

AI-88392

Purchasing Department 23. D. 1.

CC REGULAR AGENDA SPECIAL MTG

Prct. 2

Meeting Date: 11/15/2022

Submitted For: Eddie Cantu, COMM. PCT. #2

Submitted By: Lupita Garza, COMM. PCT. #2

Department: COMM. PCT. #2

CAPTION

A. Requesting exemption from competitive bidding requirements under the Texas Local Government Code 262.024 (a)(10) any work performed under a contract for community and economic development made by a county under Section 381.004 (Community and Economic Development Programs).

B. Authority to approve the 2022 Service Agreement between Hidalgo County and the Boys and Girls Club of Pharr to administer the Hidalgo County Arts Program.

BACKGROUND

Project No.: 2020-549

Term: 3/1/2022 – 2/28/2023

Contract No: C-20-549-02-23

The Hidalgo County Arts Program was created and approved by Commissioners' Court on 7/17/18 [R-AI 65705]. The Stimulating Business and Commercial Activity through the Arts (SBACA) Initiative and first Service Agreement was approved by Commissioners' Court on 7/31/18 [Term: 8/1/2018 – 7/31/2019, R-AI 65872]. The second Service Agreement was approved by Commissioners' Court on 2/26/2020 [Term: 3/1/2020 – 2/28/2021, R-AI 74515]. The third Service Agreement was approved by Commissioners' Court on 2/23/2021 [Term: 3/1/2021 – 2/28/2022, R-AI 79663].

The purpose of this agreement is to provide full funding of the County of Hidalgo Arts Program, SBACA, focusing on access to high-quality Arts programs and their benefits. For services under this agreement, the County agrees to pay Contractor the sum of \$90,000 payable in one lump sum.

Fiscal Impact

CALENDAR YEAR: 2022

ACCT. #: 2-1100-465-10-110-081-1-843

FUNDS AVAILABLE Y/N?: Y

MATCHING FUNDS Y/N?: N

BUDGETARY IMPACT:

Funding available in the amount of \$90,000.00 as of 11/10/22.

Attachments

No file(s) attached.

Form Review

Inbox	Reviewed By	Date
Purchasing / Internal	Eduardo Belmarez	11/10/2022 04:23 PM
Final Approval	Monica Salinas	11/10/2022 05:21 PM
Form Started By: Lupita Garza		Started On: 11/10/2022 11:42 AM
Final Approval Date: 11/10/2022		



Erika Zamora <erika.zamora@co.hidalgo.tx.us>

Re: Hidalgo County Arts Program - Service Agreement

1 message

Victor M. Garza <victor.garza@da.co.hidalgo.tx.us>

Mon, Nov 21, 2022 at 9:12 AM

To: Erika Zamora <erika.zamora@co.hidalgo.tx.us>

Cc: "Ramirez, Josephine" <josephine.ramirez@da.co.hidalgo.tx.us>, "garzajr, armando" <armando.garzajr@co.hidalgo.tx.us>

Ms. Zamora,

Our office has reviewed the proposed B&G Arts Program Initiative, and at this time we approve the form of the agreement. Please let me know if you have any questions or concerns.

Respectfully,

Victor M. Garza

Chief Administrative Attorney
Civil Division-Assistant District Attorney
Office of the Criminal District Attorney
Hidalgo County, Texas
100 East Cano Street
Edinburg, Texas 78539

(956) 292-7609 EXT. 8185
(956) 292-7619 FAX
victor.garza@da.co.hidalgo.tx.us

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On Tue, Nov 15, 2022 at 9:57 AM Erika Zamora <erika.zamora@co.hidalgo.tx.us> wrote:

Good morning Josie,

Attached for your review and approval is the same service agreement with the Boys and Girls Club of Pharr for the Arts Program that you reviewed last year. I have updated all applicable information.

Please let me know if you approve. It is on the agenda for Commissioners Court approval, today 11/15/22 (AI#88392).

