RECREATION, ARTS, MUSEUMS AND PARKS (RAMP) FUNDING AGREEMENT BETWEEN WEBER COUNTY and NEXT ENSEMBLE

THIS AGREEMENT is entered into and made effective the 10th day of September, 2019, by and between WEBER COUNTY, a body corporate and politic of the State of Utah, hereinafter referred to as the "COUNTY," and NEXT Ensemble, non-profit organization, located at 1970 Cherokee Circle, Ogden, UT 84403, hereinafter referred to as "RECIPIENT."

WHEREAS, the COUNTY has imposed a local sales and use tax, pursuant to Utah Code Ann. § 59-12-701, et. seq., and has enacted an ordinance and policies governing distribution of the revenues collected by this tax, hereinafter referred to as "RAMP Tax" Title 34 Chapter 6, Weber County Ordinances; and

WHEREAS, RECIPIENT has applied for and is qualified to receive a portion of the RAMP funds (hereinafter "Funds") pursuant to state statute, county ordinance, and RAMP policies;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and terms and conditions contained in this Agreement, the parties agree as follows:

SECTION ONE
RAMP FUND REQUIREMENTS

1.1 In exchange for receipt of Funds, RECIPIENT agrees to the following uses and limitations of uses for the Funds:

A. Funds shall be expended in compliance with Utah Code Ann. § 59-12-702(4)(a):

"Cultural organization:"

(i) means:

(A) a private nonprofit organization or institution having as its primary purpose the advancement and preservation of:

(I) natural history;
(II) art;
(III) music;
(IV) theater;
(V) dance; or
(VI) cultural arts, including literature, a motion picture, or storytelling;

(B) an administrative unit; and

(ii) (A) a private non-profit organization or institution having as its primary purpose the advancement and preservation of history; or

Outreach

(B) municipal or county cultural council having as its primary purpose the advancement and preservation of:

(I) history;
(II) natural history;
(III) art;
(IV) music;
(V) theater; or
(VI) dance.

B. Funds shall be expended within Weber County for projects and programs of RECIPIENT as specified in RECIPIENT'S RAMP funding application, as further specified herein, and pursuant to Utah Code Ann. § 59-12-701. et. seq., Title 34 Chapter 6 Weber County Ordinances and those policies, applications, and standards as established by Weber County and the RAMP Board to administer the distribution of the Funds.

C. Funds may not be expended for the following non-qualifying expenditures: real property; depreciation related to real property; payments into an endowment corpus; no events or activities outside of Weber County; fund-raising expenditures related to a capital or an endowment campaign, grants, re-grants or loans; interest payments; political advocacy; expenditures not directly related to RAMP's primary purposes; non-deductible tax penalties, and bad debt expense.

D. RECIPIENT agrees to submit Actual Use/Evaluation reports detailing how the Funds were expended (See Exhibit 1). The final report will be due June 30, 2020, or within 60 days of the project completion, whichever occurs sooner. The final report will be a comprehensive report of all expenditures of Funds. If the program/project which is the subject of this funding Agreement cannot be completed prior to June 30, 2020, RECIPIENT shall request an extension in writing to the Chair of the County Commission with a copy to the Chair of the RAMP Committee specifying the reasons for the delay and requesting an extension to this Agreement. After consulting with the Chair of the RAMP Committee, the County Commission shall either approve an extension to this Agreement or request that the Funds be returned to the COUNTY in accordance with Section 2.2. Actual Use/Evaluation reports will be submitted every six months during any approved extension period.

E. RECIPIENT agrees to acknowledge RAMP in writing and orally and by using the official RAMP logo on written material including but not limited to all playbills, brochures, advertisements, flyers, banners and newsletters. RECIPIENT will use other acknowledgments to include posting a COUNTY approved RAMP sign at RAMP project locations.

F. RECIPIENT shall provide COUNTY with all copies of programs or other printed material acknowledging the COUNTY and the RAMP funding of the program.

