

AGREEMENT FOR PIONEER CENTER FY 2019/20 SPONSORSHIP

This agreement (“Agreement”) is entered into at Reno, Nevada, this _____ day of _____, _____, by and between the **City of Reno**, a municipal corporation (the “City”), and **Pioneer Center for the Performing Arts** (“Contractor”).

RECITALS

This Agreement is entered into based upon the following:

A. The City supports Arts and Culture organizations in Reno through grants and sponsorships.

B. The City desires to assist the Pioneer Center for Performing Arts to provide a quality facility as a performance venue.

C. Contractor is uniquely qualified to provide said services through the management and operations of the Pioneer Center for the Performing Arts.

D. Contractor represents that it is duly qualified and able to render the services as described herein.

E. Based upon the recommendation of the Parks, Recreation and Community Services Department, the City has approved distribution of up to a specified sum of funds to Contractor pursuant to the terms and conditions of this Agreement provided that Contractor complies with all terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into the Agreement by this reference, the parties mutually agree as follows:

Article 1 Definitions and Attachments

1.1 “**Allowable Costs**” shall mean all costs properly incurred by the Contractor in accordance with Article 3 of this Agreement.

1.2 “**City Staff**” shall mean the person identified as the City’s contract administrator in Section 5.13 of this Agreement.

1.3 “**Facility**” shall mean the Pioneer Center for the Performing Arts.

1.4 “**Funds**” shall mean those funds disbursed to Contractor pursuant to the terms and conditions set forth in this Agreement.

1.5 “**Executive Director**” shall mean the person identified by Contractor in Section 5.13 of this Agreement as it’s primarily point of contact for purposes of contract administration.

Article 2 Funding

2.1 **Funding Amount.** In exchange for Contractor's performance of this Agreement, and the Scope of Work set forth in Article 4, City agrees to disburse Funds to Contractor in a total amount of _____ (\$_____). In no event shall City be obligated to reimburse Contractor for any costs in excess of \$_____, whether or not those excess costs were incurred pursuant to this Agreement at the direction of City Staff.

2.2 **Invoices.** Contractor shall submit invoices to City no more frequently than monthly. Contractor shall receive payments from the City based upon approved invoices within thirty (30) days of invoice postmark date.

2.3 **Reduction in Funding.** City reserves the right to reduce the amount of Funds disbursed to Contractor upon determination by City Staff that Contractor has failed to comply with any material term or condition of this Agreement.

2.4 **Duty to Provide Funding.** Contractor agrees to obtain, incur and document, all expenses, costs, and any other liabilities necessary to operate the facility and to pay when due, all such expenses, costs and liabilities. The City's obligation to provide Funds pursuant to this Agreement is contingent upon Contractor's timely payment of creditors.

2.5 **Termination.** This Agreement may be terminated at any time by written notice from either party, with or without cause. In such event, all finished and unfinished documents, data, deliverables, reports and work product, at the option of the City, become its property and shall be delivered to it or to any party it may designate. In the event of such termination, Contractor shall be paid for all satisfactory work, unless such termination is made for cause, in which event compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.

2.6 **Reporting Requirements.** Within sixty (60) days following the end of the fiscal year, Contractor agrees to submit a detailed final report, including all Allowable Costs incurred and/or paid by Contractor in conjunction with the facility, as well as all revenues related to the facility. Contractor's final report shall include narrative information detailing attendance, publicity and any other details it deems necessary. Contractor may be asked to provide periodic progress reports, in a form acceptable to the City providing sufficient detail to determine the progress and financial status of the facility.

2.7 **Record Inspection and Retention.** The City or its representative shall have the right to inspect and copy the records of Contractor upon reasonable notice. In addition, if any audit has been performed or is commenced during the term of this

Agreement, a copy of such audit shall be provided to the City. Contractor agrees to keep its books in accordance with an approved bookkeeping system, to retain its books and records, including all records relating to the facility, for a period of three (3) years following completion of the facility, and to make such books and records available for inspection by City Staff, or other designated representative of the City, at any time from the effective date of this Agreement until expiration of the required retention period.

2.8 **Funding Out.** Notwithstanding any other provision of this Agreement, in the event that the City has failed to appropriate or budget funds for the purposes specified in this agreement, or that the City has been required, in its sole judgment, to amend previous appropriations or budgeted amounts to eliminate or reduce funding for the purposes in this Agreement, the City's obligation to fund any unpaid amounts shall be modified or eliminated in accordance with the City's appropriations or budget decision and the Agreement shall be deemed so modified or terminated without penalty, charge or sanction.

