



**2016-2017 Cultural Services Agreement
Between the
City of Austin
and**

This 2016-2017 Cultural Services Agreement (“Agreement”) is entered into by and between the City of Austin, Texas, a home-rule municipal corporation situated in Hays, Travis and Williamson Counties (“City”) and _____, a non-profit, tax-exempt organization, hereinafter referred to as “Contractor.”

Recitals

1. Subsection 351.101(a)(4) of the Texas Tax Code authorizes the use of revenue from the City’s hotel occupancy tax to promote tourism and the convention and hotel industry, and that use includes the following: the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms;
2. The City has adopted a budget for expenditure of a portion of funds to be received from the levy of Hotel Occupancy Taxes and included therein is an allocation of monies for the purposes set forth in subsection 351.101(a)(4) of the Texas Tax Code;
3. Contractor was chosen for the following project after application and evaluation of the project; and,
4. The City wishes to engage the Contractor to carry out a cultural service project as described in this Agreement.

Now, therefore, the City and Contractor for and in consideration of the covenants and agreements set forth below, the sufficiency of which is hereby acknowledged, agree as follows:

1. **Administration of Contract.** The Cultural Arts Program Manager of the Economic Development Department shall be responsible for the administration of this Agreement.
2. **Contract Term.** The term of this Agreement shall begin on or about October 1, 2016 and shall terminate on or before September 30, 2017, unless extended in writing by mutual agreement of both parties. No extension shall be granted beyond September 30, 2018.
3. **Work Statement.** The Contractor shall provide, oversee, administer, and carry out all of the activities, services, and requirements set out in the Work Statement attached hereto as **Attachment A**, incorporated by reference for all purposes (“Project”). The Contractor shall at all times perform this Agreement as an independent contractor and the City will not be responsible for reporting or paying Contractor’s, their subcontractors’ or employees’ taxes or other similar levies that may be required by the United States Internal Revenue Service or other federal or state agency. This Agreement in no way obligates the City to provide material, equipment, transportation, or labor to assist in the production and fulfillment of the Project, except insofar as such Project takes place at City facilities where the City agrees in advance and in writing to provide reasonable on-site arrangements.
4. **Changes in Work Statement.** The City may, from time to time, during the term of this Agreement, request changes in the Work Statement to be provided by the Contractor; such changes, which may include an increase or decrease in the amount of the Contractor’s compensation and scope of work, shall, after agreement between the parties hereto, be incorporated in a written amendment to this Agreement. Before becoming effective, any amendment to or modification of this Agreement shall be in writing and signed by both parties; no agent of the City shall have the power to waive this provision. Contractor shall not commence any additional or revised work from the Work Statement unless approved by the City, and any work commenced by the Contractor not approved by the City shall be at the Contractor’s sole cost and risk.
5. **Project Budget.** The City agrees to pay Contractor for expenses incurred pursuant hereto, in accordance with the Project Budget, which incorporates all changes from the budget initially submitted to the City (“Project Budget”) as shown on **Attachment B**, incorporated by reference for all purposes. The City’s obligations under this Agreement shall not exceed the amount of \$_____ total from the Cultural Arts fund.
6. **Budget Reallocation.** Within individual program budgets for the use of City funding, the Contractor may reallocate funds in the Project Budget among the various line activities and categories not to exceed twenty percent (20%) of the City funding, provided the Contractor notifies the City in writing and provided the maximum contract obligation stated in the Project Budget is not exceeded. Reallocation of City funds among the various line activities and categories in

excess of twenty percent (20%) of the City funded Project Budget shall require submission of a revised Project Budget, written certification by the Contractor that such changes do not represent a substantial change in the Work Statement for the activities covered by this Agreement, and the written approval of the City. This revised Project Budget will become an amendment to this Agreement. Funds allocated for sponsored projects shall not be transferred without the approval of the City.