G. RECIPIENT agrees to provide COUNTY with press releases and other public relations material designed to promote the RECIPIENT'S programs and projects and crediting the RAMP Funding program.

H. RECIPIENT agrees that if it produces a free or reduced-admission-fee program, the terms of admission shall be extended to all citizens of the State of Utah and shall not be restricted to citizens of Weber County. RECIPIENT further agrees to inform the COUNTY'S Representative, named hereafter, of such an event and shall provide tickets to the event, without charge, in a number requested by said Representative. Utah Code Ann. § 59-12-705; Weber County Code § 34-6-9.

I. It is understood and agreed that no Funds or proceeds from Funds will be made available to any public officer or employee in violation of the Public Officers' and Employees' Ethics Act. Utah Code Ann. § 67-16-1, et. seq.

J. RECIPIENT agrees that although it is not a "public body" as defined by Utah's Open and Public Meetings Act (Utah Code Ann. § 52-4-1 et. seq.), and because RECIPIENT receives public funds, it will adhere to the spirit of the statute, whenever discussing RAMP funding, by making its board meetings open to the public.

SECTION TWO
USE OF FUNDS

2.1 All expenditures of Funds must be for projects or items set out in the RECIPIENT'S application form(s) attached as Exhibit 1. If the full amount requested in the application form(s) was not granted by the COUNTY, the partial expenditures for items listed on the application form(s) must comply with any RAMP Board modifications outlined in Exhibit 1. At any time that it is discovered by the COUNTY that Funds were used by the RECIPIENT for purposes other than those agreed upon within this Agreement, the COUNTY will require a return of the entire amount of Funds disbursed to RECIPIENT under this Agreement. COUNTY may also terminate this Agreement and shall be entitled to all rights, claims, and/or causes of action available to COUNTY. Further, COUNTY may disqualify the RECIPIENT from receiving any Funds from this tax revenue in the future as a result of RECIPIENT'S misuse of prior funds received.

2.2 If RECIPIENT determines for any reason not to use the Funds specified in its funding application and as approved in this Agreement during the contract period, RECIPIENT agrees to return such Funds to COUNTY, including any interest received thereon so that the Funds may be reallocated to other projects/events. RECIPIENT shall return such Funds (including interest) within fourteen (14) days of RECIPIENT'S determination to not move forward with the approved project/function.

2.3 If RECIPIENT fails to use its Fund award in compliance with this Agreement within the contract period, RECIPIENT agrees to return such Funds to COUNTY, including any interest received thereon so that the Funds may be reallocated to other projects/events. RECIPIENT shall return such Funds (including interest) within fourteen (14) days of end of the contract period unless an extension has been granted as specified herein.

SECTION THREE
CONSIDERATION

3.1 Payment of Funds to RECIPIENT and the amounts thereof have been determined, and will be paid, as set forth in Title 34 Chapter 6 of the Weber County Ordinances and according to the policies and procedures established by the RAMP Board. RECIPIENT has been approved for Funds as follows:

Community Outreach Concerts $4,400

SECTION FOUR
EFFECTIVE DATE

4.1 This Agreement shall be effective for a fourteen month period and shall not be extended except as specified in this Agreement. It is understood that the Funds received by RECIPIENT under this Agreement will be expended and accounted for by June 30, 2020 or within sixty (60) days of the project completion, whichever occurs earlier.

SECTION FIVE
AUDIT

5.1 COUNTY reserves the right to audit the use of the RAMP Funds and the accounting for the use of Funds received by RECIPIENT under this Agreement. If such audit is requested by the COUNTY, RECIPIENT shall cooperate fully with COUNTY and its representatives in the performance of the audit.

