

**CITY OF SANTA FE  
AMENDMENT No. 2 TO  
GO: GRANTS ONLINE SUBSCRIPTION SERVICE AGREEMENT  
ITEM 16-0796**

AMENDMENT No. 2 (the "Amendment") to the GO: GRANTS ONLINE SUBSCRIPTION SERVICE AGREEMENT, dated August 25, 2016 (the "Agreement"), between the City of Santa Fe (the "CLIENT") and Western States Arts Federation (the "WESTAF"). The date of this Amendment shall be the date when it is executed by the Client and WESTAF whichever occurs last.

**RECITALS:**

- A. Under the Terms of the Agreement, WESTAF has agreed to provide the following:
- B. Pursuant to Article 14a of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the Client and WESTAF agree as follows:

1. FEES and PRICING; ADDITIONAL MODULES

Article 3 of the Agreement is amended to increase the amount of by a total of seven thousand five hundred dollars (\$7,500) as described in Exhibit "A" attached hereto and incorporated herein:

Total Amount Paid: Eighteen thousand one hundred fifty dollars (\$18,150)

2. SUBSCRIPTION PERIOD; RENEWAL SUBSCRIPTION PERIODS

Article 2b of the Agreement is hereby amended as follows:

Renewal Period: 7/1/18 through 6/30/19.

3. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Client for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Client this Agreement shall terminate upon written notice being given by the City to WESTAF. The Client's decision as to whether sufficient appropriations are available shall be accepted by WESTAF and shall be final.

4. AGREEMENT IN FULL FORCE

Except as specifically provided in Amendment No. 1 and this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 2 to the GO:GRANTS ONLINESUBSCRIPTION SERVICE AGREEMENT as of the dates set forth below.

CITY OF SANTA FE:

  
\_\_\_\_\_  
Erik Litzenberg,  
Interim City Manager

DATE

6/29/12

WESTAF:

See Attached  
\_\_\_\_\_  
NAME & TITLE

DATE: \_\_\_\_\_

Renewal Period: 7/1/18 through 6/30/19.

3. APPROPRIATIONS


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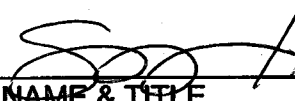
IN WITNESS WHEREOF, the parties have executed this Amendment No. 2 to the GO:GRANTS ONLINESUBSCRIPTION SERVICE AGREEMENT as of the dates set forth below.

CITY OF SANTA FE:

  
\_\_\_\_\_  
Erik Litzerberg,  
Interim City Manager

DATE 6/29/18

WESTAF:

  
\_\_\_\_\_  
NAME & TITLE Associate Director

DATE: 6/29/2018

ATTEST:

Yolanda Y. Vigil  
Yolanda Y. Vigil, City Clerk  
aw

APPROVED AS TO FORM:

MDM 6/15  
City Attorney

APPROVED:

[Signature] 6/21/18  
Finance Director au

22103.530710  
Business Unit/Line Item


**GO Smart™ SERVICE AGREEMENT**

WESTAF | 1888 Sherman Street, Suite 375 | Denver CO 8020 | 303.629.1166 | www.westaf.org | www.gosmart.org

**CLIENT INFORMATION**
**Primary Contact:** Individual who will manage the grant process in the GO Smart system

Organization	Santa Fe Arts Commission		
Name	Debra Garcia y Griego		
Email	degarcia@ci.santa-fe.nm.us	Phone 505-955-6707	
Mailing Address	20 S. Federal Place, Room 323		
City, State, ZIP	Santa Fe, NM 87504-0909		

**Existing Grant Programs** to be implemented into the GO Smart system

Grant name	Next Launch date
Community Arts Dev	
Global Arts Marketing Support	
National Arts Marketing Support	
Regional Arts Marketing Support	
Collaborative Arts Marketing Support	
Target Impact Support	

<b>WESTAF USE ONLY</b>	Staff Initials _____	CRM _____	Finance _____	Setup _____
<b>Contract START date:</b> 07 / 01 / 2018 <b>Contract END date:</b> 06 / 30 / 2019				

*\*The Contract start date is the date WESTAF executes the GO Smart Service Agreement.*
**1. GO Smart Service Description and Fee Schedule**

**1.1 Service Description.** The Service to which access will be provided under this Agreement will be the current release of the GO Smart web-based software accessed through the web domain set forth in Section 1.3, or any other URL or web address provided by WESTAF, and known as GO Smart Service which creates and manages a database to accept applications and to hold and manage the data to review grant applications in online modules that include a browser interface and data encryption, and, as part of the GO Smart Service, transmission of, access to, and storage of Client Data.

