

AN ORDINANCE 2013 - 12 - 05 - 0859

AWARDING \$32,000.00 IN TEXAS COMMISSION ON THE ARTS FUNDS TO LOCAL ARTS AND CULTURAL PROJECTS AND AUTHORIZING CONTRACTS FOR THE AWARD OF SUCH FUNDS.

* * * * *

WHEREAS, the Department for Culture and Creative Development (“DCCD”) applies annually to the Texas Commission on the Arts (“TCA”) seeking funding that helps leverage the City’s local arts investment and through this process, DCCD was awarded \$32,000.00 to support local non-profit arts and cultural organizations; and

WHEREAS, in September 2013, TCA awarded San Antonio \$32,000.00 to re-grant to local non-profit arts organizations for arts and cultural projects and DCCD conducted an application process to award such funds: and

WHEREAS, the Cultural Arts Board approved preliminary funding recommendations on November 23, 2013 and final funding recommendations on November 25, 2013 which final recommendations are reflected in Section 2, below; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. A total of \$32,000.00 in TCA funds are awarded to the agencies listed in Section 2 in the amounts indicated. The terms and conditions of the template Arts Agency Contract, attached to this Ordinance as **Exhibit I**, are approved and the City Manager, or her designee, is authorized to execute similar agreements with the agencies receiving such finding.

SECTION 2. The sum of \$32,000.00 has been appropriated in a designated fund and payment is authorized to the following agencies upon issuance of a Purchase Order:

<u>Company</u>	<u>Amount</u>
SA Botanical Garden Society	6,500.00
SA Parks Foundation	6,000.00
Texas International Folk Dancers	2,250.00
San Antonio Public Library Fdn	5,250.00
SA Living History	4,000.00
Ballet Latino de San Antonio	5,000.00
Alianza Latino America	3,000.00
	<u><u>32,000.00</u></u>

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers,

LB
12/05/13
Item No. 30

SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance shall take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.

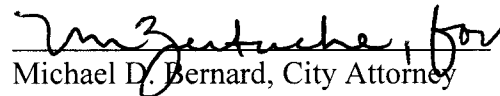
PASSED AND APPROVED this 5th day of December, 2013


M A Y O R
for Julián Castro

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


Michael D. Bernard, City Attorney

Agenda Item:	30
Date:	12/05/2013
Time:	10:24:25 AM
Vote Type:	Motion to Approve
Description:	An Ordinance awarding \$32,000.00 in Texas Commission on the Arts funds to local arts and cultural projects. [Ed Belmares, Assistant City Manager; Felix Padron, Director, Culture and Creative Development]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x			x	
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Carlton Soules	District 10		x				

EXHIBIT

I

STATE OF TEXAS *

COUNTY OF BEXAR * ARTS AGENCY CONTRACT WITH (Name of Contractor)

CITY OF SAN ANTONIO *

This Contract is entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. 2013-12-05-XXXX dated December 5, 2013, and the (agency name) , (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Department for Culture and Creative Development is designated as the managing City department (hereinafter referred to as "DCCD") for the City; and

WHEREAS, City has provided certain funds from a grant from the Texas Commission on the Arts; and

WHEREAS, City has adopted a budget for expenditure of such funds, and included therein is an allocation of funds for a project(s) entitled Project Support (TCA) (hereinafter referred to as "the Project"); and

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

The parties hereto agree as follows:

I. SCOPE OF WORK

1.1 Contractor will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to City and in compliance with the Program Statement, Performance Plan, & Budget, affixed hereto and incorporated herein for all purposes as **Attachment I**.

Project Support	Attachment I
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II. TERM

2.1 Except as otherwise provided for pursuant to the provisions hereof, this Contract shall begin on January 1, 2014, and shall terminate on August 30, 2014.

2.2 Contractor understands that this Contract will terminate as provided in Section 2.1, or sooner as provided in Article XIII. There is no guarantee of renewal for the following fiscal year.

