

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF DENTON, TEXAS, AND THE DAY OF THE DEAD FESTIVAL; PROVIDING FOR THE EXPENDITURE OF FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Denton hereby finds that the agreement between the City and the Day of the Dead Festival, which is attached hereto and made a part hereof by reference (the "Agreement"), serves a municipal and public purpose and is in the public interest; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings set forth in the preamble of this Ordinance are incorporated by reference into the body of this Ordinance as if fully set forth herein.

SECTION 2. The City Manager, or his designee, is hereby authorized to execute the Agreement and to carry out the duties and responsibilities of the City under the Public Service Agreement, including the expenditure of funds as provided in the Agreement.

SECTION 3. This Ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
AARON LEAL, INTERIM CITY ATTORNEY

BY:  \_\_\_\_\_

**SERVICE AGREEMENT  
BETWEEN THE CITY OF DENTON, TEXAS AND  
DAY OF THE DEAD FESTIVAL**

This Agreement is hereby entered into by and between the City of Denton, Texas, a Home Rule Municipal Corporation, hereinafter referred to as "City", and Day of the Dead Festival, a Texas Non-Profit Corporation, hereinafter referred to as "Festival."

WHEREAS, City has determined that the proposal for services merits assistance and can provide needed services to citizens of City and has provided funds in its budget for the purpose of paying for contractual services; and

WHEREAS, this Agreement serves a valid municipal and public purpose and is in the public interest;

NOW, THEREFORE, the parties hereto mutually agree as follows:

**I. SCOPE OF SERVICES**

Festival shall, in a satisfactory and proper manner, perform the following tasks, for which the monies provided by City may be used:

The funds being provided shall be used by Festival for the purpose of the Day of the Dead Festival.

**II. OBLIGATIONS OF FESTIVAL**

In consideration of the receipt of funds from City, Festival agrees to the following terms and conditions:

A. Six Hundred Dollars and no/100 (\$600.00) shall be paid to Festival by City to be utilized for the purposes set forth in Article I.

B. Festival will maintain adequate records to establish that the City funds are used for the purposes authorized by this Agreement.

C. Festival will permit authorized officials of City to review its books at any time.

D. Upon request, Festival will provide to City its By Laws and any of its rules and regulations that may be relevant to this Agreement.

E. Festival will not enter into any contracts that would encumber City funds for a period that would extend beyond the term of this Agreement.

F. Festival will appoint a representative who will be available to meet with City officials when requested.

G. Festival will submit to City copies of year-end audited financial statements.

### III. TIME OF PERFORMANCE

The services funded by City shall be undertaken and completed by Festival within the following time frame:

The term of this Agreement shall commence on the effective date and terminate September 30, 2017 unless the contract is sooner terminated under Section VII "Suspension or Termination".

### IV. PAYMENTS

A. PAYMENTS TO FESTIVAL. City shall pay to Festival the sum specified in Article II after the effective date of this Agreement.

B. EXCESS PAYMENT. Festival shall refund to City within ten (10) working days of City's request, any sum of money which has been paid by City and which City at any time thereafter determines:

- 1) has resulted in overpayment to Festival; or
- 2) has not been spent strictly in accordance with the terms of this Agreement; or
- 3) is not supported by adequate documentation to fully justify the expenditure.

### V. EVALUATION

Festival agrees to participate in an implementation and maintenance system whereby the services can be continuously monitored. Festival agrees to make available its financial records for review by City at City's discretion. In addition, Festival agrees to provide City the following data and reports, or copies thereof:

A. All external or internal audits. Festival shall submit a copy of the annual independent audit to City within ten (10) days of receipt.

B. All external or internal evaluation reports.

C. An explanation of any major changes in program services.

D. To comply with this section, Festival agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of funds received and the services performed under this Agreement. The record system of Festival shall contain sufficient documentation to

provide in detail full support and justification for each expenditure. Festival agrees to retain all books, records, documents, reports, and written accounting procedures pertaining to the services provided and expenditure of funds under this Agreement for five years.

E. Nothing in the above subsections shall be construed to relieve Festival of responsibility for retaining accurate and current records that clearly reflect the level and benefit of services provided under this Agreement.

