



THE CITY OF SANTA FE
ARTS COMMISSION

REQUEST FOR PROPOSAL # '16/32/RFP

Lodgers' Tax for the Arts: Category D
for projects taking place between July 1, 2016 and June 30, 2017

Closing Date: April 8, 2016 2:00 PM MST

City of Santa Fe Arts Commission
201 West Marcy St.
(Inside Community Convention Center)
Post Office Box 909
Santa Fe, NM 87504-0909
Voice: 505.955.6707
Fax: 505.955-6685
www.SantaFeArtsCommission.org

TABLE OF CONTENTS

Advertisement	1
Application Schedule	2
Eligibility	
Organizational Eligibility.....	7
Project Eligibility	7
Lodgers’ Tax for the Arts Eligibility	7
Scope of Services	8
Funding Requirements	9
Payment Process	9-10
Technical Assistance Workshop & Questions	10
Application Evaluation & Funding	
Criteria	10-11
Scoring	11
Funding Recommendations	11
Summary of Application Forms, Attachments & Enclosures	12
Living Wage	13
Exhibits	
Example of City of Santa Fe Professional Services Agreement for Funding	A

REQUEST FOR PROPOSALS

PROPOSAL NUMBER '16/32/P

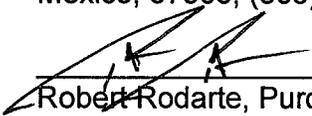
Proposals will be received by the City of Santa Fe and shall be delivered to the City of Santa Fe Purchasing Office, 2651 Siringo Road Building "H" Santa Fe, New Mexico 87505 **until 2:00 P.M. local prevailing time, April 8, 2016.** Any proposal received after this deadline will not be considered. This proposal is for the purpose of procuring professional services for the following:

Lodgers' Tax for the Arts: Category D

The proponent's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the proposal throughout, and they will be deemed to be included in the proposal document the same as though herein written out in full.

The City of Santa Fe is an Equal Opportunity Employer and all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin. The successful proponent will be required to conform to the Equal Opportunity Employment regulations.

Proposals may be held for sixty (60) days subject to action by the City. The City reserves the right to reject any of all proposals in part or in whole. Proposal packets are available by contacting: Shirley Rodriguez, City of Santa Fe, Purchasing Office, 2651 Siringo Road, Building "H" Santa Fe, New Mexico, 87505, (505) 955-5711.



Robert Rodarte, Purchasing Officer

Received by the Santa Fe New Mexican Newspaper on: 03/03/16

To be published on: 03/09/16

Received by the Albuquerque Journal Newspaper on: 03/03/16

To be published on: 03/09/16

APPLICATION SCHEDULE

1. Issuance of RFP Wednesday, March 9, 2016
2. Receipt of applications **Friday, April 8, 2016**
2 PM MST
Submitted online only through CultureGrants
available at
<http://santafenm.culturegrants.org>
3. Review meetings Monday, May 1, 2016
4. Arts Commission award recommendations Monday, May 9, 2016
5. Recommendation of Awards to Finance Committee Monday, May 16, 2016
6. Recommendations of awards to the
City Council Wednesday, May 25, 2016
7. Effective date of contract July 1, 2016
8. Completion of Contract Year June 30, 2017

**DATES OF CONSIDERATION BY PANELS, COMMITTEES AND CITY MANAGER ARE
TENTATIVE AND SUBJECT TO CHANGE WITHOUT NOTICE.**

INFORMATION FOR PROPONENTS

1. RECEIPT OF PROPOSALS

The City of Santa Fe (herein called "City"), invites firms to submit two copies of the proposal. Proposals will be received by the Purchasing Office, until 2:00 p.m. local prevailing time, April 8, 2016.

The packets shall be submitted and addressed to the Purchasing Office, at 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico 87505. No late proposals will be accepted whether hand delivered, mailed or special delivery. Do not rely on "overnight delivery" without including some lead-time. "Overnight delivery" will be determined to be non-responsive if delivered late, no matter whose fault it was. It is recommended that extra days be included in the anticipated delivery date to ensure delivery is timely. The Purchasing Office is closed 12:00 p.m. to 1:00 p.m. The outside of the envelope should clearly indicate the following information:

Proposal number: '16/32/P

Title of the proposal:

Name and address of the proponent:

Any proposal received after the time and date specified shall not be considered. No proposing firm may withdraw a proposal within 60 days after the actual date of the opening thereof.

