



**AGREEMENT BETWEEN
THE CITY OF AUSTIN
AND
GREATER AUSTIN PERFORMING ARTS CENTER INC, DBA THE LONG CENTER
FOR PROFESSIONAL SERVICES**

This Professional Services Agreement (Agreement) is made by and between the City of Austin (City), a home-rule municipality incorporated by the State of Texas, and Greater Austin Performing Arts Center Inc, DBA The Long Center (Administrator), a non-profit corporation, having offices at 701 W Riverside Dr, Austin, TX 78701.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of Administrator.** Subject to the general supervision and control of the City and subject to these terms and conditions, Administrator is engaged to provide the services set forth in the attached Agreement Exhibits.

1.2 **Responsibilities of Administrator.** The parties will collaboratively define and agree upon eligibility criteria and the process for grant administration, based on community feedback, the City's focus on equitable distribution and access to opportunity and the urgent need to provide relief due to the ongoing COVID-19 pandemic. Pursuant to the agreed eligibility criteria and grant administration processes, the 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 **City's Contract Manager.** The City's Contract Manager will be responsible for exercising general oversight of Administrator's activities in completing the Scope of Work. 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 Administrator, and shall approve all requests for payment, as appropriate. The City's Contract Manager shall give Administrator timely feedback on the acceptability of progress and task reports. The Contract Manager's oversight of 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 Administrator.

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

1.5 **Replacing a Contract Manager.** 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.

SECTION 2. TERM

2.1 **Term of Agreement.** The Agreement shall be in effect from date of last signature and stay in effect for one year from that date. If additional sources of funds for services are identified, based on continued urgent need due to COVID-19 prevention measures, the Term may be extended, in writing, for another year.

SECTION 3. PROGRAM WORK STATEMENT

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

3.2 **Federal Terms and Conditions.** Administrator acknowledges that grants will be provided from federal funds and, therefore, the Administrator will comply with the federal terms and conditions that are mandatory for these grants in Exhibit B – Federal Terms and Conditions.

SECTION 4. COMPENSATION AND REPORTING

4.1 **Agreement Amount.** Administrator acknowledges and agrees that, notwithstanding any other provision of this Agreement, the maximum amount payable by the City for this contract is \$2,530,000. Upon execution of the Agreement, the Administrator will be paid an administrative fee of \$230,000.

4.2 Reports.

4.2.1 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 Administrator will submit a fully and accurately completed payment request to Erica.Shamaly@austintexas.gov. Invoices may also be mailed to the following address:

City of Austin
City of Austin Economic Development Dept.
Attn: Erica Shamaly, Music & Entertainment Division Manager
301 W. 2nd Street, Ste. 2030
Austin, TX 78701

Questions regarding payment requests shall be addressed with the City Contract Manager. 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 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 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 Administrator shall report new grant activity to the City using the form documented in the Scope of Activities.

4.2.3 The Administrator shall complete and submit a Contract Closeout Summary Report, using the forms provided by the City, within 30 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 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 Administrator's annual financial audit report or financial review report as outlined in Section 4.5.4. If Administrator filed a Form 990 or Form 990EZ extension request, 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 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 Administrator Policies and Procedures.

4.3.1 The 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 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, Administrator shall provide the City with copies of any revised By-Laws within 14 calendar days of their approval by Administrator's governing body.

4.4 **Monitoring and Evaluation.**

4.4.1 The Administrator agrees that the City or its designee may carry out monitoring and evaluation activities to ensure adherence by Administrator and grantees to the Program Work Statement, Program Performance Measures, and Program Budget, as well as other provisions of this Agreement. 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 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 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 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 Administrator.**

4.5.1 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 Contractor agrees to incur all expenses 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 Administrator expends \$750,000 or more in a year in federal awards, 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 Administrator's fiscal year until the end of the term of this Agreement.

4.5.3 If Administrator is not subject to the Single Audit Act, and expends \$750,000 or more during Administrator's fiscal year, then 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 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 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 Administrator's audit requires the creation and submission to the City of a corrective action plan formally approved by 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 Administrator of the audit requirement set forth in this Section.

4.5.7 **Right to Audit by Office of City Auditor.**

4.5.8.1 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 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 Administrator, if Administrator fails to cooperate with this audit provision. 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 Administrator are resolved, whichever is longer. Administrator agrees to refund to the City any overpayments disclosed by any such audit.

4.5.8.2 Administrator shall include this audit requirement in any sub agreements 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.** Administrator shall be in default under the Agreement if 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 Administrator's Offer, or in any report or deliverable required to be submitted by Administrator to the City.

5.3 **Termination for Cause.** In the event of a default by 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 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 Administrator on probation for a specified period of time within which 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 Administrator has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by Administrator, the City may suspend or debar Administrator in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove Administrator from the City's vendor list for up to 5 years and any Offer submitted by 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 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, 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 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 Administrator on any Offer or in any report or deliverable required to be submitted by 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 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 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 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 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 Administrator hereunder and shall not be construed to be a limitation of liability on the part of Administrator.