#### VI. DIRECTORS' MEETINGS

During the term of this Agreement, Festival shall deliver to City copies of all notices of meetings of its Board of Directors, setting forth the time and place thereof wherein this program is a part of the subject matter of the meeting. Such notice shall be delivered to City in a timely manner to give adequate notice, and shall include an agenda and a brief description of the matters to be discussed. Festival understands and agrees that City's representatives shall be afforded access to all meetings of its Board of Directors.

Minutes of all meetings of Festival' governing body shall be available to City within ten (10) working days of approval.

#### VII. TERMINATION

The City may terminate this Agreement for cause if Festival violates any covenants, agreements, or guarantees of this Agreement, the Festival' insolvency or filing of bankruptcy, dissolution, or receivership, or the Festival' violation of any law or regulation to which it is bound under the terms of this Agreement. The City may terminate this Agreement for other reasons not specifically enumerated in this paragraph.

#### VIII. EQUAL OPPORTUNITY AND COMPLIANCE WITH LAWS

A. Festival shall comply with all applicable equal employment opportunity and affirmative action laws or regulations.

B. Festival will furnish all information and reports requested by City, and will permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with local, State and Federal rules and regulations.

C. In the event of noncompliance by Festival with the nondiscrimination requirements, the Agreement may be canceled, terminated, or suspended in whole or in part, and Festival may be barred from further contracts with City.

#### IX. WARRANTIES

Festival represents and warrants that:

A. All information, reports and data heretofore or hereafter requested by City and furnished to City, are complete and accurate as of the date shown on the information, data, or report, and, since that date, have not undergone any significant change without written notice to City.

B. Any supporting financial statements heretofore requested by City and furnished to City, are complete, accurate and fairly reflect the financial conditions of Festival on the date shown on said report, and the results of the operation for the period covered by the report, and that since said data, there has been no material change, adverse or otherwise, in the financial condition of Festival.

C. No litigation or legal proceedings are presently pending or threatened against Festival.

D. None of the provisions herein contravenes or is in conflict with the authority under which Festival is doing business or with the provisions of any existing indenture or agreement of Festival.

E. Festival has the power to enter into this Agreement and accept payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this Agreement.

F. None of the assets of Festival are subject to any lien or encumbrance of any character, except for current taxes not delinquent, except as shown in the financial statements furnished by Festival to City.

Each of these representations and warranties shall be continuing and shall be deemed to have been repeated by the submission of each request for payment.

#### X. CHANGES AND AMENDMENTS

A. Any alterations, additions, or deletions to the terms of this Agreement shall be by written amendment executed by both parties, except when the terms of this Agreement expressly provide that another method shall be used.

B. It is understood and agreed by the parties hereto that changes in the State, Federal or local laws or regulations pursuant hereto may occur during the term of this Agreement. Any such modifications are to be automatically incorporated into this Agreement without written amendment hereto, and shall become a part of the Agreement on the effective date specified by the law or regulation.

C. Festival shall notify City of any changes in personnel or governing board composition.

## XI. INDEMNIFICATION

To the extent authorized by law, the Festival agrees to indemnify, hold harmless, and defend the City, its officers, agents, and employees from and against any and all claims or suits for injuries, damage, loss, or liability of whatever kind or character, arising out of or in connection with the performance by the Festival or those services contemplated by this Agreement, including all such claims or causes of action based upon common, constitutional or statutory law, or based, in whole or in part, upon allegations of negligent or intentional acts of Festival, its officers, employees, agents, subcontractors, licensees and invitees.

## XII. CONFLICT OF INTEREST

A. Festival covenants that neither it nor any member of its governing body presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Festival further covenants that in the performance of this Agreement, no person having such interest shall be employed or appointed as a member of its governing body.

B. Festival further covenants that no member of its governing body or its staff, subcontractors or employees shall possess any interest in or use his/her position for a purpose that is or gives the appearance of being motivated by desire for private gain for himself/herself, or others; particularly those with which he/she has family, business, or other ties.

