



**AGREEMENT BETWEEN
THE CITY OF AUSTIN
AND
MUSICARES FOUNDATION, INC.
FOR
PROFESSIONAL SERVICES**

This Professional Services Agreement (Agreement) is made by and between the City of Austin ('City') acting by and through its Economic Development Department (EDD), a home-rule municipality incorporated by the State of Texas, and MusiCares Foundation, Inc. ('Grant Administrator'), a Delaware non-profit corporation, having offices at 4301 W. William Cannon Dr., Suite B-150, Austin, TX 78749.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES; CERTAIN COSTS; ADMINISTRATION FEE

1.1 **Engagement of Grant Administrator.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, Grant Administrator is engaged to provide the services set forth in the attached Agreement Exhibits.

1.2 **Responsibilities of Grant Administrator.** The parties have agreed on eligibility criteria and the process for grant administration, based on community feedback, the City's focus on equitable distribution and access to opportunity, the urgent need to act quickly during the COVID-19 pandemic and the Grant Administrator's past grant administration and distribution. Pursuant to the agreed eligibility criteria and grant administration processes, the Grant Administrator shall provide a "turn-key" grant program, providing all of the technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the grant program activities identified in the Agreement Exhibits, during the Term (as defined below).

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of Grant Administrator's activities in completing the Program Work Statement. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Agreement, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by Grant Administrator, and shall approve all requests for payment, as appropriate. The City's Contract Manager shall give Grant Administrator timely feedback on the acceptability of progress and task reports. The Contract Manager's oversight of Grant Administrator's activities shall be for the City's benefit and shall not imply or create any partnership or joint venture as between the City and Grant Administrator.

1.4 **Designation of Key Personnel.** The City's Contract Manager for this Agreement, to the extent stated in the preceding Section 1.3, shall be responsible for oversight and monitoring of Grant Administrator's performance under this Agreement as needed to represent the City's interest in Grant Administrator's performance.

1.4.1 The City's Contract Manager or designee:

- may meet with Grant Administrator to discuss any operational issues or the status of the services or work to be performed; and

- shall promptly review all written reports submitted by Grant Administrator, determine whether the reports comply with the terms of this Agreement, and give Grant Administrator

timely feedback on the adequacy of progress and task reports or necessary additional information.

1.4.2 Grant Administrator's Contract Manager shall represent Grant Administrator with regard to performance of this Agreement and shall be the designated point of contact for the City's Contract Manager.

1.4.3 If either party replaces its Contract Manager, that party shall promptly send written notice of the change to the other party. The notice shall identify a qualified and competent replacement and provide contact information.

1.5 **Administration Fee.** In addition to any other amounts due hereunder and in consideration for the services provided by Grant Administrator hereunder, upon the written request of Grant Administrator (which may be delivered from time to time during the Term), City agrees to remit to Grant Administrator an amount equal to two percent (2%) of the total amount of grants then issued under this Agreement (without duplication). For the avoidance of doubt, it is acknowledged and agreed by City, that the payment of the foregoing administration fee will not be deducted from the total amount of grant funds to be distributed hereunder rather it is an amount in addition to the total amount of grant funds to be distributed hereunder.

SECTION 2. TERM

2.1 **Term of Agreement.** The Agreement shall be in effect from May 1, 2020 through September 30, 2020 ("Term"). If additional sources of funds for grants are identified, based on continued urgent need due to COVID-19 prevention measures, the Term may be extended, in writing, for another year, from October 1, 2020 through September 30, 2021.

SECTION 3. PROGRAM WORK STATEMENT

3.1 **Grant Administrator's Obligations.** Grant Administrator shall use reasonable efforts to fully and timely provide all services described in the attached Agreement Exhibits in strict accordance with the terms, covenants, and conditions of the Agreement and all applicable federal, state, and local laws, rules, and regulations.

SECTION 4. COMPENSATION AND REPORTING

4.1 **Agreement Amount.** Grant Administrator acknowledges and agrees that, notwithstanding any other provision of this Agreement, the maximum amount payable by the City for individual grants issued under this Agreement for the initial term shall not exceed \$1,500,000.