7. **Limitations of State Law.** Contractor acknowledges the funds provided pursuant to this Agreement are funds made available through the City's Hotel Occupancy Tax, and that the Contractor is bound to comply with state law applicable to the levy and use of such tax money authorized in chapter 351 of the Texas Tax Code. No Project funds provided herein shall be utilized for other than the encouragement, promotion, improvement, and application of the arts and all expenditures shall be in full conformity to Section 351.101 of the Tax Code. The City shall have the right to recover all funds not expended in full conformity with Section 351.101 of the Tax Code, and assess any costs or fines incurred by the City due to Contractor's failure to comply with the law.
8. **Non-Automatic Renewal of Funding.** The City's obligation to pay shall not extend beyond the term of this Agreement.
9. **Reappropriation of Funds.** During the term of this Agreement, should cumulative expenditures for this Project reflect a rate of expenditure lower than what would be projected from the Project Budget based on the period of time under contract or the percentage of services rendered, the Contractor hereby agrees to re-budget the funds and activities, subject to approval by the City.
10. **Non-Obligation of General Fund.** It is expressly understood that this Agreement in no way obligates the general fund or any other monies or credits of the City. The City shall have the right to reduce funding in the event Hotel Occupancy Tax revenues fall short of the anticipated revenues.
11. **Maximum Compensation and Method of Payment.** Contractor agrees that the amount set out in Section 5. above shall constitute full and complete compensation for all services and expenses incurred under this Agreement. It is expressly understood that, in no event, except where this Agreement is subsequently amended in a writing signed by both parties, shall the total compensation and money paid to Contractor hereunder exceed this maximum amount. Contractor agrees to limit its expenditure of monies to be received hereunder to those specific terms and amounts set out in the detailed, line-item Project Budget, and to those activities with accompanying limitations described in the Work Statement.
12. **Refund and Other Remedies.** The Contractor will refund any sponsoring fee to the City if any applicable sponsored project is terminated or cancelled. The

Contractor shall refund to the City any amounts paid for expenses or charges not within the Project Budget, if there is a violation of a term of this Agreement, or not spent in compliance with state law. The City shall be authorized to deduct any such amount or charges as a claim against future payments otherwise due the Contractor under this Agreement or any future contract. In addition, the City may deduct from current invoices any or all prior year(s) audit exception debts or other debts owed the City as a result of actions or inaction on the Contractor's part which led to or contributed to the audit exception(s) or other debts under this and/or prior contracts. The City may withhold funding under this Agreement if reports for prior contracts have not been submitted as required until such time as Contractor comes into compliance with the City's reporting requirements. In the event of a termination of a sponsored project, the Fiscal Sponsor shall refund to the City all City funds related to that project.

13. Expenditures During the Last Three Months. Supplies purchased with City funds during the last three (3) months of this Agreement, which are not likely to be fully used during that time and any other major (\$100.00 or more) purchases with City funds during the last three (3) months of this Agreement shall be subject to approval in advance by the City.
14. Non-Expendable Property. Ownership and possession of permanent non-expendable property purchased under this Agreement or with funds provided under this Agreement shall, upon termination of this Agreement, become the property of the City. All non-expendable property and records necessary for a complete audit shall be insured against fire, loss, and theft for a period of four (4) years after the expiration or termination of this Agreement.
15. Program Income and Match Documentation. All program income earned as a result of the activities authorized in the Work Statement may be retained and used by the Contractor, subject to review by the City and to any applicable provisions that may be included in the Work Statement or state law. Contractor shall notify the City of expected project income from sources other than the City and shall report to the City, in writing, about the delivery of such income (e.g. grants received, denied, etc.). Contractor is obligated to meet the match requirements as specified in the Cultural Arts Funding Programs Guidelines and the Work Statement. Contractor shall seek other support when a required match from one source is not forthcoming. In the event that Contractor fails to raise the required cash match, the City shall have the right to reduce its payment obligations proportionally, or to terminate this Agreement, or in such manner as it may deem appropriate.
16. Fiscal Procedures. Records, fiscal procedures and documentation of transaction costs shall be true and correct and comply and be maintained in accordance with established procedures with respect to all matters covered by this Agreement. Failure to do so will result in termination of this Agreement.

17. **Employer-Employee Relations.** Contractor acknowledges and understands labor-management cooperation on matters such as productivity, quality of work, safety, and health are important community values to the City, as a market participant, whenever City property is used. Contractor understands that federal law protects the rights of its employees working under this Agreement to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for purposes of collective bargaining or for other mutual aid or protection.