SECTION SIX
MAINTENANCE AND AVAILABILITY OF RECORDS

6.1 RECIPIENT agrees to maintain detailed and accurate records of the use of all Funds that it receives under this Agreement. RECIPIENT further agrees to retain said records and make them available for review by the COUNTY during regular business hours upon the COUNTY'S request. Said records shall be maintained by RECIPIENT for a period of five (5) years from the date of their creation. All records shall be maintained in a manner and form approved by the Weber County Auditor's Office. The parties hereby stipulate that ownership of all records that are the subject of this paragraph shall rest with RECIPIENT. However, to the extent that such records are deemed by competent legal authority to be records of the COUNTY, COUNTY agrees that its disclosure of said records shall be governed according to the COUNTY'S rights and responsibilities under the Utah Government Records Access and Management Act. Utah Code Ann. § 63G-2-101 et. seq., 1953 as amended. If said records disclose that RECIPIENT is in violation of this Agreement, the COUNTY may make such use and disclosure of said records as it deems appropriate to protect its rights under this Agreement and to protect the public's interest in the proper expenditure of public funds.

SECTION SEVEN
ASSIGNMENT OR TRANSFER OF FUNDS

7.1 It is understood and agreed that RECIPIENT shall not assign or transfer its rights, interests or claims under this Agreement. The Funds provided under this Agreement shall be used exclusively and solely by RECIPIENT for the purposes set forth in this Agreement.

SECTION EIGHT
INDEPENDENT AGENCY

8.1 It is understood and agreed that RECIPIENT'S status in relation to COUNTY is that of an independent agent; and the RECIPIENT'S acts, made through any of RECIPIENT'S officers, agents, or employees are made without any suggestion, direction, or management whatsoever by the COUNTY, the COUNTY'S Representatives, or any other of COUNTY'S officers, agents, or employees. The parties agree that the Funds provided to RECIPIENT under this Agreement do not give COUNTY any authority whatsoever over the manner and method by which RECIPIENT carries out its purposes. However, to the extent that any actions taken by RECIPIENT violate the understanding between the parties, as expressed in RECIPIENT'S application for Funds and in this Agreement, COUNTY shall have the rights provided it under this Agreement to withdraw funding and demand reimbursement of Funds previously expended by RECIPIENT.

SECTION NINE
INDEMNIFICATION

9.1 RECIPIENT agrees to indemnify, defend, and hold harmless the COUNTY, its officers, agents and employees from and against any and all claims, damages, losses and expenses, including attorney's fees and legal costs, arising out of any and all of RECIPIENT'S, or its officers', agents', or employees' negligent or wrongful acts or failures to act which occur during the term of this Agreement, or, if not fully expended during the term of this Agreement, during the period of time in which RECIPIENT expends Funds made available under this Agreement.

9.2 COUNTY agrees to indemnify and hold harmless the RECIPIENT, its officers, agents and employees from and against any and all claims, damages, losses and expenses, including attorney's fees and costs, arising out of the negligent or wrongful acts or failure to act by COUNTY, its officers, agents, or employees during COUNTY'S performance under this Agreement.

9.3 COUNTY, as a political subdivision of the State of Utah, and as a government entity as defined in the Utah Governmental Immunity Act (Utah code Ann. § 63G-7-1 et seq.,) does not, by the provisions of this paragraph, or any other part of this Agreement, waive any of its rights and responsibilities as set forth in said Utah Governmental Immunity Act and all other applicable law.

SECTION TEN
INSURANCE

10.1 RECIPIENT will purchase and maintain, during the life of this Agreement, insurance coverage that will satisfactorily insure RECIPIENT and COUNTY against claims and liabilities that could arise because of the execution of this Agreement. The insurance coverage required is as follows:

A. **General Liability**. Comprehensive general liability insurance (including contractual liability coverage) protecting RECIPIENT and the COUNTY against any and all liability claims that may arise against either of the parties during the parties' relationship engendered by the grant of Funds under this Agreement. Such period of time shall be the term of this Agreement, or if the Funds provided to RECIPIENT under this Agreement have not been fully expended during that time, the period of time for which comprehensive general liability insurance shall be in force to protect the parties shall be extended until such time as all said Funds have been expended. Coverage to be provided under this paragraph shall be for all claims made arising out of either party's actions during the period of time described herein regardless of whether the claim is asserted against either party during said time period. The limits of

bodily injury and property damage coverage for said policy or policies of insurance shall be not less than ONE MILLION ($1,000,000) per occurrence with a TWO MILLION ($2,000,000) general policy aggregate. This policy shall be primary and non contributory to any other policy(ies) or coverage available to County, whether such coverage be primary, contributing, or excess.

