

FUNDING AGREEMENT

by and between
SEDGWICK COUNTY, KANSAS
and
ARTS COUNCIL, INC.

This Agreement is made and entered into this ____ day of _____, 2018, by and between Sedgwick County, Kansas ("County") and Arts Council, Inc., a not for profit corporation duly organized under the laws of the State of Kansas ("Council" or "Contractor").

WITNESSETH:

WHEREAS, Council has submitted a request to County for funding of a service that will benefit residents of Sedgwick County; and

WHEREAS, it is in the best interest of the County, the Council, and the general public that a new funding agreement which supersedes all other funding agreements be entered into between the parties; and

WHEREAS, in consideration for Council's continued operation, the parties have agreed on certain levels of County funding to Council.

NOW, THEREFORE, in consideration of the promises and mutual agreements hereinafter contained, County and Council hereby agree as follows:

1. **Purpose.** The sole purpose of this Agreement is to define the financial relationship between the County and the Council as it relates to funding of the Sedgwick County Fair by the County.
2. **Term.** The term of this Agreement is for one (1) year commencing January 1, 2019, and ending December 31, 2019.
3. **Services.** Council shall provide the services and programs as those services and programs are detailed within Council's "Application for Sedgwick County Funding in 2019," which is attached hereto and incorporated herein by reference (Appendix A) as part of this Agreement.
4. **County Funding and Reports.** In return for Council's performance of the services and programs specified in Appendix A, County agrees to provide the following funding to Council in County fiscal year 2019: FIFTEEN THOUSAND DOLLARS AND NO CENTS (\$15,000.00).

Funding shall be distributed in one (1) payment. The payment shall be made during the first quarter of 2019, and such payment is contingent upon County's receipt of an invoice.

Prior to any distribution of funding, Council shall furnish to County, in such form as County may require, such statements, records, reports, data and information as County may request pertaining to matters covered by this Agreement. Council shall furnish this information no later than the tenth (10th) day of January, 2019.

County reserves the right to withhold payment if County believes that Council will not spend such County funding in the manner dictated by this Agreement.

5. **Incorporation of Documents.** Appendix A (Sedgwick County Mandatory Contractual Provisions Attachment) and Appendix B (Council's Application for Sedgwick County Funding in 2019) are attached hereto and are made a part hereof as if fully set forth herein.

General Terms and Conditions

6. **Contractual Relationship.** It is agreed that the legal relationship between Council and County is of a contractual nature. Both parties assert and believe that Council is acting as an independent contractor in providing the services and programs required by County hereunder. Council is at all times acting as an independent contractor and not as an officer, agent, or employee of County. As an independent contractor, Council, or employees of Council, will not be within the protection or coverage of County's worker's compensation insurance, nor shall Museum, or employees of Council, be entitled to any current or future benefits provided to employees of County. Further, County shall not be responsible for the withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by County to Council.

7. **Authority to Contract.** Council assures it possesses legal authority to contract under this Agreement; that resolution, motion or similar action has been duly adopted or passed as an official act of Council's governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of Council to act in connection with the application and to provide such additional information as may be required.

8. **Notification.** Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

County: Sedgwick County Manager's Office
Attn: Assistant County Manager, Department of Public Services
Sedgwick County Courthouse
525 N. Main, Suite 343
Wichita, Kansas 67203

and

Sedgwick County Counselor's Office
Attn: Contract Notification
Sedgwick County Courthouse
525 N. Main, Suite 359
Wichita, Kansas 67203-3790

Council: Arts Council, Inc.
Attn: Martha L. Linsner, President
334 N. Mead St.
Wichita, Ks 67202

9. **Termination**

A. For Cause. In the event of any breach of the terms or conditions of this Agreement by Council, or in the event of any proceedings by or against Council in bankruptcy or insolvency or for appointment of receiver or trustee or any general assignment for the benefit of creditors, County may, in addition to any other remedy provided it by law or in equity or other right reserved to it elsewhere in this Agreement, without any liability to Council on account thereof, by written notice, terminate immediately all or any part of this Agreement and Council shall be liable to pay to County any excess cost or other damages caused by Council as a result thereof.

B. For Convenience. County shall have the right to terminate this Agreement for convenience in whole, or from time to time, in part, upon thirty (30) days' written notice. Upon receipt of such termination notice, Council shall not incur any new obligations and shall cancel as many outstanding obligations as reasonably possible. In such event, County shall allow full credit to Council for the grant share of the non-cancelable obligations properly incurred by Council prior to termination.

C. Due to Reduction in Funds. It is understood that funding may cease or be reduced at any time. In the event that adequate funds are not available to meet the obligations hereunder, either party reserves the right to terminate this Agreement upon thirty (30) days' written notice.

10. Complete Agreement. This Agreement and the documents incorporated herein contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor shall it be of any force or effect.

11. Assignment. Neither this Agreement nor any rights or obligations created by it shall be assigned or otherwise transferred by either party without the prior written consent of the other. Any attempted assignment without such consent shall be null and void.

12. Amendments. Neither this Agreement nor any rights or obligations created by it shall be amended by either party without the prior written consent of the other. Any attempted amendment without such consent shall be null and void.

13. Severability Clause. In the event that any provision of this Agreement is held to be unenforceable, the remaining provisions shall continue in full force and effect.

