

AN ORDINANCE 2018-01-18-0022

**AUTHORIZING THE EXECUTION OF A FUNDING AGREEMENT WITH THE BEXAR COUNTY PERFORMING ARTS CENTER FOUNDATION IN THE AMOUNT OF \$368,400.00 TO SUPPORT THE SAN ANTONIO SYMPHONY, BEGINNING JANUARY 12, 2018 AND TERMINATING SEPTEMBER 30, 2018.**

\* \* \* \* \*

**WHEREAS**, the Fiscal Year 2018 Budget approved \$614,000.00 in funding for the San Antonio Symphony (“Symphony”), which was awarded through the City’s competitive arts funding process, and a funding agreement (“Original Funding Agreement”) was executed with Symphonic Music for San Antonio (“SMSA”), which was created to manage the Symphony on behalf of the Symphony Society of San Antonio (“SSSA”) in an effort to restructure and rebrand the organizations; and

**WHEREAS**, in December 2017, SMSA and SSSA announced they were no longer working on a transition and the City has terminated the Original Funding Agreement, under which \$245,600.00 has already been disbursed; and

**WHEREAS**, SSSA would like to continue the Symphony’s season and the Department of Arts & Culture has recommended that the remaining \$368,400.00 in funding be awarded to the Bexar County Performing Arts Center Foundation (“Tobin Center”) to cover the Symphony’s support and production services provided by the Tobin Center; **NOW THEREFORE:**

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

**SECTION 1.** The terms and conditions of a Funding Agreement with the Bexar County Performing Arts Center Foundation for \$368,400.00, beginning January 12, 2018 and terminating September 30, 2018, are authorized and approved and the City Manager, or her designee, is authorized to execute the Agreement, a copy of which is attached to this Ordinance as **Attachment I**. A fully signed copy of the Funding Agreement will be attached to this Ordinance upon final execution.

**SECTION 2.** Funding in the amount of \$368,400.00 for this Ordinance is available in Fund 29006000, Cost Center 8520180001 and General Ledger 5407030, as part of the Fiscal Year 2018 Budget.

**SECTION 3.** Payment not to exceed the budgeted amount is authorized to Bexar County Performing Arts Center Foundation and shall be encumbered with a purchase order. All expenditures will comply with the approved operating budget for the current fiscal year.

**SECTION 4.** 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, 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 5.** 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, 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.

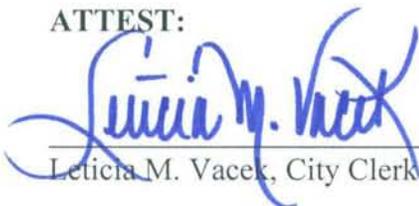
**SECTION 6.** This Ordinance shall take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.

**PASSED AND APPROVED** this 18<sup>th</sup> day of January, 2018.



**M A Y O R**  
Ron Nirenberg

**ATTEST:**



\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Andrew Segovia, City Attorney

<b>Agenda Item:</b>	<b>14 ( in consent vote: 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 23, 24, 25 )</b>						
<b>Date:</b>	01/18/2018						
<b>Time:</b>	09:23:52 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the execution of a Funding Agreement with the Bexar County Performing Arts Center Foundation in the amount of \$368,400.00 to support the San Antonio Symphony. [Lori Houston, Assistant City Manager]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
William Cruz Shaw	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				x
Clayton H. Perry	District 10		x				

LB  
01/18/18  
Item No. 14

## **Attachment I**

STATE OF TEXAS                   \*

COUNTY OF BEXAR               \*     **ARTS AGENCY CONTRACT WITH  
BEXAR COUNTY PERFORMING ARTS CENTER  
FOUNDATION for San Antonio Symphony**

CITY OF SAN ANTONIO         \*

This Contract is entered into by and between the City of San Antonio (“City”), a Texas Municipal Corporation, acting by and through Director for Department of Arts & Culture pursuant to Ordinance No. 2018-01-18-XXXX dated January 18, 2018, and the Bexar County Performing Arts Center Foundation (“Contractor”).