**1.2 Subscription Fees.** The terms of each subscription shall be as specified in the subscription agreement. Subscription will automatically renew for an additional period equal to the expiring subscription term or one year (whichever is shorter). Subscription pricing during any renewal term can increase by up to ten percent (10%) above the applicable pricing in the prior term.

**1.3 Access.** Client will access and use the GO Smart Service through admin.gosmart.org and its own custom subdomain gosmart.org URL.

**1.4 Setup Fee.** The setup fee is a one-time fee and does not apply to subsequent renewals. The setup fee shall be specified in the subscription agreement (addendum 1). See section 3.1 for setup details.

**1.5. Fee Calculation.** The Setup Fee and Subscription Fee for the Term are determined based on Client's anticipated usage of the GO Smart Service during the initial Term. In any subsequent Term, Client's level of use of the GO Smart Service is calculated based on prior Term usage, specific but not limited to the following: (a) the number of grant cycles and/or (b) the amount of media storage used. After the initial Term, upon renewal of agreement, the Subscription Fee will be adjusted to reflect Client's actual use of the GO Smart Service during the prior Term up to the maximum limit of each category of usage set forth as Client's use parameters in Section 1.2. WESTAF will have the right to monitor Client's level of use of the GO Smart Service.

**1.6 Effect of Late Payments on Service.** Fees and other charges due from Client to WESTAF that are not paid within thirty (30) days of the date due will be assessed a late fee of 1.5% of the outstanding balance per month from the date due until paid. Client will pay all costs of collection of any fees and other charges due from Client to WESTAF under this Agreement, including WESTAF's reasonable attorney's fees. The GO Smart Service may be suspended at any time Client is in arrears more than thirty (30) days in the payment to WESTAF of any fees or other charges due under this Agreement until such amounts are paid in full.

## **2. Service.**

**2.1 Services.** WESTAF will (a) make the GO Smart Service available to Client in accordance with this Agreement and its standard terms of service as published online (<http://www.westaf.org/termsandconditions.html>) and available through the GO Smart website, as amended from time to time ("Terms of Service"); and (b) provide Support as described in Section 3 and related services as described in Section 1. The Terms of Service are incorporated into and made a part of this Agreement. In the event of any conflict between the Terms of Service and the remainder of this Agreement, then the remaining terms of this Agreement shall control.

**2.2 Access and Use.** During the Term, WESTAF will provide Client with a non-exclusive, non-transferable, limited right to remotely access and use the GO Smart Service solely for Client's grants, in accordance with the documentation, the limitations set forth in Section 1, and subject to the other terms and conditions of this Agreement. Client's right to use the GO Smart Service includes the right to solicit the submission of applications, information, and materials from Applicants through the GO Smart Service for grants ("Submissions").

**2.2.1 Access Date.** Upon receipt of signed contract and payment, Client will be provided access to the GO Smart Service.

**2.3 Service Updates.** Client acknowledges that the GO Smart Service is software as a service (SaaS) provided to multiple clients and their applicants and users and that WESTAF continually updates, improves, and modifies the Service for the benefit of all clients, applicants, and user groups. WESTAF reserves the right, in its sole discretion and without incurring any liability to Client, to update, replace, modify, or alter the specifications for and functionality of any or all parts of the GO Smart Service from time to time. Client's sole remedy in the event of any change to the GO Smart Service that is not reasonably acceptable to Client and that is not made reasonably acceptable after thirty (30) days' notice to WESTAF is to terminate the Agreement and receive a prorated return of the Subscription Fee for the current Term. The setup fee is nonrefundable.

**2.4 Future Functionality.** Client agrees that this purchase and any subsequent subscriptions are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by WESTAF regarding future functionality or features. WESTAF is under no obligation to make changes to the GO Smart Service at the request of Client.

**2.5 Client Resources.** Client is solely responsible for, at its own expense, acquiring, installing, and maintaining all connectivity equipment, internet and network connections, hardware, Third-Party Software, and other equipment as may be necessary for its users to connect to and obtain access to the Service.