4.2 **Reports.**

4.2.1 Grant Administrator must register as a vendor on the City's Vendor Connection web page (https://www.austintexas.gov/financeonline/account_services/registration/registration_user.cfm). Once registered, the Grant Administrator will submit a fully and accurately completed payment request to the City's Contract Manager. Grant Administrator must provide complete and accurate supporting documentation for each such payment. Upon receipt and approval by the City of each complete and accurate payment request, the City shall process the payment to Grant Administrator in an amount equal to the City's payment obligations, subject to deduction for any unallowable costs. Any funds paid by the City to the Grant Administrator that are not awarded as an individual grant shall be returned to the City within 30 days of the end of the Term, except as provided herein.

4.2.2 Once a week, during the Term, the Grant Administrator shall report new grant activity to the City using the form provided in Exhibit D.

4.2.3 The Grant Administrator shall complete and submit a Contract Closeout Summary Report, using the forms provided by the City, within 60 calendar days following the expiration or termination of this Agreement. Any encumbrances of funds incurred prior to the date of termination of this Agreement shall be subject to verification by the City. Upon termination of this Agreement, any unused funds, unobligated funds, rebates, credits, or interest earned on funds received under this Agreement shall be returned to the City.

4.2.4 The Grant Administrator shall provide the City with a copy of its completed Internal Revenue Service Form 990 or 990EZ (Return of Organization Exempt from Income Tax) if applicable, for each calendar year to be due in conjunction with submission of Grant Administrator's annual financial audit report or financial review report as outlined in Section 4.5.4. If Grant Administrator filed a Form 990 or Form 990EZ extension request, Grant Administrator shall provide the City with a copy of that application of extension of time to file (IRS Form 2758) within 30 days of filing said form(s), and a copy of the final IRS Form 990 document(s) immediately upon completion.

4.2.5 Grant Administrator shall provide those other reports required by the City to document the effective and appropriate delivery of services as outlined under this Agreement as required by the City.

4.3 **Grant Administrator Policies and Procedures.**

4.3.1 The Grant Administrator shall maintain written policies and procedures aligned with best practices and approved by its governing body and shall make copies of all policies and procedures available to the City upon request. At a minimum, written policies shall exist in the following areas: Financial Management; Grant Management; Subcontracting and/or Procurement; Equal Employment Opportunity; Personnel and Personnel Grievance; Nepotism; Non-Discrimination of Clients; Client Grievance; Drug Free Workplace; the Americans with Disabilities Act; Conflict of Interest; Whistleblower; and Criminal Background Checks.

4.3.2 During the Term, the Grant Administrator shall provide the City with copies of any revised Articles of Incorporation and Doing Business As (DBA) certificates (if applicable) within 14 calendar days of receipt of the notice of filing by the Secretary of State's office. During the Term, Grant Administrator shall provide the City with copies of any revised By-Laws within 14 calendar days of their approval by Grant Administrator's governing body.

4.4 **Monitoring and Evaluation.**

4.4.1 The Grant Administrator agrees that the City or its designee may carry out monitoring and evaluation activities to ensure adherence by Grant Administrator and grantees to the Program Work Statement, Program Performance Measures, and Program Budget, as well as other provisions of this Agreement. Grant Administrator shall fully cooperate in any monitoring or review by the City and further agrees to designate a staff member to coordinate monitoring and evaluation activities.

4.4.2 The City expressly reserves the right to monitor client-level data related to services provided under this Agreement. If Grant Administrator asserts that client-level data is legally protected from disclosure to the City, a specific and valid legal reference to this assertion must be provided and is subject to acceptance by the City's Law Department.

4.4.3 Grant Administrator shall provide the City with copies of all evaluation or monitoring reports received from other funding sources during the Agreement Term upon request from the City.

4.4.4 Grant Administrator shall keep on file copies of all notices of Board of Directors meetings, Subcommittee or Advisory Board meetings, and copies of approved minutes of those meetings, related to this Agreement.

4.5 **Financial Audit of Grant Administrator.**

4.5.1 Grant Administrator shall annually contract with an independent auditor utilizing a Letter of Engagement to complete either a full financial audit or financial review. The auditor must be a Certified Public Accountant recognized by the regulatory authority of the State of Texas. The City shall reimburse the Grant Administrator for all out-of-pocket costs and expenses incurred by the Grant Administrator in performing its services under this Agreement (including, but not limited to, the costs of any audit or financial review required by the City).