2.3 Contractor understands that City will not distribute funds under this contract until Contractor has submitted all invoices and receivables required under the previous fiscal year's contract and City has approved said submittals. This does not excuse Contractor from complying with Section 8.6 requiring all documents and required deliverables be submitted within a period not to exceed thirty (30) days from the termination date of the Contract.

III. CONSIDERATION

3.1 In consideration, City will reimburse Contractor for expenses incurred in accordance with the budget(s) approved by City Council in Ordinance No. 2013-12-05-XXXX. Said budget(s) is (are) part of **Attachment I** to this Contract. It is specifically agreed that reimbursement hereunder shall not exceed the amount(s) as set forth in the table below:

Project Support	\$ _____ (TCA)	Attachment I
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- 3.2 The funding level of this Contract is based on the allocation awarded to DCCD by the City of San Antonio. The allocation is based on an appropriation for the Project Support (TCA) and DCCD’s receipt of said allocation.
- 3.3 Contractor understands and agrees that this is a contract to provide matching funds for funding already received by Contractor and that City shall have no obligation to provide any funds hereunder until Contractor has received the matching funds required by the Arts Funding guidelines. City requires sufficient evidence that matching funds are in place prior to making any payments under this Contract.
- 3.4 Consequently, Contractor agrees to comply with the Special Provisions set forth in Article XVII., below.

IV. PAYMENT

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

Value of Program Budget	Disbursement Schedule	
up to \$24,999	October	Performance Plan Completion
	50%	50%

- (1) The Disbursement Schedule takes effect upon Contract execution.
- (2) Invoice support documents must be provided by 4:00 p.m. on the 10th of the Month as set forth in the Disbursement Schedule and must reflect the budget set forth in Attachment I.
- (3) Contractor must provide support documentation for prior payments before receiving further payment.
- (4) Invoice for final payment must include support material for the previous payment as well as all necessary support materials for the final payment.
- (5) If Contractor fails to timely comply with any of the reporting requirements of this Contract including but not limited to invoicing, and submitting contract monitoring reports and any and all documents related to the contract, as determined by the sole discretion of the Executive Director of DCCD, funds not yet received under this Contract shall revert to a monthly reimbursement schedule, as determined by the Executive Director of DCCD, according to standard procedures followed by City’s Finance Department.

- 4.3 The City Manager, Assistant City Manager or the Director of DCCD may make changes to the Funding Schedule when doing so is in the best interest of the City and/or serves to promote the tourism and visitor industry and such changes shall not necessitate an amendment to this Contract.
- 4.4 The Executive Director of DCCD may require the Contractor’s submission of original or certified copies of invoices, cancelled checks, and/or receipts to verify invoiced expenses.
- 4.5 Contractor agrees that all requests for reimbursement shall be accompanied with documentation as may be required by the Executive Director of DCCD.
- 4.6 Contractor shall submit to City all final requests for payment no later than thirty (30) days from the termination date of this Contract, unless Contractor receives written authorization from the Executive Director of DCCD prior to such thirty (30) day period allowing Contractor to submit a request for payment after such thirty (30) day period.
- 4.7 Contractor agrees that City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of Contractor).
- 4.8 Contractor agrees that Contractor costs claimed under this Contract will not be claimed under another contract or grant from another agency.
- 4.9 Upon completion or termination of this Contract, or at any time during the term of this Contract, all unused funds, rebates, or credits on-hand or collected thereafter relating to the Project/Projects, must immediately, upon receipt, be returned by Contractor to City.
- 4.10 Upon execution of this Contract or at any time during the term of this Contract, City’s Director of Finance, the City Auditor, or a person designated by the Executive Director of DCCD may review and approve all Contractor’s systems of internal accounting and administrative controls prior to the release of funds hereunder.
- 4.11 Contractor must be designated as a 501(c)(3).
- 4.12 City reserves the right to request Contractor to provide additional records for long distance calls, faxes and/or cell phone calls charged to City.

