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C-10924
06/14/2016

PERSONAL SERVICES CONTRACT

FY2016-17 PERFORMING ARTS PARTNERSHIP PROGRAM

This Personal Services Contract for the FY 2016-17 Performing Arts Partnership Program ("Agreement") is entered into this 14th day of June, 2016 (Effective Date) between the CITY OF GLENDALE, an Arizona municipal corporation ("City") and the PHOENIX SYMPHONY ASSOCIATION, an Arizona non-profit corporation , as an Independent Contractor ("IC").

RECITALS

A. The City intends to contract IC for the performance of certain tasks.

B. IC declares that IC is engaged in an independent business and has complied with all federal, state and local laws regarding business permits and licenses of any kind that may be required to carry out the said business and the tasks to be performed under this Agreement with City.

C. IC declares that IC holds services out to the public as a separate business entity from City and is not in business for the purpose of providing services solely to City.

D. City and IC desire to memorialize their agreement with this document.

AGREEMENT

1. SERVICES TO BE PERFORMED. By this Agreement, City contracts with IC to perform all the services in the Scope of Work attached as Exhibit A ("Services").

2. COMPENSATION.

   ☐ City will pay 50% of the project fee upon execution of this Agreement and the remaining amount upon satisfactory completion of the project together with an IC invoice depicting the dates and times of the project(s).

   ☒ In consideration for the Services described herein, City will pay IC $ 4,000.00. The payment will be made within thirty (30) days after receiving an invoice from IC. The invoice must at a minimum contain the time(s) and location(s) of the Service.

3. PROMOTION. IC must acknowledge City's support in press releases, project programs and advertisements with the following credit line: "(Name of the project) is sponsored by the City of Glendale Arts Commission's Performing Arts Program."

4. FINAL EVALUATION. IC must submit a final report and a project evaluation to the Arts Commission within thirty (30) days after the completion of the Services. All unexpended funds from IC must be returned to City no later than sixty (60) days after the completion of the Services.

5. TAXES. No payroll or employment taxes of any kind will be withheld or paid with respect to payments to IC. The payroll or employment taxes that are the subject of this section include, but are not limited to FICA, FUTA, federal personal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. The IC is required to be licensed, and report and pay all city, county, and state privilege (sales) and exercise taxes.

6. WORKERS' COMPENSATION. No workers' compensation insurance has been or will be obtained by City for IC or any employee working for or on behalf of IC.

7. NON-DISCRIMINATION. IC agrees that all Services shall be open to all members of the public and no person shall be denied access to, or participate in, the performance or event on the basis of race, color, national origin, gender, age, sexual orientation or disability.

8. TERMINATION OR MODIFICATION. This Agreement may be terminated by either party upon fifteen (15) days written notice. No modification to the Agreement can be made without written approval of City and IC. Any and all sums advanced to IC under Section 2 must be refunded in full upon submission of the written notice to terminate.

9. IMMIGRATION LAW COMPLIANCE.

   a. IC, and on behalf of any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

   b. Any breach of warranty under Section 9(a) above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

   c. City retains the legal right to inspect the papers of any IC or subcontractor employee who performs work under this Agreement to ensure that IC or any subcontractor is compliant with the warranty under Section 9(a) above.

   d. City may conduct random inspections, and upon request of City, IC will provide copies of papers and records of IC demonstrating continued compliance with the warranty under Section 9(a) above. IC agrees to keep papers and records available for inspection by City during normal business hours and will cooperate with City in the exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.

   e. IC agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon IC and expressly accrue those obligations directly to the benefit of City. IC also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of City.

f. IC's warranty and obligations under this section to City is continuing throughout the term of this Agreement or until such time as City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.

g. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

10. CONFLICT. IC acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

11. INDEMNIFICATION.

a. To the fullest extent permitted by law, IC must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each a "Demand or Expense;" collectively, "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or IC) and that arises out of or results from the breach of this Agreement by IC or IC's negligent actions, errors or omissions (including any subcontractor or other person or firm employed by IC), whether sustained before or after completion of the tasks and services described in Section 1 of this Agreement.

b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, IC will be liable only to the extent that Demand or Expense results from the negligence or breach of a responsibility of IC or of any person or entity for whom IC is responsible.

c. IC is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

12. INTEGRATION. This Agreement contains, except as stated below, the entire Agreement between City and IC and supersedes all prior conversations and negotiations between the parties regarding this Agreement.

13. COMPLIANCE WITH LAW. IC must comply with all applicable federal, state, and local laws and regulations, including all laws and regulations governing music and performance licensing fees.

14. SURVIVAL. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of City and IC will survive the termination of this Agreement.

15. SEVERABILITY. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform to applicable law.

DATED this 14 day of June, 2016.

CITY OF GLENDALE,
an Arizona municipal corporation

By for Kevin R. Phelps

Kevin Phelps
City Manager

ATTEST:

Dawn McCracken

City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

PHOENIX SYMPHONY ASSOCIATION,
an Arizona non-profit corporation

By: Loren Borchard
Its: Associate VP of Development

EXHIBIT A

SCOPE OF WORK

Project:

The Classroom Concert Series

Description:

The Phoenix Symphony will perform two 40-minute concerts at Don Mensendick Middle School, emphasizing the musical qualities of string, woodwind and brass instruments. These performances are unique, because they extend learning beyond the actual concert experience by incorporating core academic concepts and challenging students to make new learning connections during the concerts. The Symphony also provides accompanying study guides and testing materials that work in tandem with STEAM (science, technology, engineering, arts and math) learning modalities.