ARTS FUNDING AGREEMENT

BETWEEN CITY OF LEWISVILLE AND

THE ACTORS CONSERVATORY THEATRE

The **CITY OF LEWISVILLE,** a Texas home rule municipal corporation (hereinafter referred to as "City"), and **THE ACTORS CONSERVATORY THEATRE**, a Texas non-profit corporation, acting herein through its duly authorized representative (hereinafter referred to as "Contractor"), enter into this funding agreement for the purposes set out herein.

WHEREAS, the City Council finds that the expenditure of public funds to Contractor is in the best interest of the residents and the City of Lewisville; and

WHEREAS, the City Council finds that expending public funds for the purpose stated above is a valid public purpose; and

WHEREAS, pursuant to Ordinance No. 4209-09-2015, the City Council determined that the City should award grant funding in a sum not to exceed $ 35,245 for the purposes outlined in the attachment entitled "Arts Grant Application" (hereinafter referred to as "Application"); and

WHEREAS, Contractor has established itself as having the ability to perform such activities.

NOW, THEREFORE, for and in consideration of the covenants, obligations, and undertakings of each of the respective parties to the Agreement, the parties hereby agree as follows:

SECTION I

PURPOSES/CONSIDERATION; PRIORITY OF DOCUMENTS

1.01 Purpose/Consideration.

This Agreement provides the terms and conditions under which City will make available grant funding in a sum not to exceed $ 35,245, for use to support the activities outlined in attached "Application", Contractor's funding application. The City's source of these funds is derived from the Hotel/Motel Tax revenues and total grant funding awarded to Contractor is

subject to change pursuant to Section 5.07 of the agreement herein. Contractor agrees to accept responsibility for guaranteeing City grant funds are used for the items in "Application".

In consideration of the City of Lewisville providing the funding specified for the 2015 – 2016 fiscal year, Contractor shall abide by the terms and conditions of this Agreement.

1.02 Priority of Documents.

This Agreement consists of: Agreement between City of Lewisville and Contractor; Application; Revised Budget Category Itemization for Approved Expenditures; General Conditions; Insurance, and Employee Dishonesty Bond when required. The documents are complementary, and what is called for by one shall be binding as if called for by all. In the event of inconsistency in any provisions of the documents, the inconsistency shall be resolved by giving precedence to the documents in the order in which they are listed above.

SECTION II

PERMITTED USES OF FUNDS; CONDITIONS OF USE

2.01 Contractor shall use any and all funds furnished by City under this Agreement for the purposes outlined in the Application, which is made a part hereof by reference and incorporated as "Application". In the event that the amount of funds requested and outlined for expenditure in the Application differs from the amount of funds actually awarded by the City, then Contractor shall submit a revised line item budget on a form provided by the City which shall be substituted for the original budget submitted with the Application. The revised line item budget must be submitted within 10 days of the execution of this Agreement and no funds shall be disbursed by the City to Contractor unless and until the revised line item budget is submitted. The revised Line Item Budget of Approved Expenditures shall be signed by two members of Contractor's executive board or, in the alternative, one member of Contractor's executive board and the executive director. The revised line item budget shall be attached hereto and incorporated herein as part of "Application".

1. Subsequent to the initial contract submittal, should the Contractor wish to utilize funds for a purpose other than those stated in "Application", the Contractor must submit an

additional amended Line Item Budget of Approved Expenditures and request approval from the Contractor's Board, Arts Advisory Board, and City Manager. No change may occur unless:

a. Approved by Contractor's Board, as evidenced by the official minutes of the Board authorizing the change;

b. Approved by the Arts Advisory Board, as evidenced by the official minutes of the Arts Advisory Board authorizing the change presented by the Contractor's Board;

c. Approved by the City Manager, or his designee, after submission of the requested change by the Arts Advisory Board.

Contractor cannot expend any funds for a purpose not listed in the funding application until receipt of written approval from the City Manager or his designee.

2.02 All expenditures of City funds must comply with the Agreement and attachments hereto. Agreement compliance is defined as:

1. At least 90% of expenses budgeted in each category of the Application and funded by City monies must be spent in that category;

2. All requests to reallocate funds from one line item to another must first be approved by the Contractor's Board, as evidenced by the official minutes of the Board authorizing the change and submitted to the Arts Center Manager. If the Arts Center Manager finds that the request conforms to Item 1 of 2.02 above, the amended line item budget shall be approved. If the Arts Center Manager finds that the amendments do not conform to 2.02.1 above, the request must be approved in accordance with the conditions set forth in b and c of Item 1 of 2.01;

3. Contractor must meet all other conditions of this Agreement.

2.03 Contractor agrees to the general conditions of the grant as set forth in the attachment entitled "General Conditions of Contract" (hereinafter referred to as the "General Conditions"), which is attached hereto and incorporated herein for all purposes as Exhibit "B".

