

**AGREEMENT TO USE FUNDS
of the City of San Antonio**

THIS AGREEMENT is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") acting by and through its Executive Director of the Department of Arts & Culture and Main Plaza Conservancy ("Grantee");

WITNESSETH:

WHEREAS, the Department of Arts & Culture is designated as the managing City department for City; and

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

WHEREAS, Grantee has submitted a request to City to provide support for Grantee's program series ("Program Series"); and

WHEREAS, pursuant to Ordinance No. 2024-09-19-0701 passed and approved on September 19, 2024, the City Council authorized the expenditure of these funds for cultural arts activities that benefit the citizens of San Antonio and the tourism and hotel industry; and

WHEREAS, City has allocated funding from the Department of Arts & Culture budget for the above-described arts-related expenditures; **NOW THEREFORE:**

For and in consideration of the following mutual promises and obligations, and for the benefit of the City of San Antonio, the parties agree as follows:

1. In consideration of the payment of the sum of not to exceed **\$50,000.00** to Grantee by City upon execution of this Agreement, Grantee agrees to provide, oversee, administer, and carry out all Program Series activities and services in a manner satisfactory to City as described in Attachment I, which is attached and incorporated into this Agreement. All services shall occur between March 5, 2025 and September 30, 2025.
2. Grantee agrees to provide City with an Artistic Activity as described in Attachment I, and as approved by City.
3. Restrictions that must be adhered to regarding this funding are attached and incorporated into this Agreement as Attachment II.
4. Accounting records for all expenditures shall be maintained by Grantee in accordance with generally accepted accounting practices, and shall be subject to audit by City or its contracted auditor. These records shall be maintained for a period of four years from the termination date of this Agreement.
5. This Agreement is effective March 5, 2025, and shall terminate upon completion or October 10, 2025, whichever is sooner.

6. This Agreement is not assignable and funds received shall only be used by the parties stated herein.
7. In the event that all funds are not used for the purposes, and in accordance with all of this Agreement's terms and provisions, including Attachments I and II, City may terminate this Agreement and Grantee shall refund any amounts to City which were not used in accordance with these terms and provisions within thirty (30) days of the receipt of notice from City. This Section shall survive termination of this Agreement.
8. None of the performance rendered under this Agreement shall involve, and no portion of the funds received shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

10. INDEMNITY

GRANTEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, property damage and intellectual property right infringement, made upon CITY directly or indirectly arising out of, resulting from or related to GRANTEE'S activities under this AGREEMENT, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Grantee shall advise City in writing within 24 hours of any claim or demand against the City or Grantee known to Grantee related to or arising out of Grantee's activities under this Agreement.

Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Grantee in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Grantee shall retain City-approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification

under this Agreement. If Grantee fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Grantee shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

Employee Litigation – In any and all claims against any party indemnified under this Agreement by any employee of Grantee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Grantee or any subcontractor under worker's compensation or other employee benefit acts.

11. **Non-Discrimination**. As a party to this Agreement, Grantee understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established in this Agreement.
12. Grantee shall receive prior written approval from City before committing these funds as a match for any other funding. Grantee agrees that costs claimed under this Agreement will not be claimed under another contract or grant from City or another agency, and Grantee warrants that each invoice submitted for payment does not include any costs paid for by another funding source or submitted for payment to any other funding source.
13. Grantee agrees and understands that, it and all persons designated by it to provide services in connection with this Agreement, is (are) and shall be deemed to be an independent contractor(s), responsible for its (their) respective acts or omissions, and that City shall in no way be responsible for Grantees actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.
14. For purposes of this Agreement, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY:

Contract Manager
Department of Arts and Culture
P.O. Box 839966
San Antonio, Texas 78283-3966

GRANTEE:

Main Plaza Conservancy
Molly Hall-Villarreal,
Executive Director
231 W. Commerce St
San Antonio, TX, 78205

Notices of changes of address by either party must be made in writing delivered to the other party's last

known address within five (5) business days of the change.

