

**CITY OF SAN DIEGO
ARTS, CULTURE AND COMMUNITY FESTIVALS
FY 2020 CITY COUNCIL ALLOCATIONS GRANT AGREEMENT**



GRANT ADMINISTRATOR

Courtney Thomson
202 "C" Street, MS 10A
San Diego, CA 92101-4106
Phone: (619) 236-6442

GRANTEE

[Name of Nonprofit Agency]
[Address]
San Diego, CA 921[##]
Phone: ([###]) [###]-[#####]

Grant Amount: **[\$\$\$1,000**

This Grant Agreement for services (Grant or Agreement) is entered into between the City of San Diego, a municipal corporation (City), and **[Name of Nonprofit Agency]**, a [state of incorporation] non-profit corporation (Grantee), (collectively referred to in this agreement as "the Parties").

RECITALS

- A. Grantee has applied for and been awarded City Transient Occupancy Tax (TOT) funding under Council Policy 100-23 "City Council Funding of Arts, Culture and Community Festivals with Discretionary Transient Occupancy Tax Allocation" subject to the terms and conditions of this Grant Agreement. Grantee is a legally constituted private nonprofit organization operating in the field of arts and culture.
- B. This Agreement furthers the goals of Council Policy 100-23, to support private nonprofit organizations that produce programs, projects and events that (i) provide access to excellence in culture and the arts for residents of, and visitors to, San Diego, and (ii) enrich the lives of the people of San Diego and build healthy, vital neighborhoods.
- C. The services to be performed by Grantee are of such nature that City is currently not performing and that the interests of City are better served by Grantee's activities than by the performance of such a program by City.
- D. The allocation provided in this Agreement was approved by City Council Resolution in which the City Council found that the allocation is made for the public purpose of providing residents and visitors of San Diego access to arts and culture, as specified in Council Policy 100-23.

AGREEMENT

1. **Effective Date; Term of Agreement.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement and approved by the City Attorney in accordance with San Diego Charter section 40 (Effective Date). Unless otherwise terminated, it shall be effective until completion of services or June 30, 2017, whichever is earliest.

2. Grantee Obligations.

2.1 Program Activities.

a. Grantee shall be eligible for reimbursement for costs related to those program activities described in the Event/Program Summary and Budget Summary (Program) provided in attached Exhibit A: Grantee's Application for Funding.

b. Program activities eligible to be reimbursed under the terms of this Agreement shall occur from July 1, 2019, through June 30, 2020.

c. City reserves the right to amend this Agreement, including, without limitation, Exhibit A, should City experience revenue shortfalls in FY 2020 which negatively impact the General Fund and/or City's ability to fund basic City services. Grantee understands that the potential exists for this Agreement to be terminated or for the funds committed as part of this Agreement to be reprogrammed or reappropriated upon recommendation of the Mayor and approval by the City Council.

2.2 Final Performance Report. Grantee shall submit a Final Performance Report (on a form provided by the Grant Administrator) indicating the extent to which the Program objectives contained in Exhibit A were accomplished. The Final Performance Report shall accompany the Final Request for Payment and shall be submitted within 60 days after completion of the Program, but in no event later than July 30, 2017. Grantee shall also attach to the Final Performance Report a Statement of Compliance signed by Grantee's executive director, chief executive officer, or equivalent, certifying that the Grantee has complied with the terms of the Agreement. City shall not make the final payment unless Grantee timely submits the Final Performance Report with the Final Request for Payment.

2.3 Financial Disclosure.

a. If City funding is \$10,000 or greater, Grantee shall submit copies of true, accurate, and complete financial disclosure documentation by September 30, 2020, evidencing the Grantee's financial status for the Grantee's fiscal year ending on or before June 30, 2020. These financial documents shall include, but are not limited to, the following:

i. A statement of the expenditure of City funds by program to be identified in the same expenditure classifications as contained in the City funded final budget approved through the application process and compared with the budgeted amounts.

ii. A statement of revenues and expenditures and a balance sheet of all funds received by Grantee.

b. If City funding is \$75,000 or greater, Grantee shall provide to City audited financial statements for Grantee's fiscal year ending on or before June 30, 2020, as well as the statement of revenues and expenditures with the balance sheet of all funds received by the Grantee: (i) prepared in accordance with generally accepted accounting principles (GAAP); and (ii) audited by an independent Certified Public Accountant in accordance with generally accepted auditing standards (GAAS). Grantee shall submit the audited financial statements to

City within 150 calendar days of Grantee's fiscal year end. Upon written request by Grantee, the Contract Administrator may, in her sole discretion, grant Grantee up to thirty (30) additional calendar days to comply with this requirement.

