

# PERFORMER AGREEMENT

## South Texas College

South Texas College, a public institution of higher education created under Texas law ("STC"), and \_\_\_\_\_ ("Performer") agree that the following terms and conditions will apply to the services provided under this **Performer Agreement** ("Agreement"). This Agreement shall be signed by both parties and shall be effective on the date of the last signature ("Effective Date").

<b>1.</b>	<b>ENGAGEMENT AND SERVICE</b>
1.1	STC contracts with the Performer to provide all of the services on the date or dates and during the time periods as more fully described in <b>Attachment A</b> (the "Services"). For the purposes of this Agreement, the term Performer shall include all personnel including employees and agents who directly perform the Services.
1.2	This Agreement shall not be renewed by its own terms, and any further services provided by the Performer beyond the term of this Agreement shall require the execution of a new agreement.
<b>2.</b>	<b>FEES AND EXPENSES</b>
2.1	In consideration of providing the Services, STC shall pay the Performer and, if applicable, reimburse the Performer for expenses incurred as set forth in <b>Attachment A</b> .
2.2	Except as specified in <b>Attachment A</b> , STC shall not pay or otherwise compensate the Performer for the Services or reimburse the Performer for any expenses incurred in providing the Services.
<b>3.</b>	<b>REPRESENTATIONS AND OBLIGATIONS OF THE PERFORMER</b>
3.1	The Performer must arrive to the location of the engagement in time to allow the completion of technical arrangements and set-ups. All sound checks and rehearsals, if any, must be completed prior to the scheduled start of the performance. Unless otherwise agreed in <b>Attachment A</b> , the Performer shall provide any and all equipment necessary to render the Services including, without limitation, any musical instruments.
3.2	If the Performer intends to provide a press kit to STC, the Performer agrees that STC must receive the press kit at least two weeks prior to the engagement.
3.3	If, for any reason, <b>EXCEPT</b> an act or event beyond the Performer's reasonable control, the Performer fails to provide the Services as required herein, the Performer will reimburse STC for its reasonable and actual expenses incurred in connection with the Services, if any, immediately upon presentation of a statement of such expenses.
3.4	The Performer agrees that if the Performer arrives at the location of the engagement or performs the Services while under the influence of intoxicating beverages, narcotics, or drugs, STC may terminate this Agreement with no liability and with no obligation to pay the Performer or reimburse any of the Performer's expenses as set forth in Section 2.
3.5	The Performer warrants that the Performer will not commit any slander or incite the listeners to an imminent threat of riot, civil disorder, or other illegal act.
3.6	The Performer acknowledges that: i) STC and the Performer have joint control over the performance of the Services; and ii) STC shall not accept any performance that it considers

	offensive or otherwise unacceptable and has the right to immediately terminate the performance judged as such by an authorized STC representative.
3.7	Any royalty fees, BMI, ASCAP, SECAC, AGVA, or union dues which may be required, in addition to any compensation for artist's services, are the Performer's sole responsibility.
3.8	The Performer agrees to abide by all federal, state, and local laws, regulations and ordinances that are applicable in the performance of the Services and acknowledges that any alterations, additions, or deletions to the terms of the Agreement that are required by changes in the applicable laws and regulations are automatically incorporated into the Agreement without written amendment hereto, and shall become effective on the date designated by such law or by regulation.
3.9	The Performer agrees to maintain proper and adequate liability insurance coverage, and provide evidence of such coverage to STC when requested, for claims that may be asserted by any party as a result of the Performer's performance of the Services. The Performer's obligations herein shall survive any termination of this Agreement.
3.10	The Performer agrees that: i) the Services shall be performed in a manner consistent with the degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession and industry practicing in the same locality; ii) if the Agreement requires the Performer's presence on STC's premises or in STC's facilities, the Performer will cause its employees, representatives, agents, and sub-Performers to comply with all applicable STC rules and policies including those relating to personal health, security, environmental quality safety, fire prevention, noise, smoking, parking, access restrictions and security directives; iii) all persons, including the Performer's owners, officers, employees, agents, and any authorized subcontractors, who are in charge of or responsible for any of the Services, are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations, and that the Performer has acquired any licenses, certifications and permits that are required to provide the Services.
3.11	Each individual who performs any services under the Agreement must be an employee of the Performer or an employee of a subcontractor engaged by the Performer. The Performer is responsible for the performance of all individuals performing any of the Services. If requested by STC, the Performer will provide STC with a list of all individuals who perform any of the Services ("List") and cause an appropriate criminal background screening to be performed on all such individuals. The Performer will not knowingly assign any individual to provide any of the Services on STC's campus or other premises who has a history of criminal conduct unacceptable for a college campus or facility including violent or sexual offenses. The Performer will update the List each time there is a change in the individuals assigned to perform any Services. If requested by STC, the Performer will provide a letter signed by an authorized representative certifying compliance with this section. The Performer will provide STC with an updated certification letter each time there is a change in the individuals assigned to perform any services.
3.12	If it is a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, the Performer is duly organized, validly existing and in good standing under the laws of the state of its organization and is authorized to do business in the State of Texas.

