 Concessions may be sold during productions. Partners are not required to pay a portion of concession proceeds to PARD. Proper permitting from the Health Department must be secured and established guidelines must be followed. Required permits shall be submitted to PARD prior to the commencement of concessions being served.

4.08 Alcohol may be sold as part of a concessions service to the public for performances and special events only. Partner will submit to PARD the Alcohol Request form (Attachment I **Alcohol Request Form**) if the Partner plans to sell or serve alcohol on PARD premises no later than 30 days prior to the date when the alcohol will be served. Partner will also have to submit all required documentation in an application to the Austin Center for Events (ACE.) Alcohol may be sold only during performance dates. Proof of Liquor Liability insurance and proof of a sales tax certificate is required for approval of the Alcohol Request.

4.09 Partner must pay PARD invoices within 30 calendar days of receipt of invoice. If payment is not made within the 30 days after receipt of the invoice, this agreement will be terminated.

4.10 Cancellation of production dates that result in a cumulative loss of revenue to the City of \$2400 or more (for the potential rental of the space for the reserved time at the current rate in the COA fee schedule Attachment L) will result in termination of this agreement.

PARD's Roles and Responsibilities:

4.10 PARD will invoice the Partner for the rental fee within five (5) working days of the Partners load-out date.

4.11 Any additional damages to the facility or equipment will be addressed with the Partner by PARD staff in writing within five (5) working days of the end of the load-out period.

4.12 PARD's final invoice will include payment for any damages or losses incurred by Partner.

4.13 Free presentations provided to the general public, with previous approval by PARD staff, will be considered a co-collaboration with PARD. Co-collaborations must be approved by the Site Manager and the Division Manager. Co-collaborations are exempt from the \$1 per ticket sold fee, but will be required to meet marketing guidelines for co-collaborations which require that the PARD site be named as a co-collaborator.

4.14 PARD will process alcohol request forms received no later than 30 days prior to the presentation and notify the Partner in writing no later than one (1) week prior to the presentation if the request was approved.

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ARTICLE 5

PROGRAM PROTOCOLS

5.01 Any damages to the facility, equipment, etc. must be communicated by the Partner to the site manager or program coordinator within 24 hours of when the damage occurred.

5.02 Any contact with emergency service departments (Police, Fire Department, EMS, Animal Control, etc.) must be communicated by the Partner to the event staff, site manager or program coordinator within 24 hours.

5.03 Incidents or injuries must be documented by completing an Incident Report Form (Attachment K) within 24 hours of the incident. Incidents must be communicated to the site manager or program coordinator within 24 hours of the incident.

5.04 Use of the PARD facility is to be done in a clean and orderly fashion, without damage to adjacent spaces or art work.

5.05 Each Partner will be responsible for participating in an evaluation process on a quarterly basis to evaluate the Partner's performance in the program as well as provide feedback to PARD staff regarding the program. A final evaluation will be due at the completion of the partnership.

5.06 Partners are required to attend all meetings including orientation held by PARD staff to which they are invited to discuss program protocols. In the case where the Partner's principal is not available, a separate one-on-one meeting may be set with PARD's Site Coordinator to discuss the meeting content.

5.07 Partners are required to adopt professional conduct in all their communications with PARD staff, other artists, and the public. Professional conduct is considered calm, respectful speech and conduct at all times. Direct and polite communications of concerns or issues to the personnel involved is also considered professional conduct. Inappropriate behavior will result in immediate termination from the Artist Access Program.

ARTICLE 6

INSURANCE

General Requirements

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Attachment H, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Attachment H, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in attached requirements the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in attached requirements are required minimums and are not intended to limit the responsibility or liability of the Contractor.

ARTICLE 7

TERMINATION

- 6.01 Notice of any claims of material breach, including the non-compliance of a Partner to meet and fulfill the deliverables and requirements as have been outlined in this Agreement and the intent to terminate this Agreement because of that breach shall be given in writing to the Partner, identifying the breach claimed with particularity, and stating the time permitted to cure, such time to be commercially and legally reasonable. The notice of a claim of breach is sufficient to constitute termination of this Agreement in the event that the breach is not cured within the time permitted. Without waiving any legal rights, PARD and the Partner agree to voluntary non-binding mediation of any disputes.
- 6.02 Either party may terminate this Agreement for convenience by providing at least 60 calendar days' written notice to the other party.
- 6.03 The City may suspend this Agreement immediately in the event of a health or safety issue on the Premises and such suspension shall be in effect until the health and safety issue is resolved to the satisfaction of the City. City shall provide the Partner with written notice of any suspension. The Partner must comply with any suspension notice.
- 6.04 Partner shall conduct all activities allowed under this agreement in or about the PARD Facility so as to not endanger any person lawfully therein. Partner shall indemnify and hold harmless the City, its officials, officers, employees and agents from and against any and all costs, expenses, damages, claims or liabilities, including but not limited to reasonable attorneys' fees, from or in connection with, any negligent act or omission of the Partner, its officers, employees or agents in the performance of this agreement.
- 6.05 No recourse shall be had against any elected official officer, employee or agent of the City for any claim based upon this Agreement.
- 6.06 The City shall have the right to terminate this Agreement upon notice to the Partner due to the Partner's action or inaction that may result in compromising public health, safety, and welfare and for which there is not cure. Immediate termination without cure will be enacted for illegal use of drugs and alcohol on the premises, malicious acts damaging the facility, equipment or staff, inappropriate behavior with children or adults, unpaid invoices, and

removal of equipment, furniture or other materials belonging to the City of Austin from the premises.

6.07 The Partner has the right to appeal a termination through a written request to the Parks and Recreation Department Director. The Director will assemble a non-biased jury to hear the arguments of both sides of the dispute. The Director will make the final determination which may include voluntary non-binding mediation.

ARTICLE 8

INDEMNITY

PARTNER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY, ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (INDEMNIFIED PARTIES), AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS (CLAIMS), TO THE EXTENT ARISING, DIRECTLY OR INDIRECTLY, OUT OF (A) A BREACH OF THIS AGREEMENT OR VIOLATION OF LAW BY PARTNER, ITS OFFICERS, AGENTS, EMPLOYEES, PARTNERS, SUB[PARTNER]S, SUCCESSORS OR ASSIGNS, (PARTNER PARTIES), (B) A FALSE REPRESENTATION OR WARRANTY MADE BY THE PARTNER PARTIES IN THIS AGREEMENT OR IN PARTNER'S PROPOSAL, (C) THE NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY THE PARTNER PARTIES IN CONNECTION WITH THIS AGREEMENT. CLAIMS TO BE INDEMNIFIED UNDER THIS ARTICLE INCLUDE CLAIMS FOR BODILY INJURY OR DEATH, OCCUPATIONAL ILLNESS OR DISEASE, LOSS OF SERVICES WAGES OR INCOME, DAMAGE DESTRUCTION OR LOSS OF USE OF PROPERTY, AND WORKERS' COMPENSATION CLAIMS. PARTNER'S OBLIGATIONS UNDER THIS ARTICLE ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED IN PART BY THE ALLEGED NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES.

City shall give Partner written notice of a Claim asserted against an Indemnified Party. Partner shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against the Indemnified Parties. The Indemnified Parties shall have the right (but not the obligation) to participate in the defense of any claim or litigation with attorneys of their own selection without relieving Partner of any obligations in this agreement. In no event may Partner admit liability on the part of an Indemnified Party without the written consent of City Attorney.

Maintenance of the insurance required under this Agreement shall not limit Partner's obligations under the Rental Contract Insurance Requirements. Partner shall require all sub-partners to indemnify City as provided in this Article.