

AGREEMENT

THIS AGREEMENT, by and between **CITY OF COLUMBIA, MISSOURI**, a municipal corporation (hereinafter "City"), and Dismal Niche Arts (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 three thousand eighty three dollars (\$3,083.00) 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:

**Dismal Niche Arts
106 W. Lathrop Rd.
Columbia, MO 65203
ATTN: Matthew Crook**

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, 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 (including but not limited to attorney's fees) 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 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, or the United States Western District of 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.

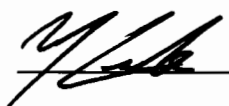
22. Entire Agreement. This Agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

[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:

Dismal Niche Arts

By: 

Name: MATTHEW L. CROOK

Title: PRESIDENT

Date: 10/14/22

CITY OF COLUMBIA, MISSOURI

By: 

De'Carlon Seewood, City Manager/sd

Date: 10-20-22

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

Columbia Experimental Music Festival

PROJECT DESCRIPTION

The Columbia Experimental Music Festival, now in its seventh year, is a contemporary music and arts festival scheduled to take place November 3rd - 6th throughout downtown Columbia, MO. Acting as a 4 day celebration of adventurous arts and music in a smaller Midwestern city that by and large does not attract the same kind of cutting edge, world class contemporary music that is often readily available in larger metropolitan areas, the festival program is thoughtfully curated by a committee made up of area musicians, artists, educators and community advocates and is dedicated to community building through and within the arts. Programming includes live musical performances from both emerging local and regional acts as well as world renowned national and international musicians, film screenings, visual art exhibits and artist workshops. We plan for this year's programming to take place at a number of local venues including The First Baptist Church of Columbia, The Blue Note, Missouri United Methodist Church, The Daniel Boone Regional Library, Rose Music Hall, Ragtag Cinema, Hitt Records and more. All events will be wheelchair accessible and open to the public.

The objective of the festival is to promote a culture of adventure and safe, cross-cultural community building through and within the arts by way of the presentation of new and exciting music and multi-media events in interesting and unconventional public spaces. Through our programming we aim to facilitate immersive, interactive experiences that are both cognitively and viscerally challenging while also restorative and conducive to the non-didactic freedom of subjective interpretation and enjoyment. We wish for both artists and audience member to not simply come and 'take it all in' but to allow themselves to be taken in, in a unique and individual aesthetic experience that is not easily reproducible.

This year, as in years past, our project addresses the challenging balance between financial viability and artistic integrity while ultimately holding artistic quality and a demographically diverse representation of performers as a couple of our highest values. With these values serving as guides to our programming, we strive to provide an experience that encourages the fostering of connections and relationships between artists and audiences across lines of age, race, gender, artistic mediums, ideas and communities with the hopes of stimulating critical thought within our community and the communities of the artists we bring to the festival. This year's programming is currently being curated with regard for the rich and varied experiences of the experimental music community as a whole. Over the past seven years, we've done our best within our modest financial abilities to consistently present a lineup of world class artists from a wide variety of backgrounds and working across a variety of different mediums with careful attention paid to detail in the placement of artists in venues appropriate for their technical needs and aesthetics and this is year no different. From the opening night at the First Baptist Church of Columbia with celebrated Chicago based Afro-Jazz ensemble Natural Information Society to the closing Sunday night at the Blue Note with Polaris Prize winning 10-piece Canadian post-rock orchestra Godspeed You Black Emperor and all things in between including a field recording and tape looping workshop and a 16mm experimental short films program curated by Travis Bird of the True/False Film Festival and even local high school band showcase, the CEMF will once again work to center and represent the voices of artists from many different walks of life while providing a program that is accessible to audiences from many different communities in an effort to produce a collective event imbued with a spirit of solidarity, joyful discovery and a sense of social imagination and generosity through immersive and engaged listening.

While this year's programming is still in the planning stages, what follows is a proposed schedule of

events and artists with whom we have extended official invitations and offers at venues with which we are currently in conversation:

Thursday, 11/3

7pm - Natural Information Society w/ Ben Lamar Gay at First Baptist Church of Columbia

Friday, 11/4

1pm - Afternoon field Recording and 'Tape Looping' Workshop with Darkroom Records at Dogwood Artist Workspace

7pm - Pink Siifu w/ MC Yallah at Rose Music Hall

Saturday, 11/5

3pm - Afternoon screening of 16mm experimental short film program at Ragtag Cinema

7pm - Juana Molina w/ the In Place Quartet at United Methodist Church

Sunday, 11/6

1pm - Acoustic performance TBA at Daniel Boone Regional Library or AP Green Chapel at MU

7pm - Godspeed Black Emperor at Blue Note

USE OF FUNDS

Dismal Niche Arts Requests \$5,000 to be allocated in the following manner: \$2500 to assist with artist fees, \$1000 to offset production related costs, \$1000 for marketing and promotion and \$500 toward the transportation and lodging of artists. We identify these four budget areas as paramount to our ability to deliver a quality festival program.

When considering where to allocate city funds, it makes sense for us to assign the majority of the requested amount to secure artistic talent for the festival. This budgetary item is far and away our greatest expense each year - last year accounting for roughly 60 percent of our overall expenditures, clearly demonstrating our commitment - above all else - to maintaining a high quality artistic program. Once we have scheduled artists and covered all performance, production costs are the most important line item in our budget. Production costs include venue rental fees, equipment rentals and contracted labor from local sound technicians. With travel expenses on the rise and nearly all CEMF headlining performers arriving from out-of-state - it's practical to apply \$500 to assist in this area. Finally, the CEMF invests funds within an array of media - from the traditional to the new, from print and radio advertising to digital social media. \$1000 to assist in marketing will allow us to expand our reach further than in previous years by putting more funds at our disposal to secure an array of advertising from radio slots with stations like KBIA and BXR, in print advertisements with the Columbia Tribune and a host of social media outlets including Instagram and Facebook.