3.13	The Performer shall not solicit funds or contributions, either directly or through the sale of materials, unless prior written permission is obtained from STC and a solicitation permit is issued.
<b>4.</b>	<b>OBLIGATIONS OF STC</b>
4.1	STC will, at its expense and in its sole discretion, publicize the engagement according to its own policies and procedures.
4.2	STC may provide a photographer; all copies, prints and digital recordings will remain the property of STC on the condition that they will not be used for commercial gain or any other purpose other than as STC promotional materials.
4.3	STC may video record the performance. If a video recording of the performance is made, the recording, in whatever media format including digital images and tape, will remain the property of STC on the condition that it will not be used by anyone other than STC and will not be used by STC for commercial gain.
4.4	Except as otherwise stated in this Agreement, neither party will be liable for failure or delay in performance to the extent caused by an act, event or circumstance beyond its reasonable control (“Intervening Event”). Notwithstanding the foregoing, STC shall pay the Performer for the Services in accordance with this Agreement if the Performer has commenced the engagement and the rendering of the Services hereunder when an Intervening Event occurs. If the Performer has not begun rendering the Services and STC informs the Performer that the Services must be cancelled due to the occurrence or anticipated occurrence, in STC's sole discretion and judgment, of an Intervening Event, STC shall reimburse the Performer for any reasonable expenses agreed to in <b>Attachment A</b> , and that were actually incurred by the Performer in preparation for providing the Services, to the extent that the expenses could not be avoided or mitigated through reasonable efforts by the Performer. Under no circumstances, however, shall STC be obligated to pay or reimburse the Performer in an amount that exceeds the total obligations listed in <b>Attachment A</b> .

<b>5.</b>	<b>DEFAULT AND TERMINATION</b>
5.1	Except as provided for in Section 4.4, STC shall pay the Performer only for the Services actually rendered. STC has the right to deny all or a portion of the payment to the Performer if the Performer fails to comply with the terms, conditions and obligations contained in this Agreement.
5.2	If the Performer is in breach of any term of this Agreement, in addition to any other remedies STC may have at law or in equity, STC has the right to terminate this Agreement immediately or, at STC's option, and if feasible given the nature and timing of the breach, STC may give the Performer written notice of the breach and a reasonable opportunity to remedy the default. The Performer acknowledges that monetary damages include the additional costs that may be incurred by STC in finding and contracting another performer to provide any Services remaining to be performed.