**2.6 User Accounts.** Each user will be assigned a unique user identification name ("User ID") and password for access to and use of the Service (a "User Account"). A User Account may be accessed and used only by Client's authorized personnel. WESTAF reserves the right to require that Client's authorized personnel be registered with WESTAF. Client is responsible for all activities that occur under Client's User Accounts, and Client is responsible for ensuring the security and confidentiality of its User IDs. WESTAF is not responsible for the consequences of (a) any unauthorized access to or alteration of any of the following caused by Client or its failure to prevent unauthorized access to the Service: (i) Client's transmissions or data; (ii) any material, information, or data sent or received through the Service, regardless of whether the data is actually received by WESTAF; or (iii) any financial transactions entered into through the Service; or (b) Client's failure to abide by this Agreement. Client will use commercially reasonable efforts to prevent unauthorized access to or use of the Service and will notify WESTAF promptly of any such unauthorized access or use.

**2.7 Suspension of User Accounts.** Client agrees to submit accurate, current, and complete information to WESTAF and promptly update such information. Should WESTAF suspect that such information is untrue, inaccurate, not current, or incomplete; that Client's user accounts have been compromised or used to gain unauthorized access to the GO Smart Service or has materially breached this Agreement, WESTAF will have the right to suspend Client's use of the Service pending resolution or termination of this Agreement.

**2.8 User Conduct.** Client agrees to abide by all applicable local, state, national, and foreign laws, treatises, and regulations in connection with the GO Smart Service. Client agrees not to use and not to permit its users or any third party to use the Service to: (a) send unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of unsolicited messages, whether commercial or otherwise; (b) harvest, collect, gather, or assemble information or data regarding other users, without their consent; (c) transmit through or post on the Service unlawful, libelous, abusive, harassing, tortious, defamatory, threatening, harmful, invasive of another's privacy, vulgar, obscene or otherwise objectionable material of any kind or nature or which is harmful to minors in any way; (d) transmit any material that may infringe or violate the intellectual property rights or other rights of third parties, including trademark, copyright, or right of publicity; (e) transmit any material that contains software viruses or other harmful or deleterious computer code; (f) interfere with or disrupt servers or networks connected to the Service or violate the regulations, policies, or procedures of such networks; (g) attempt to gain unauthorized access to the Service, other accounts, computer systems or networks connected to the Service, through password mining or any other means; (h) harass or interfere with another user's use and enjoyment of the Service; or (i) commit or aid in the commission of any unlawful or dishonest act, violate any person's rights, or annoy, harass, harm, threaten, or intimidate another person.

**2.9 Restrictions on Use.** Except as expressly permitted in this Agreement or as otherwise authorized by WESTAF in writing, Client will not, and will not permit any User or third party to: (a) copy, transmit, store, publicly display, modify, adapt, alter, translate, or create derivative works with respect to the Service, except as required in accordance with this Agreement and the limitations and restrictions included as part of the Service; (b) sublicense, lease, rent, loan, sell, resell, distribute, make available, or otherwise transfer the Service or access to any third party for any purpose, including to accept Submissions or to manage Submissions for any other person or for any grant other than Client's

grant(s); (c) resell or use the Service to accept submission of applications, information, and materials or to manage submission of applications, information, and materials for any other person or for any grant other than Client's grant(s); (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Service; or (e) otherwise use or copy the Service, or any component of it, except as expressly allowed by this Agreement.

**2.10 Client Data.** Client owns all Client Data and WESTAF makes no claim of ownership in or to and does not exert any control over Client Data. Client has sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and copyright of all Client Data and WESTAF will not be responsible or liable for the deletion, correction, destruction, damage, loss, or failure to store any Client Data. WESTAF may access Client's account, including Client Data, as provided for in this Agreement to provide the Service and to aggregate Client Data (in a manner that does not identify any person) and use such anonymous, aggregated data for its own internal purposes and for any commercial purpose. Client will have the right, at its own expense, to download from the Service and to purge any of its Client Data at any time. WESTAF will maintain data inputted by Client's applicants and users during the current and all prior Terms provided that Client has continually maintained its subscription to the Service. WESTAF will maintain Client Data for the thirty (30) day period following termination. Client Data will be available to Client to download from the GO Smart service without further charge, and, thereafter, WESTAF may delete Client Data from the Service.

### **3. Setup and Support**

**3.1 Setup.** WESTAF will set up the system for Client's GO Smart site including a custom subdomain, creating the site framework, setting up administrative users and training for Client's staff, including managing panels and exporting reports from the system.