Respectfully,

Erika Zamora

Director of Administration
Hidalgo County Precinct 2
Commissioner Eduardo "Eddie" Cantu
[300 W Hall Acres, Suite G](mailto:erika.zamora@co.hidalgo.tx.us)
[Pharr, TX 78577](mailto:erika.zamora@co.hidalgo.tx.us)
[Ph: \(956\)292-7000](tel:(956)292-7000) Ext 2015

IN WITNESS THEREOF, this Agreement is executed in duplicate originals this _____ day of _____, 2022.

COUNTY:
COUNTY OF HIDALGO

CONTRACTOR:
BOYS & GIRLS
CLUB OF
PHARR

By: *Richard Cortez*
Hon. Richard Cortez,
Hidalgo County Judge

By: *Alfredo Mata, Jr.*
Alfredo Mata, Jr.,
Chief Executive Officer

ATTEST:
By: *Arturo Guajardo, Jr.*
Hon. Arturo Guajardo, Jr.,
Hidalgo County Clerk



APPROVED AS TO FORM:

**HIDALGO COUNTY CRIMINAL
DISTRICT ATTORNEY'S OFFICE
RICARDO RODRIGUEZ, JR.**

By: *Victor M. Garza*
Victor M. Garza, Assistant District Attorney

INVOICE

INVOICE

Contractor's name:

Contractor's Address:

Contractor's Telephone:

Date

Invoice No.

Billed To
Hidalgo County
Office of Hidalgo County Judge Richard F. Cortez
100 E. Cano, 2nd Floor
Edinburg, TX 78539

TERMS
Date Upon Receipt

DESCRIPTION	REQUISITION	DESCRIPTION	TOTAL
		Grant Funding Year: March 1, 2022 thru February 28, 2023	\$

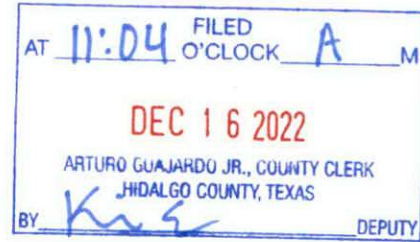
Please Remit Payment to the address above:

TOTAL DUE: \$

For Questions Call: (XXX) XXX-XXXX

Thank you

THE STATE OF TEXAS §
§
COUNTY OF HIDALGO §



SERVICE AGREEMENT

This Economic Development Program Agreement (the "Agreement") is entered into by and between the COUNTY OF HIDALGO, TEXAS, hereinafter referred to as the ("COUNTY"), a political subdivision of the State of Texas, and Boys & Girls Club of Pharr, a Texas non-profit corporation, and hereinafter referred to as the ("CONTRACTOR"), herein after referred to collectively as the ("Parties").

WITNESSETH

WHEREAS, Hidalgo County is authorized pursuant to Section §381.004 (b)(7) of the Texas Local Government Code (LGC), to develop and administer state and local economic development programs for the purpose of stimulating business and commercial activity in the County; and

WHEREAS, the Hidalgo County Commissioners Court created the "Hidalgo County Arts Program" on July 17, 2018, under the authority of the Texas Local Government Code §381.004(b)(7), for the encouragement, promotion, improvement, and application of the arts focused on assisting economically disadvantaged, underemployed & unemployed residents gain employment through skills development training for demand occupations; and

WHEREAS, the Hidalgo County Commissioners Court on the 31st day of July, 2018 created the Stimulating Business and Commercial Activity Through The Arts Initiative, hereinafter referred to as ("SBACA") designed to develop an arts initiative for the benefit of county residents, focusing on access to high-quality Arts programs and their benefits, with an emphasis on serving residents with barriers to access in order for them to achieve long-term economic outcomes.; and

WHEREAS, pursuant to Section 381.004 LGC, County is authorized to spend public funds and provide personnel and services of the county to develop such programs and to contract with another entity for the administration of such an economic development program, hereinafter referred to as the "Initiative"; and