V. PROGRAM INCOME

- 5.1 For purposes of this Contract, “program income” shall mean earnings of Contractor realized from activities resulting from this Contract or from Contractor’s management of funding provided or received hereunder. Such earnings shall include, but shall not be limited to, interest income; usage or rental/lease fees; income produced from contract-supported services of individuals or employees or from the use of equipment or facilities of Contractor provided as a result of this Contract, and payments from clients or third parties for services rendered by Contractor pursuant to this Contract. Contractor shall be permitted to retain such funds to be:
 - (A) added to the Project and used to further eligible Project and/or Contractor objectives, in which case proposed expenditures must first be approved by City; or
 - (B) deducted from the total Project cost for the purpose of determining the net cost reimbursed by City.
- 5.2 Contractor shall provide DCCD, through the Contract Monitoring Report, notice of activity that generates program income. Contractor shall provide detail in the Contract Monitoring Report of the type of activity, time, and place of all activities that generate program income.

- 5.3 Contractor shall fully disclose and be accountable to City for all program income. Failure by Contractor to report program income as required is grounds for suspension, cancellation, or termination of this Contract.
- 5.4 Contractor shall include this Article, in its 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 hereto pertaining to the interpretation or meaning of any part of this Contract or its governing rules, regulations, laws, codes or ordinances, the City Manager, as representative of City, the party ultimately responsible for all matters of compliance with City of San Antonio rules and regulations, shall have the final authority to render or secure an interpretation.

VII. AUDIT

- 7.1 Contractor agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of Contractor or its programs of any findings about accounting deficiencies, or violations of Contractor’s financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to DCCD within ten (10) days of Contractor’s receipt of the report.
- 7.2 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 audit 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, Contractor agrees to make available to City all accounting and Project records.

Contractor shall, during normal business hours, and as often as deemed necessary by City and/or the applicable state or federal governing agency or any other auditing entity, make available to the auditing entity books, records, documents, reports, and evidence with respect to all matters covered by this Contract and shall continue to be so available for a minimum period of four (4) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Contract. Said records shall be maintained for the required period beginning immediately after Contract termination, save and except if there is litigation or if the audit report covering such agreement has not been accepted, Contractor shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by Contractor in accounting for expenses incurred under this Contract, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.

- 7.3 City may, at its sole discretion, require Contractor 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 Contractor shall abide by such requirements.
- 7.4 When an audit or examination determines that Contractor has expended funds or incurred costs which are questioned by City and/or the applicable state or federal governing agency, Contractor shall be notified and provided an opportunity to address the questioned expenditure or costs.

Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, Contractor 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, DCCD may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, Contractor 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 Contractor is obligated under the provision hereof to refund a disapproved or disallowed cost incurred, such refund shall be required and be made to City by cashiers check or money order. If DCCD elects to deduct such claims from

subsequent reimbursements, during such time, Contractor is forbidden to reduce Project expenditures and Contractor must use its own funds to maintain the Project.

Contractor agrees and understands that all expenses associated with the collection of delinquent debts owed by Contractor shall be the sole responsibility of Contractor and shall not be paid from any Project funds received by Contractor under this Contract.

VIII. RECORDS, REPORTING, AND COPYRIGHTS

8.1 DCCD is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by DCCD, Contractor shall furnish to DCCD, if applicable, such statements, records, data, and information and permit City, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Contract.

8.2 Contractor shall submit to DCCD such reports as may be required by City, including the Contract Monitoring Report form, which is affixed hereto and incorporated herein as **Attachment II** preferably by electronic means. Said report is to be submitted to DCCD no later than 4:00 p.m. on the tenth (10th) day of month according to the schedule below in which the reported activities occurred as stated on the Performance Plan set forth in Attachment I.

Contract Monitoring Report Schedule			
1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
January 10 th	April 10 th	July 10 th	October 10 th

8.3 The Public Information Act, Government Code Section 552.021, requires City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Contract, Contractor 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, Contractor shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of Contractor’s receipt of such request.

