

PERSONAL SERVICES CONTRACT
FY 2023-24 PERFORMING ARTS GRANT PROGRAM

This Personal Services Contract for the FY 2023-24 Performing Arts Partnership Program (“Agreement”) is entered into this day of September, 2023 (Effective Date) between the CITY OF GLENDALE, an Arizona municipal corporation (“City”) and ProMusica Arizona Chorale & Orchestra, an Arizona nonprofit Corporation, as an Independent Contractor (“IC”).

RECITALS

- A. The City wishes to contract IC to provide certain services as described below.
- B. IC affirms that it is a natural person or business entity contracted to perform certain services for the City.
- C. City and IC desire to memorialize their agreement with this contract.

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. RELATIONSHIP OF PARTIES. IC certifies that IC is an independent business entity or sole proprietor. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. IC has the responsibility for, and control over, the methods and details of performing Services and providing products under this Agreement. IC will provide all tools, materials, training, hiring, supervision, work policies and procedures, and be responsible for the compensation, discipline and termination of IC personnel. Neither Party has any authority to act on behalf of, or to bind the other to any obligation.
- 3. BUSINESS PERMITS AND LICENSE COMPLIANCE. IC also certifies that IC has complied with all applicable federal, state and local laws, including obtaining and complying with any terms and conditions of required business permits and licenses in order to carry out its business and to perform the Services under this Agreement with City.
- 4. COMPENSATION. The City will pay IC for the Services performed in accordance with one of the provisions below as chosen by the IC:

City will pay 50% of the total compensation fee \$1,065.88, upon execution of this Agreement, and the remaining 50 % within 30 days of the full and satisfactory completion of the Services; or

City will pay IC nothing upon execution of this Agreement and the entire amount of compensation [\$1,065.88] within thirty (30) days of the full and satisfactory completion of the Services.

The City's payment obligation does not begin to run until a final invoice documenting the time(s) and location(s) of all Services provided under this Agreement has been submitted to the City for review.

5. PROMOTION. IC must acknowledge City's financial support in press releases, project programs, advertisements or any other marketing materials, including any photographs or other content posted on any social media site (e.g., Facebook, Twitter, Snap Chat, Instagram, etc.) with the following credit line: "(Name of the project) is funded by a City of Glendale Performing Arts Grant."
6. 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. Any and all unexpended funds from IC must be returned to City no later than sixty (60) days after the completion of the Services.
7. TAXES. The City will not withhold any payroll or employment taxes of any kind from any payments made 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. As provided in Section 3 above, the IC is required to obtain and comply with all necessary business licenses, The City makes no representation and provides no opinion regarding the IC's requirement to report and pay all city, county, and state privilege (sales) and exercise taxes.

WORKERS' COMPENSATION. The IC acknowledges and agrees that because it is providing the Services under this Contract as an independent contractor, the City will not obtain Workers' Compensation insurance on IC's behalf and IC, its employees and subcontractors are not entitled to workers' compensation benefits from the City. IC shall obtain Workers' Compensation if required by State law.

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, age, gender, gender identity or expression, sexual orientation, genetic characteristics, marital status, familial status, U.S. military veteran status, religion or disability. IC will require any Sub-contractor to be bound to the same requirements as stated within this section.

8. NO BOYCOTT OF ISRAEL. To the extent A.R.S § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.
9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

CITY OF GLENDALE,
an Arizona municipal corporation

Daniel Sabillon,
Deputy Director, Economic Development

ATTEST:

Julie K. Bower
City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

Zack Wells 9/10/23

Zack Wells
Executive Director

EXHIBIT A
SCOPE OF WORK

Project: Women in Song

Dates and times: December 2023

Description:

ProMusica Arizona's 16-voice vocal ensemble, Women in Song will perform at the Glendale Main Public Library. The performance consists of holiday music from different cultures and time periods. Space for the performance will be provided by the Glendale Public Library, and the performance will be free to the public. It will be promoted by both the Library and ProMusica Arizona with publicity including a press release to local media, an email blast to ProMusica Arizona's 4,000+ recipients, online and printed event calendars, printed flyers, website announcements, and social media postings.

IMPORTANT REQUIREMENT:

As a condition for release of funds, IC must provide a detailed, finalized schedule of grant-funded events including titles of events/performances, descriptions (with promotional photos/images if applicable), locations, dates & times. The schedule of events must be sent by email to Daniel Sabillon DSabillon@glendaleaz.com at least 45 days prior to the start of event(s).