



**CITY OF AUBURN and AUBURN SYMPHONY ORCHESTRA
CONTRACT FOR SERVICES**

THIS CONTRACT is made and entered into on the _____ day of _____, 2019, by and between the CITY OF AUBURN, a municipal corporation of the State of Washington (the “City”), and the AUBURN SYMPHONY ORCHESTRA, a not-for-profit corporation organized pursuant to 26 U.S.C. 501 (C)(3)(the “Service Provider” or “ASO” and collectively, the “Parties”).

1. **SCOPE OF SERVICES BY SERVICE PROVIDER** The Service Provider will engage, enrich and inspire our community through artistically vibrant performances; will uphold the highest artistic and professional standards; will present a broad range of repertoire; will serve a wide and diverse audience; and will provide quality educational experiences for all ages. Service Provider will provide classical music opportunities to area youth through reduced ticket prices to concerts as well as outreach to Auburn area schools. Service Provider will actively participate in community events and include City of Auburn logo in all applicable promotional materials. Service Provider will comply with requirements listed in Attachment “A.”
2. **TERM OF CONTRACT:** The Term of this Contract will be from January 1, 2020, through December 31, 2020.
3. **COMPENSATION TO SERVICE PROVIDER:**
 - a. The Parties understand that the Service Provider operates on a fiscal year that runs from July 1 through the following June 30, and that its concert season is consistent with its fiscal year. The City’s fiscal year is from January 1 through the following December 31. The Parties agree that the marketing services provided throughout the year are adequate consideration for the City to pay the Service Provider its full consideration due for the calendar year by the end of June each year in order to support the Service Provider’s budget cycle.
 - b. The total contract is for \$75,000 per calendar year, which will be paid as set forth in Attachment “B.”
 - c. **Invoicing and Reports.** The Service Provider will submit invoices and reports not later than 30 calendar days before payment is due. For each reporting period, the Service Provider will provide report outlining how the Service Provider met the performance measures set forth in this Agreement.
4. **NON-APPROPRIATION OF FUNDS:** If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to make payments for Services or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon the completion of all

remaining Services for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

5. RECORDS INSPECTION AND AUDIT: All compensation payments will be subject to the adjustments for any amounts found upon audit or otherwise improperly invoiced and all records and books of accounts pertaining to any work performed under this Contract will be subject to inspection and audit by the City for a period of up to three (3) years from the final payment for work performed under this Contract.
6. CONTINUATION OF PERFORMANCE. In the event that any dispute or conflict arises between the parties while this Contract is in effect, the Service Provider agrees that, notwithstanding such dispute or conflict, the Service Provider shall continue to make a good faith effort to cooperate and continue work toward successful completion of assigned duties and responsibilities. Nothing in this section is intended to restrict or otherwise limit the Parties rights of termination set forth elsewhere in this Contract.
7. CONTRACT ADMINISTRATION: This Contract will be administered by Auburn Symphony Orchestra Manager on behalf of the Service Provider and by Mayor or the Mayor's designee on behalf of the City. Any written notices required by terms of this Contract will be served or mailed to the following addressees unless changed by written notice to the other Party:

If to the City: City of Auburn, 25 West Main Street, Auburn WA 98001

If to the Service Provider: Auburn Symphony Orchestra, P.O. Box 2186, Auburn WA 98071

8. NOTICES: All notices or communications permitted or required to be given under this Contract will be in writing and will be deemed to have been duly given if delivered in person or deposited in the United States mail postage prepaid for mailing by certified mail return receipt requested.
9. INSURANCE: The Service provider shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Service provider's work through the term of the contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated.
 - A. No Limitation. The Service provider's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Service provider to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
 - B. Minimum Scope of Insurance. The Service provider's required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance shall be as least at broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent service providers, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Service provider's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

C. Minimum Amounts of Insurance. The Service provider shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.

D. City Full Availability of Service provider Limits. If the Service provider maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Service provider, irrespective of whether such limits maintained by the Service provider are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Service provider.

