

AGREEMENT

THIS AGREEMENT, by and between **CITY OF COLUMBIA, MISSOURI**, a municipal corporation (hereinafter "City"), and The Curators of the University of Missouri on behalf of University Concert Series (hereinafter "Contractor"), is entered into on the date of the last signatory noted below ("Effective Date").

WHEREAS, City, through its Office of Cultural Affairs, has canvassed the cultural needs of City and determined that certain unmet cultural needs exist within the community; and

WHEREAS, Contractor provides services that may fulfill the cultural needs of Columbia's citizens; and

WHEREAS, City is desirous of meeting the unmet cultural needs by contracting for services with Contractor.

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows.

1. **Term.** The services of Contractor shall commence as soon as practicable after the execution of this Agreement, unless otherwise directed in writing, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of the Agreement, but in any event, all of the services required hereunder shall be completed by **December 31, 2023**, unless the Parties agree otherwise, in writing.
2. **Services.** City agrees to engage the services of Contractor and Contractor agrees to perform the services outlined in Exhibit A. Contractor agrees that it will make no changes in the approved services until the changes are approved in writing by City. Minor changes may be approved by City staff. Significant programming changes require the approval of the Commission on Cultural Affairs.
3. **Subcontracts.** Contractor represents that Contractor will secure at Contractor's own expense, all personnel required to perform the services called for under this Agreement by Contractor. None of the work or services covered by this Agreement shall be subcontracted or assigned without the written approval of City.

4. Payment.

- a. City agrees to pay Contractor the sum of four thousand seven hundred sixty six dollars (\$4,766.00) which shall constitute complete compensation for all services and payment of expenses to be rendered under this Agreement. It is expressly understood that in no event will the total amount to be paid to Contractor under the terms of this Agreement or any amendment thereto exceed the sum set forth in this paragraph unless otherwise agreed to in writing between the parties in advance of the provision of such services.
- b. Payment shall be made as follows:
City shall pay ninety percent (90%) of the agreement amount within 30 days of execution of agreement. City shall retain ten percent (10%) of the agreement amount pending completion of the services agreed upon and the receipt of Contractor's final report within forty-five (45) days of the end of the project. If the Contractor fails to file a final report with the Office of Cultural Affairs within ninety (90) days of the completion of the services agreed upon, the ten percent (10%) retained shall be forfeited to City and Contractor shall not be eligible to participate in future agreements with City for the provision of cultural services until such unmet requirements are fulfilled.
- c. Contractor agrees that City may withhold payment of funds until Contractor has satisfied all requirements of this Agreement and any previous contract between Contractor and City. Where Contractor has had previous City funds for projects under programs of the Office of Cultural Affairs, a final report including a detailed schedule of income and expenses must have been presented in order for new project funds to be disbursed.

5. Contractor agrees that it is responsible for all funds made available to Contractor by this Agreement and further agrees that it will reimburse to City any funds expended in violation of city, state, or federal law or in violation of this Agreement. Contractor agrees that it is subject to audit and review on request by City. If Contractor has a financial audit prepared, that report shall be furnished to the Office of Cultural Affairs. Contractor agrees that all funds received from City shall be expended as outlined in the Exhibit A and in the budget approved by the City's Manager of Cultural Affairs. None of the funds shall be used to replace monies normally budgeted by Contractor for other projects or for staff salaries, contractor overhead, generalized administrative expenses or be diverted to any other use or purpose. Full records of all expenditures and disbursements and any income from the provision of the program described in Exhibit A shall be kept and open to City inspection during regular business hours.

6. No Assignment. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.
7. Termination. City shall have the right at any time by written notice to Contractor to terminate and cancel this Agreement, without cause, for the convenience of City. In such event, Contractor shall immediately stop work and City shall not be liable to Contractor except for payment for actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Contractor for the performance of the cancelled portions of the contract, including a reasonable allowance of profit applicable to the actual work performed. Anticipatory profits and consequential damages shall not be recoverable by Contractor. Should City terminate this Agreement, Contractor shall refund any advance payment made and amount due to the City within thirty (30) days of the termination date.
8. Cancellation of Art Services, Program(s) or Event(s).
 - a. Cancellation by Contractor. Should Contractor cancel the proposed art services, program(s), or event(s) that are outlined in Exhibit A, Contractor shall return all of the funds to the City.
 - b. Cancellation by City. Should City cancel the proposed art services, program(s), or event(s) that are outlined in Exhibit A or should an order of the City result in cancellation of the services, program(s) or event(s), Contractor shall return the unspent funds to the City.
9. Notices. Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to City:
City of Columbia
Office of Cultural Affairs
P.O. Box 6015
Columbia, MO 65205-6015
ATTN: Sarah Dresser,
Office of Cultural Affairs
Manager

If to Contractor:
Curators of the University of Missouri
University Concert Series
203 S. 9th Street
Columbia MO, 65201
ATTN: Robert Wells

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending party if delivered by courier or U.S. mail.