5.3	<p>THE PERFORMER ACKNOWLEDGES THAT <b>STC'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED EXCLUSIVELY TO, AND UNDER NO CIRCUMSTANCES SHALL EXCEED, THE MAXIMUM AMOUNT PAYABLE TO THE PERFORMER SET FORTH IN ATTACHMENT A. STC SHALL NOT BE LIABLE TO THE PERFORMER FOR ANY LOST REVENUES; INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES (WHETHER OR NOT FORESEEABLE OR CONTEMPLATED BY THE PARTIES AT THE EFFECTIVE DATE); OR, EXEMPLARY OR PUNITIVE DAMAGES AS A RESULT OF STC'S DEFAULT OF THIS AGREEMENT.</b></p>
<b>6.</b>	<b>INDEMNITY</b>
6.1	<p>THE PERFORMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS STC, STC'S BOARD OF TRUSTEES AND THE STATE OF TEXAS AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE "INDEMNIFIED PARTIES") FROM AND AGAINST ALL DAMAGES, COSTS, SUITS, ACTIONS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY KIND, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "CLAIMS") BY ANY PERSON OR ENTITY, ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THE AGREEMENT OR THE SERVICES PROVIDED UNDER THE AGREEMENT, TO THE EXTENT CAUSED BY THE ACTS, OMISSIONS OR WILLFUL MISCONDUCT OF THE PERFORMER OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS OR SUPPLIERS. IN ADDITION, THE PERFORMER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THE AGREEMENT OR THE SERVICES PROVIDED UNDER THE AGREEMENT.</p>
<b>7.</b>	<b>RELATIONSHIP AND REFERENCE</b>
7.1	<p>In performing the Services, the Performer is, and undertakes performance thereof, as an independent contractor with sole responsibility for its own debts, obligations, acts, and omissions as well as for all persons employed in connection with the Agreement, including exclusive liability for the payment of all federal, state, and local unemployment and disability insurance premiums and fees as well as all social security and other taxes and contributions payable in respect of such persons, from and against which liability the Performer agrees to indemnify, exonerate and hold harmless STC. The Performer shall have no authority to act for or on behalf of STC or the State of Texas except as expressly provided for in the Agreement; no other authority, power or use is granted or implied.</p>
7.2	<p>The Agreement is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the Agreement as a third-party beneficiary or otherwise.</p>
7.3	<p>The Performer shall be responsible for the payment of any taxes due on any monies received under this Agreement, and the Performer specifically acknowledges that the Performer is not covered by workman's compensation or any other insurance policy held by STC.</p>
7.4	<p>The Performer shall not make any reference to STC in any promotional material, except as a professional reference, without STC's prior written authorization.</p>
<b>8.</b>	<b>NOTICES</b>

8.1	All notices must be in writing and addressed to the other party's primary contact listed in 8.2. Notices can be by email and will be treated as given on receipt, as verified by written or automated receipt or by electronic log (as applicable).	
8.2	<b>Performer:</b> Name: Address:  Tel: Email:	<b>STC:</b> South Texas College Attn: 3201 West Pecan Blvd. McAllen, TX 78501 956.  @southtexascollege.edu
<b>9.</b>	<b>AMENDMENT AND ASSIGNMENT</b>	
9.1	Any amendment must be in writing, signed by authorized representatives of both parties, and expressly state that it is amending or modifying this Agreement.	
9.2	Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party and any attempt to do so shall be a breach of this Agreement and shall be void.	
<b>10.</b>	<b>ENTIRE AGREEMENT</b>	
10.1	This Agreement sets out all the terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter. Any terms or conditions contained in a quote, purchase order, order confirmation, invoice, or other similar document related to this Agreement are void. This Agreement, and each of its provisions, shall inure to the benefit of, be binding upon, and be enforceable against each party hereto and their respective permitted successors, assigns, transferees and delegates.	
10.2	If a court of competent jurisdiction finds any provision of the Agreement illegal, unenforceable or beyond the contractual authority of either party, then the offending provision will be stricken and the remainder of the agreement between the parties will remain in effect. No delay, failure, or waiver of either party's exercise or partial exercise of any right or remedy under the Agreement shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy.	
<b>11.</b>	<b>GOVERNING LAW AND JURISDICTION</b>	
11.1	To the extent Texas Govt. Code Chapter 2260 is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260, and the related rules adopted by the Texas Attorney General, must be used by STC and the Performer to attempt to resolve any claim for breach of contract made by the Performer that cannot be resolved in the ordinary course of business. STC's Vice President for Finance & Administrative Services will examine the Performer's claim and any counterclaim and negotiate with the Performer in an effort to resolve such claims. The parties specifically agree that: (i) neither the execution of this Agreement by STC nor any other conduct, action or inaction of any representative of STC relating to the Agreement constitutes or is intended to constitute a waiver of STC's or the state's sovereign immunity to suit; and (ii) STC has not waived its right to seek redress in the courts.	
11.2	ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE GOVERNED BY TEXAS LAW, EXCLUDING ITS CONFLICT OF LAWS RULES AND, SUBJECT TO THE PROVISIONS OF <i>TEXAS GOVT. CODE CHAPTER 2260</i> , WILL BE LITIGATED EXCLUSIVELY IN THE FEDERAL OR STATE	