2. PREPARATION OF PROPOSAL

Vendors shall comply with all instructions and provide all the information requested. Failure to do so may disqualify your proposal. All information shall be given in ink or typewritten. Any corrections shall be initialed in ink by the person signing the proposal.

This request for proposal may be canceled or any and all proposals may be rejected in whole or in part, whenever the City of Santa Fe determines it is in the best interest of the city.

3. ADDENDA AND INTERPRETATIONS

No oral interpretation of the meaning of any section of the proposal documents will be binding. Oral communications are permitted in order to make an assessment of the need for an addendum. Any questions concerning the proposal must be addressed prior to the date set for receipt of proposal.

Every request for such interpretation should be in writing addressed to, Purchasing Officer, 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico, 87505 and to be given consideration must be received at least (5) days prior to the date set for the receiving of proposals.

Any and all such interpretations and any supplemental instruction will be in the form of written addenda to the RFP, which if issued, will be delivered to all prospective firms not later than three days prior to the date fixed for the receipt of the proposals. Failure of any proposing firm to receive any such addenda or interpretations shall not relieve such firm from any obligation under their proposal as submitted. All addenda so issued shall become part of the contract documents.

The City reserves the right to not comply with these time frames if a critical addendum is required or if the proposal deadline needs to be extended due to a critical reason in the best interest of the City of Santa Fe.

4. LAWS AND REGULATIONS

The proposing firm's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the contract throughout. They will be deemed to be included in the contract the same as though herein written out in full.

5. METHOD OF AWARD

The proposal is to be awarded based on qualified proposals as per the enclosed rating system and at the discretion and consideration of the governing body of the City of Santa Fe. The selection committee may interview the top three rated proponents; however, contracts may be awarded without such interviews. At its discretion the city reserves the right to alter the membership or size of the selection committee. The City reserves the right to change the number of firms interviewed.

6. COMPLIANCE WITH CITY'S MINIMUM WAGE RATE ORDINANCE (LIVING WAGE ORDINANCE)

A copy of the City of Santa Fe Ordinance No. 2003-8, passed by the Santa Fe City Council on February 26, 2003 is attached. The proponent or bidder will be required to submit the proposal or bid such that it complies with the ordinance to the extent applicable. The recommended Contractor will be required to comply with the ordinance to the extent applicable, as well as any subsequent changes to the Ordinance throughout the term of this contract.

7. PROTESTS AND RESOLUTIONS PROCEDURES

Any proponent, offeror, or contractor who is aggrieved in connection with a procurement may protest to the Purchasing Officer. The protest must be in writing and submitted within fifteen (15) days and requirements regarding protest and resolution of protests are available from the Purchasing Office upon request.

SPECIAL CONDITIONS

1. GENERAL

When the City's Purchasing Officer issues a purchase order document in response to the vendor's bid, a binding contract is created.

2. ASSIGNMENT

Neither the order, nor any interest therein, nor claim under, shall be assigned or transferred by the vendor, except as expressly authorized in writing by the City Purchasing Officer's Office. No such consent shall relieve the vendor from its obligations and liabilities under this order.

3. VARIATION IN SCOPE OF WORK

No increase in the scope of work of services or equipment after award will be accepted, unless means were provided for within the contract documents. Decreases in the scope of work of services or equipment can be made upon request by the city or if such variation has been caused by documented conditions beyond the vendor's control, and then only to the extent, as specified elsewhere in the contract documents.

4. DISCOUNTS

Any applicable discounts should be included in computing the bid submitted. Every effort will be made to process payments within 30 days of satisfactory receipt of goods or services. The City Purchasing Officer shall be the final determination of satisfactory receipt of goods or services.

5. TAXES

The price shall include all taxes applicable. The city is exempt from gross receipts tax on tangible personal property. A tax exempt certificate will be issued upon written request.

6. INVOICING

(A) The vendor's invoice shall be submitted in duplicate and shall contain the following information: invoice number and date, description of the supplies or services, quantities, unit prices and extended totals. Separate invoices shall be submitted for each and every complete order.

(B) Invoice must be submitted to ACCOUNTS PAYABLE and NOT THE CITY PURCHASING AGENT.

7. METHOD OF PAYMENT

Every effort will be made to process payments within 30 days of receipt of a detailed invoice and proof of delivery and acceptance of the products hereby contracted or as otherwise specified in the compensation portion of the contract documents.