6.1.1.5 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 Administrator's email address, and shall be mailed to the following address:

City of Austin
Economic Development Department
ATTN: Contract Manager
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 Administrator, shall be considered primary coverage as applicable.

6.1.1.8 If insurance policies are not written for amounts specified, 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 Administrator.

6.1.1.11 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 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 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.** 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 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 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 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. 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 **Cyber Liability Insurance.** Coverage of not less than \$1,000,000 each claim and annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

Policy shall be endorsed to name City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.

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 Administrator shall not engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. The 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 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 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 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 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, Administrator will cease all work until notified by the City that the violation or unsafe condition has been corrected. Administrator shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

8.2 **Indemnity.**

8.2.1 Definitions:

8.2.1.1 "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:

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

8.2.1.1.2 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, Administrator, and third parties),

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

8.2.2 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 FAULT OF ADMINISTRATOR, OR ADMINISTRATOR'S AGENTS, OR EMPLOYEES, IN THE PERFORMANCE OF ADMINISTRATOR'S OBLIGATIONS UNDER THE AGREEMENT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR ADMINISTRATOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

- 8.3 **Claims.** If any claim, demand, suit, or other action is asserted against Administrator which arises under or concerns the Agreement, or which could have a material adverse effect on Administrator's ability to perform hereunder, Administrator shall give written notice thereof to the City within 10 calendar days after receipt of notice by 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.

8.4 **Business Continuity.** Administrator warrants that it has adopted a business continuity plan that describes how 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. 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.

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

8.5 **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 Administrator shall be addressed as follows:

To the City:

City of Austin
Economic Development Department
ATTN: Sylnovia Holt-Rabb
PO Box 1088
Austin TX 78702

With copy to:

City of Austin
Economic Development Department
ATTN: Erica Shamaly
PO Box 1088
Austin TX 78702

To Administrator:

Greater Austin Performing Arts Center LLC
DBA: The Long Center
701 W. Riverside Dr.
Austin TX 78701

8.8 **Confidentiality.** In order to provide the deliverables to the City, 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"). 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. 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 Administrator promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. Administrator agrees to use protective measures no less stringent than 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, Administrator shall publicize the activities conducted by 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 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 Administrator, cancel the Agreement without liability if it is determined by the City that gratuities were offered or given by Administrator or any agent or representative of 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 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 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. Administrator's services shall be those of an independent contractor. 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 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 Administrator without the prior written consent of the City. Any attempted assignment or delegation by 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 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 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 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 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, 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.** 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 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 Administrators. Administrator agrees to implement processes and services in a manner that is culturally and linguistically appropriate and competent.

8.26 **Funding Out and Offset for Taxes Owed.** Administrator acknowledges that the City has provided notice of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person who is in arrears to City of Austin for taxes, and of § 2-8-3 of the Austin City Code concerning the right of City of Austin to offset indebtedness owed City of Austin. Administrator also acknowledges that the City has provided notice that the City's payment obligations are payable only from funds appropriated or available for the purpose of this Agreement. If the City does not appropriate funds for this Agreement, or if there are no other lawfully available funds for this Agreement, the Agreement is void. City shall provide Administrator notice of the failure of City to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement or the reduction of any appropriation to an amount insufficient to permit City to pay its obligations under the Agreement.

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 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 Administrator (or its affiliates) (collectively, the "GA Property"), including, without limitation, the trademark images or design logos of The Greater Austin Performing Arts Center LLC dba The Long Center

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

**GREATER AUSTIN PERFORMING ARTS
CENTER LLC
DBA; THE LONG CENTER**

DocuSigned by:

Signature: 2AB3F3C1571C483...

Name: Cory Baker
Printed

Title: President and CEO

Date: 11/15/2021

CITY OF AUSTIN


Signature: Rodney Gonzales

Name: Rodney Gonzales
Printed

Title: Assistant City Manager

Date: 12/1/2021

APPROVED AS TO FORM AND LEGALITY:

By: 

EXHIBITS

Exhibit A Scope of Work and Program Guidelines

Exhibit B Federal Terms and Conditions

***Exhibit A - Scope of Work and Program Guidelines
FY 2022 Austin Music Disaster Relief Grant***

- 1.0 Background:** The Austin Music Disaster Relief Grant provides one-time unrestricted \$2,000 grants to local professional musicians; independent promoters; and music, music composition, and music industry creative workers facing hardships due to the economic impacts of the COVID-19 pandemic. The Austin City Council approved [Resolution No. 20210610-077](#) on June 10, 2021 to dedicate \$4 million from the federal American Rescue Plan Act's Local Fiscal Recovery Fund Austin's Music Industry. There is \$2.3 million available for this grant. The program guidelines align with [Music Commission Recommendation No: 20210820-1a \(PDF\)](#). Refer to "**Appendix A**" for the Austin Music Disaster Relief Grant program guidelines.