2.04 Unexpended and unencumbered City funds that remain with the Contractor after September 30, 2016, will revert to the City and the Contractor must return said funds to the City on or before October 31, 2016. Encumbered City funds are those funds which the Contractor has

received and obligated for payment by written agreement or contract to expend on approved projects listed in Exhibit "A".

SECTION III

NON-ASSIGNMENT

3.01 Contractor may not assign any interest in this Agreement, whether in whole or part, without prior approval of the City Council, as reflected by a duly authorized resolution.

SECTION IV

INDEPENDENT CONTRACTOR

4.01 The City enters into this Agreement with Contractor for the purposes enumerated in Section I. Contractor asserts and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of the City. Contractor has exclusive control over the details of the activity, and is responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants. The doctrine of respondeat superior does not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants. Further, this agreement does not create a partnership or joint enterprise between City and Contractor.

SECTION V

DISBURSEMENT OF FUNDS

5.01 The City will disburse funds provided under this Agreement as follows:

a. an amount not to exceed 50% of the funds by November 30, 2015.

b. an amount not to exceed 25% of the funds by February 29, 2016.

c. an amount not to exceed the remaining 25% of the funds by July 1, 2016.

5.02 Expenses incurred after the termination date will not be reimbursed under this Agreement and the City shall assume no liability for same.

5.03 Failure to comply with the quarterly reporting requirements as outlined in Section 5.07 of this agreement below, including submittal of an executed certificate of compliance, shall

result in funds being withheld from disbursement to the Contractor until a properly prepared report is submitted to the City as required.

5.04 Failure to submit a revised Line Item Budget as required in Section II of this agreement when applicable shall result in funds being withheld from disbursement to the Contractor until it is submitted to the City.

5.05 Contractor recognizes that this Contract shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions. Contractor and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Lewisville, which fiscal year ends on September 30th of each year, shall be subject to Lewisville City Council approval. In the event that the Lewisville City Council does not approve the appropriation of funds for this contract, the Contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

5.06 Contractor recognizes that grant funding is derived from Hotel/Motel tax revenue collected by the City. In the event that the Hotel/Motel Tax revenue generated for fiscal year 2015 – 2016 is lower than initially anticipated, Contractor agrees that the total sum of grant funding awarded by the City to the Contractor may be adjusted accordingly at the City's sole discretion.

5.07 **<u>Reporting Requirements.</u>**

Within thirty (30) days after the close of each preceding quarter of the contract term, Contractor agrees to provide financial statements to the Contract Administrator sufficiently describing the expenditure of funds provided by the City to be compared against the Line Item Budget of Approved Expenditures attached in "Application", a list of all bank checks dispatched per quarter relating to the Approved Expenditures attached in "Application", as well as a description of program goals achieved and/or progress of same for the preceding quarter. In the case of grants of $1,000 or less, the report is due within 30 days of the close of the quarter in which

the funds were expended. Reports submitted without required notarized signatures will be rejected and considered incomplete.

At the end of the Contract Term or in the event of earlier termination, Contractor shall provide a final written report of its activities and expenditures to the Contract Administrator.

SECTION VI

NO PROHIBITED INTEREST

6.01 Contractor acknowledges and represents it is aware of all applicable laws, the City Charter, and the City Code of Conduct regarding prohibited interests, and that the existence of a prohibited interest at any time will render the Contract voidable.

SECTION VII

INSURANCE REQUIREMENTS/INDEMNIFICATION

7.01 Insurance.

At its own expense, Contractor agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in Exhibit "C". Additionally, this insurance must specifically cover any and all activities occurring on City property, including those activities of Contractor's employees, volunteers, vendors, contractors, or subcontractors. Contractor must provide proof of this insurance to the Contract Administrator within ten (10) days of execution of this Agreement. A properly executed certificate of insurance issued by Contractor's insurance agency is sufficient proof of insurance. Contractor must maintain a current copy of the certificate(s) and provide proof of its current insurance to City throughout the entire term of this Contract. These insurance requirements shall apply only to grants of more than $1,000.

7.02 Indemnification.

Contractor shall release, defend, indemnify and hold harmless City and its officers, agents and employees from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including attorney's fees and expenses, in any way arising out of, related to, or resulting from the performance of the work or caused by the negligent act or omission of Contractor, its

officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Contractor is legally responsible (hereinafter "Claims"). Contractor must defend City against all such Claims.

City shall have the right to select or to approve defense counsel retained by Contractor to fulfill its obligation to defend and indemnify the City, unless such right is expressly waived by City in writing. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not a waiver of Contractor's obligation to defend or indemnify the City pursuant to this Agreement. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor is liable for all costs incurred by City.