**WHEREAS**, City has provided certain funds from the Hotel Motel Tax Fund for the promotion of tourism and the convention and hotel industry through the encouragement, promotion, improvement, application and exhibition of the arts; and

**WHEREAS**, City has adopted a budget for expenditure of such funds, and included is an allocation of funds for certain operational costs of the San Antonio Symphony (“Project”); and

**WHEREAS**, funds for the Project were originally awarded to Symphonic Music for San Antonio, through Ordinance No. 2017-09-14-0652, but that agreement has been terminated because Symphonic Music for San Antonio was unable to continue the required services;

**WHEREAS**, City wishes to enter an agreement with Contractor and funding will be used to cover expenses associated with the support and production services that the Contractor provides to the San Antonio Symphony (“Symphony”); **NOW THEREFORE:**

The Parties agree as follows:

I. SCOPE OF WORK

1.1 Contractor will utilize all funds provided to reimburse itself for support and production services associated with the Symphony for the events listed in the Performance Schedule, affixed and incorporated into this Contract as **Attachment I**, and in compliance with the Allowable Costs List, affixed and incorporated into this Contract as **Attachment II**. The Allowable Costs listed in **Attachment II** are limited to those costs attributable to the Symphony. In the event the Symphony’s season is cancelled, City may immediately terminate this Agreement as set forth in Section 12.1.

II. TERM

2.1 Except as otherwise provided for pursuant to the provisions hereof, this Contract shall begin on January 12, 2018 and shall terminate on September 30, 2018.

### III. CONSIDERATION

- 3.1 In consideration of obligations, under this Contract, City will pay Contractor for expenses incurred in accordance with the Allowable Costs that are identified as part of **Attachment II**. It is specifically agreed that payment hereunder shall not exceed \$368,400.00.

### 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.

- 4.2 (A) Contractor agrees that City's liability hereunder is limited to making payments 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"). Allowable Costs are defined as those costs which are necessary, reasonable and allowable under applicable Federal, State, and local law, for the proper administration and performance of the services to be provided under this Contract and as further defined in **Attachment II**. Funding provided under this Contract may only be used for any or all of the Allowable Costs set forth in **Attachment II**. In no event shall City be liable for any cost of Contractor not eligible for payment as defined within this Contract.

(B) All funds disbursed under this Contract shall be subject to the following payment schedule:

**January 19, 2018** - \$123,000.00 upon receipt of an invoice from Contractor.

**March 1, 2018** - \$123,000.00 upon receipt of a detailed listing of expenditures and support materials (including copies of invoices, cancelled checks, and/or receipts to verify invoiced expenses) for all expenditures claimed to date.

**April 1, 2018** - \$122,400.00 upon receipt of a detailed listing of expenditures, support materials (including copies of invoices, cancelled checks, and/or receipts to verify invoiced expenses) for all expenditures claimed to date, and an invoice.

Within thirty business (30) days of the last scheduled performance set forth in **Attachment I**, Contractor shall submit to City a detailed listing of expenditures and support materials (including copies of invoices, cancelled checks, and/or receipts to verify invoiced expenses) reconciling the funding provided under this Contract with all payments made with those funds.

(C) City shall pay such invoices within fifteen (15) business days, subject to the receipt of the required documents and support materials set forth in this Agreement.

- 4.3 The City Manager, Assistant City Manager or the Director of the Department of Arts & Culture ("DA&C") may make changes to the funding schedule when doing so is in the best

interest of City and/or serves to promote the tourism and visitor industry; such changes shall not necessitate an amendment to this Contract.

- 4.4 Contractor agrees that all requests for disbursement shall be accompanied with documentation pertaining to the Project as may be required by City.
- 4.5 Contractor agrees that City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of Contractor).
- 4.6 Contractor shall maintain a financial management system and accounting records pertaining to the Project that that are supported by source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation pertaining to the Project as required by City). Contractor shall maintain records and shall meet necessary requirements under Generally Accepted Accounting Principles ("GAAP").
- 4.7 Contractor agrees that costs claimed under this Contract will not be claimed under another contract or grant from another agency or City Department, and Contractor warrants that each invoice submitted for payment does not include any costs paid for by another funding source or submitted for payment to any other funding source.
- 4.8 Upon completion or termination of this Contract, all unused funds must be returned by Contractor to City within ten (10) business days.