**3.2 Training.** WESTAF will provide training on how to build and manage grants prior to the scheduled Launch Date for up to eight (8) members of Client's staff for total training of up to four (4) hours. Training may be provided individually or in group session(s) and may include representatives of other clients. Training will be by telephone or webinar, or any combination of these as determined by WESTAF. In-person training at WESTAF's Denver, Colorado office or Client's office is available at an additional expense to Client. For ongoing training of current staff and new personnel, Client may utilize up to three (3) hours of individual training webinars during each subscription period. Additional community webinars, open to all clients, are available. WESTAF will also provide a GO Smart training manual to Client.

**3.3 Tech Support to Client's Staff.** Standard tech support includes a software manual, ticket support, and phone support to assist Client with technical issues. Ticket and phone support is available Monday through Friday (except U.S. federal holidays) between 8:30a.m. and 5:00p.m. Mountain Time. Client's staff may utilize up to three (3) hours of WESTAF's staff time during each annual subscription period for phone support. Support for Client's staff beyond standard tech support will be billed at the rate as set forth in Section 3.4.

**3.4 Tech Support Rates.** Additional support not included in standard tech support can be provided at Client's request at WESTAF's then-current standard rates. WESTAF's current standard service rate for technical support is \$100 per hour.

**3.5 Client's Applicants.** WESTAF is not responsible for assisting or training Client applicants on use of the System or communicating to Client's applicants Client's transition to a new grant management service .

**3.6 Client's Responsibilities in Assisting Applicants.** Client is responsible for assisting applicants with the following:



- (a) items related to programmatic elements of the grant application;
- (b) grant eligibility and policy issues;
- (c) specific questions and answers relating to the application form, which may include inquiries regarding the purpose of the question;
- (d) basic navigation issues related to the GO Smart Service and website;
- (e) creating email accounts and downloading Adobe Reader or other software for proper display of grant applications;
- (f) assisting with username and password creation and/or retrieval;
- (g) uploading media data and converting data to upload as media data into the Service; and
- (h) providing the first response to technical questions relating to the GO Smart Service and answering those that fall within staff members' abilities.

WESTAF does not offer technical assistance to Client's applicants and is not responsible for answering programmatic grant questions from Client's applicants. Applicant questions will be redirected to Client's staff.

#### **4. Term, Termination.**

**4.1 Term.** Each term of this Agreement will be for the subscription period, unless sooner terminated as provided for under this Agreement (the "Term"). The initial Term start date is the date WESTAF executes the GO Smart Agreement.

**4.2 Renewal.** After the expiration of the initial Term under this Agreement, Client will automatically enter into a subsequent Term. Client's continued use of the GO Smart Service after the expiration of any Term will be deemed as renewal of the subscription under this Agreement for an additional Term. The renewed Term will immediately follow the expiration of the then-expired Term. The renewed Term will be upon the same terms and conditions as the then-expired Term; renewed Term fees will be based upon prior Term usage and adjustments can be made if mutually agreed upon by WESTAF and Client.

**4.3 Termination.** Either party may terminate this Agreement if the other party breaches any material provision of the Agreement and does not cure such breach within thirty (30) days after receiving written notice thereof.

**4.4 Effects of Termination.** Upon termination of this Agreement and subject to the remainder of this Section: (a) any amounts owed to a party under this Agreement before such termination will be immediately due and payable; (b) all rights granted in this Agreement will immediately cease to exist; and (c) unless otherwise permitted in writing by WESTAF, Client must discontinue all use of the GO Smart Service. All provisions which by their nature or terms are intended to survive or operate after termination of any Term shall survive termination of this Agreement or termination of the Service regardless of the reason for termination, including, without limitation, all the provisions of Sections 1, 5, 6, 8.2, and 9 together with any accrued payment obligations. The fact of termination shall not relieve any party of any obligation to perform acts contemplated to be performed after termination.

#### **5. Warranties; Disclaimer of Warranties; Limitation of Liability.**

**5.1 Performance Warranty.** During the Term, WESTAF warrants that the GO Smart Service, when used as permitted under this Agreement and in accordance with the instructions in the Documentation, will operate substantially as described in the Documentation, except WESTAF does not warrant that Client's use of the service will meet Client's requirements, be error free, timely, or uninterrupted (the "performance warranty"). WESTAF will, at its own expense and as its sole obligation and Client's exclusive remedy for any breach of the performance warranty, use reasonable commercial efforts to correct any reproducible material error in the Service reported to WESTAF by Client in writing during the Term or, if not possible to do so within a reasonable period of time or at a reasonable cost, as determined

in WESTAF's good faith judgment, return to Client the unearned portion of any fees paid by Client and this Agreement will be deemed terminated. Additionally, WESTAF reserves the right to take the system offline for maintenance at any time and for any reason.