Austin Music Disaster Relief Program
\$2.3M for \$2,000 individual grants
Est. No. of Applicants: 1,500 – 2,500
No. of awardees and \$2,000 checks: 1,150

- 2.0 American Rescue Plan Act Requirements:** Since AMDRF is funded through the American Rescue Plan Act (ARPA), program outcomes must align with the [State & Local Fiscal Recovery Funds \(SLFRF\) Interim Final Rule](#). Additionally, The Long Center must comply with the federal Treasury Department's requirements or APRA contractors:

- 2.1 SAM.gov registration:** Maintain an active registration with the System for Award Management (SAM.gov).
- 2.2 Recordkeeping:** Retain all records and financial documents for no less than five years.
- 2.3 Single Audit Participation:** Be prepared to participate in an audit under the Single Audit Act if The Long Center expends more than \$750,000 in federal awards during The Long Center's fiscal year.
- 2.4 Civil Rights Compliance (Title VI of the 1964 Civil Rights Act):** The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.
- 2.5 Reporting Requirements:** See "**Appendix B**" for information regarding federal reporting requirements.

- 3.0 Third Party Responsibilities:** The Long Center assumes the following responsibilities:

- 3.1 Task A – City of Austin "Portal" Application System:** The Long Center will utilize the City's

Portal application system to streamline the Austin Music Disaster Relief Grant application, evaluation/scoring, and awarding processes.

- 3.1.1 City of Austin Portal Application System Training
- 3.1.2 City of Austin Portal Admin Access
- 3.1.3 Documentation & Online Verification
- 3.1.4 MSA Eligibility Verification
- 3.1.5 Qualified Census Tract (QCT) Verification
- 3.1.6 Evaluation & Scoring

- 3.2 **Task B – Austin Music Industry Panel:** Form and coordinate a panel of Austin-based music industry experts to double-check and affirm 3rd Party Administrator application evaluations and scores.
- 3.3 **Task C – Daily Update Meetings:** Provide daily updates on progress to City of Austin Contract Manager and Program Managers.
- 3.4 **Task D – Marketing and Promotion:** Coordinate marketing and promotion regarding the Austin Music Disaster Relief Grant with the City’s Economic Development Department Communications Team. The Long Center shall not distribute marketing materials regarding this fund without the City’s review and written approval. The Long Center will defer Council questions, board and commission questions, media inquiries, interview requests, and public information requests to the City.
- 3.5 **Task E – Grant Payments to Awardees:** Facilitate \$2,000 grant payments to awardees via checks.
- 3.6 **Task F – Financial & Data Reporting:** Document administration hours and completed deliverables at the conclusion of process. Refer to “**Appendix B**” for federal reporting requirements.

4.0 City Responsibilities: The City assumes the following responsibilities:

- 4.1.1 City will maintain the Portal application system, as well as provide training and access for The Long Center.
- 4.1.2 Staff will identify and compensate third-party vendor to provide application and technical assistance to program applicants.
- 4.1.3 City will produce an instructional webinar about the program in English and Spanish.
- 4.1.4 City will distribute a press release, social media posts, and other marketing tools to promote the Austin Music Disaster Relief Grant. City staff will share marketing materials with The Long Center, and City staff will review marketing requests/drafts from The Long Center within four business days of receipt.
- 4.1.5 City will translate Austin Music Disaster Relief Grant materials to at least the five most spoken languages in the City of Austin.
- 4.1.6 City staff will respond to requests from The Long Center within two business days, excluding requests covered in 6.1.4.
- 4.1.7 City staff will provide The Long Center with dates for meetings seven days in advance of the meetings.
- 4.1.8 City staff will serve as the lead representative for Council, board/commission, media, and public information inquiries regarding any activities performed under this

contract.

4.1.9 City will pay all invoices in accordance with the City's Purchasing Guidelines.

5.0 **Designation of Key Personnel:** The City and the Contractor resolve to keep the same key personnel assigned to this project throughout its term. If it becomes necessary for The Long Center to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, The Long Center shall promptly notify the City and obtain approval for the replacement. Such approval shall not be unreasonably withheld. The Long Center's and City's key personnel are identified as follows:

6.0

	Name/ Title	Phone Number	Email Address
COA Contract Manager:	Erica Shamaly, MED Manager	(512) 417-3440	Erica.Shamaly@austintexas.gov
COA Project Manager (AMDRG):	Stephanie Bergara, Program Coordinator	(512) 974-7804	Stephanie.Bergara@austintexas.gov
City Contract Administrator, Procurement Specialist	Brenita Wilkison	(512) 974-3164	Brenita.Selement@austintexas.gov
Contractor's Key Personnel:			
Contractor's Key Personnel:			