8. DEFAULT

The City reserves the right to cancel all or any part of this order without cost to the City if the vendor fails to meet the provisions for this order, and except as otherwise provided herein, to hold the vendor liable for any excess cost occasioned by the city due to the vendor's default. The vendor shall not be liable for any excess cost if failure to perform the order arises out of causes beyond the control and with the fault or negligence of the Vendor and these causes have been made known to the City of Santa Fe in written form within five working days of the vendor becoming aware of a cause which may create any delay; such causes include, but are not limited to, acts of God or the public enemy, acts of the State or of the Federal Government, fires, floods,

epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above unless the city shall determine that the suppliers or services to be furnished by the sub-contractor are obtainable from other sources in sufficient time to permit the vendor to meet the required delivery schedule. The rights and remedies of the city are not limited to those provided for in this paragraph and are in addition to any other rights provided for by law.

9. NON-DISCRIMINATION

By signing this City of Santa Fe bid or proposal, the vendor agrees to comply with the Presidents Executive Order No. 11246 as amended.

10. NON-COLLUSION

In signing this bid or proposal, the vendor certifies they have not, either directly or indirectly, entered into action in restraint of full competition in connection with this bid or proposal submittal to the City of Santa Fe.

ELIGIBILITY

Organizations considering applying for funding for the first time are encouraged to contact the Arts Commission at (505) 955-6707 prior to submitting an application. Arts Commission staff is available to help ensure that both an organization and project are eligible for funding, as well as to provide guidance regarding in which funding program to apply.

Organizational Eligibility

Potential applicants should carefully review the follow requirements to determine their eligibility:

- Only Santa Fe-based organizations whose mission includes the arts will be funded.
- Be a federally recognized nonprofit with an IRS 501(c)3 status; OR a public agency (as defined in NMSA Section 11-1-1 or any county, state or education institution specified in Article 12, Section 11 of the NM Constitution).
- Have a State of New Mexico Incorporation Certificate as a domestic or foreign nonprofit corporation and be in good standing with the State.
- Organizations must have a current City of Santa Fe business registration number.
- City of Santa Fe-operated programs are not eligible.
- Annual organizational operating budget over \$1 million during the most recently completed fiscal year as evidenced by the IRS Form 990.
- Employ a full-time, paid administrative staff of at least 2 FTE.

Project Eligibility

- Must support the presentation of artistic content to the general public; we do not provide general operating funds or funding to support ancillary, non-arts-based programs. Examples of public presentations include performances, productions, exhibitions, art markets, fairs and festivals (i.e. indoor or outdoor community celebrations of the arts), and workshops or conferences.
- All public presentations must be open and accessible to the general public.
- Projects must take place in the northern portion of Santa Fe county (i.e. Madrid/ Galisteo to northern boundary of county)
- Minimum project budget of \$300,000; up to \$100,000 request.
- Contract amount must be dollar-for-dollar in cash.
- Demonstrate economic impact, such as cultural and tourism impact for our city, such as geographical information of visitors, tickets sold for events, and impact to the Lodgers Tax.

What Cannot Be Funded

The Arts Commission cannot fund certain projects and project elements. These include:

- Demonstration and master classes
- Scholarships and fellowships
- Closed subscription series
- Projects which are part of a post-secondary academic degree program
- Awards (ribbons, trophies, prizes, etc.)
- Deficits and debt reduction (including finance charges, loan fees, etc.)
- Meals, catering, lodging or transportation
- Capital expenses (including the purchase of equipment or real property, labor or materials costs for renovations, remodeling or new construction, etc.)

- Tuition assistance for college, university or other post-secondary formal course work
- Fund-raising (events, personnel, merchandise, invitations, etc.)

In many instances, the larger project budget or organizational budget may include some of these elements; however, Arts Commission funds cannot be applied toward these costs.

Lodgers’ Tax for the Arts Eligibility

Funding for these programs is authorized by the City of Santa Fe Ordinance No. 1987-45, which earmarks a portion of the Lodgers’ Tax for the “promotion and advertising of nonprofit attractions and nonprofit performing arts in Santa Fe.” NMSA “Lodgers’ Tax Act” (3-38-21) authorizes a municipality to use tax proceeds to defray costs of advertising, publicizing and promoting tourism attractions within the area. Therefore, **eligible organizations must play a role in promoting tourism and apply the funding received primarily towards the project’s promotional, advertising and marketing costs.** All projects must take place between July 1, 2016 and June 30, 2017. Organizations may apply for funding through only one program.