C. No officer, member, or employee of City and no member of its governing body who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to the Agreement which affects his personal interest or the interest in any corporation, partnership, or association in which he has direct or indirect interest.

## XIII. NOTICE

Any notice or other written instrument required or permitted to be delivered under the terms of this Agreement shall be deemed to have been delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified, return receipt requested, or via hand-delivery or facsimile, addressed to Festival or City, as the case may be, at the following addresses:

### CITY

City of Denton, Texas  
Attn: City Manager  
215 E. McKinney  
Denton, TX 76201  
Fax No. 940.349.8591

### DAY OF THE DEAD FESTIVAL

David Pierce  
Day of the Dead  
2016 N. Bell Avenue  
Denton, TX 76209

Either party may change its mailing address by sending notice of change of address to the other at the above address by certified mail, return receipt requested.

#### XIV. MISCELLANEOUS

A. Festival shall not transfer, pledge or otherwise assign this Agreement or any interest therein, or any claim arising thereunder to any party or parties, bank, trust company or other financial institution without the prior written approval of City.

B. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect and continue to conform to the original intent of both parties hereto.

C. In no event shall any payment to Festival hereunder, or any other act or failure of City to insist in any one or more instances upon the terms and conditions of this Agreement constitute or be construed in any way to be a waiver by City of any breach of covenant or default which may then or subsequently be committed by Festival. Neither shall such payment, act, or omission in any manner impair or prejudice any right, power, privilege, or remedy available to City to enforce its rights hereunder, which rights, powers, privileges, or remedies are always specifically preserved. No representative or agent of City may waive the effect of this provision.

D. This Agreement, together with referenced exhibits and attachments, constitutes the entire agreement between the parties hereto, and any prior agreement, assertion, statement, understanding, or other commitment occurring during the term of this Agreement, or subsequent thereto, have any legal force or effect whatsoever, unless properly executed in writing, and if appropriate, recorded as an amendment of this Agreement.

E. This Agreement shall be interpreted in accordance with the laws of the State of Texas and venue of any litigation concerning this Agreement shall be in a court of competent jurisdiction sitting in Denton County, Texas.

IN WITNESS WHEREOF, the parties do hereby affix their signatures and enter into this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF DENTON, TEXAS

\_\_\_\_\_  
TODD HILEMAN, CITY MANAGER

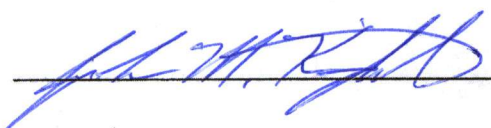
ATTEST:

JENNIFER WALTERS, CITY SECRETARY

BY: \_\_\_\_\_

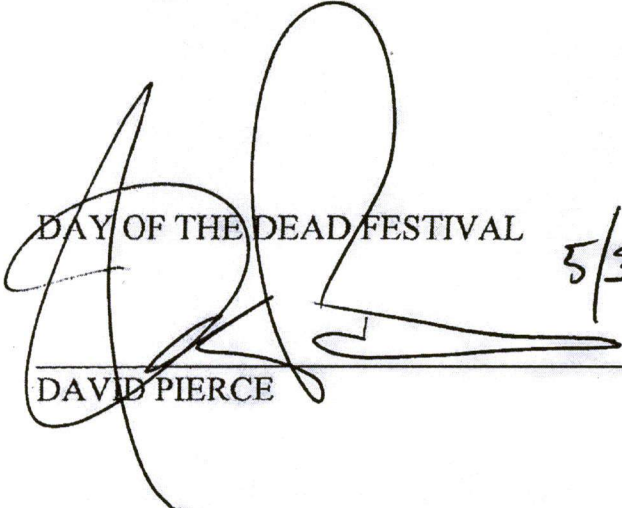
APPROVED AS TO LEGAL FORM:

AARON LEAL, INTERIM CITY ATTORNEY

BY:  \_\_\_\_\_

DAY OF THE DEAD FESTIVAL

5/3/17

  
\_\_\_\_\_  
DAVID PIERCE

ATTEST:

\_\_\_\_\_  
BOARD SECRETARY