7.0 **Deliverables/Milestones**

7.1 Task A Deliverables / Milestones – City of Austin “Portal” Application System

Deliverables/Milestones	Description	Timeline (due/completion date, reference date, or frequency)	Performance Measure/ Acceptance Criteria	Contract Reference / Section
City of Austin Portal Application System Training	Contractor required to participate in training with City Staff to learn how to utilize Portal as an Administrator.	Within 7 days of contract execution	Confirm training sufficient at conclusion	5.1.1
City of Austin Portal Admin Access	Utilize City of Austin Portal application system as a program administrator to access, evaluate, and score applicants	Within 2 business days of conclusion of training.	COA will provide access	5.1.2
Documentation & Online Verification	Based on guidelines, confirm upload of correct supporting documents and public facing weblinks for questions in Eligibility Section and verify results with City designated Community Navigator.	Confirm as documents are uploaded	Daily Update MTG	5.1.3 App. A
MSA Eligibility Verification for Both Programs	Look up applicant home addresses to verify located in the Austin-Round Rock, TX Metropolitan Statistical Area (MSA – Code	Confirm as applications are submitted	Daily Update MTG	5.1.4

	12420) via https://geomap.ffiec.gov/FFIECGeoCMap/GeocodeMap1.aspx			
Qualified Census Tract (QCT) Verification for AMDRF3	Points awarded if the Applicant home address is in a QCT. Verify each applicant home address at https://www.huduser.gov/portal/sadda/sadda_qct.html	Confirm as applications are submitted	Daily Update MTG	5.1.5
Evaluation & Scoring	Evaluate applicants according to City provided program guidelines and verify results with Austin Music Industry Panel.	Begin as applications are submitted	Daily Update MTG	5.1.6 App. A

7.2 Task B – Austin Music Industry Panel

Deliverables/Milestones	Description	Timeline (due/completion date, reference date, or frequency)	Performance Measure/ Acceptance Criteria	Contract Reference/ Section
Evaluation & Scoring Affirmations	Form and coordinate a panel of Austin-based music industry experts to double-check and affirm 3 rd Party Administrator application evaluations and scores.	Within 14 days of contract execution	Daily Update MTG	5.2

7.3 Task C – Daily Update Meetings

Deliverables/Milestones	Description	Timeline (due/completion date, reference date, or frequency)	Performance Measure/ Acceptance Criteria	Contract Reference/ Section
Daily Check-In w/ COA	Provide daily updates on progress to COA Contract Manager and Program Manager daily at 3pm CST.	Within 3 days of contract execution	Daily Update MTG	5.3

7.4 Task D – Marketing and Promotion

Deliverables/Milestones	Description	Timeline (due/completion date, reference date, or frequency)	Performance Measure/ Acceptance Criteria	Contract Reference/ Section
Coordinated Marketing Campaigns	Coordinate marketing and promotion regarding the Austin Music Disaster Relief Grant with the City.	Within 7 days of contract execution	Daily Update MTG	5.4

7.5 Task E – Grant Payments to Awardees

Deliverables/Milestones	Description	Timeline (due/completion date, reference date, or frequency)	Performance Measure/ Acceptance Criteria	Contract Reference/ Section

Payments to Awardees	After final list is approved, facilitate \$2,000 grant payments via check using the preferred address provided by the applicant.	10 days after application portal closes	Audit approval; Daily Update MTG	5.5
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7.6 Task F – Financial & Data Reporting

Deliverables/Milestones	Description	Timeline (due/completion date, reference date, or frequency)	Performance Measure/ Acceptance Criteria	Contract Reference/ Section
Administration Fee Documentation & Final Report	Document Administration Fee hours and completed deliverables at the conclusion of process	TBD	Daily Update MTG	5.6
Data Reporting	Follow federal guidelines for ARPA reporting	TBD	Daily Update MTG	5.6 App. B

FY 2022 Program Guidelines:

8.0 Definitions

8.1 Applicant. The individual applying for the Austin Music Disaster Relief Grant.

8.2 Professional Musician. Must meet at least one of the following requirements:

- At least two years of documentation showing that Applicant has regularly performed as a professional musician—solo or as part of a band—in live performances to public audiences.
- Six released recordings (singles).
- Six promotionally released music videos.

8.3 Independent Promoter. Must meet all the following requirements:

- No more than three staff.
- At least two years of documentation showing that applicant has curated and promoted live shows featuring musicians and bands.

8.4 Music / Music Composition / Music Industry Creative Worker:

- Defined as an individual whose current or primary occupation is or has been within Music / Music Composition / Music Industry for at least two years
- Includes creative workers working in the Music / Music Composition / Music Industry sector, including staff and associated personnel working in venues and organizations within the sector

9.0 Eligibility

9.1 Eligible Applicants:

- Work as a professional musician; independent promoter; or music/music composition/music industry creative worker.

- Reside in [the Austin–Round Rock Metropolitan Statistical Area \(MSA\)](#), which includes Travis, Williamson, Hays, Bastrop, and Caldwell Counties.
- Be at least 18 years old.