	COURTS OF HIDALGO COUNTY, TEXAS; THE PARTIES CONSENT TO PERSONAL JURISDICTION IN THOSE COURTS.
11.3	This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to STC or the State of Texas. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to STC or the State of Texas under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.
<b>12.</b>	<b>COUNTERPARTS AND SURVIVAL</b>
12.1	The parties may execute this Agreement using electronic signatures, electronic copies, and in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one agreement.
12.2	The terms and conditions of this Agreement that, by their nature, require performance by either party after the termination of the Agreement including, without limitation, confidentiality obligations, limitations of liability, exclusions of damages, indemnification obligations, and governing law, and any other provision or partial provision that, by its nature, would reasonably extend beyond the termination of this Agreement, shall be and remain enforceable after such termination of this Agreement for any reason whatsoever.
<b>13.</b>	<b>ACKNOWLEDGEMENTS</b>
13.1	<p>The Performer acknowledges that pursuant to <i>Texas Local Govt. Code</i> Chapter 176, all vendors who contract or seek to contract with a “local governmental entity” such as STC may be required to complete a conflict of interest questionnaire (“CIQ”) if such vendor has a relationship with an officer of STC who is considered a “local government officer” or with a family member of such officer. If completion of a CIQ is required as of the Effective Date or at any time during the term of this Agreement, the Performer shall file the CIQ with STC’s Vice President of Finance &amp; Administrative Services. At <a href="https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf">https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf</a>, the Performer can find the official CIQ form along with a list of STC officers who are defined by Chapter 176 as “local government officers.”</p> <p><b>Performer’s Initials: _____</b></p>

13.2	<p>The Performer acknowledges that pursuant to <i>Texas Education Code</i> § 44.034, a person or business entity, <b>excluding</b> publicly-traded companies and certain vendors of library goods and services, which does business with STC, must notify STC if such person, or an owner or operator of such business entity, has ever been convicted of a felony, and must include in the notification a general description of the conduct that resulted in the felony conviction. At <a href="https://finance.southtexascollege.edu/purchasing/purchase/files/Form-Criminal-History.pdf">https://finance.southtexascollege.edu/purchasing/purchase/files/Form-Criminal-History.pdf</a>, the Performer can find a Criminal History Disclosure Form (“CHDF”) that may be used for this purpose. If the Performer is required to submit a CHDF pursuant to § 44.034 as of the Effective Date or at any time during the term of this Agreement, the Performer shall send the CHDF to STC’s Vice President of Finance &amp; Administrative Services with a copy to the Director of Purchasing.</p> <p><b>Performer’s Initials:</b> ____</p>
13.3	<p>If the Performer is a taxable entity subject to the Texas Franchise Tax (Texas Tax Code Chapter 171), the Performer certifies that the Performer is not currently delinquent in the payment of any taxes due under Chapter 171 or that the Performer is not subject to those taxes.</p>
13.4	<p>Pursuant to Texas Govt. Code Chapter 2252, the Performer certifies that the Performer is not engaged in business with Iran, Sudan, or a foreign terrorist organization. The Performer acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.</p>
13.5	<p>Pursuant to Texas Govt. Code § 2274.0102 dealing with access to critical infrastructure, the Performer certifies that the Performer is not ineligible to receive or enter into this Agreement. The Performer represents and warrants that: (a) the Performer does not, and will not for the duration of this Agreement, boycott energy companies or have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or (b) these verifications required by Texas Govt. Code Chapter 2274 do not apply to this Agreement. If circumstances relevant to this representation change during the course of the Agreement, the Performer shall promptly notify STC.</p>
13.6	<p>Pursuant to Texas Health and Safety Code § 161.0085 pertaining to “vaccine passports,” the Performer is not ineligible to receive or enter into this Agreement. Under Texas Govt. Code §§ 2155.006 &amp; 2155.0061 dealing with the misuse of disaster relief funds and prohibitions on human trafficking respectively, the Performer certifies that the individual or business entity named in this Agreement is not ineligible to receive or enter into this Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.</p>
13.7	<p>In accordance with Texas Family Code § 231.006, with respect to child support obligations, the Performer is not ineligible to enter into this Agreement and the Agreement may be terminated and payment may be withheld if this certification is inaccurate. The Performer agrees that any payments due under this Agreement shall be directly applied towards eliminating any debt or delinquency the Performer has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support as required by Texas Govt. Code § 2252.903.</p>