2.4 Records Retention and Examination. Grantee shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Agreement for four (4) years after receipt of final payment by City under this Agreement. Grantee shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City as required by law. Grantee shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Grantee shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Agreement. Grantee must include this provision in all subcontracts made in connection with this Agreement and exceeding \$5,000.

2.5 Duty to Cooperate with Auditor. The City Auditor may, in his or her sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Grantee's records to confirm contract compliance. Grantee shall make reasonable efforts to cooperate with the Auditor's requests.

2.6 Acknowledgment of City in Contracts. If Grantee chooses to give recognition for the funding received, it shall recognize the City of San Diego, not individual Council members nor individual Council districts.

2.7 Prevailing Wages. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Contract is subject to State prevailing wage laws. For construction work performed under this Contract cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Contract cumulatively exceeding \$15,000, Bidder and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to San Diego Municipal Code Chapter 2, Article 2, Division 42. Bidder must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living Wage Rate), and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

2.7.1 If your contract will require that your organization pay prevailing wages, additional contractual provisions will be required to be added to this contract prior to contract execution.

3. City Responsibilities.

3.1 Reimbursement. City shall monitor Grantee's activities under this Agreement through the Director of Council Administration, and shall reimburse Grantee for expenditures incurred according to this Agreement from the funds encumbered under this Agreement.

3.2 Contract Administration. The Director of Council Administration is designated as City's Grant Administrator for the purposes of this Agreement. The Grant Administrator shall receive and process all reports and Requests for Payment. All correspondence and notices shall be sent to the following address:

Courtney Thomson
Council Administration
202 "C" Street, MS 10A
San Diego, CA 92101-4106
Email: lwitzel@sandiego.gov

4. Payments.

4.1 Payments will be provided on a reimbursement basis only. City will not advance payment pursuant to Council Policy 100-23.

4.2 City shall not make any payment to the Grantee if either of the following is not on file with City:

- a. The Final Performance Report as well as any financial disclosure or audit required under any previous City funding agreement; and
- b. Any other document required under this Agreement, including proof of required insurance.

4.3 Reimbursements shall be made upon written request to the Contract Administrator. Each request shall consist of a completed Request for Payment form (to be provided by the Contract Administrator) with proof of both expenses incurred and payments made in conformance with the requirements of Section 4.4 of this Agreement.

4.4 Grantee's expenses shall only be reimbursed under the following conditions:

- a. The expenses were incurred and paid for by Grantee within City's fiscal year (July 1, 2019, to June 30, 2020);
- b. The expenses are in accordance with the Program Objectives and Budget Summary outlined in Exhibit A; and,
- c. The expenses are approved by the Grant Administrator.

4.5 City reserves the unilateral right to temporarily withhold or adjust the final payment, subject to City's approval of the Final Performance Report, all financial disclosures, and any

audits required of Grantee under this Agreement. City's approval will not be withheld unreasonably.

4.6 City shall not be responsible in any way for monetary losses of any type incurred by Grantee as a result of Grantee's conducting the program described in Exhibit A. Grantee agrees that City's monetary contribution is limited to the amount provided for in this Agreement, and that City shall not be responsible for cash costs or support services other than as provided for in this Agreement.

5. Termination.

5.1 Termination for Convenience. City may, at its sole option and for its convenience, terminate all or any portion of the Agreement by giving notice of such termination to the Grantee. Such notice shall be delivered to the Grantee and effective upon personal service or five days after deposit with the United States Postal Service, or one business day after overnight courier.

5.2 Reimbursement after Termination. After termination of this Agreement, Grantee shall only submit for reimbursement of costs incurred prior to the date of termination.. By accepting payment for final reimbursements, Grantee discharges City of all of City's payment obligations and liabilities under this Agreement.