E. Other Insurance Provision. The Service provider's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Service provider's insurance and shall not contribute with it.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

G. Verification of Coverage. The Service provider shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the Service provider before commencement of the work. Upon request by the City, the Service provider shall furnish certified copies of all required insurance policies, including endorsements, required in this contract and evidence of all subservice providers' coverage.

H. Subservice providers' Insurance. The Service provider shall cause each and every Subservice provider to provide insurance coverage that complies with all applicable requirements of the Service provider-provided insurance as set forth herein, except the Service provider shall have sole responsibility for determining the limits of coverage required to be obtained by Subservice providers. The Service provider shall ensure that the City is an additional insured on each and every Subservice provider's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

I. Notice of Cancellation. The Service provider shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.

J. Failure to Maintain Insurance. Failure on the part of the Service provider to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Service provider to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Service provider from the City.

10. INDEMNIFICATION: Service Provider will defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

If a court of competent jurisdiction determines that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the

Service Provider and the city, its officers, officials, employees, and volunteers, the Service Provider's liability, including the duty and cost to defend, will be only to the extent of the Service Provider's negligence. It is further specifically and expressly understood that the indemnification provided constitutes the Service Provider's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

11. **RESTRICTION AGAINST ASSIGNMENT:** Service Provider will not assign this Contract or any interest nor any money due or to become due without first obtaining the written consent of the City. Service Provider will not subcontract any part of the services to be performed without first obtaining the written consent of the City.
12. **AMENDMENT MODIFICATION OR WAIVER:** No amendment modification or waiver of any condition provision or term of this Contract will be valid or of any effect unless made in writing signed by the Party or Parties to be bound and specifying with particularity the nature and extent of such amendment modification or waiver. Any waiver by any Party of any default of the other Party will not affect or impair any right arising from any subsequent default.
13. **TERMINATION AND SUSPENSION:** Either Party may terminate this Contract upon ninety (90) days written notice to the other Party. If the Service Provider has performed services pursuant to the Contract, the Service Provider will be compensated for such services in accordance with the rate of compensation provided in Attachment "B."
13. **PARTIES IN INTEREST:** This Contract will be binding upon and the benefits and obligations provided for inure to and bind the Parties and their respective successors and assigns provided that this section will not be deemed to permit any transfer or assignment otherwise prohibited by this Contract. This Contract is for the exclusive benefit of the Parties and it does not create a contractual relationship with or for the benefit of any third party.
14. **COSTS TO PREVAILING PARTY:** In the event of litigation or other legal action to enforce any rights responsibilities or obligations under this Contract, the prevailing Party will be entitled to receive its reasonable costs and attorney's fees.
15. **APPLICABLE LAW:** This Contract and the rights of the Parties will be governed by and interpreted in accordance with the laws of the State of Washington and venue for any action will be King County, Washington. The Parties agree and understand that any applicable statute of limitation will commence no later than the substantial completion by the Service Provider of the services.
16. **CAPTIONS HEADINGS AND TITLES:** All captions headings or titles in the paragraphs or sections of this Contract are inserted for convenience of reference only and shall not constitute a part of this Contract or act as a limitation of the scope of the particular

paragraph or sections to which they apply As used herein where appropriate the singular shall include the plural and vice versa and masculine feminine and neuter expressions shall be interchangeable Interpretation or construction of this Contract shall not be affected by any determination as to who is the drafter of this Contract this Contract having been drafted by mutual agreement of the Parties.