WHEREAS, COUNTY desires to enter into an agreement with CONTRACTOR whereby CONTRACTOR will administer the Initiative (as hereinafter defined), and CONTRACTOR desires to provide for the administration of the Initiative;

NOW, THEREFORE, under the authority of Texas Local Government Code §262.024(10), and LGC§381.004, the Parties agree as follows:

ARTICLE I

PURPOSE

- 1.01 The purpose of this Agreement is to provide full funding of the County of Hidalgo Arts Program, SBACA, focusing on access to high-quality Arts programs and their benefits. The results of which shall have an emphasis on serving residents with barriers to access in order for them to achieve long-term economic outcomes. The Initiative will be coordinated and administered by CONTRACTOR whose corporate offices are located at 1026 S. Fir Street, Pharr, Texas 78577.

ARTICLE II

TERM

- 2.01 The term of this Agreement is for 12 months beginning March 1, 2022 and ending February 28, 2023.

ARTICLE III

SERVICES

- 3.01 CONTRACTOR will operate the Initiative, through which it will provide an arts program for the benefit of county residents, focusing on access to high-quality Arts programs and their benefits, with an emphasis on serving residents with barriers to access in order for them to achieve long-term economic outcomes.
- 3.02 The Initiative's primary focus shall be on the encouragement, promotion, improvement, and application of the arts, which can lead to community collection and civic engagement. Coupled with research backed outcomes including Higher SAT Scores, Proficiency in Core Subjects, Community Connection, Improved Social Skills and Emotional Regulation, the Initiative serves as a catalyst to stimulate long term local economic development.
- 3.03 The Contractor shall be registered and licensed (if applicable) for the services being requested in the State of Texas, and shall demonstrate experience in, but not limited to:
- 3.03.1 Offering general programming in the Arts for youth ages 6-17 that inspires creativity through incorporating fine arts, digital arts, cultural arts and applied arts.

- 3.04 The Contractor shall be responsible for outreach, recruitment, intake and acceptance of a sufficient number of eligible residents for any proposed program.
- 3.05 The contractor shall be responsible for reporting to the County as to the progress of the SBACA Initiative under the Hidalgo County Arts Program, as further detailed in the service agreement.

ARTICLE IV

WARRANTY OF COMPLETION

- 4.01 CONTRACTOR shall complete the Initiative in the event that allocated funds are not available or sufficient to cover total Initiative costs. CONTRACTOR warrants that CONTRACTOR has the means and resources to ensure completion of the Initiative in such an event. CONTRACTOR's obligations under the Agreement may be scaled back or eliminated commensurate with available funding from the COUNTY.

ARTICLE V

CONSIDERATION

- 5.01 For services rendered under this Agreement, COUNTY agrees to pay CONTRACTOR the sum of Ninety Thousand dollars (\$90,000.00), payable in one lump sum. Requests for budget revisions shall be submitted by CONTRACTOR to COUNTY for approval.
- 5.02 CONTRACTOR shall submit to the COMMISSIONERS COURT such other reports as may be requested by COUNTY to document CONTRACTOR'S obligations under this Agreement.

ARTICLE VI

REVIEW

- 6.01 The COMMISSIONERS COURT shall be the primary contact regarding this Agreement.
- 6.02 In the event CONTRACTOR utilizes subcontractors in performing any obligation required by this Agreement, the Department of Budget and Management staff shall, prior to execution of all contractual agreements, review and approve the selection process, bidding procedures and all proposed agreements, if any, entered into by CONTRACTOR.