Article 3 Use of Management Funds

3.1 **Allowable Costs.** Unless specified in writing by City Staff, costs incurred by Contractor in the conduct of the facility for which Contractor may receive Management Funds, are limited to the following:

- 3.1.1 Administrative. Payments for contractors and/or employee salaries, and benefits for executive and supervisory administrative staff, program directors, support staff and equipment to support administrative functions.
- 3.1.2 Artistic. Payments for employee salaries and benefits for artistic directors, conductors, curators, composers, choreographers, designers, visual, performing and literary artists.
- 3.1.3 Technical/Production. Payments for contractors and/or employee salaries and benefits specifically identified with and applicable to the festival, for technical management, such as – technical directors, wardrobe, lighting, and sound crew, stage crews, video and film technicians, exhibit preparers and equipment to support technical/production functions.
- 3.1.4 Outside Artistic Fees and Services. Payments to firms or persons for the services of individuals who are not considered employees for the applicant, including artistic directors, conductors, curators, composers, choreographers, designers, visual, performing and literary artist's service in non-employee/non-staff capacities.

3.1.5 Marketing. Costs for marketing, advertising, publicity or promotion, including printing and postage.

3.2 **Restrictions on Use.** Management Funds may not be utilized for payment of any of the following:

3.2.1 Fines and Penalties. Costs resulting from contractor's violations of, or failure of the organization or individual to comply with federal, state, and local laws, and regulations.

3.2.2 Interest. Interest of any kind paid on loans, notes, borrowed funds, or for any other reason, however presented.

3.2.3 Reserve Funds. Contributions to a reserve fund for any similar provisions.

3.2.4 Capital Expenditures. The cost of permanent equipment, construction and improvements which increase the value or useful life of contractor's buildings or equipment.

3.2.5 Scholarships and Awards. Payment or contribution to any form of Scholarship or Award, or funding of educational expenses or costs for students, except as a part of a facility program or event in the form of free or reduced admission or participation fees.

3.2.6 Lobbying. Costs of publicity or production of materials intended to support, defeat or otherwise influence legislation or any kind by federal, state, or local government.

3.2.7 Other. Attorney's fees, litigation costs, debt collection costs, political contributions, donations and losses.

Article 4 Scope of Work

4.1 **Scope of Work.** Contractor's Scope of Work shall consist of the following items:

- A. Ongoing theater upkeep including preventative maintenance or facility maintenance to enhance customer comfort and safety.
- B. Utility subsidy to help defer increases of gas and electrical costs in addition to improving energy efficiency.
- C. Daily operations including goods and services related to building usage.

4.2 **Deliverables.** Contractor's deliverables shall consist of the following:

- A. A well managed and maintained facility.
- B. Quarterly progress reports.
- C. Recognition of City sponsorships in promotional materials.

Article 5 Additional Terms

51 **Indemnification of the City of Reno.** Neither the City, City Staff, City Council nor City Arts and Culture Commission shall be responsible or liable for any debt, action, obligation, negligence or liability committed or incurred by the Contractor, its staff, agents or clientele, and Contractor hereby agrees to indemnify, defend and hold harmless the City, City Staff, City Council, City Arts and Culture Commission, and each of them, their officers, employees, agents and volunteers, from and against any and all claims, liabilities, and damages of any kind, including reasonable attorney's fees and costs arising from or relating to any breach of any of the terms and conditions of this Agreement or conduct of the Contractor. No payment, final or otherwise, shall operate to release the Contractor from any legal obligation under this provision. City does not waive, and specifically reserves, all of its statutory and common law defenses, including all protections under NRS Chapter 41.

52 **Legal Actions against Contractor.** If any legal action of any nature is filed against the Contractor, Contractor shall notify City Staff within three (3) days of receipt of complaint.

53 **Authority to enter into this Contract.** Contractor hereby represents and warrants that the undersigned person signing as an officer on behalf of Contractor has authority to enter into this Agreement on behalf of Contractor and to bind the same to this Agreement, and further, that there are no restrictions or prohibitions contained in any article of incorporation or bylaws of Contractor against entering into this Agreement.

54 **Assignment of this Contract.** This Agreement is not assignable.