15. If any provision of this Agreement is for any reason held to be unconstitutional, void, or invalid, the remaining provisions or sections contained herein shall remain in effect and the section so held shall be reformed to reflect the intent of the parties.
16. The signer of this Agreement for Grantee represents, warrants, assures and guarantees that the he or she has full legal authority to execute this Agreement on behalf of Grantee and to bind Grantee to all of its terms, conditions, provisions and obligations.
17. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
 - (i) a City officer or employee;
 - (ii) his parent, child or spouse;
 - (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
 - (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

Grantee warrants and certifies that Grantee and its officers, employees and agents are neither officers nor employees of City.

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

18. It is the policy of the City of San Antonio to provide a work environment to all employees and applicants free of **employment discrimination, harassment and sexual harassment**. In addition, any behavior, regardless of intent or severity, that could be deemed inappropriate workplace behavior, but may not legally constitute **employment discrimination, harassment, or sexual harassment**, is prohibited. **Harassment** and **sexual harassment** are forms of discrimination that violate Title VII of the Civil Rights Act of 1964, (as amended), the Civil Rights Act of 1991, the American with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and related State of Texas statutes. Retaliation against employees for opposing alleged **employment discrimination, harassment, or sexual harassment** or for filing a charge, testifying, assisting, or participating in any manner in an Equal Employment Opportunity (EEO) investigation, proceeding, or hearing is prohibited. Grantee shall comply with this policy in all interactions with Grantee's employees and subcontractors, artists, and volunteers if any, under this Agreement.
19. The following is City's policy statement regarding material and/or performances funded under this Agreement:
 - (A) Grantee is instructed to make the public aware that sensitive subject matter of graphically violent and/or sexually explicit nature may be performed, sponsored, or exhibited by displaying at all times during the term of this Agreement an English/Spanish bilingual notice that viewer and/or parental discretion should be exercised. Grantee shall forward to the City a copy of

the content of the notice to be displayed along with the notification required by Section 19 (B).

(B) Grantee must make Department aware in writing of the intent to perform, sponsor or exhibit the proposed event of sensitive subject matter of graphically violent and/or sexually explicit nature no less than thirty (30) days prior to the actual activity. Additionally, Grantee shall ensure that any such performance or exhibition is held in a separate area removed from visibility by members of the general public who might choose not to view such performance or exhibition.

(C) The City shall have the right to terminate this Agreement upon finding that Grantee's activities are not in compliance with the above provisions.

Grantee shall not knowingly encourage, foster, promote or fund any project, production, workshop or program that includes obscene material as defined by Section 43.21 of the Texas Penal Code.

20. Trademarked and Copyrighted Usage. Grantee agrees to obtain all necessary licenses and take all other necessary steps to ensure that all use of trademarked and/or copyrighted materials under this Contract complies with United States and any other applicable trademark and copyright law.

IN WITNESS OF WHICH this Agreement is executed to be effective on the __ day of March, 2025.

CITY OF SAN ANTONIO

GRANTEE

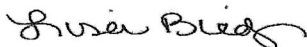


Lori Houston
Assistant City Manager,
City of San Antonio



Molly Hall-Villarreal
Executive Director
Main Plaza Conservancy

Approved as to Form:



City Attorney
By electronic signature

Attachments:

Attachment I, Services & Requirements

Attachment II, Restrictions

Attachment I

SERVICES & REQUIREMENTS FOR GRANTEE

The Saga: Funding support of \$50,000 for The Saga at Main Plaza.

Grantee must submit an Artistic Activity Report for April 2025 – June 2025 in the format required by City by July 10, 2025 and July 2025 – September 2025, by October 10, 2025.



Attachment II

RESTRICTIONS

Department of Arts & Culture Funding cannot be used to support:

1. Any activity not allowed by the funding source.
2. Workshops and educational programs held on a school campus that are provided by the school.
3. State or local government institutions and departments.
4. Capital improvements.
5. Purchase of real property.
6. Benefits or fundraising events.
7. Cash prizes.
8. Programs that are essentially recreational, rehabilitative, or therapeutic.
9. Political purposes for or against a political candidate, ballot measure or bill.
10. Projects, productions, workshops and/or programs that include obscene material as defined in Section 43.21, Penal Code of Texas.
11. Costs of receptions and social activities, except when they are incidental and related to arts activities.
12. Deficit or debt reduction efforts.
13. Funding for litigation or litigation related activities.
14. Religious institutions and/or programs to support a religion.
15. Food and beverages.