4.5.2 In the event Grant Administrator expends \$750,000 or more in a year in federal awards, Grant Administrator shall have a single or program specific audit conducted in accordance with Chapter 200, Subpart F, of Title 2 of the Code of Federal Regulations as required by the Single Audit Act of 1984, as amended (Single Audit Act), and shall submit to the City a complete set of

audited financial statements and the auditor's opinion and management letters in accordance with Chapter 200, Subpart F, of Title 2 of the Code of Federal Regulations and any guidance issued by the federal Office of Management and Budget covering Grant Administrator's fiscal year until the end of the term of this Agreement.

4.5.3 If Grant Administrator is not subject to the Single Audit Act, and expends \$750,000 or more during Grant Administrator's fiscal year, then Grant Administrator shall have a full financial audit performed in accordance with Generally Accepted Auditing Standards (GAAS). If less than \$750,000 is expended, then a financial review is acceptable, pursuant to the requirements of this Agreement.

4.5.4 Grant Administrator shall submit a complete financial audit report or financial review which has been presented and accepted by the Board of Directors, to include the original auditor Opinion Letter/Independent Auditor's Report within 270 calendar days of the end of Grant Administrator's fiscal year, unless alternative arrangements are approved in writing by the City. The financial audit report or financial review report must include the Management Letter/Internal Controls Letter, if one was issued by the auditor.

4.5.5 The inclusion of any Findings or a Going Concern Uncertainty, as defined by Chapter 200, Subpart F, of Title 2 of the Code of Federal Regulations and GAAS, in a Grant Administrator's audit requires the creation and submission to the City of a corrective action plan formally approved by Grant Administrator's governing board. The plan must be submitted to the City within 60 days after the audit is submitted to the City. Failure to submit an adequate plan to the City may result in the immediate suspension of funding. If adequate improvement related to the audit findings is not documented within a reasonable period of time, the City may provide additional technical assistance, refer the Agreement to the City Auditor for analysis, or move to terminate the Agreement as specified in Section 5 of the Agreement.

4.5.6 The expiration or termination of this Agreement shall in no way relieve Grant Administrator of the audit requirement set forth in this Section of the City from reimbursing the Grant Administrator for the costs and expenses described in Section 4.5.1, above.

4.5.7 **Right To Audit By Office of City Auditor.**

4.5.8.1 Grant Administrator agrees that the representatives of the Office of the City Auditor, or other authorized representatives of the City, shall have access to, and the right to audit, examine, and copy any and all records of Grant Administrator related to the performance under this Agreement during normal business hours (Monday – Friday, 8 am – 5 pm). In addition to any other rights of termination or suspension set forth herein, the City shall have the right to immediately suspend the Agreement, upon written notice to Grant Administrator, if Grant Administrator fails to cooperate with this audit provision. Grant Administrator shall retain all such records for a period of 5 years after the expiration or early termination of this Agreement or until all audit and litigation matters that the City has brought to the attention of Grant Administrator are resolved, whichever is longer. Grant Administrator agrees to refund to the City any overpayments disclosed by any such audit.

4.5.8.2 Grant Administrator shall include this audit requirement in any subagreements entered into in connection with this Agreement.

SECTION 5. TERMINATION

5.1 **Right To Assurance.** Whenever one party to the Agreement in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

5.2 **Default.** Grant Administrator shall be in default under the Agreement if Grant Administrator (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) fails to provide adequate assurance of performance under the "Right to Assurance" paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Grant Administrator's Offer, or in any report or deliverable required to be submitted by Grant Administrator to the City.

5.3 **Termination for Cause.** In the event of a default by Grant Administrator, the City shall have the right to terminate the Agreement for cause, by written notice effective upon 10 calendar days, unless otherwise specified, after the date of such notice, unless Grant Administrator, within such 10 day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Grant Administrator on probation for a specified period of time within which Grant Administrator must correct any non-compliance issues. Probation shall not normally be for a period of more than 9 months; however, it may be for a longer period, not to exceed 1 year depending on the circumstances. If the City determines Grant Administrator has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by Grant Administrator, the City may suspend or debar Grant Administrator in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove Grant Administrator from the City's vendor list for up to 5 years and any Offer submitted by Grant Administrator may be disqualified for up to 5 years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of Grant Administrator's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

5.4 **Termination Without Cause.** The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon 30 calendar-days prior written notice. Upon receipt of a notice of termination, Grant Administrator shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay Grant Administrator, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of termination in accordance with the terms hereof.