**5.2 Security Warranty.** WESTAF warrants that the GO Smart Service will be compliant with SSL (secured sockets layer) protocols that encrypts communication between the server and the user's browser. If WESTAF breaches the security warranty, then WESTAF will do the following as Client's sole remedy: (a) defend Client against any third-party claims arising out of and proximately caused by the failure of the Service to be SSL compliant to the extent such a defense is actually covered by any policy of insurance in effect for WESTAF's benefit; and (b) indemnify and hold harmless Client from all damages (other than consequential and indirect damages), including claims by third party claimants, arising out of and proximately caused by the Service to the extent such damages are actually covered by any policy of insurance in effect for WESTAF's benefit (a "covered security breach claim"). WESTAF's obligation to defend and indemnify Client for covered security breach claims under this Section 5.2 shall be carried out under the standards and limitations of Section 7.

**5.3 Cyber Liability/Security Breach Insurance.** WESTAF presently has and will use commercially reasonable efforts to maintain liability insurance related to security breaches affecting the Service. The parties intend that WESTAF's obligations and Client's rights under Section 5.2 are limited solely to amounts actually available under policies of liability insurance maintained by WESTAF.

**5.4 Warranty Against Infringement.** WESTAF hereby warrants that the GO Smart Service will be free of any third-party claim that the GO Smart Service infringes, misappropriates, or violates any United States patent issued as of the date hereof, copyright, trademark, trade secret, or other intellectual or proprietary right of any third party, except for (i) intellectual property, proprietary, and privacy rights of third parties in media data and any other content uploaded by Client and any applicant, ser, or third party into the GO Smart Service; and (ii) interests related to privacy in any respect (the "warranty against infringement"). Client's exclusive remedies in the event of any breach of the warranty against infringement are set forth in Section 6.

**5.5 Disclaimers.** THE EXPRESS WARRANTIES IN THIS SECTION 5.5 ARE IN LIEU OF, AND WESTAF HEREBY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE GO SMART SERVICE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. EXCEPT FOR THE EXPRESS WARRANTIES MADE IN THIS SECTION 6, ACCESS TO AND USE OF THE GO SMART SERVICE IS PROVIDED "AS IS" WITH ALL FAULTS. WESTAF MAKES NO REPRESENTATIONS AND NO REPRESENTATIVE OF WESTAF IS AUTHORIZED TO MAKE ANY REPRESENTATION CONCERNING THE GO SMART SERVICE BEYOND WHAT IS PROVIDED FOR IN THIS AGREEMENT AND THE DOCUMENTATION.

**5.6 Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT OR THE USE OR AVAILABILITY OF THE GO SMART SERVICE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THE OBLIGATIONS EXPRESSLY MADE AND ASSUMED BY WESTAF UNDER SECTION 6, WESTAF'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE GO SMART SERVICE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO WESTAF DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY.

## **6. Indemnification.**

**6.1 WESTAF's Indemnification Obligation.** WESTAF will indemnify, defend, and hold Client and each of its parents, subsidiaries, affiliates, officers, directors, members, employees, attorneys, and agents harmless from and against: (a) any claims, losses, damages, liabilities, or expenses (including reasonable attorneys' fees and expenses) arising out of or resulting from any breach of the security warranty that is a covered security breach claim; or (b) any third-party claim, including reasonable attorneys' fees and expenses, arising out of or resulting from any breach of the warranty against infringement (the "indemnification obligation"). WESTAF's indemnification obligation does not include any obligation to indemnify, defend, or protect against: (i) any claim to the extent it arises from Client's use of the GO Service contrary to the terms of this Agreement; or (ii) any claim to the extent WESTAF is prejudiced in its defense or settlement of the claim as a result of Client's failure to provide WESTAF with notice of the claim within a reasonable period of time when Client knew or should have known of the claim or from Client's failure to cooperate with WESTAF's defense of the claim. All claims for which WESTAF has an obligation to indemnify, defend, and hold Client harmless under this section 6.1 are referred to in this Agreement as a "covered claim." WESTAF shall have the right to control the investigation, defense, and settlement of all covered claims and may settle covered claims without Client's consent provided such settlement does not require any affirmative obligation on the part of Client.