9.2 Ineligible Applicants

- City of Austin Employees
- Individuals younger than 18 years old
- Individuals who do not meet the definitions of Professional Musicians, Independent Promoters, and Music/Music Composition/Music Industry Creative Workers
- Individuals who live outside of the Austin MSA
- Businesses, organizations, government agencies, and public authorities

10.0 Required Documentation

Applications will not be reviewed without proper documentation spanning two years from the date of application. Any type of documentation that demonstrates active participation as a Professional Musician, Independent Promoter, and Music / Music Composition / Music Industry Creative Worker is acceptable. Points are not associated with this application requirement, but at least two years of documentation is required to confirm eligibility:

- Current resume or curriculum vitae (CV)
- Current biography
- Screenshot or PDF of LinkedIn work history
- Press demonstrating involvement within the music sector
- Portfolio (web links, screenshots, printouts, scans, etc.)
- Marketing materials of performances, exhibitions, showings, productions, collections, or recitals.
- Materials showing merchandise created and sold, including screenshots of websites that exhibit or sell the Applicant's products
- Credits or liner notes
- Purchased advertising to Austin residents
- Contracts for performances, exhibitions, showings, commissions, recitals, productions, or production services
- Letter from employer or manager stating role and involvement in the music sector
- Website screenshot of events or concert schedule with locations

11.0 Awards

This round of the Austin Music Disaster Relief Grant will provide one-time unrestricted \$2,000 emergency relief grants to eligible professional musicians; independent promoters; and music, music composition, and music industry creative workers. The process of selecting grantees will prioritize equity, vulnerability, and long-time Austin area residents. Individuals may only apply once and may only receive one award.

12.0 Scoring Criteria

- Applicant home address located in a Qualified Census Tract (QCT) – **10 PTS***

- Combination average annual household earnings/wages (after taxes) for 2020 and 2021 and number of household members – **Up to 10 PTS***
 - Number of years residing in the Austin-Round Rock, TX Metropolitan Statistical Area (MSA) – **Up to 10 PTS**
 - Number of residential moves due to economic hardship – **Up to 10 PTS**
 - Lack of access to a traditional bank or credit union – **Up to 10 PTS**
 - Lack of healthcare access – **Up to 10 PTS**
 - Applicant hasn't returned to pre-pandemic annual household earnings/wages since March 2020 – **Up to 20 PTS**
 - Previously didn't receive Austin Music Disaster Relief Grant and/or Austin Creative Worker Relief Fund grants – **Up to 4 PTS**
 - Limited access to Personal Protective Equipment (PPE) and high-speed internet that prevents Applicant from taking jobs in the Austin music industry – **Up to 7 PTS***
 - COVID-19 Impacts: Increased Costs of Household Expenses; Increased Costs of Doing Business; Inability to make rent or mortgage payments; Cancellation of events; Pay/Salary cuts and/or Termination of staff / contractors; Discrimination; Losses due to unrefunded deposits, leases & other down-payments – **Up to 9 PTS***
- *ARPA Priority Criteria**

13.0 Proprietary and Confidential Information

All information provided in response to this application is subject to the Texas Government Code, Chapter 552, and could be made available to the public upon request. Applicants that want portions of their submission kept confidential must mark each portion as "Proprietary". To the extent allowed by law, City of Austin staff will endeavor to protect such information from disclosure. City staff may request a review and determination from the Attorney General's Office of the State of Texas of any contents marked as "Proprietary". A copyright notice or symbol is insufficient to identify proprietary or confidential information.

Exhibit B – Federal Terms and Conditions

The following Terms, Conditions, Clauses and Certifications are required by various agencies of the United States Government as part of the City's contracts where federal funds are used or reimbursement will be sought from federal and state sources. These provisions are non-negotiable.

1. Applicable to All Contracts Regardless of Dollar Value.

a. Prohibition on Contracting for Covered Telecommunications Equipment or Services

Prohibition on Contracting for Covered Telecommunications Equipment or Services

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or Contract Provisions Guide 28

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

(i) Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system.

(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered for telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

b. Domestic Preference Procurements

Domestic Preference for Procurements As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-

ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

c. Access to Records

The Contractor agrees to provide the City of Austin, Texas, State of Texas Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

d. Contract Changes or Modifications

Changes or modifications to contracts will be discussed with the Contractor. These changes will require documentation of any price increase or decrease. City will review and accept or reject price changes. City will issue a contract amendment for each change.

Changes to contract scope or price may increase the number of applicable federal contract clauses. If a contract value is increased from one dollar value threshold to another, the City will advise the Contractor of the additional applicable requirements as an amendment of the contract.

e. DHS Seal, Logo and Flags

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The contractor shall include this provision in any subcontracts.

f. Compliance with Federal Law, Regulations, and Executive Orders

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

g. No Obligation by Federal Government

The federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

h. Program Fraud and Fraudulent Statements or Related Acts

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

i. Affirmative Socioeconomic Steps

If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

j. Copyright – all contracts that may involve the creation of copyrightable material.

“License and Delivery of Works Subject to Copyright and Data Rights” The Contractor grants to the City of Austin, Texas, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the City of Austin, Texas or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the (insert name of the non-federal entity) data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the (insert name of the non-federal entity).

k. Civil Rights

Recipients of Federal financial assistance from the Treasury, including the City's contractors and subcontractors are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds.

Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of

- race,
- color,
- national origin (including limited English proficiency),
- disability,
- age, or

- sex (including sexual orientation and gender identity),

in accordance with the following authorities:

- Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22;
- Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794;
- Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28;
- Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

I. Requirement to use minority businesses, woman-owned businesses, and labor surplus area firms.

Prime Contractors must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Prime contractor may contact the City for assistance in identifying businesses in these three categories.

m. Parties involved in developing requirements excluded from award of subsequent contract.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals are excluded from competing for such procurements.

If a contractor is later discovered to have violated this term, contract is void. [MW: ensure language is consistent with other City terms creating void contract, such as Anti-Lobbying.] [MW: This should probably move up to the City's library of Standard Terms and Conditions.]

n. Prohibition on contracting / subcontracting with precluded parties

Contractors may not use subcontractors identified within the System for Award Management as a precluded party.

2. Applicable to Contracts Over \$10,000

a. Termination for Cause or Convenience; Process and Basis for Settlement

The City may terminate this Contract for convenience at any time with 30 calendar days' written notice to Contractor. On receipt of the Notice, the Contractor shall immediately stop performance of services (unless the Notice directs otherwise) and deliver all documents, programs, reports, and materials accumulated in performing this Contract (whether finished or in process) to the City within 10 business days, or as otherwise stated in the Notice. The City shall pay the Contractor for all reimbursable costs and obligations incurred up to the date of termination. However, in no event shall the Contractor be entitled to recover any profit for unperformed Services. In the event of a termination for convenience, the City shall have the right (but not the obligation) to take over the Services and complete them by contract or otherwise, including the option to require the Contractor to assign any or all of its subcontracts to the City.

b. Procurement of Recovered Materials where materials are involved

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –

Competitively within a timeframe providing for compliance with the contract performance schedule;

Meeting contract performance requirements; or

At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

3. Applicable to Contracts Over \$25,000

a. Suspension and Debarment

Suspension and Debarment. This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the City of Austin, Texas. If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City of Austin, Texas, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

b. Registration with and maintenance of account with GSA System for Award Management (SAM)

Prime and all subcontractors (if any) shall register with the System for Award Management.

LINK: <https://sam.gov/content/entity-registration>

Per Executive Orders 12549 and 12689, a contract award must not be made to parties listed on the government-wide exclusions in the System for Award Management.

4. Applicable to Contracts Over \$100,00 with mechanics or laborers

a. Contract Work Hours and Safety Standards Act

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (insert name of grant recipient or subrecipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.”

5. Applicable to Contracts Over \$100,000

a. Byrd Anti-Lobbying Amendment

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended) Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

If applicable, contractors must sign and submit the certification included on the final page with each bid or offer exceeding \$100,000.

6. Applicable to Contracts Over \$150,000

a. Clean Air Act and Federal Water Pollution Control Act

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The contractor agrees to report each violation to the (insert name of non-federal entity entering into the contract) and understands and agrees that the (insert name of the nonfederal entity entering into the contract) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The contractor agrees to report each violation to the (insert name of the non-federal entity entering into the contract) and understands and agrees that the (insert name of the nonfederal entity entering into the contract) will, in turn, report each violation as required to assure notification to the (insert name of the pass-through entity, if applicable), Federal Emergency Management Agency

(FEMA), and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

7. Applicable to Contracts Over \$250,000

a. Remedies for Violation or Breach of Contract; Sanctions and Penalties

A party shall be in default ("Default") under the Contract if the party (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, and following receipt of notice of such failure, fails timely to cure the failure within [*time to cure*] or fails to provide adequate assurance of performance within [*should be same amount of time*].

8. Applicable to Contracts Over \$750,000

- a. When the City spends an amount in excess of \$750,000 with a contractor, whether in a single order or contract, or as the result of a series of purchases assembled into a reimbursement project, the City will be the subject of a "single audit" for each such event.
- b. Contractor is advised that the requirements of a single audit may result in requirements to produce additional documentation for the City.

9. Applicable Only to Construction Projects

a. Equal Employment Opportunity

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual 7 See 2 C.F.R. Part 200, Appendix II, § C. Contract Provisions Guide 11 orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other Contract Provisions Guide 12 sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality

or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings

b. Davis-Bacon Act

§ 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.*

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification

of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). [Laborers](#) or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the [employer's](#) payroll records accurately set forth the time spent in each classification in which work is performed. The [wage determination](#) (including any additional classification and wage rates conformed under [paragraph \(a\)\(1\)\(ii\)](#) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at [the site of the work](#) in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The [contracting officer](#) shall require that any class of [laborers](#) or mechanics, including helpers, which is not listed in the [wage determination](#) and which is to be [employed](#) under the [contract](#) shall be classified in conformance with the [wage determination](#). The [contracting officer](#) shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the [wage determination](#); and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the [wage determination](#).

(B) If the contractor and the [laborers](#) and mechanics to be [employed](#) in the classification (if known), or their representatives, and the [contracting officer](#) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the [contracting officer](#) to the [Administrator](#) of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The [Administrator](#), or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the [contracting officer](#) or will notify the [contracting officer](#) within the 30-day period that additional time is necessary.