As essential consideration for the City to enter into this Agreement, Contractor agrees to comply with all federal labor laws concerning the protection of these employee rights. Any final finding by a National Labor Relations Board administrative law judge of an unfair labor practice committed by the Contractor involving employees performing work under this Agreement shall constitute a breach of this Agreement and the City may seek all remedies against the Contractor as provided for in this Agreement.

Contractor further agrees that it shall, upon request from any labor organization which represents or reasonably might represent employees working under this Agreement, enter into a labor peace agreement with such organization which provides that during the term of this Agreement: (1) the Contractor shall not violate any of the employee rights stated above; (2) the labor organization shall not engage in any strike or other work stoppage concerning the activities under his Agreement; and (3) the Contractor shall not engage in any lockout or other work stoppage concerning the activities under this Agreement.

18. **Compliance with Applicable Laws.** The Contractor shall comply at its own cost with all applicable federal, state and local laws and regulations.
19. **Tax-exempt status.** Contractor shall:
- A. Maintain its status as a legal non-profit tax-exempt organization.
 - B. Comply with any federal or state requirements applicable by virtue of the Contractor's legal status.
 - C. Comply with any other laws, regulations, or requirements applicable by virtue of the Contractor's legal status.
 - D. Contractor will notify the City within three days of any changes to its tax-exempt status.
20. **City not Obligated to Third Parties.** The City shall not be obligated or liable to any party other than Contractor for the payment of any monies or for provision of any goods or services or the enforcement of the terms of this Agreement unless such liability is specifically agreed to in this Agreement or subsequent written

amendment to this Agreement.

21. **Subcontracting**. No work or services covered by this Agreement may be subcontracted without the prior written approval of the City, except where subcontracts are specified as conditions of this Agreement as per the Work Statement attached hereto as **Attachment A**. Any work or service which is allowed to be subcontracted shall be subcontracted by written agreement on a prescribed form entitled "Sponsorship Agreement", and shall be subject, by its terms, to each and every provision of this Agreement, including insurance requirements. Sponsorship Agreements (if any) shall be included as **Attachment E** to this Agreement.
22. **Assignability**. Except as provided for in Section 21. above, the Contractor shall not assign or transfer any rights under, or interests in, this Agreement (whether by assignment or otherwise) without the prior written consent of the City.
23. **Conflict of Interest**.
 - A. No member of the governing body of the Contractor nor any employee of such member involved in the planning or implementation of the Work Statement shall have a financial interest, direct or indirect, in this Agreement other than that which is derived from employment under this Agreement and any benefits related thereto. Nor shall any employee or individual described above have a direct or indirect financial interest in the sale or rental of any land, materials, supplies, or services to Contractor for which contract funds from this Agreement are utilized.
 - B. Any present interest in this Agreement which is had by any person, organization, or entity mentioned above in Section 23.A. above, shall within ten (10) calendar days of the date of execution of this Agreement, fully disclose such interest in writing to the City.
 - C. Any interest acquired henceforth by any of those persons or entities mentioned or referred to in Section 23.A., above, shall be fully disclosed in a detailed writing to the City within five (5) calendar days of acquisition of such interest, once apparent to the individual involved or to the Contractor.

24. **Termination**

- A. **Convenience by the City**. The City may terminate this Agreement at any time and for any reason, including actual or anticipated decreases in Hotel Occupancy Tax collections, by giving at least thirty (30) days notice in writing to the Contractor. If this Agreement is terminated by the City for convenience, Contractor shall be paid an amount which bears the same ratio to the total compensation as the services actually performed and completed by Contractor to the total services of the Contractor covered by this Agreement, less payments or compensation previously made by the City. provided however, that if less than sixty percent (60%) of the services covered by this

Agreement have been performed on the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payments) for the portion of the reasonable and actual out-of-pocket expenses not otherwise reimbursed under this Agreement which were incurred by the Contractor during the Agreement period and which are directly attributable to the uncompleted portion of the services by this Agreement. Contractor shall not incur unnecessary expenses after receipt of notice of termination and shall diligently endeavor to reduce expenses budgeted for payment under this Agreement.

B. Termination for Convenience by the Contractor. The Contractor may terminate this Agreement, in whole or in part, for the following reasons, by giving at least thirty (30) days notice in writing to the City; provided however, all sums paid by the City prior to the termination date provided by the Contractor will be returned by the Contractor in whole to the City within ten days of the termination notice:

1. The Contractor may terminate this Agreement for any reason; or,
2. The involuntary dissolution of the Contractor.

25. Non-Compliance Plan. The following notification plan will be used, as appropriate, in order to correct deficiencies and avoid termination of this Agreement. Contractor's due date to respond is calculated from the date the non-compliance letter/e-mail is sent by the City.

