



CITY OF SAN MARCOS
PROVIDER CONTRACT

SECTION 1. **Parties to Contract:** This Contract is entered into between the City of San Marcos ("City") and Sights and Sounds of Christmas, Inc. ("Nonprofit"). The parties agree to be bound by the mutual obligations, performances, duties, and accomplishments in this Agreement.

SECTION 2. **Contract Period:** This Contract shall be in effect from the execution date of this Contract through February 14, 2026.

SECTION 3. **Obligation of The City and Nonprofit:**

A. City agrees to provide the Nonprofit an amount not to exceed \$100,000 in accordance with the approved City of San Marcos Fiscal 2026 budget ("Budget") subject to the terms and conditions outlined below, respectively, in return for its faithful, diligent, expeditious and satisfactory performance of the activities required to produce an in-person signature event. The funds are 50% Hotel Occupancy Tax and 50% General Fund.

B. The Nonprofit agrees to provide the City of San Marcos the sponsorship benefits as set forth in the Nonprofit event package.

C. The Nonprofit agrees to produce a signature event that will directly enhance and promote tourism.

D. The public purpose of this Contract is to support the production of Sights and Sounds of Christmas, a six-day family-friendly Christmas festival featuring children holiday performances, diverse musical showcase, more than 25 food vendors, carnival, 5k run, and over one million lights and an immersive display. The funds provided under this Contract may not be used for any other purpose than the herein stated public purpose of the production of this in-person event. The failure of the Nonprofit to use the funds provided under this Contract for this sole public purpose shall be considered a breach of this Contract and will result in the automatic termination of this Contract.

SECTION 4. **Use of Funds:** A portion of these funds provided under this Contract are generated by the City's Hotel Occupancy Tax to be used only in furtherance of the activities identified in Section 3.

The City's Hotel Occupancy Tax must be used to produce a signature event that will directly enhance and promote tourism and the convention and hotel industry. At least 15 percent of the total grant awarded must be used to purchase advertising to attract overnight stays to San Marcos hotel; proof of paid marketing is required.

The City of San Marcos requires that no more than 50% of the annual budget of the event budget shall be derived from City funds. In the event that such funds do exceed 50% of the annual budget of the Nonprofit event at any time during which this Contract is in effect, the Nonprofit agrees to notify the City immediately so that appropriate monetary adjustments to this Contract can be made to assure compliance with this section. Under no circumstances shall any of the funds be used to pay Board of Director salaries or benefits.

SECTION 5. **Accounting:** The Nonprofit shall maintain complete and accurate financial records and at the request of the City, shall make the records available for inspection and review during normal business hours.

SECTION 6. **Unspent Funds:** Any funds allocated to the Nonprofit by the City, which are unencumbered or unexpended at the end of the Contract Period, or other date of the termination of this Agreement, shall be remitted to the City within 30 days from the date thereof.

SECTION 7. **Hours of Operation:** Event dates are the weekends of Thursday, December 4 – Saturday, December 6 and Thursday, December 11 – Saturday, December 13, 2025

SECTION 8. **Reports:** The Nonprofit agrees to provide an event evaluation report as required by the City relating to its performance and expenditures of funds under the terms of this Contract. Report is due on or before February 14, 2026, which is 60 days from the day following the event. The City of San Marcos requires that detailed records be kept related to production and operation. A link to the event follow-up report is available on the grant portal.

Documents required:

1. List of activities with schedule, summary of how this event directly enhanced and promoted tourism and the convention and hotel industry, and attendance data (report link www.visitsanmarcos.com/arts/for-creators/)
2. Income statement (profit-and-loss statement) - organization's revenue, expenses, and profitability – budget vs actual

SECTION 9. **Periodic Payments:** Funds to be paid by the City as provided in Section 3 above shall be released to the Nonprofit in two payments. The first payment of 85%, shall be released following the execution of this contract. The second payment of 15% shall be released following the City's analysis of the event evaluation report received as set out in Section 8 above, except that following a notice to Nonprofit by City of an insufficiency in the report or a default under this Contract, funds shall not be released unless and until such time as the insufficiency or default is remedied, as determined by the City in its discretion. First payment shall be in the amount of \$85,000. The second payment shall be in the amount of \$15,000 which will be reduced such that they do not exceed 50% of the Nonprofit's reported

qualifying expenditures and/or did not spend 15% of the grant for paid advertising as set out in Section 4.