(C) In the event the contractor, the [laborers](#) or mechanics to be [employed](#) in the classification or their representatives, and the [contracting officer](#) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the [contracting officer](#) shall refer the questions, including the views of all interested parties and the recommendation of the [contracting officer](#), to the [Administrator](#) for determination. The [Administrator](#), or an authorized representative, will issue a determination within 30 days of receipt and so advise the [contracting officer](#) or will notify the [contracting officer](#) within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this [contract](#) from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the [contract](#) for a class of [laborers](#) or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as [stated](#) in the [wage determination](#) or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the [wages](#) of any [laborer](#) or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or

program, *Provided*, That the [Secretary](#) of Labor has found, upon the written request of the contractor, that the applicable standards of the [Davis-Bacon Act](#) have been met. The [Secretary](#) of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The (write in name of [Federal Agency](#) or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this [contract](#) or any other Federal [contract](#) with the same prime contractor, or any other federally-assisted [contract](#) subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay [laborers](#) and mechanics, including [apprentices](#), trainees, and helpers, [employed](#) by the contractor or any subcontractor the full amount of [wages](#) required by the [contract](#). In the event of failure to pay any [laborer](#) or mechanic, including any [apprentice](#), [trainee](#), or helper, [employed](#) or working on [the site of the work](#) (or under the [United States Housing Act of 1937](#) or under the [Housing Act of 1949](#) in the construction or development of the project), all or part of the [wages](#) required by the [contract](#), the (Agency) may, after written notice to the contractor, [sponsor](#), applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.*

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all [laborers](#) and mechanics working at [the site of the work](#) (or under the [United States Housing Act of 1937](#), or under the [Housing Act of 1949](#), in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of [wages](#) paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the [Davis-Bacon Act](#)), daily and weekly number of hours worked, deductions made and actual [wages](#) paid. Whenever the [Secretary](#) of Labor has found under [29 CFR 5.5\(a\)\(1\)\(iv\)](#) that the [wages](#) of any [laborer](#) or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the [Davis-Bacon Act](#), the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the [laborers](#) or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing [apprentices](#) or [trainees](#) under approved programs shall maintain written evidence of the registration of [apprenticeship programs](#) and certification of [trainee](#) programs, the registration of the [apprentices](#) and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any [contract](#) work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the [agency](#) is a party to the [contract](#), but if the [agency](#) is not such a party, the contractor will submit the payrolls to the applicant, [sponsor](#), or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under [29 CFR 5.5\(a\)\(3\)\(i\)](#), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each [employee](#) (*e.g.*, the last four digits of the [employee](#)'s social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site

at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the [agency](#) is a party to the [contract](#), but if the [agency](#) is not such a party, the contractor will submit them to the applicant, [sponsor](#), or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the [sponsoring](#) government [agency](#) (or the applicant, [sponsor](#), or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons [employed](#) under the [contract](#) and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, [29 CFR part 5](#), the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, [29 CFR part 5](#), and that such information is correct and complete;

(2) That each [laborer](#) or mechanic (including each helper, [apprentice](#), and trainee) [employed](#) on the [contract](#) during the payroll period has been paid the full weekly [wages](#) earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full [wages](#) earned, other than permissible deductions as set forth in Regulations, [29 CFR part 3](#);

(3) That each [laborer](#) or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable [wage determination](#) incorporated into the [contract](#).

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by [paragraph \(a\)\(3\)\(iii\)\(B\)](#) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and [section 231](#) of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under [paragraph \(a\)\(3\)\(i\)](#) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview [employees](#) during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the [Federal agency](#) may, after written notice to the contractor, [sponsor](#), applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to [29 CFR 5.12](#).

(4) Apprentices and trainees -

(i) Apprentices. [Apprentices](#) will be permitted to work at less than the predetermined rate for the work they performed when they are [employed](#) pursuant to and individually registered in a bona fide [apprenticeship program](#) registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, [Employer](#) and Labor Services, or with a [State Apprenticeship Agency](#) recognized by the Office, or if a person is [employed](#) in his or her first 90 days of probationary employment as an [apprentice](#) in such