8.4 In accordance with Texas law, Contractor 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.

Contractor acknowledges and agrees that all local government records, as described herein, 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. Contractor further agrees to turn over to City all such records upon termination of this Contract. Contractor 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 DCCD, unless required to do so by a court of competent jurisdiction. DCCD shall be notified of such request as set forth in Article VIII., Section 8.3 of this Contract.

8.5 City and Contractor agree that should City wish to obtain a license to use the Project for commercial or non-commercial purposes, the parties shall negotiate such a license, upon mutually agreeable terms, at no cost to City. Contractor agrees to execute all documents reasonably requested by City to enable City to utilize all such property.

8.6 Within a period not to exceed thirty (30) days from the termination date of the Contract, Contractor shall submit all final fiscal reports and all required deliverables to City. Contractor understands and agrees that in

conjunction with the submission of the final report, Contractor shall execute and deliver to City a receipt for all sums and a release of all claims against the Project/the Projects.

- 8.7 Contractor shall provide to DCCD all information requested by DCCD relating to the Contractor’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 (name, title, address, telephone number, fax number and e-mail address);
 - (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, Contractor shall maintain and provide to City upon written request :

- (D) Minutes of board meetings which if approved by the Contractors board will become part of the Contractors project records; and
 - (E) Board Agenda, if requested must be submitted at least three (3) business days prior to each Board meeting.
- 8.8 Contractor agrees to comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto, referenced in Section 12.4 of this Contract.
- 8.9 Contractor shall promptly inform City of any key employee status changes, whether or not such positions are funded under this agreement.
- 8.10 Contractor’s primary contact for this Contract is (Name/Title) _____ and (Name/Title) _____ shall serve as the secondary contact. All contacts identified herein will have the ability to access files in order to function seamlessly during the course of business with the City. Contractor shall notify the City upon any change in contact information within 10 days of the change.
- 8.11 Contractor shall provide City with its hours of operation no later than October 31, 2013. Contractor shall promptly inform the City if any change is made to daily schedule.

IX. INSURANCE

- 9.1 Contractor agrees to comply with the following insurance provisions:
 - (A) Prior to the commencement of any work under this Contract, Contractor shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City’s Department for Culture and Creative Development, which shall be clearly labeled “**Project 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. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent’s signature and phone number and be mailed with copies of all applicable endorsements directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Contract until such certificate and endorsements have been received and approved by the City’s Department for Culture and Creative Development. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.
 - (B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. In no instance will City allow modification whereupon City may incur increased risk.
 - (C) A Contractor’s financial integrity is of interest to the City; therefore, subject to Contractor’s right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and

maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor’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:

<u>TYPE</u>	<u>AMOUNTS</u>
Broad Form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability 	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
Business Automobile Liability <ul style="list-style-type: none"> a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles ** if transportation of participants is conducted 	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

(D) The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

City of San Antonio
 Attn: Department for Culture and Creative Development
 PO Box 839966
 San Antonio, Texas 78283-3966

(E) Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

- Name the City and 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 the City;
- Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

(F) Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the

option to suspend Contractor’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.

- (G) In addition to any other remedies the City may have upon Contractor’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- (H) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor’s or its subcontractors’ performance of the work covered under this Contract.
- (I) It is agreed that Contractor’s insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Contract.
- (J) 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 the City shall be limited to insurance coverage provided.
- (K) Contractor and its subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNITY

10.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the 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 the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR’S activities under this AGREEMENT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT. 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 CONTRACTOR 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 hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**