SCOPE OF SERVICES

Organizations who receive contracts for funding shall provide the following services to the City:

- Promote and advertise nonprofit attractions and nonprofit performing arts in Santa Fe through the presentation and production of the project.
- Promote and market the project locally, regionally, nationally and/or internationally through media coverage and placements that emphasize target markets and demonstrate evidence of attracting audiences.
- Promote and market the City by utilizing the City’s arts logo and credit line on all printed promotional material related to the project.
- Improve marketing effectiveness by providing Santa Fe businesses with opportunities to tie-in to cultural events in Santa Fe by attracting audiences.
- Encourage the cultural development of Santa Fe by maintaining high standards of artistic excellence as demonstrated by an ongoing series of performances, exhibitions and/or services.
- Strengthen the position of the arts as an integral part of Santa Fe by:
 - Providing cultural benefits and preserving the artistic identity of Santa Fe; and
 - Providing educational programs and opportunities; and
 - Providing access to new and underserved audiences.
- Demonstrate administrative competency through planning, quality programming and realistic budgeting.
- Attend a request for proposal technical assistance workshop conducted by the City of Santa Fe Arts commission prior to the termination date of this Agreement.
- Provide a final report to the City providing statistical and demographic information about audience attendance and the results of the project.

FUNDING REQUIREMENTS

Organizations receiving funding must comply with the following requirements. Potential applicants should carefully read through the requirements below to ensure they would be able to meet them if funded.

Matching Funds

Organizations must match the contract amount dollar-for-dollar in cash.

Cash is defined as income generated through ticket sales, program advertising, budget allocations, fundraising, pledges, grants, miscellaneous contributions, memberships, etc.

Funds from other City of Santa Fe sources cannot be used as a match for Arts Commission funds.

Credit Line and Logo

All organizations funded by the Arts Commission must display the Arts Commission's credit line logo on all printed and digital publicity, promotional and program materials related to the project. Failure to include the logo can result in the termination of the contract and the revocation of funding.

Reporting

Organizations are required to submit reports online through CultureGrants at <http://santafenm.culturegrants.org>. Report actual demographic/attendance numbers based on ticketed events or reasonable estimates for free events to support tourism impact. Ten percent of the total funding award will be withheld until acceptance of the final report by the Arts Commission.

There are no exceptions to the reporting requirements. Potential applicants may request a sample "Reporting Packet" to receive detailed information.

Failure to submit acceptable reports by the deadline will render an organization ineligible to apply for Arts Commission funding for a period of five (5) years from the due date of the report.

Evaluation

Organizations will be asked to provide a limited number of performance/event tickets to the Arts Commission for the purpose of evaluation and/or familiarity with the project. Additionally, site visits will be conducted by Arts Commission staff to evaluate the organization.

Financial Records

Separate financial records related to the funded project must be maintained by the organization. These records must be kept on file during the contract period and for a minimum of three fiscal years after the end of the contract. They are subject to local, state, and federal audits at any time.

Audits

Organizations must submit an independent financial audit within 90 days of the end of the organization's fiscal year. Organizations must also submit an annual IRS Form 990 to maintain organizational eligibility. There are no exceptions to this requirement.

Site Visit

Participate in at least one programmatic and administrative site visit once during the two year contract period.

PAYMENT PROCESS

The City of Santa Fe does not pay for services until they are rendered. Partial payments may be requested during the contract period based on percentage of services that have been rendered. Staff reviews all requests before payments are made.

Ten percent of the total contract amount is withheld until the project is completed and required reports have been submitted and approved.

Please allow 30 days for the processing of all approved payment requests.

TECHNICAL ASSISTANCE WORKSHOPS & QUESTIONS

Technical assistance workshops are held prior to the application deadline. All organizations/groups considering submitting an application are strongly encouraged to attend. During the workshop, Arts Commission staff will provide important information about funding, the review process and completing an application. Please note that if your organization currently has a funding contract with the Arts Commission, an organizational representative is required to attend this workshop.

Additionally, Arts Commission staff is available throughout the application period to answer questions regarding the application and review process. Please direct your inquiries to: John Tennyson jmtennyson@ci.santa-fe.nm.us or by telephone at (505) 955-6707.