ARTICLE VII

PROGRAM RECORDS & REQUIREMENTS

- 7.01 CONTRACTOR agrees to comply with all federal, state and local laws and ordinances applicable to COUNTY for the work or services provided under this Agreement.
- 7.02 CONTRACTOR shall maintain all financial records in accordance with Cost Principles for Non-profit Organizations.
- 7.03 COUNTY may conduct, at minimum, two (2) monitoring visits to CONTRACTOR'S Initiative site to determine performance and compliance with the terms of this Agreement.
- 7.04 CONTRACTOR shall maintain books, records and other documents relating directly to the receipt and disbursement of funds received from COUNTY.
- 7.05 CONTRACTOR shall allow any duly authorized representative of COUNTY, at all reasonable times, to have access to and the right to inspect copy, audit and examine all such books, records and other documents of closeout procedures respecting this Agreement, until final settlement and conclusion of all issues arising out of this activity are completed.

ARTICLE VIII

TERMINATION AND DEFAULT

- 8.01 COUNTY may suspend or terminate this Agreement if CONTRACTOR materially fails to comply with any term herein. This Agreement may also be terminated for convenience with thirty (30) days written notice. COUNTY agrees to pay CONTRACTOR for the amount of work completed up to the termination of this Agreement.
- 8.02 Upon termination of this Agreement, CONTRACTOR shall transfer to COUNTY any unutilized funds provided under the terms of this Agreement, if any, along with any accounts receivable attributable to such funds within five (5) business days.

ARTICLE IX

FURTHER REPRESENTATION, WARRANTIES AND COVENANTS

9.01 CONTRACTOR further represents and warrants that:

- a. All information, data or reports ever provided or to be provided to COUNTY is, shall be and shall remain complete and accurate as of the date shown on the information, data or report and that since said date shown, shall not have undergone any material change without written notice to COUNTY.
- b. Any supporting financial statements ever provided or to be provided to COUNTY are, shall be and shall remain complete, accurate and fairly reflective of the financial condition of CONTRACTOR on the date shown on said statements and during the period covered thereby, and that since said date shown, except as provided by written notice to COUNTY, there has been no material change, adverse or otherwise, in the financial condition of CONTRACTOR.
- c. No litigation or proceedings are presently pending or threatened against CONTRACTOR relating to the Agreement or Initiative.
- d. None of the provisions contained herein contravene or in any way conflict with the authority under which CONTRACTOR is doing business or with the provisions of any existing obligation or agreement of CONTRACTOR.
- e. CONTRACTOR has the legal authority to enter into this Agreement and accept payments hereunder and has taken all necessary measures to authorize such execution of contract and acceptance of payments pursuant to the terms and conditions thereof.

ARTICLE X

PERFORMANCE RECORDS AND REPORTS

10.01 As often and in such form as COUNTY may require, CONTRACTOR shall furnish to COUNTY such performance records and reports as deemed by COUNTY as pertinent to matters covered by this Agreement. Upon such request by COUNTY, CONTRACTOR shall have no less than ten (10) days to provide records and reports to COUNTY.

ARTICLE XI

INSURANCE

- 11.01 Actual losses not covered by insurance as required by this Article shall be allowable costs under this Agreement and shall therefore remain the sole responsibility of CONTRACTOR.
- 11.02 CONTRACTOR shall comply with applicable workers compensation statutes and shall provide and maintain proof of workers compensation insurance coverage with a waiver of subrogation provided in favor of COUNTY.
- 11.03 CONTRACTOR shall maintain and provide proof of general liability insurance, upon execution of this Agreement, of not less than \$1,000,000 naming COUNTY as additional insured (if applicable).

ARTICLE XII

INDEMNIFICATION

- 12.01 **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY AND SAVE HARMLESS COUNTY, ITS EMPLOYEES, AGENTS, OFFICERS OR CONTRACTORS, FROM AND AGAINST ANY AND ALL LIABILITY CLAIMS, DEMANDS, DAMAGES, EXPENSES, FEES, FINES, PENALTIES, SUITS, PROCEEDINGS, ACTIONS, AND CAUSES OF ACTION OF ANY AND EVERY KIND AND NATURE ARISING OR GROWING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT. THIS OBLIGATION TO INDEMNIFY SHALL INCLUDE THE RETENTION OF LEGAL COUNSEL AND INVESTIGATION COSTS AND ALL OTHER REASONABLE COSTS, EXPENSES, AND LIABILITIES ARISING FROM THE INITIAL NOTICE THAT A CLAIM OR DEMAND HAS BEEN MADE, IS TO BE MADE OR MAY BE ASSERTED.**
- 12.02 CONTRACTOR is and shall be deemed to be an independent contractor and operator responsible to all third parties for its respective acts or omissions and that COUNTY shall in no way be responsible therefore.

