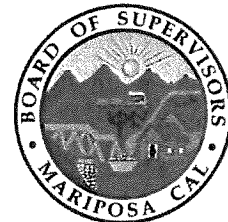




# MARIPOSA COUNTY

Administration • 966-3222



## RESOLUTION - ACTION REQUESTED 2018-361

MEETING: July 24, 2018  
TO: The Board of Supervisors  
FROM: Dallin Kimble, County Administrative Officer  
RE: Mariposa County Arts Council Agreement

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### **RECOMMENDATION AND JUSTIFICATION:**

Approve an Agreement with the Mariposa County Arts Council in the Amount of \$61,000 to Provide Performing Arts, Visual Arts, Arts Resources and Education Services to the County; and Authorize the Board of Supervisors Chair to Sign the Agreement.

The Mariposa County Arts Council serves the people of Mariposa County through community programs, events and arts education initiatives. Programs include the Mariposa Symphony Orchestra, Music on the Green, the Mariposa Theater Alliance and the Treetop Gallery. Arts education and public outreach initiatives include the Young Master Composers Celebration, the After School Arts program, Summer Art and Music Camp, Welcome to Classical Music school assembly program, Adult Art Workshops and more.

During the Fiscal Year 2018-19 Budget Hearings, the Board of Supervisors approved funding of \$61,000 for the Mariposa County Arts Council. The Mariposa County Arts Council cannot receive the funding until an agreement has been approved and signed.

### **BACKGROUND AND HISTORY OF BOARD ACTIONS:**

The Board of Supervisors adopted Resolution 14-508 on October 7, 2014, approving an agreement for Fiscal Year 2014-15 with the Mariposa County Arts Council in the amount of \$61,000.

The Board adopted Resolution 15-462 on October 6, 2015, approving an agreement for Fiscal Year 2015-16 in the amount of \$61,000.

The Board adopted Resolution 16-480 on September 20, 2016, approving an agreement for Fiscal Year 2016-17 in the amount of \$61,000.

The Board adopted Resolution 18-037 on February 6, 2018 approving an agreement for Fiscal Year 2017-18 in the amount of \$61,000.

### **ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

## Resolution - Action Requested 2018-361

Do not approve the agreement. The Mariposa County Arts Council will be unable to receive county funds and the continuation of certain programs may be in jeopardy.

**FINANCIAL IMPACT:**

**Funding for the agreement is budgeted in the Community Cultural budget.**

**ATTACHMENTS:**

**Arts Council(DOCX)**

**RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]**

**MOVER:** Marshall Long, District III Supervisor

**SECONDER:** Kevin Cann, District IV Supervisor

**AYES:** Smallcombe, Jones, Long, Cann, Menetrey

**AGREEMENT WITH MARIPOSA COUNTY ARTS COUNCIL**

THIS AGREEMENT (“Agreement”) is made and entered into this 1<sup>st</sup> day of July, 2018, by and between the County of Mariposa, a political subdivision of the State of California, (“County”), and Mariposa County Arts Council, (“Contractor”), pursuant to the following terms and conditions.

**WITNESSETH:**

**1. TERM**

The term of this Agreement shall commence on July 1, 2018 and terminate on June 30, 2019 unless extended as provided by this Agreement.

**2. SERVICES**

Arts Council shall provide performing arts, visual arts, arts resources, and education services to County as described in Exhibit A, “Scope of Work,” which is attached hereto and incorporated herein by reference. Contractor shall provide all staffing and materials necessary to perform the Scope of Work.

**3. COMPENSATION**

Contractor shall be compensated for services performed in an amount not to exceed \$61,000.00 made in quarterly payments of \$15,250.00. The County shall pay Contractor within thirty (30) days of receipt of an approved invoice.

**4. INSURANCE**

Contractor shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

**A. MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

- (1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: ISO Form Number CA 00 01 covering any auto, (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

B. OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provision:

(1) Additional Insured Status: The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 forms if a later edition is used).

(2) Primary Coverage: For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(3) Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

(4) Waiver of Subrogation: Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

(5) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of

ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(6) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the County.

(7) Verification of Coverage: Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

(8) Subcontractors: Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.

(9) Special Risks or Circumstances: County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## **5. HOLD HARMLESS/INDEMNIFICATION**

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify County and its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions of Contractor or its officers, agents, or employees in rendering services under this Agreement; excluding, however, such liability, claims, losses, damages, or expenses arising from County's sole negligence or willful acts.

## **6. INDEPENDENT CONTRACTOR**

It is the expressed intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.

## **7. PUBLIC EMPLOYEES RETIREMENT SYSTEM (CALPERS)**

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the

payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

## 8. STATE AND FEDERAL TAXES

As Contractor is not County's employee, Contractor is responsible for paying all required state and federal taxes. In particular:

- a. County will not withhold FICA (Social Security) from Contractor's payments;
- b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
- c. County will not withhold state or federal income tax from payment to Contractor;
- d. County will not make disability insurance contributions on behalf of Contractor;
- e. County will not obtain workers' compensation insurance on behalf of Contractor.

## 9. ASSIGNMENT

It is understood and agreed that this Agreement contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the County.