CRITERIA, SCORING AND FUNDING RECOMMENDATIONS

The Arts Commission staff reviews all applications for eligibility and completeness. Then a Review Panel consisting of community representatives, field experts and the Arts Commission review all eligible applications. (See “Proposal Schedule”)

All applications are reviewed based on an established set of criteria. The criteria are weighted equally, based on a scale of 1 (low) to 5 (high).

Criteria

50% Evidence of attraction tourists

As demonstrated by:

- Estimated size, diversity and geographic location of the audience
- Ability of the project to advertise and promote Santa Fe as a tourist destination; appropriateness of promotion and marketing to project and audience; quality of marketing and promotional materials
- Estimated tourism expenditures; estimated expenditures directly related to project / indirect expenditures related to the project (i.e. parking, meals, lodging, etc.)

25% Standards of administrative and artistic excellence

As demonstrated by:

- Quality of artistic samples submitted
- Ability to foster the creation, production, presentation and awareness of the arts in Santa Fe; utilization of local artists and local businesses
- Qualifications/backgrounds of the key artistic and administrative personnel; professional reviews
- Accuracy of the application materials; accuracy of financial information; diversity of income sources and earned/unearned income mix; stability of organizational budget from year to year

25% Alignment with Policy Planks

As demonstrated by:

- Students have access to in-school and/or after school arts education programs.
- Promotes creative dialogue and exchange throughout the community
- Outreach boosts participation in arts and cultural activities.

**EVALUATION CRITERIA
&
WEIGHTED VALUES**

EVALUATION COMMITTEE MEMBERS

At its discretion, the City reserves the right to alter the membership and size of the committee.

If interviews are conducted for the top three rated firms, those scores totaled from the evaluation committee members from the interview evaluations will determine the final top rated firm, unless other tangible extenuating circumstances are documented.

Unless noted elsewhere in this RFP, the same evaluation form will be used to separate the interview scores.

Scoring

Scores of the evaluation committee members will be totaled to determine the top rated firms. Each reviewer scores the application based on the criteria. All reviewers' scores are added together and then divided by the number of reviewers scoring the application. This score is then multiplied by 10. A minimum combined score of 80 points is necessary to be considered for funding in any category. Receiving the minimum score does not guarantee receipt of funding.

Funding Recommendations

Using the scores and rankings as a guide, the Arts Commission makes funding recommendations. These recommendations are then forwarded to the appropriate bodies for approval. All awards are based on the availability of tax dollars and funding.

SUMMARY OF APPLICATION FORMS, ATTACHMENTS, AND ENCLOSURES

A complete application consists of all online forms provided by the Arts Commission as well as required attachments and enclosures uploaded by the applicant. Arts Commission staff is available to answer any questions you may have. Please e-mail jmtennyson@ci.santa-fe.nm.us or call (505) 955-6707.

The following is a list of the required online application forms, attachments and enclosures. The online application forms are completed online through <http://santafenm.culturegrants.org/>. Required attachments and enclosures must be uploaded to the Support Material Form through the online application. Please see application for more information on accepted file types. Please note that the Arts Commission is not responsible for compatibility issues due to operating systems, platforms, programs or program versions.

Please use this as a checklist when preparing your online application.

The online application includes the following:

- Applicant Information
- Project Narrative
- Audience Demographics
- Promotion/Marketing
- Financial Information
- Support Material
- Certification/Submission

Provide upload the following to Support Material:

- Artistic and Administrative Biographies
- Board List
- Organizational Chart
- Organizational History
- IRS Exemption Letter
- Incorporation Certificate
- IRS Form 990 for most recent completed fiscal year
- Artistic Samples
- Promotional Samples, Reviews, and Educational Materials

The closing date for applications is **Friday, April 8, 2016 at 5:00 PM MST**



City of Santa Fe Living Wage Ordinance

PURSUANT TO THE CITY OF SANTA FE
LIVING WAGE ORDINANCE, SECTION 28-1 SFCC 1987
EFFECTIVE MARCH 1, 2016 ALL WORKERS WITHIN THE
CITY OF SANTA FE
SHALL BE PAID A LIVING WAGE OF

\$10.91
PER HOUR

Santa Fe's Living Wage

-  The Santa Fe Living Wage Ordinance establishes minimum hourly wages.
-  The March Living Wage increase corresponds to the increase in the Consumer Price Index (CPI).
-  All employers required to have a business license or registration from the City of Santa Fe ("City") must pay at least the adjusted Living Wage to employees for all hours worked within the Santa Fe city limits.