10.3 **CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this AGREEMENT.**

- 10.4 **Defense Counsel** – City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Contractor 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 Agreement. If Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor 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 hereunder by any employee of Contractor, 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 herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor 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 Contractor shall comply with all applicable Federal, State and local laws, rules, regulations as amended from time to time including but not limited to:
- worker’s compensation;
 - unemployment insurance;
 - timely deposits of payroll deductions;
 - Occupational Safety and Health Act regulations;
 - Employee Retirement Income Security Act of 1974, P.L. 93-406.
 - Drug-Free Workplace Act of 1988 and the Texas Worker’s Compensation Commission Drug-Free Workplace Rules effective April 17, 1991 (Failure to comply with these may subject the Contractor to suspension of payments, termination of Contract, debarment and suspension actions);
 - American with Disabilities Act P.L. 101-336, enacted July 26, 1990, and all regulations thereunder; and
 - City of San Antonio and Bexar County charter, ordinances and bond ordinances.
- 11.2 **Non-Discrimination.** As a party to this contract, Contractor understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. Additionally, Contractor agrees to comply fully with all applicable nondiscrimination, minimum wage, and equal opportunity policies, laws and regulations.
- 11.3 Contractor warrants that all taxes, which Contractor 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.
- Contractor shall also maintain and submit to DCCD upon written request form 990, 990N or 990T.
- 11.4 Additionally, Contractor shall comply with the following:
- Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slr/recordspubs/gr.html>
 - Texas Government Code Chapter 552 pertaining to Texas Public Information Act

- Texas Local Government Code Chapter 252 pertaining to Purchasing and Contracting Authority of Municipalities and Chapter 2254 pertaining to Professional and Consulting Services which can both be found at <http://www.capitol.state.tx.us/statutes/go/go0055200toc.html>

- 11.5 Contractor understands that certain funds provided pursuant to this Contract have been made available by City and/or by Federal, State, or other granting entities. Consequently, Contractor must comply with all laws, rules, regulations, policies, and procedures applicable to those specific funds. For example, CDBG Contractors are required to follow applicable CDBG regulations. In addition, Contractor shall comply with the following Office of Management and Budget (OMB) Circulars, as applicable:
- (A) OMB Circular A-21, entitled, “Cost Principles for Educational Institutions”;
 - (B) OMB Circular A-87, entitled, “Cost Principles for State, Local and Indian Tribal Governments”;
 - (C) OMB Circular A-102, entitled, “Grants and Cooperative Agreements with State and Local Governments”;
 - (D) OMB Circular A-122, entitled, “Cost Principles for Non-Profit Organizations”; and
 - (E) OMB Circular A-133, entitled, “Audits of States, Local Governments, and Not for Profit Organizations”.

XII. NO SOLICITATION/CONFLICT OF INTEREST

- 12.1 Contractor warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of Contractor or City. For breach or violation of this warrant, City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.
- 12.2 Contractor 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. Contractor 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 Contractor 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 Contractor acknowledges that it is informed that Charter of City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has “prohibited financial interest” in a contract with the 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: A City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any

individual or entity above listed is subcontractor on a City contract, a partner or a parent or subsidiary business entity.

- 12.6 Contractor warrants and certifies, and this Contract is made in reliance thereon, (that neither Contractor nor his or her spouse, parent, child, sibling or first-degree relative is a City officer or employee as defined by Section 2-52(e) of the City Ethics Code. If Contractor is a business entity, Contractor representative further warrants and certifies that no City officer or employee nor any spouse, parent, child sibling or first-degree relative of a City officer or employee owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity). Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XIII. TERMINATION

- 13.1 Termination for Cause – Should Contractor fail to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by City, or if this Contractor should violate any of the covenants, conditions, or stipulations of the Contract, City shall thereupon have the right to terminate this Contract by sending written notice to Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the end of ten (10) days following the day on which such notice is sent). Contractor 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 Contractor’s performance upon which final payment is conditioned shall include, but not be limited to, Contractor’s complete and satisfactory performance, of its obligations for which final payment is sought. Should Contractor 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 date thereof, which date shall not be sooner than thirty (30) days following the day on which notice is sent. Contractor shall also have the right to terminate this Contract and specify the date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which notice is sent. Contractor 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 Contractor’s performance upon which final payment is conditioned shall include, but not be limited to, Contractor’s complete and satisfactory performance of its obligations for which final payment is sought.
- 13.3 Notwithstanding any other remedy contained herein or provided by law, City may delay, suspend, limit, or cancel funds, rights or privileges herein given Contractor for failure to comply with the terms and provisions of this Contract. Specifically, at the sole option of City, Contractor may be placed on probation during which time City may withhold reimbursements in cases where it determines that Contractor is not in compliance with this Contract. Contractor 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 Contractor is discharged or otherwise leaves employment with Contractor, then, in accordance with Article XI, Section 11.2 of this Contract, Contractor 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. Upon the expiration of four (4) years from the end of said timeframe, Contractor must thereafter return to City any remaining funds received from City for salaries and wages. Such funds to be returned shall be classified as “disallowed costs” and refunded by Contractor in accordance with Article VII., Section 7.4 of this Contract. The obligations of Contractor to return such funds to City in accordance with this paragraph, however, shall be subject to compliance by Contractor of all applicable Texas Unclaimed Property laws.