14. Nondiscrimination and Workplace Safety. Council agrees to abide by all federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violation of applicable laws, rules or regulations may result in termination of this Agreement.

15. Retention of Records. Unless otherwise specified in this Agreement, Council agrees to preserve and make available to County at reasonable times all of its books, documents, papers, records and other evidence involving transactions related to this Agreement for a period of five (5) years from the date of expiration or termination of this Agreement.

Matters involving litigation shall be kept for one (1) year following termination of litigation, including all appeals, if the litigation exceeds five (5) years.

16. Inspection/Audit of Facilities and Records of Council. County shall have the right of inspection of Council's facilities and records at any time during Council's regular business hours, and at any other time

provided that County gives Council twenty-four (24) hours' notice of its intent to inspect. This right of inspection shall include the right to monitor and inspect Council's programs as well as the right to inspect all books containing any type of participant data or financial documentation relating to funding provided by County.

Council shall annually submit to County appropriate financial documentation and/or records audited concerning use of County's funds. It is understood at the time of the signing of this Agreement that Council's financial matters are currently, and will remain so during all times relevant to this Agreement, audited annually by a firm of certified public accounts pursuant to a policy established by Council's governing body.

17. Open to the Public. All services and programs rendered by Council that are funded by County funds shall be open to the general public, pursuant to any admission charges as may be determined by Council from time to time.

18. Signs/Decals. Council agrees to allow County, upon County's request, to place sign(s) and/or decal(s) on Council's premises (e.g., at the front entrance to the facility, vehicle doors, etc.). Said locations shall be mutually agreed upon in advance by the parties hereto. Said sign(s) and/or decal(s) shall state: "A portion of the funding for this program is provided by the Board of County Commissioners," or similar agreed-upon language evidencing County's contributions to Council's operations.

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IN WITNESS WHEREOF, the parties hereto have executed this Funding Agreement by signature of their duly authorized officers the day and year first above written.

SEDGWICK COUNTY, KANSAS:

ARTS COUNCIL, INC.

David T. Dennis, Chairman
Commissioner, Third District



Martha L. Linsner, President

APPROVED AS TO FORM ONLY:

Michael L. Fessinger
Assistant County Counselor

ATTESTED TO:

Kelly B. Arnold
County Clerk

APPENDIX A
SEDGWICK COUNTY MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in the Sedgwick County Mandatory Contractual Provisions Attachment, which is attached hereto, are hereby incorporated in this Agreement and made a part thereof. In the event of conflict between the provisions of this Agreement and the Sedgwick County Mandatory Contractual Provisions Attachment, the terms of the Sedgwick County Mandatory Contractual Provisions Attachment will control."

The parties agree that the following provisions are hereby incorporated into the Agreement to which it is attached and made a part thereof, said contract being the ____ day of _____, 20 ____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement in which this attachment is incorporated.
2. **Choice of Law:** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation:** If, in the judgment of the Chief Financial Officer, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, County may terminate this Agreement at the end of its current fiscal year. County agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to County under the Agreement. County will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon termination of the Agreement by County, title to any such equipment shall revert to Contractor at the end of County's current fiscal year. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the County or the Contractor.
4. **Disclaimer of Liability:** County shall not hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has consented to a jury trial to resolve any disputes that may arise hereunder. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any Agreement and/or this Contractual Provisions Attachment will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. County is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, County shall provide to the Contractor a certificate of tax exemption.

County makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance:** County shall not be required to purchase any insurance against loss or damage to any personal property to which this Agreement relates, nor shall this Agreement require the County to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest:** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the County and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the County. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any County employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the County.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by County to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the County promptly at the request of County in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by County, shall destroy or render such data or material unreadable.
12. **Cash Basis and Budget Laws.** The right of the County to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the County shall at all times stay in conformity with such laws, and as a condition of this Agreement the County reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto.
- Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the County cumulatively total \$5,000 or less during the County's fiscal year.
14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including Sedgwick County, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the County in relation to this Agreement prohibits the County from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the County in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. County shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify County within the same five (5) business days, with the County reserving the same right to terminate for breach as set forth herein.
15. **HIPAA Compliance.** Contractor agrees to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (codified at 45 C.F.R. Parts 160 and 164), as amended ("HIPAA"); privacy and security regulations promulgated by the United States Department of Health and Human Services ("DHHS"); title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended ("HITECH Act"); the Genetic Information Nondiscrimination Act of 2008 ("GINA"); provisions regarding Confidentiality of Alcohol and Drug Abuse Patient Records (codified at 42 C.F.R. Part 2), as amended (collectively referred to as "HIPAA"), to the extent that the Contractor uses, discloses or has access to protected health information as defined by HIPAA. Under the final Omnibus Rule effective March 2013, Contractor may be required to enter into a Business Associate Agreement pursuant to HIPAA.
16. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.
17. **Tax Set-Off.** If, at any time prior to or during the term of any executed agreement, Contractor is delinquent in the payment of real and/or personal property taxes to Sedgwick County, and the delinquency exists at the time payment is due under the agreement, County will offset said delinquent taxes by the amount of the payment due under the agreement and will continue to do so until the delinquency is satisfied, pursuant to K.S.A. 79-2012.