10. HOLD HARMLESS AGREEMENT:

To the fullest extent not prohibited by law and without waiving sovereign immunity, Contractor shall indemnify and hold harmless the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses for bodily injury and/or property damage arising by reason of any act or failure to act, negligent or otherwise, of Contractor, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with Contractor or a subcontractor for part of the services), of anyone directly or indirectly employed by Contractor or by any subcontractor, or of anyone for whose acts the Contractor or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Contractor to indemnify, hold harmless, or defend the City of Columbia from its own negligence.

11. Professional Oversight Indemnification. Contractor understands and agrees that City has contracted with Contractor based upon Contractor's representations that Contractor is a skilled professional and fully able to provide the services set out in this Agreement. In addition to any other indemnification set out in this Agreement, Contractor agrees to the extent permitted by law and without waiving sovereign immunity, to defend, indemnify and hold and save harmless City from any and all claims, settlements, and judgments whatsoever arising out of City's alleged negligence in hiring or failing to properly supervise Contractor.

12. No Third-Party Beneficiary. No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party, so as to constitute any such person a third-party beneficiary under this Agreement.

13. No Waiver of Immunities. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

14. Nature of City's Obligations. All obligations of City under this Agreement, which

require the expenditure of funds, are conditional upon the availability of funds budgeted and appropriated for that purpose.

15. **General Laws.** Contractor shall comply with all federal, state, and local laws, rules, regulations, orders, and ordinances. Contractor's services shall also be done in accordance with any regulations or orders including but not limited to public health orders. Contractor shall be responsible for obtaining any permits needed for the services, program(s) or event(s).
16. **Governing Law and Venue.** This contract shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this contract document, shall be in Boone County, Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.
17. **Nondiscrimination.** During the performance of this Agreement, Contractor shall not discriminate against any employee, applicant for employment or recipient of services because of race, color, religion, sex, sexual orientation, gender identity, age, disability, or national origin or any other legally protected category. Contractor shall comply with all provisions of laws, rules and regulations governing the regulation of Equal Employment Opportunity including Title VI of the Civil Rights Act of 1964 and Chapter 12 of the City of Columbia's Code of Ordinances. Contractor shall include this obligation of compliance in its contracts with subcontractors on this project.
18. **Americans with Disabilities Act.** Contractor shall comply with all applicable provisions of the Americans with Disabilities Act and the regulations implementing the Act, including those regulations governing employment practices. If this Contract involves Contractor providing services directly to the public, Contractor shall make the services, programs, and activities governed by this Agreement accessible to persons with disabilities as required by the Americans with Disabilities Act and its implementing regulations. Payment of funds under this Agreement are conditional upon Contractor certifying to the City in writing that it and the completed Project complies with the Americans with Disabilities Act and 28 CFR Part 35.
19. Contractor agrees that it will include either the Office of Cultural Affairs (OCA) logo or the following credit line in all advertising, catalogues, flyers, posters, literature, film/video credits, news releases, printed programs, public broadcasts, promotion and publicity set out in a prominent location and type size: "Financial assistance for this project has been provided by the City of Columbia, Office of Cultural Affairs."

20. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Faxed signatures, or scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be deemed to have the same legal effect as original signatures on this Agreement.

21. Contract Documents. This Agreement includes the following exhibits, which are incorporated herein by reference:

Exhibit	Description
A	Scope of Services

In the event of a conflict between the terms of an exhibit and the terms of this Agreement, the terms of this Agreement controls.

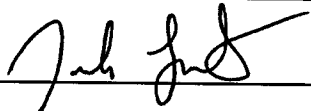
22. Entire Agreement. This Agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have been duly authorized to execute this Agreement as of the day and year last written below.