6. Indemnity. With respect to any liability, including, but not limited to, claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Grantee, or Grantee's employees, agents, and officers, arising out of any services performed for reimbursement under this Agreement, the Grantee agrees to defend, indemnify, protect, and hold harmless City, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Grantee, its employees, agents, or officers, or any third party. The Grantee's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of City, its agents, officers, or employees.

7. Insurance.

7.1 Requirements.

- a. Grantee shall not begin any work under this Agreement until it has:
 - i. provided to City, insurance certificates and endorsements reflecting evidence of all insurance required below; however, City reserves the right to request, and the Grantee shall submit, copies of any policy upon reasonable request by City;
 - ii. obtained City approval of each insurance company or companies; and
 - iii. confirmed that all policies contain the specific provisions required below.

b. The policies shall be kept in force for the duration of the term of this Agreement. Maintenance of specified insurance coverage is a material element of this Agreement and Grantee's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by City. The Grantee shall not modify any policy or endorsement of this Agreement which increases City's exposure to loss for the duration of this Agreement. Grantee's liabilities, including Grantee's indemnity obligations under this Agreement, shall not be deemed limited in any way to the required insurance coverage.

7.2 Certificates. Grantee shall deliver to City an ACORD certificate of insurance for the duration of this Agreement for each of the following coverage types (unless specifically waived by the Director of Risk Management):

a. Commercial General Liability Insurance, Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.;

b. Commercial Automobile Liability Insurance, Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Grantee has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

c. Workers' Compensation Insurance, as required by the laws of the State of California for all of Grantee's employees who are subject to this Agreement, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000).

7.3 Required Endorsements. Grantee's insurance shall include the following:

a. Additional Insureds. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the Commercial General Liability policy and Commercial Automobile Liability Insurance policy with respect to liability arising out of work or operations performed by or on behalf of Grantee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Grantee's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

b. Primary and Non-Contributory. The Commercial General Liability Insurance policy shall include a separate endorsement providing that coverage is primary and non-contributory to any coverage carried or maintained by City under the Commercial General Liability and Automobile Liability policies.

c. Waiver of Subrogation. The Worker's Compensation policy must be endorsed to provide that the insurer will waive all rights of subrogation against City and its respective elected officials, officers, employees, agents, and representatives for losses paid under the

terms of this policy or these policies which arise from work performed by the Named Insured for City.

7.4 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to City. City will accept non-admitted surplus lines insurers if they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements provided in this Agreement.

7.5 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of Grantee and must be disclosed and acceptable to City at the time evidence of insurance is provided.

7.6 Modification. City reserves the right, from time to time, to review the Grantee's insurance coverage, limits, deductible, and self-insured retentions to determine if they are acceptable to City. City will reimburse Grantee for the cost of the additional premium for any coverage requested by City in excess of that required by this Agreement without overhead, profit, or any other markup.

8. Council Policy Provisions.

8.1 Council Policies.

a. Council Policy 100-23. Grantee agrees to comply with Council Policy 100-23, which provides a set of uniform guidelines, conditions, and criteria governing the application for, and granting of, funds to private non-profit organizations for the purpose of supporting their ongoing operational expenses and/or their sponsorship of special events. Council Policy 100-23 is located on City's website at http://docs.sandiego.gov/councilpolicies/cpd_100-23.pdf and is incorporated herein by reference.

b. Council Policy 100-04. Grantee agrees to comply with Council Policy 100-04, which establishes that all City contractors, including, but not limited to, construction contractors, consultants, grantees, and providers of goods and services agree to comply with all applicable titles of the Americans with Disabilities Act.

c. Council Policy 100-17. Grantee agrees to comply with Council Policy 100-17, which requires all City construction contractors, consultants, grantees, and providers of services to provide a drug-free workplace for the performance of work done in connection with a contract held by City.

d. Council Policy 000-41. Council Policy 000-41. Grantee shall comply with Council Policy 000-41, which requires that Grantee shall not create any advertisement or writing that identifies or refers to City as the user of a product or service, without first obtaining the prior written approval of City.