A. Incomplete reports will be processed as follows:

STEP 1

1st Notice sent via e-mail to contractor who has submitted an incomplete final report. Contractor has 5 business days to submit. E-mail is initiated and forwarded by the Contract Administrator.

STEP 2

2nd Notice sent via U.S. certified mail to Contractor who has not responded, or if report requires additional corrections. Contractor has 10 business days to make corrections. Letter signed by Cultural Funding Team Lead.

STEP 3

Termination Notice sent certified mail to Contractor who has not responded, or not provided corrections. Letter signed by Division Manager. Copies of Termination Notice are forwarded to sponsor (when applicable), and Department Director.

B. Delinquent reports will be processed as follows:

STEP 1

1st Notice sent via e-mail to Contractor who is 15 business days delinquent in submitting final report. Contractor has 10 business days to submit report or contact

office. E-mail is initiated and forwarded by the Contract Administrator.

STEP 2

2nd Notice sent certified mail to Contractor who is 30 business days delinquent or has submitted an incomplete report after first delinquent notice. Contractor has 5 business days to submit complete report. Letter signed by Cultural Funding Team Lead. Note: Applicant will not be granted program extensions request after second notice.

STEP 3

Termination Notice sent certified mail to contractor who has not responded, or not provided corrections or additional information. Letter signed by Division Manager. Copies of Termination Notice are forwarded to sponsor (when applicable), and Department Director.

C. Expired/cancelled insurance will be processed as follows:

STEP 1

1st Notice sent to Contractor via e-mail. Contractor has 5 business days to provide proof of insurance renewal, contact the Contract Administrator, and must cease activities until insurance is reinstated. Contract Administrator signs letter.

STEP 2

2nd Notice sent certified mail to Contractor who is 10 business days delinquent in providing proof of insurance renewal. Contractor has 5 business days to submit renewal notice. Letter signed by Cultural Funding Team Lead.

STEP 3

Termination Notice sent certified mail to contractor who has not responded or not provided insurance renewal. Letter signed by Division Manager. Copies of Cancellation Notice are forwarded to the Department Director.

D. A continuing default by Contractor or sponsored project may result in:

- Suspension and/or termination of Cultural Services Agreement
- Suspension and/or termination of funds
- Suspension and/or termination of funds for other contracts with the City
- Reimbursement of funds received by City
- Ineligibility for future funding
- Review by City Auditor's Office Investigating Unit
- Sponsor (if applicable) of sponsored project will refund sponsoring fee to City
- Suspension of processing and administrating of any future applications for funding until reports are completed from delinquent year.

26. **Termination for Cause.** Should the Contractor or the City fail to fulfill in a timely and proper manner obligations under this Agreement, or if the Contractor or the City should violate any of the covenants, agreements, or stipulations of this Agreement, the

aggrieved party shall thereupon have the right to terminate this Agreement in whole or in part by sending written notice to the Contractor or the City of such termination, containing the reasons therefore, and specifying the effective date thereof, which date shall not be sooner than the end of twenty-one (21) calendar days following the day on which such notice is sent.

Notwithstanding the above, the breaching party shall not be relieved of liability to the other party for damages sustained by virtue of any breach of this contract.

If the Contractor is the breaching party, the City may withhold any and all payments due the Contractor for the purpose of set-off until such time as the exact amount of damages due the City from the Contractor is determined. This provision does not waive the right of the City to take whatever action necessary to protect its rights under this Agreement, including state law.

27. Remedies: Suspension. Except as provided for in Section 17. (Employer-Employee Relations), the City shall have the right to suspend full or partial funding without advance notice any time the City has reason to believe that Contractor is not in full compliance with the provisions of this Agreement or if Contractor is debarred from further City contracts. Noncompliance shall include, but is not limited to, not providing information as required or requested, past due reports, deficiency in matching funds documentation, incomplete or false documentation, or unapproved changes in scope or budget. Immediately upon the imposition of such suspension, the City shall provide written notice to Contractor. The written notice shall set forth the default or failure alleged and the action required for cure of such default or failure. A continuing default by Contractor on any previous Cultural Services Agreement shall constitute grounds for Contractor to be debarred from further City contracts and entitle the City to suspend or terminate this Agreement.