#### V. ADMINISTRATION OF CONTRACT

- 5.1 In the event that any disagreement or dispute should arise between the Parties pertaining to the interpretation or meaning of any part of this Contract or its governing rules, regulations, laws, codes or ordinances, City shall have the final authority to render or secure an interpretation. Said interpretation shall become the final governing authority to dispute resolution and shall be appropriately conveyed to the Parties.

#### VI. AUDIT

- 6.1 Contractor shall make all pertinent records available for inspection that are reasonably necessary for City to conduct a review of expenditures funded under this Contract.
- 6.2 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, and said reviews and/or audits resulted in findings of accounting deficiencies, or violations of Contractor's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to City within ten (10) days of Contractor's receipt of the report.
- 6.3 City reserves the right to conduct, or cause to be conducted an audit of all funds received under this Contract at any and all times deemed necessary by City. City 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 pertinent 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 after termination, unless 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 copies of excerpts, transcripts, books, records, documents and evidence, including all books and records pertaining to the Project used by Contractor in accounting for expenses incurred under this Contract, all other non-City executed contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.

6.4 [Intentionally omitted].

6.5 When an audit or examination determines that Contractor has expended funds or incurred costs which are questioned by City, Contractor shall be notified by City and provided an opportunity to address the questioned expenditure or costs.

Should any expense or charge that has been paid be subsequently disapproved or disallowed as a result of any site review or audit, Contractor will immediately refund such amount to City no later than ten (10) business days from the date of notification of such disapproval or disallowance by City. At its sole option, City may, instead, deduct such claims from subsequent payments. If Contractor is obligated to refund a disapproved or disallowed cost, such refund shall be made to City by cashier's check or money order.

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.

6.6 Contractor shall input all information required by City pertaining to the Project into City's required reporting software system.

## VII. RECORDS AND REPORTING

7.1 At such times and in such form as may be required by City, Contractor shall furnish any statements, records, data, and applicable information and documents pertaining to the Project, as may be requested by City. Contractor shall permit City, if applicable, to have interviews with its personnel, board members and Project participants pertaining to the matters covered by this Contract.

7.2 Contractor shall submit to City any such reports pertaining to the Project as may be required by City, including the detailed listing of expenditures, in a form directed by City.

- 7.3 Contractor shall comply with all applicable provisions of the Public Information Act, Texas Government Code Section 552.021, which requires the City to make public information available to the public. 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 after Contractor's receipt of such request.
- 7.4 Within a period not to exceed thirty (30) days from the termination date of the Contract, Contractor shall submit a final detailed listing of expenditures and all required deliverables to City.
- 7.5 Contractor agrees to comply with official records retention schedules in accordance with the Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slr/recordspubs/gr.html> and any amendments thereto, as well as 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>

#### VIII. INSURANCE

- 8.1 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 of Arts and Culture, which shall be clearly labeled "**Symphony Funding Agreement**" 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 a Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature and phone number with an original copy mailed to the Department of Arts and Culture and emailed to assigned Contract Officer. 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 Arts and Culture. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 8.2 City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal 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.
- 8.3 A contractor's financial integrity is of interest to City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by 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: 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 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

8.4 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 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 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  
 Department of Arts and Culture  
 ATTENTION: Contract Manager  
 115 Plaza de Armas  
 San Antonio, Texas 78205

8.5 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 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 City

- Provide for an endorsement that the “other insurance” clause shall not apply to City where 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.
- 8.6 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, or terminate the remaining terms of this contract, 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.
- 8.7 In addition to any other remedies 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, 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.
- 8.8 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.
- 8.9 It is agreed that Contractor’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by City of San Antonio for liability arising out of operations under this Contract.
- 8.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Contract and that no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 8.11 Contractor and its subcontractors are responsible for all damage to their own equipment and/or property.

#### IX. INDEMNITY

- 9.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death property damage or intellectual property right infringement, made upon CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR’S activities under this CONTRACT, 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 CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT 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.

- 9.2 The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 9.3 CONTRACTOR shall advise CITY in writing within 24 hours of any claim or demand against CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this CONTRACT.
- 9.4 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 Contract. 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.
- 9.5 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.