**6.2 Exclusive Remedies.** If an injunction or order is obtained against Client's use of the GO Smart Service by reason of a covered claim, or if in WESTAF's opinion, the GO Smart Service is likely to become the subject of such a claim, then WESTAF shall at its expense and as Client's sole remedy (a) do one of the following: (i) procure for Client the right to continue using the GO Smart Service; or (ii) terminate the Term of this Agreement without liability to Client, except to refund any unused portion of the Fees for the current Term; and (b) indemnify, defend, and hold harmless Client for all covered claims as required under Section 6.1.

**6.3 Client's Indemnification Obligation.** To the extent the GO Smart Service functions in accordance with WESTAF's performance warranty and except as provided for in Section 5.1. Client will indemnify and hold WESTAF and each of its parents, subsidiaries, affiliates, officers, directors, members, employees, attorneys, and agents harmless from and against any and all claims, demands, damages, losses, liabilities, or expenses (including attorneys' fees and costs) made against WESTAF by any third party due to or arising out of or in connection with Client's or Client's applicants' use of the GO Smart Service (including inputted or uploaded Client Data) or Client's breach of this Agreement.

**6.4 Limitations for Governmental Entities.** If Client is a governmental entity or agency, Client's obligation to indemnify WESTAF under this Agreement is limited to the extent its organic statute, the constitution of its state, and the other law of Client's state permits Client to indemnify WESTAF without a specific appropriation for such indemnification obligation being made. If Client is a governmental entity or agency, Client has no obligation to make appropriations in order to fund an indemnification obligation to WESTAF. Nothing in this section which eliminates or reduces Client's obligation to indemnify WESTAF will eliminate, reduce, or otherwise affect Client's obligation to perform under the Agreement or eliminate, reduce, or otherwise affect Client's liability for any breach of the Agreement.

**7. Privacy.** Access to and use of the GO Smart Service is subject to WESTAF's privacy policy as published online at <http://www.westaf.org/privacy.html> and available through the GO Smart website, as such policy may change from time to time (the "Privacy Policy"). The Privacy Policy is incorporated into and made a part of this Agreement.

## **8. General.**

**8.1 Applicants' Rights.** Client agrees to respect the copyright in the submitted works of applicants who apply for Client's grant(s). Client agrees that its agreement with applicants will provide that Client will not use or reproduce any copyrighted work of applicant for the purpose of promoting Client's organization except (a) with the applicant's express permission; and (b) if requested by applicant, by paying fair compensation for the rights granted in

applicant's work. WESTAF will have the right to terminate Client's access to the Service if Client violates the requirements of this paragraph.

**8.2 Proprietary Rights.** The GO Smart Service and Documentation, and all Intellectual Property Rights therein, are the exclusive property of WESTAF. All rights in and to the GO Smart Service not expressly granted to Client in this Agreement are reserved to WESTAF. Client will not remove, alter, or obscure any proprietary notices (including copyright notices) of WESTAF on the Documentation or included as part of the Service. Nothing contained in this Agreement will be deemed to give Client any right, title, or interest in or to the GO Smart Service, content, and website, or any trademark or trade name of WESTAF, except the rights expressly granted to Client in this Agreement, which include access to and use of the GO Smart system for the Term for Client to link Client's website to the GO Smart Service for the purpose of providing applicants with access to the Service from Client's website.

**8.3 Third Party Interaction; Links.** Client may enter into correspondence with, purchase goods and/or services, or participate in promotions of advertisers or sponsors showing their goods and/or services through the GO Smart Service. Any such activity, and any terms, conditions, warranties, or representations associated with such activity, are solely between Client and the applicable third party. WESTAF will have no liability, obligation, or responsibility for any correspondence, purchase, or promotion between Client and any such third party. Client may not link any website to any of WESTAF's websites for the GO Smart Service except Client's organizational website or other site belonging to and/or managed by Client.

**8.4 Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**8.5 Force Majeure.** Except for any payment obligations, neither party will be liable for any delay in performing or for failing to perform obligations resulting from forces of nature, inclement weather, fire, explosions, floods, or riots or civil disturbances.