5.5 **Fraud.** Fraudulent statements by Grant Administrator on any Offer or in any report or deliverable required to be submitted by Grant Administrator to the City shall be grounds for the termination of the Agreement for cause by the City and may result in legal action.

SECTION 6. OTHER DELIVERABLES

6.1 **Insurance.** The following insurance requirements apply:

6.1.1. General Requirements

6.1.1.1 Grant Administrator shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Agreement and during any warranty period.

6.1.1.2 Grant Administrator shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Agreement execution and within 14 calendar days after written request from the City.

6.1.1.3 Grant Administrator must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

6.1.1.4 Grant Administrator shall not commence work until the required insurance is obtained and has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of Grant Administrator hereunder and shall not be construed to be a limitation of liability on the part of Grant Administrator.

6.1.1.5 Grant Administrator's insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

6.1.1.6 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain Grant Administrator's email address, and shall be mailed to the following address:

City of Austin
Austin Public Health
ATTN: Social Services Contracts
P. O. Box 1088
Austin, Texas 78767

6.1.1.7 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Agreement, covering both the City and Grant Administrator, shall be considered primary coverage as applicable.

6.1.1.8 If insurance policies are not written for amounts specified, Grant Administrator shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

6.1.1.9 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

6.1.1.10 The City reserves the right to review the insurance requirements set forth during the effective period of the Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as Grant Administrator.

6.1.1.11 Grant Administrator shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.

6.1.1.12 Grant Administrator shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

6.1.1.13 Grant Administrator shall endeavor to provide the City 30 calendar-days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.

6.1.2 **Specific Coverage Requirements.** Grant Administrator shall, at a minimum, carry insurance in the types and amounts indicated below for the duration of the Agreement, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of Grant Administrator.

6.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000* for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

6.1.2.1.1 Blanket contractual liability coverage for liability assumed under the Agreement and all other Agreements related to the project

6.1.2.1.2 Independent Grant Administrator's Coverage

6.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period

- 6.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
- 6.1.2.1.5 Thirty calendar-days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
- 6.1.2.1.6 The "City of Austin" listed as an additional insured, Endorsement CG 2010, or equivalent coverage

6.1.2.2 **Professional Liability Insurance.**

6.1.2.2.1 Grant Administrator shall obtain coverage at a minimum limit of \$500,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

6.1.2.2.2 If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Agreement and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the Agreement.

6.1.2.3 **Blanket Crime Policy Insurance.** A Blanket Crime Policy shall be required with limits equal to or greater than the sum of all Agreement funds allocated annually by the City. Acceptance of alternative limits shall be approved by Risk Management.

6.1.2.4 **Directors and Officers Insurance.** Directors and Officers Insurance with a minimum of not less than \$1,000,000 per claim shall be in place for protection from claims arising out of negligent acts, errors or omissions for directors and officers while acting in their capacities as such. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The coverage shall be continuous for the duration of the Agreement and for not less than 24 months following the end of the Agreement. Coverage, including renewals, shall have the same retroactive date as the original policy applicable to the Agreement or evidence of prior acts or an extended reporting period acceptable to the City may be provided. Grant Administrator shall, on at least an annual basis, provide the City with a Certificate of Insurance as evidence of such insurance.

6.1.2.5 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents, must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

6.1.2.6 **Certificate.** The following statement must be shown on the Certificate of Insurance.

"The City of Austin is an Additional Insured on the general liability policy. A Waiver of Subrogation is issued in favor of the City of Austin for the general liability policy."

6.2 **Equal Opportunity.**

6.2.1 **Equal Employment Opportunity.** The Grant Administrator shall not engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. The Grant Administrator shall execute and submit to the City a current Non-Discrimination Certification, which is attached to this Agreement as Exhibit C.