CONTRACTOR:

The Curators of the University of Missouri

By: 

Name: Jeremiah Lotven

Title: Pre-Award Manager, SPA/Authorized Signer

Date: 9/21/2022

MU Project No. 00080285

CITY OF COLUMBIA, MISSOURI

By: De'Carlton Seewood, City Manager/sd

Date: _____

APPROVED AS TO FORM:

Nancy Thompson, City Counselor/rw

CERTIFICATION: I, hereby certify that this contract is within the purpose of the appropriation to which it is to be charged, Account Number account number 11004610-504990, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

Matthew Lue, Director of Finance

EXHIBIT A SCOPE OF SERVICES

University Concert Series 2022-2023 Season

PROJECT DESCRIPTION

The University Concert Series presents our 115th season, which follows a school-year calendar from October 2022 through May 2023. With a rich history in providing the widest array of performing professional artistic talent and expression in central Missouri, we are committed to bringing quality cultural expression and multi-generational engagement through music, dance and theatrical performances to the historic Missouri Theatre and Jesse Auditorium, venues owned and operated by the University of Missouri. These performances will bring diverse perspectives, stories, and cultures to the Columbia community and will incorporate numerous Columbia organizations, including Mareck Dance (formerly the Missouri Contemporary Ballet), the Missouri Symphony, and the MU School of Music, among others. We will also incorporate outreach activities for the Columbia Public Schools and Columbia children and students as described below.

The tentative 2022-2023 schedule is as follows:

St. Louis Symphony Orchestra (Regional Professional Orchestra)
RESPECT 8-Nov-22 (Professional tour of Broadway Musical)
Mareck Dance 11-Nov-22 and 12-Nov-22 (Local professional dance company)
Choral Union 2-Dec-22 (Collaboration between University music dept. and community choir members)
Nutcracker 5-Dec-22 (Professional tour -- ballet)
Trans-Siberian Experience 13-Dec-22 (Professional touring band)
Bones Apart 5-Feb-23 (Professional Trombone quartet w/ community outreach)
Lviv National Philharmonic of Ukraine 23-Feb-23 (Internationally touring philharmonic orchestra)
Million Dollar Time Machine 12-Mar-23 (Variety show with music throughout the decades)
Show-Me Opera 17-Mar-23 and 19-Mar-23 (Student-performed opera by MU School of music)
Mareck Dance 7-Apr-23 and 8-Apr-23 (Local professional dance company)
Choral Union 27-Apr-23 (Collaboration between University music dept. and community choir members)
Missoula Children's Theatre 6-May-23 (Theatre production which casts local children)

Shows below are in discussion:

Chicago 26-Oct-22 (Professional tour of Broadway Musical)
Hairspray 14-Sep-22 (Professional tour of Broadway Musical)
Tootsie 24-Jan-23 (Professional tour of Broadway Musical)
My Fair Lady 14-Feb-23 (Professional tour of Broadway Musical)
Chicago 4-May-23 (Professional tour of Broadway Musical)
Buddy: The Buddy Holly Story (Professional tour of Broadway Musical)
On Your Feet (Professional tour of Broadway Musical)
Turning 15 On the Road to Freedom (Professional tour of Broadway Musical)
Four Phantoms (Professional tour of Broadway Musical)
David Sedaris (Humorist/speaker)
The Ten Tenors (Professional vocal group)
Voctave (Professional vocal group)

Outreach activities will include the following:

BONES APART: In collaboration with the Missouri Symphony, the University Concert Series will pay for a full day of outreach activities with Columbia Public Schools encouraging students to take an interest in the

arts. This group will be especially impactful since it is comprised of femme brass players, an underrepresented group in brass sections specifically. This group will also perform outreach activities such as masterclasses with the MU School of Music and MOSY student conservatory.

MISSOULA: Missoula presents a performance of a children's play cast entirely with local children from the Columbia area. Auditions are open to anyone in grades K-12 and approximately 60 students perform the show two times during a Saturday performance.

VOCTAVE: We hope to schedule a school performance from Voctave during the day to let local students experience live entertainment in a theatre setting. This will expose them to the arts and people making a living in the arts and connect to vocal music curriculum at their own schools.

CHORAL UNION: This performance is a collaboration between community members and University students and faculty. It allows local singers to have a professional choral experience regardless of age, race, ability, or background.

OSHER CLASSES: We hope to be included in the Osher Potpourri of the Arts program again in 2022-2023 and our Outreach and Development Coordinator, Lainie Vansant, may also present other full-length courses for the Osher audience.

USE OF FUNDS

Funds received will help offset artist fees in the coming season. Ticket sales alone do not cover our annual expenses. Individual donors, corporate sponsors, grants and other outside income help us to accomplish our mission of bringing the very best in the performing arts to mid-Missouri. Most artists require additional payment for educational workshops and outreach. These funds will help us to engage the underserved and provide dialogue experiences with our community.

The total cost per person will be \$11.90, determined by the total project cost of \$250,000 divided by an estimated audience of 21,000.