SECTION 10. **Monitoring of Performance:** The Nonprofit agrees to allow the City or their designee, to inspect, at City's request, and with advance notice to the Nonprofit, all pertinent records, files, information, or other written material maintained by the Nonprofit or its subcontractors and related to the subject matter of this Contract. Any failure by the Nonprofit to provide such records as requested by the City in a timely manner may be deemed by the City to be in breach of this Contract by the City. Notwithstanding the foregoing requirements of this Section, the City acknowledges that the Nonprofit may redact or withhold such information that is deemed confidential by law unless any such confidentiality laws permit disclosure to the City and such records are pertinent to the City's evaluation of the performance of the Nonprofit under this Contract.

SECTION 11. **Sub-Contracts:** No part of this Contract may be subcontracted to any other person, corporation, entity, organization, or association without the prior written consent of the City to such sub-contractor and to the terms and conditions of any such sub-contract.

SECTION 12. **Political Activity:** The Nonprofit agrees not to use any of the funds under this contract for any political activity, including any activity to further the election or defeat of any candidate for public office or any activity undertaken to influence the passage, defeat, or final content of legislation.

SECTION 13. **Compliance With Laws:** The Nonprofit agrees to comply with all applicable laws, ordinances, codes, and regulations of the local, state, and federal governments including but not limited to those laws, ordinances, codes, and regulations pertaining to equal employment opportunity and those pertaining to discrimination against participants.

SECTION 14. **Breach of Contract:**

A. If the City determines that the activities as described in this agreement are not being carried out as approved by the City or that the Nonprofit is in breach of any of the terms of this Contract, the City shall notify the Nonprofit in writing of the deficiency. The Nonprofit shall have ten working days from the date of the notice to correct or satisfy the deficiency.

B. If the deficiency is not appropriately corrected or satisfied in the opinion of the City within the prescribed time, notice may be given to Nonprofit that its funding will be terminated.

C. A decision of the City to terminate funding may be appealed to the City Council within 10 days of the date of the notice to terminate funding. During the appeal process, funding to the Nonprofit shall be put on hold.

D. The City Council shall conduct a hearing on the matter within thirty days of receipt of an appeal and render a decision on the appeal as soon as practicable thereafter.

E. Upon termination of this Contract under this Section 14, the Nonprofit shall remit

all funds allocated to it by the City within 30 days from the date of termination unless an appeal is filed, in which event the Nonprofit shall remit such funds within 30 days after any final ruling upholding the decision of the City to terminate the Contract. Nothing herein shall preclude either party from seeking any other remedy for breach of this Contract that is available in law or in equity.

In the event of a termination due to a default by Nonprofit, if the City determines any payments already made by the City hereunder were used in a manner allowed by this Contract, the City may allow Nonprofit to keep the previously disbursed funds, but no further payments will be made.

F. Notwithstanding the foregoing provisions of this section, either party to this Contract shall have the right to terminate this Contract by providing written notification to the other party at least 30 days prior to the effective date of such termination; however, the City agrees that it will not terminate this Contract under this subsection except for good and sufficient cause as determined by the City in its discretion. In the event of termination under this subsection, no further payments will be made to Nonprofit.

SECTION 15. **Miscellaneous:**

A. This Contract contains the entire agreement between the parties. Any oral understandings or agreements in conflict with the written provisions of this Contract shall be of no force or effect.

B. Any alterations, additions, deletions, or amendments to the terms of this Contract must be made in writing and executed by both parties hereto.