55 **No Joint Enterprise or Other Entity.** It is understood and agreed that no employee of the Contractor nor any other person or company hired by Contractor in connection with the facility or otherwise shall, under any circumstance, be deemed an agent, contractor, employee or member of the City nor Reno Arts and Culture Commission with the exception of a City Councilperson acting in his or her capacity as a member of the Pioneer Center Board of Directors. This Agreement shall not be construed to create any form of agency, partnership, joint venture, employer-employee relationship, principal-agent relationship, or other common entity or enterprise of any kind, between the parties.

56 **Insurance.** Contractor shall maintain for the term of this Agreement, and for a two year period of time after completion of this Agreement, comprehensive general liability insurance for limits of not less than one million dollars (\$1,000,000) for bodily injury and property damages, per occurrence. As evidence of liability insurance coverage, the City will accept certification of insurance issued by an authorized representative of the insurance carrier. Each certificate shall contain a 30-day written notice of cancellation to the certificate holder and shall name the City as an additional insured. Contractor shall maintain during the term of this Agreement Worker's Compensation insurance covering the statutory liability as determined by the compensation laws of the State of Nevada. Contractor must also comply with all applicable state laws which require participation in any state workers compensation fund.

57 **Independent Contractor.** The parties agree that Contractor is an independent contractor and this Agreement is entered into in conformance with the provisions of NRS 333.700. Therefore, there shall be no:

- 5.7.1 Withholding of income taxes by the City;
- 5.7.2 Industrial insurance provided by the City;
- 5.7.3 Participation in group insurance plans which may be available to employees of the City;
- 5.7.4 Participation or contributions by either the independent contractor or City to any public employees retirement system;
- 5.7.5 Accumulation of vacation leave or sick leave;
- 5.7.6 Unemployment compensation coverage provided by City.

58 **Limited Liability.** The City does not waive and intends to assert any statutory privileges available to it under Nevada law. Contract liability of both parties shall not be subject to punitive damages. Actual damages for any City breach shall never exceed the amount of funds which have been appropriated for payment under this Agreement, but not yet paid, for the fiscal year budget in existence at the time of the breach.

59 **Compliance with Applicable Law.** Contractor shall comply with all applicable federal, state and local laws and regulations, including but not limited to business licensing requirements, workers' compensation and wage and hour laws.

5.10 **Interpretation and Severability.** This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement shall be interpreted in accordance with the laws of the State of Nevada. If any provision of this Agreement or its application is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall not be affected.

5.11 **Modification.** This Agreement is the entire Agreement between the parties. This Agreement shall not be modified or amended nor shall any rights hereunder be waived, except by written instrument signed by both parties, and authorized by the City Council.

5.12 **Benefits.** This Agreement is entered into solely for the benefit of the parties hereto. It shall confer no benefits, direct or indirect, on any third persons, including employees of the parties. No person or entity other than the parties themselves may rely upon or enforce any provision of this Agreement. The decision to assert or waive any provision of this Agreement is solely that of each party.

5.13 **Contractor Principal in Charge.** Contractor's Executive Director or designee shall be responsible for the performance of the Scope of Work described herein. It is understood that Contractor shall coordinate its performance with the City's Arts & Culture Manager or designee.

5.14 **Non-Discrimination Policy.** Contractor shall not discriminate in its employment practices against any person by reason of race, religion, color, sex, age or national origin and agree to comply with the provisions of said laws and orders as well as all laws and orders relating to the employment of the handicapped, the employment of veterans and the use of minority business enterprises to the extent any such laws and orders are applicable in the performance of work or furnishing of services, materials or supplies hereunder. For this purpose, the provisions of such laws and orders and pertinent regulations, as now in force or hereafter amended, shall be deemed an integral part of this Agreement to the same extent as if written at length.

5.15 **Jurisdiction.** This Agreement shall be administered and interpreted under the laws of the State of Nevada. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in full force and effect.

5.16 **Notices.** All notices, requests, demands and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given by registered or certified mail, return receipt requested, postage prepaid thereon as follows:

CITY
City Managers Office
Attn: Arts, Culture and Events Manager
P.O. Box 1900
Reno, Nevada 89510

CONTRACTOR
Pioneer Center for the Performing Arts
Attn: Executive Director, Dennyse
Sewell
100 South Virginia Street
Reno, NV 89501

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date entered on the first page hereof.

CITY OF RENO

CONTRACTOR

By: _____
Hillary Schieve
Mayor

By: _____
Title: _____

ATTEST

Ashley Turney
City Clerk

APPROVED AS TO FORM:

By: _____
Office of the City Attorney