ARTICLE XIII

CHANGES AND AMENDMENTS

- 13.01 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof shall be by amendment in

writing, dated subsequent to the date hereof, and executed by both COUNTY and CONTRACTOR.

13.02 Changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as the effective date of the rule, regulation or law.

13.03 CONTRACTOR shall notify COUNTY in writing of any proposed change in physical location for work to be performed pursuant to the terms of this Agreement. Such notice shall be provided by CONTRACTOR to COUNTY at least thirty (30) calendar days in advance of the proposed change.

ARTICLE XIV

ASSIGNMENTS

14.01 CONTRACTOR shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising hereunder, without first procuring the written approval of COUNTY. Any attempt at transfer, pledge or other assignment shall be void and shall confer no rights upon any third person.

ARTICLE XV

WAIVER OF PERFORMANCE

15.01 No waiver by COUNTY of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of COUNTY to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

15.02 No act or omission of COUNTY shall in any manner impair or prejudice any right, power, privilege, or remedy available to COUNTY hereunder or by law or in equity,

such rights, powers, privileges or remedies to be always specifically preserved hereby.

15.03 No representative or agent of COUNTY may waive the effect of the provisions of this Article.

ARTICLE XVI

REVERSION OF ASSETS

16.01 All funds provided hereunder and all equipment, supplies and materials acquired hereunder on hand, available to, or in the actual or constructive possession of CONTRACTOR at the time of expiration of this Agreement, and any accounts receivable attributable to the use of funds provided hereunder shall be transferred to COUNTY, unless otherwise specified in this Agreement.

ARTICLE XVII

COMMITMENT OF CURRENT REVENUES ONLY

17.01 In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of COUNTY under this Agreement, COUNTY may terminate this agreement upon ninety (90) days written notice to Company. County agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of COUNTY.

ARTICLE XVIII

ENTIRE AGREEMENT

18.01 This Agreement constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto unless same is in writing, dated subsequent to the date hereof and duly executed by the Parties.

ARTICLE XIX

INTERPRETATION

19.01 In the event any disagreement or dispute should arise between the Parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, regulations, laws, codes or ordinances, COUNTY as the Party ultimately responsible for matters of compliance, shall have the final authority to render or secure an interpretation.

ARTICLE XX

NOTICES

20.01 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:

COUNTY:

Hidalgo County, Texas
100 E. Cano, 2nd Floor
Edinburg, TX 78539

CONTRACTOR:

Alfredo Mata, Jr.
Chief Executive Officer
Boys & Girls Club of Pharr
1026 S. Fir St.
Pharr, TX 78577

ARTICLE XXI

TEXAS LAW TO APPLY

21.01 This Agreement shall be construed under and in accordance with the laws of the United States and the State of Texas, and all obligations of the Parties are performable in Hidalgo County, Texas.

ARTICLE XXII

LEGAL CONSTRUCTION

22.01 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE XXIII

ADDITIONAL DOCUMENTS

23.01 COUNTY and CONTRACTOR hereto covenant and agree that they will execute each such other and further instrument and documents as are or may become necessary or convenient to effectuate and carry out the terms of this agreement.

ARTICLE XXIV

NONDISCRIMINATION

24.01 CONTRACTOR, including subcontractors, assignees and successors in interest, ensures that no person shall on the grounds of race, religion, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation when providing any services described herein under this agreement.