C. The Nonprofit warrants that it possesses the legal authority to enter into this Contract and to perform the services and comply with the terms provided for herein.

D. City may, in its sole discretion provide for or conduct an independent audit of the funds received under this Contract at any time during the effective term of this Contract and for twelve months after its termination.

E. The Nonprofit agrees to maintain all program records related to the activities under this Contract for at least twelve months after the termination of this Contract.

F. The Nonprofit agrees to include the statement "Funded in whole or in part by the City of San Marcos" in any promotional materials related to the activities under this Contract.

SECTION 16. **Supplemental Conditions. (Check One)**

A. None: _____

B. As stated in Appendix B: X

For: The City of San Marcos

Date:_____ By: _____
Stephanie Reyes, City Manager

For: Sights and Sounds of Christmas, Inc. (Nonprofit)

Date:_____ By: _____
Rick Doria, Board President

Appendix B

Signature Event Eligibility

- Organization must be in good standing with the Texas Comptroller's Office as verified by the Texas Comptroller Search
- Must bring people together to celebrate and enjoy different forms of artistic expression, music, food, sports and/or traditions in San Marcos
- Must occur within the San Marcos 78666 zip code
- Exclusive annual San Marcos event
- Minimum attendance of 5,000 people
- 50% of attendance must be out of town guests
- Proven record of a successful event for three consecutive years; excluding pandemic years
- Must be open to public participation or attendance
- Accessible and inclusive event
- Respectful of the environment
 - Must work towards a 'Zero waste status' 90% landfill diversion
 - Collaborate with Resource Recovery or like organization
- Must be held in-person and advertised to visitors and San Marcos residents
- Must be completed within the time period set in contracted award year
- Must apply and fulfill all City of San Marcos permit requirements
- Applicants must have fulfilled contractual requirements of previously funded events, including final reports

Event Restrictions

Applicant events may not receive funding or donations from any other City board, commission or department in addition to the public events grant. In addition, City of San Marcos Public Events Grant Funding cannot be used to support:

- Lobbying: Per the City's ethics policy, grant applicants are prohibited from directly or indirectly communicating with City Council members regarding their qualifications or any department matter related to the application, award or contract. Any violation of this provision will result in future disqualification of the applicant.
- Political activity – including any activity supporting the current elected public office, election, or defeat of any candidate for public office; or to influence the passage, defeat or final content of legislation.

Ineligible Expenses

Though part of your event budget, certain costs are ineligible to be paid with funding from grants. Ineligible expenses include:

- To reduce/eliminate a deficit
- An event that occurred before the grant award year
- Regranting awarded funds is not an allowed, including to individuals as a microgrant
- Scholarships (The grantee is allowed to offer sliding scale, discounted fees or free programming to their program participants.)

- Award ceremonies, recreation activities, or parties and private celebrations.
- Events that are primarily fundraisers, benefits, or activities offered for the sole purpose of raising money in excess of the value of programs or services delivered
- Costs of food and drink for receptions
- Rental costs of hotel/motel rooms
- Cash prizes or items purchased for resale, use as prizes or gifts, or awards
- Transportation to exhibits/field trips
- Programs that are essentially recreational, rehabilitative, or therapeutic
- Building space, real property, or supplies and equipment that is purchased and owned by, or could be used by, the applicant
- Long-life items and permanent fixtures (excluding permanent public art)
- Organizations' monthly/seasonal/annual operational costs
- Funding for litigation or litigation related activities
- Consultants who are members of an applicant's staff
- Payments to students or interns whose employment is tied to class credit
- Property Taxes, payroll tax or any other tax (sales tax excluded)

2025 City of San Marcos In-kind Support

- Use of San Marcos Plaza Park (one week pre and post 2025 event)
- Use of Pauline Espinoza Hall (one week pre and post 2025 event)
- Limited assistance from Parks and Recreation outdoor parks crew
 - Set-up and break-down
 - Day of event parkland oversight