**8.6 Export Control.** WESTAF controls and operates this Service from its location in the United States and is subject to the United States Export Administration Laws and Regulations. WESTAF makes no representation that the Service is appropriate or available for use in other locations. If Client uses the Service from outside the United States, Client is solely responsible for compliance with all applicable laws, including, without limitation, export and import regulations of other countries. Any use of the Service contrary to United States law is prohibited. Client will comply strictly with all United States export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

**8.7 Assignment.** Neither party may assign or transfer, by operation of law or otherwise, any of its rights under this Agreement (including the rights granted to Client to access and use the GO Smart Service) to any third party without the other party's prior written consent, which consent will not be unreasonably withheld or delayed, except that either party may assign this Agreement, without consent, to any successor to all or substantially all its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization, or otherwise. An assignment by Client may increase fees if it results in a change in the terms of Client's grant(s). Any attempted assignment or transfer in violation of the foregoing will be null and void.

## **9. Governing Law and Venue.**

**9.1 In General.** Except as provided for in Section 8.8.2, this Agreement will be governed by and interpreted in accordance with the laws of the State of Colorado, without reference to its choice of laws or rules. Any action or proceeding arising from or relating to this Agreement will be brought in a federal or state court in Denver, Colorado, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

**9.2 Governmental Entities.** If Client is a governmental entity or agency, then this Agreement will be governed by and interpreted in accordance with the laws of the state under which Client is organized or created without reference to such state's choice of law provisions. Any action or proceeding arising from or relating to this Agreement will be brought in a federal or state court in such state in a judicial district in which Client's executive offices are located and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

**9.3 Remedies.** Except as exclusive obligations and remedies are expressly provided for in this Agreement, the parties' rights and remedies under this Agreement are cumulative. Client acknowledges that the GO Smart Service contains valuable trade secrets, intellectual property, and other proprietary information of WESTAF, that any actual or threatened breach of Section 2 of this Agreement will cause immediate and irreparable harm to WESTAF for which monetary damages would be an inadequate remedy, and that injunctive relief without necessity of any bond being posted or proof of actual damages is an appropriate remedy for such breach. If any legal action is brought by a party to interpret or enforce this Agreement, then the prevailing party will be entitled to receive from the other party its reasonable attorney's fees, court costs, and other collection expenses, in addition to any other relief it may receive.

**9.4 Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

**9.5 Construction.** The headings of Sections of this Agreement are for convenience only and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to" and "Section" reference to Sections and subsections of this Agreement with any reference to a Section including all subsections under that Section.

**9.6 Entire Agreement.** This Agreement (including all attachments to and other terms referred to in this Agreement) constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. The terms of any purchase order or similar document submitted by Client to WESTAF concerning this Agreement or the GO Smart Service will have no effect.

**9.7 Modification.** This Agreement may be amended or modified only upon written consent of the parties.

**9.8 Counterparts.** This Agreement may be executed in several counterparts and by facsimile or electronic copy, each of which will constitute an original and all of which, when taken together, will constitute one agreement.

**10. Definitions.** The following definitions apply whether used with or without capitalization.

**10.1 "Client Data"** means the information (text, images, audio, video, documents, and other data) uploaded by applicants through the GO Smart Service or input into the GO Smart Service by Client and its users in order to complete grant applications. Client owns all Client Data.

**10.2 "Client Information"** means each client information form completed by Client and accepted by WESTAF, the form of which is page 1 of this Agreement. Each Client Information Form is incorporated by reference into this Agreement and made a part hereof.

**10.3 "Documentation"** means WESTAF's description of the Service and the GO Smart User Manual, as provided on the GO Smart website through which the Service is made available to Client, as updated from time to time during the Term of this Agreement.

10.4 **"GO Smart Service" or "Service"** means the web-based grant application and management service owned and made available by WESTAF as described in Section 1 and the Documentation. The Service includes such features as are set forth on the GO Smart website, gosmart.org, as WESTAF may change such features and URL address from time to time.

10.5 **"Support"** means GO Smart's standard technical support for Client's use and operation of the GO Smart Service as described in Section 3.

10.6 **"Intellectual Property Rights"** means all worldwide intellectual property rights, including, without limitation, copyrights, trademarks, service marks, trade secrets, know-how, inventions, patents, patent applications, moral rights, and all other proprietary rights, whether registered or unregistered.

10.7 **"Third-Party Software"** means any third-party computer software programs used by Client in conjunction with its use of the GO Smart Service.

10.8 **"Fees"** have the meaning given in Section 1.