In the event the City determines the default or deficiency to be satisfied, the Contractor shall be restored to full compliance status and paid all funds withheld during the suspension period.

In the event the City determines that the default or deficiency remains unsatisfied, the account may be forwarded to a City auditor for review, at the discretion of the City staff, and Contractor will be advised of this action by written notice and may be debarred from further City contracts.

28. INDEMNITY AND LIABILITY. CONTRACTOR AGREES TO INDEMNIFY THE CITY FROM ANY AND ALL LIABILITY LOSS OR DAMAGES THE CITY MAY SUFFER AS A RESULT OF CLAIMS, DEMANDS, COSTS, OR JUDGMENTS AGAINST IT ARISING OUT OF THE PERFORMANCE OF THE TERMS OF THIS AGREEMENT. CONTRACTOR SHALL SAVE AND HOLD HARMLESS THE CITY, ITS AGENTS, SERVANTS AND EMPLOYEES FROM ANY AND ALL LOSS, COST OR EXPENSE OF ANY TYPE OR NATURE RESULTING FROM ANY ACT OR OMISSION OF THE CONTRACTOR, ITS AGENTS,

SERVANTS OR EMPLOYEES ARISING FROM ACTIVITIES UNDER OR RELATED TO THIS AGREEMENT, FOR WHICH A CLAIM, DEMAND, SUIT OR OTHER ACTION IS MADE OR BROUGHT AGAINST CONTRACTOR OR THE CITY.

IN THE EVENT THAT ANY CLAIM, DEMAND, SUIT OR OTHER ACTION IS MADE OR BROUGHT BY ANY PERSON, FIRM, CORPORATION, OR OTHER ENTITY AGAINST THE CONTRACTOR OR THE CITY, THE CONTRACTOR SHALL GIVE WRITTEN NOTICE TO THE CITY OF ANY SUCH CLAIM, DEMAND, SUIT OR OTHER ACTION OR THREAT THEREOF WITHIN TEN DAYS OF RECEIPT OF SUCH CLAIM, DEMAND, SUIT OR OTHER ACTION. SUCH NOTICE SHALL STATE THE DATE AND HOUR OF NOTIFICATION OF ANY SUCH CLAIM, DEMAND, SUIT, OR OTHER ACTION, OR THE THREAT THEREOF; THE NAMES AND ADDRESSES OF THE PERSON, FIRM, CORPORATION OR OTHER ENTITY MAKING OR THREATENING TO MAKE SUCH CLAIM, OR THAT INSTITUTED OR THREATENED TO INSTITUTE ANY TYPE OF ACTION OR PROCEEDING; THE BASIS OF SUCH CLAIM, ACTION OR PROCEEDING; AND THE NAME OF ANY PERSONS AGAINST WHOM SUCH CLAIM IS BEING MADE OR THREATENED. SUCH WRITTEN NOTICE SHALL BE DELIVERED EITHER PERSONALLY OR BY MAIL TO THE DEPARTMENT DIRECTOR AT 301 WEST SECOND STREET, AUSTIN, TEXAS, 78701 OR P.O. BOX 1088, AUSTIN, TEXAS, 78767.

29. Insurance.

A. The Contractor and subcontractors shall carry insurance as required, in the following types and minimum amounts for the duration of this Agreement and furnish certificates of insurance along with copies of policy declaration pages and all policy endorsements as evidence thereof. Determination of the required specified types of insurance for each contractor will be assessed by the City. A statement of such requirements are hereto attached as **Attachment D**, Insurance Requirements, and as follows:

1. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$500,000 for coverages A and B. The policy shall contain medical payments coverage, contractual liability coverage, and independent contractor's coverage.
2. Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
3. Worker's Compensation and Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Sec. 401). The minimum policy limits for Employer's

Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

The policy shall apply to the City of Austin and the State of Texas.