#### X. APPLICABLE LAWS

- 10.1 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.
- 10.2 Non-Discrimination. As a party to this Contract, Contractor understands and agrees to comply with the City of San Antonio *Non-Discrimination Policy* contained in Chapter 2,

Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. Additionally, Contractor agrees to comply fully with all applicable nondiscrimination, minimum wage, and equal opportunity policies, laws and regulations.

10.3 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.

10.4 The following provisions shall only apply to Contractor in the event that it meets the definition of Company found below:

Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of San Antonio, Contractor verifies that it does not boycott Israel, and will not boycott Israel during the term of this Agreement. City relies on Contractor's verification. If found to be false, City may terminate this Agreement for material breach, without providing the opportunity to cure.

10.5 Copyright. Contractor shall be responsible for ensuring all copyrighted works performed under this Agreement are covered by all necessary licenses and shall take all other necessary steps to insure that all use of all copyrighted materials in the Project complies with United States and any other applicable trademark and copyright law.

## XI. CONFLICT OF INTEREST

11.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party

to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

11.2 Contractor warrants and certifies as follows:

- (i) Contractor and its officers, employees and agents are neither officers nor employees of City.
- (ii) Contractor has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

11.3 Contractor acknowledges that City's reliance on the above warranties and certifications is reasonable.

## XII. TERMINATION

- 12.1 Cancellation of Season - In the event the Symphony's season is cancelled, City may immediately terminate this Agreement by providing written notice to Contractor; provided, however, that Contractor may still submit invoices for expenditures, and City will disburse funds with respect to such invoices, to the extent such expenditures were incurred, or irrevocably committed in the ordinary course of business, prior to the cancellation of the Symphony's season.
- 12.2 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 have the right to terminate this Contract by sending written notice to Contractor and specify the effective date thereof (which date shall not be sooner than the end of ten (10) business 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.

- 12.3 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) business 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) business 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.
- 12.4 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 payments 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.
- 12.5 Contractor must be designated and remain in good standing with the State of Texas as a 501(c)(3) organization during the term of this Contract. If during the course of this Contract, the Contractor’s 501(c)(3) status is no longer in effect, the City shall consider that change as grounds for suspension or termination of this Contract.

### XIII. PROHIBITION OF POLITICAL ACTIVITIES

- 13.1 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.

### XIV. ADVERSARIAL PROCEEDINGS

- 14.1 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.

## XV. SPECIAL PROVISIONS

15.1 Indecency. The following is City's policy statement regarding material and/or performances funded under City'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 15.1(b).

(B) Contractor must make City 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.

15.2 Tourism Impact. A list of each scheduled activity, program or event that could enhance and/or promote the visitor/tourism industry is attached as **Attachment I**. Contractor shall update said list or calendar in the event of any modifications or additions.

## XVI. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

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

## XVII. ASSIGNMENT

17.1 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.

## XVIII. AMENDMENT

- 18.1 Any alterations, additions or deletions to the terms of this Contract 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 Director of DA&C shall have the authority to execute an amendment of this Contract without the necessity of seeking any further approval by the City Council of the City of San Antonio, if permitted by all applicable local, state and federal laws in the following circumstances:
- (A) an increase in funding of this Contract in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Contract or (b) \$50,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments executed without City Council approval pursuant to this Subsection, during the term of this Contract, shall not exceed the foregoing amount; or
- (B) modifications to the Performance Schedule set forth in **Attachment I**.
- 18.2 Any amendments to the Performance Schedule must be made at least fifteen (15) days prior to any event being added to this Contract by such amendment.

## XIX. SUBCONTRACTING

- 19.1 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 Contract. Compliance by subcontractors with this Contract 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.

## XX. OFFICIAL COMMUNICATIONS

- 20.1 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 of Arts & Culture  
Attention: Contract Manager  
115 Plaza de Armas, Suite 102  
San Antonio, Texas 78205

Contractor:

Bexar County Performing Arts Center Foundation  
Michael Freshner, President and CEO

100 Auditorium Circle  
San Antonio, Texas 78205

#### XXI. VENUE

- 21.1 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.

#### XXII. AUTHORITY

- 22.1 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. 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.

#### XXIII. INDEPENDENT CONTRACTOR

- 23.1 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. Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the Parties.
- 23.2 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.