10.9 **"Term"** has the meaning given in Section 4.1.

10.10 **"Subscription"** means Client's right to access and use the GO Smart Service under this Agreement.

10.11 **"Media data"** means digital media, including, but not limited to, images and audio, video, and document (such as PDF, Word or Excel) files, uploaded by applicants through the GO Smart Service as part of their grant applications and is part of the Client Data.

10.12 **"Worksample module"** means the optional module in the GO Smart Service that allows applicants to upload digital media, including, but not limited to, image, audio, video, and document files.

10.13 **"Program"** means a container in the GO Smart Service for grouping one or more related grant cycles together.

10.14 **"Program Cycle"** means an individual cycle of a grant program.

10.15 **"Report"** means the process of exporting Client Data to produce a document, including, but not limited to an award letter, panel book, mail merge, or grant contract.

10.16 **"Applicant"** means any individual who uses the GO Smart Service to submit an application, or any part of an application, to Client's grant(s) and who has been supplied user identification and a password by WESTAF for this purpose.

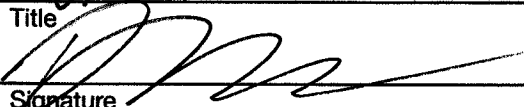
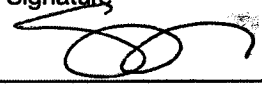
10.17 **"User Account"** has the meaning given in Section 2.6.

10.18 **"Users"** means Client's employees, independent contractors, or volunteers who are authorized by Client to use the GO Smart Service and have been supplied user identification and a password by WESTAF for this purpose.

10.19 **"Submissions"** has the meaning given in Section 2.2.

This **Service Agreement** is entered into between **WESTAF**(Western States Arts Federation), a Colorado nonprofit corporation, and Client identified in the signature block of this Agreement, below. The duly

authorized representatives of WESTAF and Client have executed this Service Agreement as of the later date entered below.

<b>CLIENT</b> 06/27/18	<b>WESTAF</b> 1888 N. Sherman St., Suite 375 Denver, CO 80203
Date Debra Garcia y Griego	Date 6/8/18
Print Name Director	Print Name SEYAN WICORD
Title 	Title ASSOCIATE DIRECTOR
Signature	Signature 
	City of Santa Fe Business Licence #: 18-00151390



**Attachment 1**  
**GO Smart Subscription Pricing Detail**

Date:	06/08/18
GO Smart Client:	Santa Fe Arts Commission
Subscription Period:	07/01/18 - 06/30/19

**Billing Contact Information:**

Contact Name & Phone:	Debra Garcia y Griego	Phone 505-955-6707
Contact Email:	degarcia@ci.santa-fe.nm.us	
Address:	20 S. Federal Place, Room 323 Santa Fe, NM 87504-0909	

**System Usage**

Number of annual grant programs	6
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**Annual Subscription Pricing:**

GO Smart Annual Subscription Fee (Up to 3 grant cycles)	\$4,500
Additional Program Cycles (\$1,000 for each additional cycle)	\$3,000
TOTAL	\$ 7,500

WESTAF will invoice upon receipt of the signed subscription agreement.





## GO Smart Renewal Agreement

GO Client	Santa Fe Arts Commission	
Renewal Period	July 1, 2018 - June 30, 2019	Date: March 16, 2018

### Current Billing Contact Information:

Contact Name & Phone	Jackie Camborde
Contact email	jncamborde@ci.santa-fe.nm.us
Address City, State, Zip	201 West Marcy Street Santa Fe, NM 87504-0909

### Annual Subscription Pricing:

GO Smart Annual Subscription Fee <ul style="list-style-type: none"><li>Up to 3 grant cycles<ul style="list-style-type: none"><li>Community Arts</li><li>Global Arts Marketing</li><li>National Arts Marketing</li></ul></li><li>250mb of media storage per user</li></ul>	\$4,500
3 Additional Grant Cycles - (\$1,000 per cycle per year) <ul style="list-style-type: none"><li>Regional Arts Marketing</li><li>Collaborative Arts Marketing</li><li>Target Impact Support</li></ul>	\$3,000

**Total Renewal**

**\$7,500**

We will invoice you upon receipt of your renewal

☐ The above information is correct

Initials \_\_\_\_\_

Please complete the table below only if you are adding or changing your billing contact information.

Contact Name & Phone	( ) -
Contact email	
Address, City, State, Zip	