XIV. PROHIBITION OF POLITICAL ACTIVITIES

- 14.1 Contractor 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 Contractor 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 To ensure that the above policies are complied with, Contractor shall provide every member of its personnel paid out of City funds with a statement of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to DCCD. Contractor shall list the name and number of a contact person from DCCD on the statement that Contractor’s personnel can call to report said violations.
- 14.5 Contractor agrees that in any instance where an investigation of the above is ongoing or has been confirmed, reimbursements paid to the Contractor under this Contract may, at City’s discretion, be withheld until the situation is resolved.
- 14.6 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, Contractor 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.

XV. ADVERSARIAL PROCEEDINGS

- 15.1 Contractor 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

- (B) Contractor, at City’s option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against City remains unresolved.

XVI. GOVERNMENT-SUPPORTED PROJECT

- 16.1 Contractor shall identify all events and activities funded in whole or in part by City by stating that the Project is “supported by the City of San Antonio’s Department for Culture and Creative Development and the Texas Commission on the arts (TCA)” and by utilizing the official DCCD logo (not the “sahearts” website logo) and the TCA logo. The list of events and activities to be funded as part of this Project is included in **Attachment I** to this Contract.
- 16.2 This requirement shall apply to all print and electronic media and any other media related to events and activities funded in whole or in part by City.
- 16.3 Contractor shall not identify City or Texas Commission on the Arts as a funding provider for any events and activities for which City has not authorized funding. Only events and activities identified within **Attachment I** of this Contract shall be considered to be authorized for funding by City.
- 16.4 If Contractor identifies City or Texas Commission on the Arts as a funding provider for any events and activities for which City has not authorized funding, City may require Contractor to issue a retraction in a format and timeframe directed by City. All costs for retractions shall be the responsibility of Contractor and such costs shall not be eligible for reimbursement by City.

XVII. SPECIAL PROVISIONS

- 17.1 Indecency. The following is City’s policy statement regarding material and/or performances under DCCD’s Arts Agency Contracts:
 - (A) Contractor 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. Contractor shall forward to the City a copy of the content of the notice to be displayed along with the notification required by Section 17.1 (b).
 - (B) Contractor must make DCCD 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 Contractor’s activities are not in compliance with the above provisions.

Contractor 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.

- 17.2 Removal/Relocation. Contractor acknowledges that the location of the Project on City property may necessitate future removal or relocation that may subject the Project to destruction, distortion, mutilation or other modification if and when removed. Such removal or relocation of the Project, if practical and economically feasible as determined by City in its sole discretion, will occur in conformity with the guidelines and review requirements listed in City’s Unified Development Code, Article VI, Division 5, Section 35-656. Contractor agrees that a City decision made under this paragraph regarding if, when and how to remove the Project is final.

Contractor hereby expressly consents to both the installation and removal of the Project and thereby expressly waives his/her Moral Rights to the Project. It is agreed that if the Project, or any portion thereof, is removed

from its location causing it, or any part thereof, to be destroyed, distorted, mutilated or modified in any way, the Project may not thereafter be referred to as “a Project by Contractor”.