SECTION VIII

TERM

8.01 The term of this Agreement is October 1, 2015 through September 30, 2016. At the expiration of this Agreement, the Contractor shall have the continuing obligation to complete any unfulfilled terms and conditions of this Agreement, including the submission of a final written report to the City and any other requested written documentation verifying Contractor's compliance with the terms of this Agreement.

SECTION IX

TERMINATION

9.01 Each party shall have the right to an early termination of this Agreement by giving the other party written notice thirty (30) days before the desired early termination date. After a notice of early termination, Contractor may use City funds only for costs incurred before the notice of termination date. Contractor, however, must return to the City the unused balance of any funds disbursed to the Contractor pursuant to this Agreement within ten (10) days of either an early termination or at the end of the Agreement term.

9.02 In the event Contractor breaches any of the terms or conditions of this Agreement, whether in whole or part, the City may immediately terminate this Agreement by providing written notice to the Contractor, notwithstanding any other provision. Contractor is solely responsible for funds expended contrary to the terms and conditions of this Agreement, and must return the City funds within ten (10) days of the termination.

SECTION X

MISCELLANEOUS

10.01 Entire Agreement.

This Agreement and its attachments constitute the entire agreement between the parties. The parties may only modify, amend, or supplement this Agreement through a written instrument executed by both parties.

10.02 Authority

The undersigned represents and warrants that he or she is the duly authorized representative of the Contractor, and that the Board of Trustees (or equivalent) of the Contractor has approved and accepted this Agreement by Board resolution. Contractor at all times shall maintain a copy of the Board resolution for submission to City upon request.

This Agreement does not become or binding on the City of Lewisville until both the Contractor and the City Manager or his designee have executed it.

10.03 Successors and Assigns

This Contract is binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

10.04 Notice.

Any Notice, Reports or Documents required to be provided by this Agreement shall be in writing and delivered to the parties as follows:

City – Contract Administrator	Contractor
James Wear, Arts Center Manager	The Actors Conservatory Theatre
City of Lewisville	359 Lake Park Rd., Ste. 118
P.O. Box 299002	Lewisville, TX 75057
Lewisville, TX 75029-9002	
Telephone: (972) 219-8444	
jwear@cityoflewisville.com	

10.05 Paragraph Headings.

The paragraph headings contained herein are for convenience only and do not define or limit the scope of any provisions in this Agreement.

10.06 Interpretation of Contract.

Although this Agreement is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

10.07 Venue.

The parties agree that the laws of the State of Texas govern this Agreement, and which is performable in Denton County, Texas. In the event of breach of this Agreement, venue for all causes of action shall exclusively lie in Denton County, Texas.

10.08 Severability.

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

10.09 Immigration Reform and Control Act (8 U.S.C. 1324a).

The City of Lewisville supports the Immigration Reform and Control Act (IRCA), which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Contractor shall at all times during the term of the Agreement comply with the requirements of IRCA and shall notify the City of Lewisville within fifteen (15) working days of receiving notice of a violation of IRCA. The Contractor also warrants that it has not had an IRCA violation within the last five (5) years. The City may terminate this Agreement if the City determines that (a) the Contractor or its agents have been untruthful regarding IRCA violations in the preceding five (5) years or (b) the Contractor failed to timely notify the Buyer of an IRCA violation.

10.10 <u>ADA Compliance</u>.

All goods and services provided pursuant to this Agreement must comply with the Americans with Disabilities Act and any amendments thereto (the "ADA") and all regulations promulgated pursuant to the ADA. Contractor will be required to certify compliance, if required under the law or otherwise required by the City.

10.11 <u>Protection of Resident Workers</u>.

The City actively supports the Immigration and Nationality Act (INA), which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Contractor shall establish appropriate procedures and controls so no services under this Agreement will be performed by any worker who is not legally eligible to perform such services or employment. The City reserves the right to audit Contractor's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services under the contract. The audit will be at the City's expense.

IN TESTIMONY OF WHICH THE PARTIES HERETO AFFIXED THEIR SIGNATURES ON THIS THE _____ DAY OF _____, 2015

ACTORS CONSERVATORY THEATRE

BY: _____

Kevin Moran
PRESIDENT OF THE BOARD

CITY OF LEWISVILLE, TEXAS

BY: _____
Donna Barron
CITY MANAGER

APPROVED AS TO FORM:

_____
Lizbeth Plaster, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF Denton)

This instrument was acknowledged before me on the 14 day of December, 2015 by Kevin Moran, President of Actors Conservatory Theatre, a non-profit corporation, on behalf of said corporation.

Notary Public in and for the
State of Texas

SARAH J. MOFFITT
Notary Public, State of Texas
My Commission Expires
March 15, 2016

STATE OF TEXAS)
)
COUNTY OF DENTON)

This instrument was acknowledged before me on the ___ day of _____, _____ by **CLAUDE KING**, City Manager of the **CITY OF LEWISVILLE, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public in and for the
State of Texas