an [apprenticeship program](#), who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, [Employer](#) and Labor Services or a [State Apprenticeship Agency](#) (where appropriate) to be eligible for probationary employment as an [apprentice](#). The allowable ratio of [apprentices](#) to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an [apprentice](#) wage rate, who is not registered or otherwise [employed](#) as [stated](#) above, shall be paid not less than the applicable wage rate on the [wage determination](#) for the classification of work actually performed. In addition, any [apprentice](#) performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the [wage determination](#) for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every [apprentice](#) must be paid at not less than the rate specified in the registered program for the [apprentice](#)'s level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable [wage determination](#). [Apprentices](#) shall be paid fringe benefits in accordance with the provisions of the [apprenticeship program](#). If the [apprenticeship program](#) does not specify fringe benefits, [apprentices](#) must be paid the full amount of fringe benefits listed on the [wage determination](#) for the applicable classification. If the [Administrator](#) determines that a different practice prevails for the applicable [apprentice](#) classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, [Employer](#) and Labor Services, or a [State Apprenticeship Agency](#) recognized by the Office, withdraws approval of an [apprenticeship program](#), the contractor will no longer be permitted to utilize [apprentices](#) at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in [29 CFR 5.16](#), [trainees](#) will not be permitted to work at less than the predetermined rate for the work performed unless they are [employed](#) pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of [trainees](#) to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every [trainee](#) must be paid at not less than the rate specified in the approved program for the [trainee](#)'s level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable [wage determination](#). [Trainees](#) shall be paid fringe benefits in accordance with the provisions of the [trainee](#) program. If the [trainee](#) program does not mention fringe benefits, [trainees](#) shall be paid the full amount of fringe benefits listed on the [wage determination](#) unless the [Administrator](#) of the Wage and Hour Division determines that there is an [apprenticeship program](#) associated with the corresponding journeyman wage rate on the [wage determination](#) which provides for less than full fringe benefits for [apprentices](#). Any [employee](#) listed on the payroll at a [trainee](#) rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the [wage determination](#) for the classification of work actually performed. In addition, any [trainee](#) performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the [wage determination](#) for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize [trainees](#) at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of [apprentices](#), [trainees](#) and journeymen under this part shall be in conformity with the equal employment opportunity requirements of [Executive Order 11246](#), as amended, and [29 CFR part 30](#).

(5) **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of [29 CFR part 3](#), which are incorporated by reference in this [contract](#).

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in [29 CFR 5.5\(a\)\(1\)](#) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the [contract](#) clauses in [29 CFR 5.5](#).

(7) Contract termination: debarment. A breach of the [contract](#) clauses in [29 CFR 5.5](#) may be grounds for termination of the [contract](#), and for debarment as a contractor and a subcontractor as provided in [29 CFR 5.12](#).

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in [29 CFR](#) parts [1](#), [3](#), and [5](#) are herein incorporated by reference in this [contract](#).

(9) Disputes concerning labor standards. Disputes arising out of the [labor standards](#) provisions of this [contract](#) shall not be subject to the general disputes clause of this [contract](#). Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in [29 CFR](#) parts [5](#), [6](#), and [7](#). Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting [agency](#), the U.S. Department of Labor, or the [employees](#) or their representatives.

(10) Certification of eligibility.

(i) By entering into this [contract](#), the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the [Davis-Bacon Act](#) or [29 CFR 5.12\(a\)\(1\)](#).

(ii) No part of this [contract](#) shall be subcontracted to any person or firm ineligible for award of a Government [contract](#) by virtue of section 3(a) of the [Davis-Bacon Act](#) or [29 CFR 5.12\(a\)\(1\)](#).

(iii) The penalty for making false statements is prescribed in the U.S. [Criminal Code](#), [18 U.S.C. 1001](#).

c. Copeland Anti-Kickback – Applicable to Construction contracts greater than \$2,000

Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

d. Value Engineering

Prime contractors are encouraged to submit value engineering recommendations for changes to construction contracts where there are opportunities for cost reductions without compromising purpose or quality. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. [MW: maybe we just pull the language from the FAR here. Also, GSA contracts included value engineering clauses for service contracts. We might want to move it to the “all procurements” section on that basis. If a contractor can conclusively demonstrate a cost reduction that does not compromise quality or purpose, then that benefits all parties. However, VE normally results in a “reward”, “rebate” or other consideration to the contractor to offset the lost billables.]

10. Applicable to Funding Agreements Only

a. Rights to Inventions Made Under a Contract or Agreement

“License and Delivery of Works Subject to Copyright and Data Rights” The Contractor grants to the City of Austin, Texas, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the (insert name of the non-federal entity) or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the (insert name of the non-federal entity) data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the (insert name of the non-federal entity).

11. Records Retention

Records retention by the contractor varies based on source of funds. This contract has the following document retention requirements. (Check only one, then erase the others)

FEMA Public Assistance: minimum of three (3) years after submission of final federal financial report.

US Treasury – CARES Act: Seven (7) years after last action (Completion; final report; litigation; dispute or audit)

US Treasury – American Rescue Plan Act (SLFRF): Five (5) years after funds expended or returned to Treasury.

Records retention will be reviewed prior to completion of contract, and contractor will be specifically released from further document production or retention as part of the City’s Contract Closeout process.

Contractor acknowledges these additional Special Supplemental Terms, Conditions, Clauses and Certifications incorporated in full or by reference above as part of the City's contract.

DocuSigned by:

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Signature of Contractor's Authorized Official

Cory Baker

President and CEO

Name and Title of Contractor's Authorized Official

11/15/2021

Date

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements
The undersigned certifies, to the best of his or her knowledge and belief, that: No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal

contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

DocuSigned by:

Cory Baker

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Signature of Contractor's Authorized Official

Cory Baker

President and CEO

Name and Title of Contractor's Authorized Official

11/15/2021

Date