#### XXIV. SEVERABILITY

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

terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXV. ENTIRE CONTRACT

25.1 This Contract and its attachments constitute the entire and integrated Contract between the Parties and contain all of the terms and conditions agreed upon, and supersede all prior negotiations, representations, or contracts, either oral or written.

In witness of which this Contract has been executed effective the 12<sup>th</sup> day of January, 2018.

**CITY OF SAN ANTONIO:**

**CONTRACTOR:**

\_\_\_\_\_  
Debbie Racca-Sittre  
Director  
Department of Arts & Culture

\_\_\_\_\_  
Michael Freshner  
President and CEO  
Bexar County Performing Arts Center  
Foundation

**Attest:**

\_\_\_\_\_  
City Clerk

**Approved as to Form:**

\_\_\_\_\_  
City Attorney

**ATTACHMENTS**

Attachment I - Schedule of Performance

Attachment II - Allowable Costs

**Attachment I-Schedule of Performance**

Concert/Event	Series	Date	Time
Beethovens Eroica	Classics	12-Jan	8:00 PM
Beethovens Eroica		13-Jan	8:00 PM
Beethovens Eroica		14-Jan	2:00 PM
Young People's Concert Series	YPC	16-Jan	9:45 AM and 11 AM
Young People's Concert Series		17-Jan	9:45 AM and 11 AM
Young People's Concert Series		18-Jan	9:45 AM and 11 AM
Classical Mystery Tour	Pops	19-Jan	8:00 PM
Classical Mystery Tour		21-Jan	8:00 PM
Young People's Concert Series	YPC	21-Feb	9:45 AM and 11 AM
Bernstein and Brahms	Classics	23-Feb	8:00 PM
Bernstein and Brahms		24-Feb	8:00 PM
Young People's Concert Series	YPC	27-Feb	9:45 AM and 11 AM
Young People's Concert Series		28-Feb	9:45 AM and 11 AM
La La Land	Movies	2-Mar	8:00 PM
La La Land		3-Mar	8:00 PM
Dvorak 9	Classics	9-Mar	8:00 PM
Dvorak 9		10-Mar	8:00 PM
A Tribute to Ella Fitzgerald	Pops	16-Mar	8:00 PM
A Tribute to Ella Fitzgerald		17-Mar	8:00 PM
Vivaldi: The Four Seasons	Classics	23-Mar	8:00 PM
Vivaldi: The Four Seasons		24-Mar	8:00 PM
Vivaldi: The Four Seasons		25-Mar	2:00 PM
Moser Performs Elgar	Classics	13-Apr	8:00 PM
Moser Performs Elgar		14-Apr	8:00 PM
Fiesta Pops	Pops	20-Apr	8:00 PM
Fiesta Pops		21-Apr	8:00 PM
Fiesta Pops		22-Apr	2:00 PM
Pirates of the Carribbean	Movies	11-May	8:00 PM
Pirates of the Carribbean		12-May	8:00 PM
Young People's Concert Series	YPC	23-May	9:45 AM and 11 AM
Young People's Concert Series		24-May	9:45 AM and 11 AM
Young People's Concert Series		25-May	9:45 AM and 11 AM
Patriotic Pops	Pops	25-May	8:00 PM
Patriotic Pops		26-May	8:00 PM
Patriotic Pops		27-May	2:00 PM
Tchaikovsky, Mozart and More	Classics	1-Jun	8:00 PM
Tchaikovsky, Mozart and More		2-Jun	8:00 PM
Tchaikovsky, Mozart and More		3-Jun	2:00 PM
Rodgers and Hammerstein	Classics	8-Jun	8:00 PM
Rodgers and Hammerstein		9-Jun	8:00 PM
Rodgers and Hammerstein		10-Jun	2:00 PM

## **Attachment II-Allowable Costs**

### **Shared Services Agreement**

1. Expenses of the San Antonio Symphony under its Shared Services Agreement with Contractor

### **Venue**

1. Cost of Symphony's rental of space from Contractor
2. Security
3. Cleaning
4. Stage hands
5. Box office
6. House Labor
7. Patron Services
8. Catering
9. Equipment rental
10. Ticketing charges
11. Credit Card Fees
12. Marketing
13. SAPD
14. SAFD