## 10. NOTICE

Any and all notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective parties at the following addresses:

### **CONTRACTOR:**

Mariposa County Arts Council  
5009 Highway 140  
P.O. Box 2134  
Mariposa, CA 95338  
Phone (209) 966-3155

### **COUNTY:**

County of Mariposa  
Administration  
P.O. Box 784  
Mariposa, CA 95338  
Tel: (209) 966-3222

## 11. COMPLIANCE

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor's performance under this Agreement, including, but not limited to, laws related to prevailing wages. Specifically, Contractor shall not engage in unlawful employment

discrimination, including, but not limited to, discrimination based upon a person's race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

## **12. PUBLIC RECORDS ACT**

Contractor is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

## **13. ENTIRE AGREEMENT AND MODIFICATION**

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and the County Administrative Officer. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

## **14. ENFORCEABILITY AND SEVERABILITY**

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

## **15. TERMINATION AND RIGHTS UPON TERMINATION**

A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this Agreement, Contractor shall immediately be paid all fees earned as of the effective date of termination.

B. Either party may terminate this Agreement for convenience upon 30 calendar days' written notice to the other party. Upon termination for convenience, Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination, as set forth in Exhibit B.

C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft.

**16. NO WAIVER**

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

**17. DISPUTES**

Should it become necessary for a party to this Agreement to bring an action in connection with this Agreement, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney's fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Mariposa, State of California.

**18. CAPTIONS**

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**19. NUMBER AND GENDER**

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

**20. MANDATORY AND PERMISSIVE**

"Shall" is mandatory. "May" is permissive.

**21. SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**22. COUNTERPARTS**

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

**23. OTHER DOCUMENTS**

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.



**24. CONTROLLING LAW**

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

**25. AUTHORITY**

Each party and each party's signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

**26. NEGOTIATED AGREEMENT**

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

**27. NO RELIANCE ON REPRESENTATIONS**

Each party warrants and represents that it is not relying and has not relied upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or fact provided by the other party.

**28. WARRANTY**

County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all work shall be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release.

**29. FUNDING AVAILABILITY**

It is mutually agreed that if the County budget of the current fiscal year and/or any subsequent fiscal years covered under this Agreement does not appropriate sufficient funds for this Agreement, this Agreement shall terminate and be of no further force and effect upon the day notice is provided by County to Contractor of such event. Upon termination of this Agreement, the County shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement except for services rendered prior to such termination and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor's

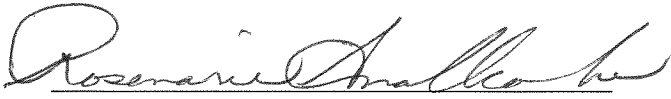
assumption of risk of possible non-appropriation is part of the consideration for this Agreement. County budget decisions are subject to the discretion of the Board of Supervisors.

If funding for any fiscal year is reduced or deleted by the County budget for purposes of this Agreement, the County shall have the option to either cancel this Agreement with no liability occurring to the County, except County must reimburse Contractor for services rendered prior to such reduction or modification of the County budget, or offer an Agreement amendment to Contractor to reflect the reduced amount.

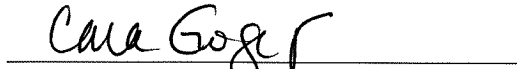
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

COUNTY OF MARIPOSA

CONTRACTOR



Rosemarie Smallcombe, Chair  
Board of Supervisors



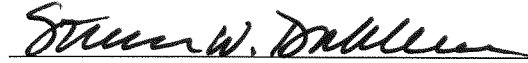
Cara Goger, Executive Director  
Mariposa County Arts Council

ATTEST:

APPROVED AS TO FORM:



René LaRoche  
Clerk of the Board



Steven W. Dahlem  
County Counsel

## Exhibit A SCOPE OF WORK

### Principal Programs

The Mariposa Symphony Orchestra consists of approximately 50 regional musicians who perform 5+ times a year around the county, occasionally hosting nationally acclaimed professional musicians.

Music on the Green Summer Concert Series is held every Friday and Saturday night during the summer months and brings free, live music to Mariposa's outdoor Art Park.

Mariposa Theatre Alliance is an association of producing theatre artists formed to foster and promote theatre throughout Mariposa County through staged productions, theatre workshops, and technical assistance.

The Treetop Gallery features the work of local artists and curated exhibitions and is designed to be a welcoming place for engagement with the visual arts.

### Arts Education Initiatives and Public Programs

Artists in the School places trained teaching artists into all of Mariposa County's 5<sup>th</sup> grade classrooms for 8-week residencies that delivers standards-aligned, integrated curriculum that teaches art in concert with at least one other academic subject.

Young Master Composers Celebration is an annual contest in which Mariposa's residents aged 8-18 are challenged to compose their very own piece of classical music.

Young Masters Youth Exhibition provides the youth of Mariposa the opportunity to share their ideas, narratives, and inspiration with their community through their own pieces of original visual artwork at the Treetop Gallery.

Summer Art and Music Camp is a partnership program with the County of Mariposa's Department of Parks and Recreation and provides several weeks of quality arts programming for youth enrolled in the Parks and Recreation's Summer Day Camp program.

JumpStArts is a visual literacy program for probation and foster youth, supporting a growing body of research indicating that exposing youth to art promotes emotional intelligence, a greater sense of self-worth, and critical thinking skills.

F/STOP is a lifespan learning photography program for Mariposa residents 55 years of age and older. It consists of a series of free digital photography classes focused on the artistic elements of photography and is designed to promote creativity, self-expression, and increase comfort with digital technology.

SITE +VISION is a visual literacy and field trip program offered to all the High Schools in Mariposa that centers on selected curated exhibitions of Bay Area museums and includes field trips to these institutions.

Adult Art Workshops provide a variety of creative workshops for Mariposa County adults throughout the year.

District 2 Art Show is held in Greeley Hill and features work from artists living in Mariposa County's District 2 and the surrounding regions.