XVIII. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

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

XIX. ASSIGNMENT

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

XX. AMENDMENT

- 20.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Contractor and evidenced by passage of a subsequent City ordinance, as to City’s approval; provided, however, the Executive Director of DCCD shall have the authority to execute an amendment of this Contract without the necessity of seeking any further approval by the City Council of the City of San Antonio, if permitted by all applicable local, state and federal laws in the following circumstances:
 - A. an increase in funding of this Contract in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Contract or (b) \$25,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments executed without City Council approval pursuant to this subsection during the term of this Contract shall not exceed the foregoing amount;
 - B. modifications to the Performance Plan set forth in **Attachment I** hereto, so long as the terms of the amendment stay within the parameters set forth in the Program Statement, also set forth in **Attachment I** hereto;
 - C. budget line item shifts of funds, so long as the total dollar amount of the budget set forth in Article III. Section 3.1 of this Contract remains unchanged; provided, however, that budget line item shifts of funds related to personnel services cannot exceed the total dollar amount allocated to personnel services set forth in the budget (**Attachment I**) of this Contract;
 - D. 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 DCCD;
 - E. adjustments to the funding awarded under this Agreement in order to comply with Texas Tax Code Section 351.103(c) and other applicable laws and regulations, including the Arts Funding Guidelines, so long as any increases in funding comply with Section 20.1(a) above; and
 - F. any modifications to Attachment I necessary to correspond with funding adjustments made under Subsections 20.1(a) and (e) above.
- 20.2 Any amendments to the Performance Plan must be made at least fifteen (15) days prior to any event being added to this Agreement by such amendment.

XXI. SUBCONTRACTING

- 21.1 Any work or services subcontracted hereunder 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

Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees.

XXII. OFFICIAL COMMUNICATIONS

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

City:

**City of San Antonio
Department for Culture and Creative Development
PO Box 839966
San Antonio, Texas 78283-3966**

Contractor:

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 of the change.

XXIII. VENUE

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

XXIV. GENDER

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

XXV. AUTHORITY

25.1 The signer of this Contract for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained. Contractor shall provide evidence to City 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, or a for-profit entity governed by an autonomous governing body, acting in accordance with the governing instruments submitted to City in the application for funding. Whether a non-profit or for-profit entity, Contractor must be 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. Contractor shall provide DCCD verification of the foregoing requirements no later than the execution date of this Contract.

XXVI. INDEPENDENT CONTRACTOR

26.1 It is expressly understood and agreed that the Contractor 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 hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.

- 26.2 Nothing contained herein shall be deemed or construed by the parties hereto 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 hereto.
- 26.3 Any and all of the employees of Contractor, wherever located, while engaged in the performance of any work required by City under this Contract shall be considered employees of Contractor 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 Contractor.

XXVII. SEVERABILITY

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

XXVIII. CONTRIBUTION PROHIBITIONS

- 28.1 Contractor acknowledges that City Code Section 2-309 may apply to this Contract and provides that any person acting as a legal signatory for a proposed contractual relationship such as this one, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits their application for funding until 30 Calendar days following the contract award. Contractor understands that if the legal signatory entering the Contract has made such a contribution, the City may not award the Contract to that contributor or to that contributor's business entity.
- 28.2 Contractor acknowledges that this Contract is made in reliance thereon, that the individual signing this Contract has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Contract. Should the signor of this Contract violate this provision, the City Council may, in its discretion, declare the Contract void.

XXIX. ENTIRE CONTRACT

- 29.1 This Contract and its attachments constitute the entire and integrated Contract between the parties hereto 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 January, 2014.

CITY OF SAN ANTONIO:

CONTRACTING AGENCY:

Felix Padrón
Executive Director
Department for Culture and Creative Developer

XXXXXXX
Address xxxxxx
San Antonio, TX 78XXXX

Authorized Signor

APPROVED AS TO FORM:

Print Name

City Attorney

Board President (if required by Agency)

ATTACHMENTS

- Attachment I – Program Statement, Performance Plan & Budget
- Attachment II – Contract Monitoring Report