6.2.2 **Americans with Disabilities Act (ADA) Compliance.** The Grant Administrator shall not engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

- 6.3 **Publications.** All published material and written reports submitted under the Agreement must be originally developed material unless otherwise specifically provided in the Agreement. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 7. WARRANTIES

- 7.1 **Performance Standards.** The Grant Administrator warrants and represents that all services provided under this Agreement shall be fully and timely performed in a good and workmanlike manner in accordance with generally accepted community standards and, if applicable, professional standards and practices. The Grant Administrator may not limit, exclude, or disclaim this warranty or any warranty implied by law, and any attempt to do so shall be without force or effect

SECTION 8. MISCELLANEOUS

- 8.1 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event Grant Administrator is observed performing in a manner that the City reasonably believes is a material violation of federal, state, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, Grant Administrator will cease all work until notified by the City that the violation or unsafe condition has been corrected. Grant Administrator shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

8.4 **Indemnity.**

8.4.1 Definitions:

8.4.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

8.4.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, Grant Administrator, their respective agents, officers, employees; and/or

8.4.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, Grant Administrator, and third parties),

8.4.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

8.4.2 GRANT ADMINISTRATOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE UNCURED, MATERIAL BREACH BY GRANT ADMINISTRATOR, OR GRANT ADMINISTRATOR'S EMPLOYEES, IN THE PERFORMANCE OF GRANT ADMINISTRATOR'S OBLIGATIONS UNDER THE AGREEMENT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR GRANT ADMINISTRATOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

- 8.5 **Claims.** If any claim, demand, suit, or other action is asserted against Grant Administrator which arises under or concerns the Agreement, or which could have a material adverse effect on Grant Administrator's ability to perform hereunder, Grant Administrator shall give written notice thereof to the City within 10 calendar days after receipt of notice by Grant Administrator. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

8.6 **Business Continuity.** Grant Administrator warrants that it has adopted a business continuity plan that describes how Grant Administrator will continue to provide services in the event of an emergency or other unforeseen event and agrees to maintain the plan on file for review by the City. Grant Administrator shall provide a copy of the plan to the City's Contract Manager upon request at any time during the Term, and the requested information regarding the Business Continuity Plan shall appear in the annual AAP documentation.

8.6.1 Grant Administrator agrees to participate in the City's Emergency Preparedness and Response Plan and other disaster planning processes. Grant Administrator participation includes assisting the City to provide disaster response and recovery assistance to individuals and families impacted by manmade or natural disasters.

8.7 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Agreement shall be in writing and shall be deemed delivered 3 business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, email, or other commercially accepted means. Notices to the City and Grant Administrator shall be addressed as follows:

To the City:	To Grant Administrator:	With copy to:
City of Austin Economic Development Department ATTN: Erica Shamaly, Music & Entertainment Division Manager	MusiCares Foundation ATTN: Debbie Carroll	City of Austin Economic Development Department ATTN: Michelle Clemons, EDD
5202 E. Ben White, Ste. 400 Austin, TX 78741	3030 Olympic Blvd Santa Monica, CA 90404	301 W. 2nd St., Austin, Texas Austin, TX 78702

8.8 **Confidentiality.** In order to provide the deliverables to the City, Grant Administrator may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Grant Administrator acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. Grant Administrator (including its employees, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided Grant Administrator promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. Grant Administrator agrees to use protective measures no less stringent than Grant Administrator uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

8.9 **Advertising.** Where such action is appropriate as determined by the City, Grant Administrator shall publicize the activities conducted by Grant Administrator under this Agreement, at the City's sole cost and expense. Any news release, sign, brochure, or other advertising medium including websites disseminating information prepared or distributed by or for Grant Administrator shall recognize the City as a funding source and include a statement that indicates that the information presented does not officially represent the opinion or policy position of the City.

8.10 **Gratuities.** The City may, by written notice to Grant Administrator, cancel the Agreement without liability if it is determined by the City that gratuities were offered or given by Grant Administrator or any agent or representative of Grant Administrator to any officer or employee of the City with a view toward securing the Agreement or securing favorable treatment with respect to the awarding or amending or the making of

any determinations with respect to the performing of such Agreement. In the event the Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Grant Administrator in providing such gratuities.

8.11 **Prohibition Against Personal Interest in Agreements.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Agreement resulting from that solicitation. Any willful violation of this Section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of Grant Administrator shall render the Agreement voidable by the City.

8.12 **Independent Contractor.** The Agreement shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. Grant Administrator's services shall be those of an independent contractor. Grant Administrator agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City.

8.13 **Assignment-Delegation.** The Agreement shall be binding upon and inure to the benefit of the City and Grant Administrator and their respective successors and assigns, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by Grant Administrator without the prior written consent of the City. Any attempted assignment or delegation by Grant Administrator shall be void unless made in conformity with this paragraph. The Agreement is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Agreement.