13.8	Neither the Performer nor its principals, if any, are suspended or debarred from doing business with the state or federal government as listed on the <i>State of Texas Debarred Vendor List</i> maintained by the Texas Comptroller of Public Accounts and the <i>System for Award Management (SAM)</i> maintained by the General Services Administration.
13.9	STC strictly adheres to all statutes, court decisions and opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act (“TPIA”). Unless otherwise informed Performer in writing, STC shall consider all information, documentation and any other materials requested to be submitted in connection with the Agreement to be of a nonconfidential and non-proprietary nature and therefore subject to public disclosure under the TPIA. In accordance with TPIA §§ 552.002 and 2252.907, and at no additional charge to STC, the Performer will make any information created or exchanged with STC pursuant to the Agreement (and not otherwise exempt from disclosure under the TPIA) available in a format reasonably requested by STC that is accessible by the public. If applicable, the Performer will comply with the requirements of Texas Govt. Code § 552.372(a).
13.10	Performance by STC under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (“Legislature”) and/or allocation of funds by STC’s Board of Trustees. If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, STC may provide written notice to the Performer and terminate this Agreement without further duty or obligation. The Performer acknowledges that appropriation, allotment and allocation of funds are beyond STC’s control.
13.11	The Performer acknowledges that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor’s Office, or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds under <i>Texas Education Code</i> § 51.9335(c). The Performer shall cooperate with the Auditor in the conduct of the audit or investigation including, without limitation, providing all records requested.
13.14	The parties acknowledge that they have read and understand this Agreement, and agree to be bound by its terms and conditions.

**IN WITNESS WHEREOF**, the parties have executed this Agreement effective as of the date stated above.

**PERFORMER**

By: \_\_\_\_\_

Name:	
Title:	
Date:	



**SOUTH TEXAS COLLEGE (STC)**

By: \_\_\_\_\_

Name:	*Dr. Ricardo J. Solis
Title:	President
Date:	

By: \_\_\_\_\_

Name:	
Title:	
Date:	

**Notice: STC policy prohibits contracting with a current employee or with a former employee unless the Effective Date of the Agreement is 12 months or more after the date of termination of employment. Any contract or agreement in violation of this policy shall be void.**

**\*If the total amount payable exceeds \$1,000.00, STC's President must sign the Agreement in order to be binding on STC.**

## Attachment A

	Campus & Location	Date of Performance	Time of Performance
1			
2			
3			
4			
5			
6			
<b>Description of the Services:</b>  If more space is needed, please attach additional page(s)			
<b>Description of Fees and Expenses*:</b>			
<b>Not-to-Exceed Amount:</b>	\$ _____		
	*All expenses, if any, must be: i) reasonable, ii) necessary in order to provide the Services pursuant to this Agreement, and iii) actually incurred by the Performer.		
<p><b>Payment Terms:</b> Unless otherwise indicated by STC, after the Performer concludes the Services, the Performer or Agent shall sign a Services Rendered Form (SRF) prepared by STC for payment processing. Payment to the Performer will be made no more than 30 days following the date on which the Performer signs the SRF.</p> <p>In lieu of the SRF, the Performer may prepare and submit an invoice to STC. The invoice must describe the Services rendered and, if necessary, include time sheets as well as any other documentation reasonably requested by STC. STC shall pay approved invoices within 30 days of receipt.</p> <p><b>Note:</b> In order to process the SRF or invoice, the Performer must provide or have on file with STC, a current IRS form W-9.</p>			

**Performer's Initials:** \_\_\_\_\_