8.2 Employee Outreach and Non-Discrimination.

a. Compliance with City's Equal Employment Opportunity Outreach Program. Grantee shall comply with the requirements of City's Equal Employment Opportunity Outreach Program (San Diego Municipal Code (Municipal Code) sections 22.2701 - 22.2708). Grantee shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Grantee shall provide equal opportunity in all employment practices. Grantee shall ensure that its subcontractors comply with City's Equal Employment Opportunity Outreach Program requirements. Nothing in this section shall be interpreted to hold Grantee liable for any discriminatory practice of its subcontractors.

b. Non-Discrimination Clause. Grantee shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Grantee shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Grantee understands and agrees that violation of this clause shall be considered a breach of this Agreement and may result in Agreement termination, Grantee debarment, or other sanctions. Contracts between the Grantee and any subcontractors, vendors, and suppliers shall contain this language.

c. Compliance Investigations. Upon City's request, Grantee agrees to provide to City, within 60 calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Grantee has used in the past 5 years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Grantee for each subcontract or supply contract. Grantee further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance (Municipal Code sections 22.3501 - 22.3517). Grantee understands and agrees that violation of this clause shall be considered a breach of this Agreement and may result in Agreement termination, Grantee debarment, and other sanctions. Grantee further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination in Contracting Ordinance apply only to violations of said Nondiscrimination in Contracting Ordinance.

d. Equal Benefits Ordinance. Grantee agrees to comply with Municipal Code sections 22.4301-22.4308, which require City Grantees to offer the same employment benefits to employees with spouses and employees with domestic partners. Grantee certifies it will provide and maintain equal benefits as defined in Municipal Code section 22.4302 for the duration of this Agreement. Failure to maintain equal benefits is a breach of the Agreement. Grantee agrees to notify employees of their equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by employees:

During the performance of a contract with the City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners.

9. Additional Terms.

9.1 Certification of Good Standing. Prior to the award, Grantee must be in good standing

with the Secretary of State, the California Attorney General, and Franchise Tax Board. All required filings must be current and the status of the corporation must be active.

9.2 Compliance with Law. Grantee shall comply with all laws, ordinances, regulations, and policies of the Federal, State and local governments applicable to this Agreement. In addition, the Grantee shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

9.3 Independent Contractors. Grantee, and any subcontractors employed by Grantee, shall be independent contractors, and not agents or employees of City. Any provision of this Agreement that may appear to give City a right to direct Grantee concerning the details of performing its obligations and/or duties under this Agreement, or to exercise any control over such performance, shall mean only that Grantee shall follow the direction of City concerning the end results of the performance.

9.4 Lobbying and Political Activities. Grantee shall not use, and require its subcontractors not to use, any of the funds, personnel, or materials received in connection with this Agreement to influence, or attempt to influence, any governmental decision or election in any manner whatsoever. This prohibition shall apply to any decision of any kind to be made by any electorate, legislative body, agency, bureau, board, commission, district, or any other instrument of Federal, State, or local government. The term “influence or attempt to influence” shall mean the making, with the intent to influence, any communication to, or appearance before, any officer, employee, or appointee of any governmental entity, as well as any communication made to any electorate, regarding any ballot measure or candidate election.

9.5 Public Records. Grantee acknowledges that all documents related to the funding request, including application materials, this Agreement, expenditure documentation, and other documents related to this Agreement are a matter of public record and, as such, may be provided to members of the public.

9.6 Severability. If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

9.7 Jurisdiction and Venue. The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California. The venue for any suit or proceeding concerning this Agreement shall be in the County of San Diego, State of California.

9.8 Time of the Essence. Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement.

9.9 Integrated Agreement. This Agreement, and the Exhibits and references incorporated into this Agreement, fully express all understandings of the Parties concerning the matters

covered in this Agreement. All prior negotiations and agreements are merged into this Agreement.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date:

GRANTEE

I hereby certify that I can legally bind Grantee and that I have read all of this Agreement.

By: _____
Signature of Authorized Representative Title

Print Name Date

CITY OF SAN DIEGO

By: _____
Kristina Peralta
Director
Purchasing & Contracting Date

Approved as to form this _____ day of _____, 20_____.

MARA W. ELLIOTT, City Attorney

By: _____
Catherine Morrison
Deputy City Attorney

EXHIBIT A

**ACCF FY 2020 FUNDING APPLICATION
[PROGRAM/BUDGET]**

DRAFT