8.14 **Waiver.** No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either Grant Administrator or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

8.15 **Modifications.** The Agreement can be modified or amended only by a written, signed agreement by both parties. No pre-printed or similar terms on any Grant Administrator invoice, order, or other document shall have any force or effect to change the terms, covenants, and conditions of the Agreement.

8.16 **Interpretation.** The Agreement is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control, unless otherwise defined in the Agreement.

8.17 **Dispute Resolution.**

8.17.1 If a dispute arises out of or relates to the Agreement, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, 1 senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

8.17.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and Grant Administrator agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or an Agreement interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and Grant Administrator will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

8.18 **Jurisdiction and Venue.** The Agreement is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Agreement shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

8.19 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

8.20 **Holidays.** The following holidays are observed by the City:

<u>HOLIDAY</u>	<u>DATE OBSERVED</u>
New Year's Day	January 1
Martin Luther King, Jr's Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

8.21 **Survivability of Obligations.** All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement.

8.22 **Non-Suspension or Debarment Certification.** The City is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended

or debarred from federal, state, or City Agreements. By accepting an Agreement with the City, Grant Administrator certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the Exclusions records at SAM.gov, the State of Texas, or the City of Austin.

8.23 **Public Information Act.** Grant Administrator acknowledges that the City is required to comply with Chapter 552 of the Texas Government Code (Public Information Act). Under the Public Information Act, this Agreement and all related information within the City's possession or to which the City has access are presumed to be public and will be released unless the information is subject to an exception described in the Public Information Act.

8.24 **Political and Sectarian Activity.** No portion of the funds received by Grant Administrator under this Agreement shall be used for any political activity (including, but not limited to, any activity to further the election or defeat of any candidate for public office) or any activity undertaken to influence the passage, defeat, or final content of legislation; or for any sectarian or religious purposes.

8.25 **Culturally and Linguistically Appropriate Standards (CLAS).** The City is committed to providing effective, equitable, understandable and respectful quality care and services that are responsive to diverse cultural beliefs and practices, preferred languages, health literacy, and other communication needs. This commitment applies to services provided directly by the City as well as services provided through its Grant Administrators. Grant Administrator agrees to implement processes and services in a manner that is culturally and linguistically appropriate and competent.

8.26 **Entire Agreement.** This Contract, together with the below Exhibits, and any addenda and amendments thereto constitute the entire agreement between the parties, and this Contract shall not be modified, amended, altered, or changed except with the written consent of the parties.

8.27 **No Rights.** Unless otherwise specifically agreed to in writing by the Grant Administrator in advance and with respect to each particular use, the City shall have no right to use, display, or otherwise exploit any marks, names, design marks, logos or copyrights of the Grant Administrator (or its affiliates) (collectively, the "GA Property"), including, without limitation, the trademark MUSICARES or any gramophone design logos. Notwithstanding any other term herein to the contrary, the City acknowledges and agrees that no rights have been granted to it to use: (i) any sound recordings, (ii) any musical compositions (including, without limitation, words, lyrics and/or music), (iii) any names, likenesses, characters, voices, biographies, copyrights, designs, trademarks, or other identification of any individual or performing group, including, any individual who has received a grant hereunder, or (iv) any other rights owned or controlled by any person(s) or entity(ies) (collectively, "Third Party Rights"). The City agrees that it shall not make use of any Third Party Rights unless City arranges and obtains in advance, at its sole cost and expense, from the owner(s) of the applicable Third Party Rights any and all necessary licenses and releases with respect to each proposed use of such material by City.

In witness whereof, the parties have caused duly authorized representatives to execute this Agreement on the dates set forth below.

MUSICARES FOUNDATION, INC.

DocuSigned by:
Signature: Debbie Carroll
9C74E4D45B104CA...

Name: Debbie Carroll
Printed Name

Title: Vice President, Health and Human Services

Date: 5/14/2020

CITY OF AUSTIN

By: Sylvia Holt-Rabb

Name: Sylvia Holt-Rabb

Title: Acting Director, Economic Development Dept.

Date: 5/15/2020

EXHIBITS

- Exhibit A:** **Austin Music Disaster Relief Fund Program Requirements and Application Form**
- Exhibit B:** **Non-Discrimination Certification**
- Exhibit C:** **MusiCares Reporting Template**