Who is Required to Pay the Living Wage?

-  The City to all full-time permanent workers employed by the City;
-  Contractors for the City, that have a contract requiring the performance of a service but excluding purchases of goods;
-  Businesses receiving assistance relating to economic development in the form of grants, subsidies, loan guarantees or industrial revenue bonds in excess of twenty-five thousand dollars (\$25,000) for the duration of the City grant or subsidy;
-  Businesses required to have a business license or registration from the City; and
-  Nonprofit organizations, except for those whose primary source of funds is from Medicaid waivers.
-  For workers who customarily receive more than one hundred dollars (\$100) per month in tips or commissions, any tips or commissions received and retained by a worker shall be counted as wages and credited towards satisfaction of the Living Wage provided that, for tipped workers, all tips received by such workers are retained by the workers, except that the pooling of tips among workers shall be permitted.

REQUEST FOR PROPOSALS ONLY
CITY OF SANTA FE
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and _____ (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City and the Contractor, whichever occurs last.

1. SCOPE OF SERVICES

The Contractor shall provide the following services for the City:

A. Advertise, publicize and promote Santa Fe as an arts center through presentation and production of the project described in Exhibit "A" attached hereto and incorporated by reference in response to RFP #16/ /P.

B. Promote and market the project locally, regionally and internationally through media coverage and placements that emphasize target markets.

C. Improve marketing effectiveness by providing Santa Fe businesses with opportunities to tie-in to cultural events in Santa Fe by attracting audiences as demonstrated with statistical and demographic information about audience attendance.

D. Encourage the cultural development of Santa Fe by maintaining high standards of artistic excellence as demonstrated by an ongoing series of performances, exhibitions and/or services.

E. Strengthen the position of the arts as an integral part of Santa Fe by:

(1) Providing cultural benefits and preserving the cultural identity of Santa Fe; and

(2) Providing access to all special constituencies

F. Demonstrate administrative competency through planning, quality programming and realistic budgeting.

G. Attend a request for proposal technical assistance workshop conducted by the City of Santa Fe Arts commission prior to the termination date of this Agreement.

H. Provide a report to the City of the results of the advertising project.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the personnel, experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The City shall pay to the Contractor in full payment for services rendered, a sum not to exceed, inclusive of applicable gross receipts taxes.

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Payment shall be made upon receipt and approval by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed and deliverables received and accepted by the City.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, and terminate on _____, unless sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the City upon ten (10) days written notice to the Contractor.

(1) Upon termination, the Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the City original copies of all work product, research or papers prepared under this Agreement.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this contract.

8. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

9. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

11. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations

whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this

Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

13. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation

of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or

legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by

Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. MATCHING FUNDS

The Contractor may use the amount paid by the City pursuant to Article 3, herein, to meet matching requirements of federal or state government for the receipt of additional funds for those entities.

23. LOGO AND CREDIT LINE

A. The Contractor must include the City of Santa Fe Arts Commission logo on all printed publicity, promotion, and program materials applicable to this Agreement. In immediate proximity to the logo, the following credit line must be clearly visible and readable: "Partially funded by the City of Santa Fe Arts Commission and the 1% Lodgers' Tax."

B. Failure to provide the appropriate credit line and use of logo can result in termination of this Agreement.

24. OPTION TO RENEW

Contractor is granted, upon a satisfactory performance, an option to renew this Agreement for one additional year. Contractor and the City shall renegotiate the terms and conditions upon renewal. The option shall be exercised by the parties prior to the expiration date of this Agreement.

25. NOTICES

Any notice required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe:

Contractor:

Arts Commission
PO Box 909
Santa Fe, NM 87504-0909

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have executed this Agreement
on the date set forth below.

CITY OF SANTA FE:

CONTRACTOR:

JAVIER M. GONZALES, MAYOR

NAME & TITLE

DATE: _____

DATE: _____

ATTEST:

YOLANDA Y. VIGIL
CITY CLERK

APPROVED AS TO FORM:



KELLEY A. BRENNAN,
CITY ATTORNEY

2/23/16

APPROVED:

OSCAR S. RODRIGUEZ,
FINANCE DIRECTOR

22103.561850

BUSINESS UNIT/LINE ITEM