- B. In addition, certificates of insurance shall contain the proper office of the insurer, the locations and operations to which the insurance applies and the expiration date of coverage. If the insurance policy amounts are for less than the amounts listed above, the Contractor shall carry an Excess Liability Insurance policy for any differences in amounts. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage. The Contractor is responsible for all deductibles or self-insured retentions. The Contractor shall not commence work under this Agreement until the required insurance has been obtained for itself and sponsored projects, if any. Insurance is to be written by a company licensed to do business in the State of Texas at the time the policy is issued and acceptable to the City.
- C. The Contractor shall produce an endorsement to each effected policy:
 - 1. Naming the City of Austin, Economic Development Department, Cultural Arts Division, 201 East Second Street, Austin, Texas 78701, as an additional insured (except Workers' Compensation).
 - 2. That provides a waiver of subrogation in favor of the City of Austin, Economic Development Department, Cultural Arts Division, 201 East Second Street, Austin, Texas 78701.
 - 3. That obligates the insurance company to provide thirty (30) days written notification to the City of Austin, Economic Development Department, Cultural Arts Division, 201 East Second Street, Austin, Texas 78701, of any non-renewals, cancellations or other material changes to the insurance coverage(s).
- D. That the "other" insurance clause shall not apply to the City where the City is an additional insured shown on the policy declarations or by endorsement. It is intended that policies required in this agreement shall be considered primary coverage as applicable.
- E. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of this Agreement. All certificates of insurance shall include a clause to the effect that the policy shall not be canceled, renewed or material changes made without thirty (30) days prior written notice made to the City.
- F. The City reserves the right to review insurance requirements of this section during the effective period of this Agreement and to make reasonable adjustments to insurance coverage(s) and limits when deemed necessary and prudent by the City

based upon changes in statutory law, court decisions or the claim history of the industry as well as the claim history of the Contractor.

- G. The City shall be entitled, upon request, and without expense, to receive certified copies of policies and all endorsements.
- H. Premises Liability Insurance. The premises on and in which the activities described in the Work Statement are conducted shall be covered by premises liability insurance, if those activities are carried out at a single location (a) under the control of the Contractor and (b) which is not already covered by sufficient or any liability insurance, to be determined by the Economic Development Department.
- I. Contractor's Driver(s). All employees of Contractor who drive a vehicle during the course and scope of their employment shall possess a valid Texas driver's license and liability insurance. The insurance requirement is waived if the Contractor has obtained such insurance for its employees who drive for the Contractor.

Special Provisions

In the event the Contractor will serve alcoholic beverages to individuals for entertainment purposes at an event related to this Agreement, the Contractor shall carry Host Liquor Liability Coverage of \$500,000 per claim.

In the event the Contractor will sell alcoholic beverages at an event related to this Agreement, the Contractor shall carry or require the subcontractor to carry Liquor Legal Liability or Dram Shop Act Liability Coverage of \$500,000 per claim.

Any coverage written on a claims-made basis shall carry a retroactive date which coincides with the date of this Agreement. This insurance shall be maintained for the duration of this Agreement and for two (2) years following completion of the services under this Agreement. The premium of any extended reporting period or coverage tail shall be paid for by the Contractor / policyholder.

Actual losses not covered by insurance as required by this Agreement shall be paid by the Contractor.

The Contractor is required to comply with these insurance provisions and any special provisions indicated in the Work Statement.

- 30. Audit and Inspection. At any time during normal business hours and as often as the City or any state agency may deem necessary for auditing and inspection purposes, Contractor shall make available to the City data concerning its financial affairs and all of its records relating to all matters covered by this Agreement; Contractor shall permit the City or any representative of a state agency to audit, examine and make

excerpts, copies of, or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this contract for a period of four (4) years after the termination date hereof. During the entire four (4) year period, all of the above described data shall be maintained and kept easily accessible.

31. Monitoring and Evaluation. The Contractor agrees to cooperate fully with the City in the development, implementation, and maintenance of systems enabling the City to monitor and evaluate programs funded in whole or in part by the City. The Contractor agrees to maintain and provide such data as is determined by the City to be necessary to effectively fulfill its monitoring and evaluative responsibilities.

For purposes of monitoring, Contractor shall allow free admission to designated Economic Development Department employees and Austin Arts Commission members, to attend each contract event funded in whole or in part by the City.

32. Reports and Information. At such times and in such form as the City may require, Contractor, at its expense, shall furnish to the City such statements, records, reports, data and information, including mailing lists, as the City may request pertaining to matters covered by this Agreement.