- 17. SEVERABLE PROVISIONS: Each provision of this Contract is intended to be severable. If any provision is found by a court of competent jurisdiction to be illegal or invalid or not applicable to any person or circumstance for any reason whatsoever such illegality invalidity or non-applicability will not affect the legality or validity of the remainder of this Contract or its applicability to other persons or circumstances.
- 18. ENTIRE AGREEMENT: This Contract contains the entire understanding of the Parties and supersedes all prior agreements contracts and understandings between the Parties with respect to such subject matter.
- 19. COUNTERPARTS: This Contract may be executed in multiple counterparts and will become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

IN WITNESS WHEREOF the Parties hereto have caused this Contract to be executed effective the day and year first set forth above:

AUBURN SYMPHONY ORCHESTRA

CITY OF AUBURN

Title: _____

Nancy Backus, Mayor

Date: _____

Date: _____

APPROVED AS TO FORM:

Steven Gross, City Attorney

ATTACHMENT A
Scope of Services

Scope of Work:

1. Auburn Symphony Orchestra (ASO) will engage, enrich and inspire our community through artistically vibrant performances; will uphold the highest artistic and professional standards; will present a broad range of repertoire; will serve a wide and diverse audience; and will provide quality educational experiences for all ages.
2. ASO will produce, at the minimum, three full symphony programs, four chamber concerts, three summer concerts each performing arts season.
3. ASO will conduct outreach into Auburn public schools and offer reduced price student tickets.
4. Conduct outreach to new audiences through programming and marketing efforts.
5. Participate in community events and/or festivals through hosting a booth and/or partnering to present programming as part of the event program.

Service Provider Agrees to:

1. Credit the City of Auburn in all appropriate public announcements, programs, advertising, and other forms of notice relating to the activity and service covered under this agreement and produced by, for, and under the direction of the organization. Where possible, the City of Auburn logo should be used. If logo is not appropriate, ASO may list the funder as : City of Auburn.
2. Provide access to members of the City Council and Auburn Arts Commission for purposes of evaluation to at least three performances each year.
3. Meet with the City Council, Arts Commission, or the Arts Coordinator once during the contract period, to provide information regarding programming and administration of the programs.
4. Provide the City of Auburn reports and data as outlined as part of the payment schedule.
5. Make available to the City of Auburn the service providers financial and other records, upon request, to determine compliance with this agreement.
6. Include City Council members and Arts Commissioners in their mailing list.

ATTACHMENT B

Compensation

Payment Schedule

Phase I: To be completed by January 31, 2020. Not to Exceed \$25,000.00 upon receipt or completion of the following:

- Full execution of this contract
- Receipt of completed invoice
- Receipt of schedule of activities and programming for 2019-20 performing arts season
- Submission of all printed material and copies of paid advertisements completed between June 2019 and January 2020¹
- Attendance reports for concerts (from September 2019 through January 31, 2020; including zip code demographic summary of patrons and student discount tickets claimed, and tracking of new versus returning attendees.
- Outline summary of outreach activities and community participation efforts
- Receipt of annual report from prior ASO fiscal year and
- Submission of marketing plan and budget for ASO 2019-2020 performing arts season.

Phase II: To be completed by March 31, 2020. Not to exceed \$25,000.00 upon receipt or completion of the following:

- Receipt of completed invoice
- Submission of all printed material and copies or documentation of paid advertisements completed between January 2020 and March 2020
- Attendance reports for ASO concerts (from February 1-March 31, 2020); including zip code demographic summary of patrons and student discount tickets claimed, and tracking of new versus returning attendees and
- Outline summary of outreach activities and community participation efforts.

Phase III: To be completed by June 5, 2020. Not to exceed \$25,000.00 upon receipt or completion of the following:

- Receipt of completed invoice
- Submission of all printed material and copies of paid advertisements completed between March 2020 and June 5, 2020
- Attendance reports for ASO concerts (from March 31-June 4, 2020); including zip code demographic summary of patrons and student discount tickets claimed, and tracking of new versus returning attendees
- Outline summary of outreach activities and community participation efforts and
- Summary of annual fundraiser.

¹ NOTE: While this Contract covers performances in 2019 and 2020, references are made to the ASO's 2019-2020 season, which includes periods covered in this Contract.