33. Activity Reports.

- A. Final Reports shall be completed and submitted by the Contractor within 30 days of the completion of Project activities in accordance with the “FY 16 Final Report Instructions and Form” located at <http://www.austintexas.gov/department/core-cultural-funding-programs>
- B. A representative from Contractor shall attend a mandatory final report workshop prior to submitting the final report.

34. Financial Reports.

- A. Contractors are required to provide detailed documentation of all expenditures necessary to meet the 1:1 matching requirements in accordance with the “FY 16 Final Report Instructions and Form” located at <http://www.austintexas.gov/department/core-cultural-funding-programs>
- B. An independent audit containing a complete set of audited financial statements along with an auditor’s management letter may be required for Contractor’s funded at \$50,000 or greater after the execution of this Agreement. Should the City request such an audit, Contractor will retain the appropriate professionals within thirty (30) days of the City’s request for an audit and the audit shall be provided to the City within a reasonable time period and without unreasonable delay. This audit must conform to the standards of the American Institute of Certified Public Accountants and must be submitted to the City as per the City’s

request. Extensions of time for submission of the audit may be granted, upon request of the Contractor, at the sole discretion of the City.

35. Fees. If the Contractor charges fees for its services and/or facilities, it must develop a written schedule of its rates and the charging policies they represent, which it shall submit to the City and make readily available to those affected by it.

36. Authorizations. The City shall be entitled to request and receive formal verification that actions or representatives have been duly authorized by the governing board.

37. Publicity. Contractor shall publicize the activities conducted by the Contractor under this Agreement. Contractor shall list any and all events on NowPlayingAustin.Com, including but not limited to all programs, performances, workshops, screenings, book signings, etc., as shown on the Work Statement attached hereto as Attachment A. Contractor shall acknowledge the City's support in all electronic and printed materials and advertisements pertinent to City-funded programs/projects. Specific logo and credit line information is listed in **Attachment C**.

38. Accessibility for Individuals with Disabilities. The Contractor is obligated to comply with the Federal guidelines requiring access for individuals with disabilities (Section 504 of the 1973 Rehabilitation Act, Public Law 93-112) and shall report to the City in brief narrative form of their compliance with those regulations.

Contractor shall comply, to the extent applicable, with the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disability in employment (Title I), state and local government services (Title II), and places of public accommodation and commercial facilities (Title III).

39. Drug-Free Workplace Act of 1988. Further, as required by the Drug-Free Workplace Act of 1988, Contractor must also certify that they will provide a drug-free workplace environment.

The compliance procedure will include a pre-award review to determine whether the recipient is meeting compliance standards. The City will provide information about filing complaints with the appropriate agencies and will investigate any complaints concerning alleged violations.

40. Interpretation. Although drafted by the City, this Agreement shall be fairly construed, neither more strongly for or against a party.

41. Entire Agreement. This Agreement, together with its referenced exhibits and attachments, constitutes the entire agreement between the parties hereto; any prior agreement, whether written or oral, or assertion, or statement or understanding, or other commitment antecedent to this Agreement shall have no force or effect whatsoever.

42. **Severability of Provisions.** If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of law, the remaining terms continue on in full force and effect as though the offending term were never a part of this Agreement.
43. **Non-Waiver Clause.** In no event shall any payment to Contractor hereunder or any other act or omission by the City constitute or be construed in any way to be a waiver by the City of any breach of covenant or default which may then or subsequently exist. Neither shall such payment or action or omission in any manner impair or prejudice any right, power, or remedy available to the City to enforce its rights hereunder, which rights, powers, privileges, or remedies are always specifically reserved. No agent of the City may waive the effect of this provision.
44. **Selection of Governing Body.** The membership of a Contractor's governing board shall not be selected or appointed in whole or in part by any individual(s) receiving any direct or indirect financial benefits from the Contractor.

Executed this _____ day of _____, 2016.

CONTRACTOR

Signature

Print Name

Title

Signed this _____ day of _____, 2016.

CITY OF AUSTIN

By: _____

Signature

Attachment A – Work Statement
Attachment B – Project Budget

Attachment C – City Logo & Credit information

Attachment D – Insurance Requirements

Attachment E – Sponsorship Agreement(s), if applicable

DRAFT