B. **Workers' Compensation**. Workers' compensation insurance covering RECIPIENT for any and all claims that may arise against RECIPIENT under the workers' compensation laws of the State of Utah.

C. **Waiver of Insurance**. In certain cases the COUNTY may waive the insurance requirement due to the size of the award or the nature of the RECIPIENT. If the insurance requirement is waived, the COUNTY will initial this paragraph: _____.

D. **Certificate of Insurance**. RECIPIENT shall provide a certificate of all insurances to the COUNTY Representative.

SECTION ELEVEN
MISCELLANEOUS

11.1 **Additional Documents**. The following documents shall be submitted by RECIPIENT to the COUNTY prior to any funds being disbursed to RECIPIENT by the COUNTY, and are incorporated into this Agreement by reference, being made part hereof as exhibits:

A. RECIPIENT'S Application Form with attachments and modifications approved by the RAMP Board (Exhibit 1);
B. Certificate of Insurance as specified in Section Ten unless otherwise waived.

11.2 **Amendments**. This Agreement may be amended in whole or in part at any time by the Parties by a written amendment approved and signed by all Parties in the manner provided by law.

11.3 **Authorization**. The individuals signing this Agreement on behalf of the Parties confirm that they are the duly authorized representatives of the Parties and are lawfully enabled to sign this Agreement on behalf of the Parties.

11.4 **Captions and Headings**. The captions and headings herein are for convenience of reference only and in no way define, limit or describe the scope or intent of any sections or provisions of this Agreement.

11.5 **Compliance with Laws**. During the time the RECIPIENT is expending the Funds provided by this Agreement, RECIPIENT, its officers, agents and employees agree to comply with all laws, federal, state or local, which apply to its operations; including, but not limited to: laws requiring access to persons with disabilities and non-discrimination against protected groups in admission, hiring and operation.

11.6 **Counterparts**. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one of the same instrument.

11.7 **County Representative**. COUNTY hereby appoints Shelly Halacy, or her designee, as the COUNTY Representative to assist in the administration of this Agreement and the Funding provided by this Agreement. Said Representative shall ensure performance of this Agreement by RECIPIENT and assist RECIPIENT in obtaining information and access to COUNTY or other government offices, if necessary, for RECIPIENT'S performance of this Agreement. Additionally, said Representative shall monitor and evaluate the performance of this Agreement by RECIPIENT, but shall not assume any supervisory or management role over RECIPIENT or any of RECIPIENT'S officers, agents or employees, or in the RECIPIENT'S expenditure of funds provided by this Agreement, other than to enforce COUNTY'S rights and responsibilities under this Agreement.

11.8 **Documents on File**. Executed copies of this Agreement shall be placed on file in the office of the Keeper of the Records of each of the Participants and shall remain on file for public inspection during the term of this Agreement.

11.9 **Entire Agreement**. This Agreement contains the entire agreement between the parties, and no statement, promise or inducement made by either party or agent for either party that are not contained in this written Agreement shall be binding or valid and this Agreement may not be enlarged, modified or altered, except in writing, signed by the parties in accordance with Section 11.2.

11.10 **Governing Laws**. It is understood and agreed by the parties hereto, that this Agreement shall be governed by the laws of the State of Utah and Weber County, both as to interpretation and performance.

11.11 **Interpretation**. The entire agreement among the parties shall consist of this Agreement and the documents set forth herein. All documents are complementary, and that which is called for by one of them shall be as binding as if called for by all. In the event of an inconsistency between any of the provisions of said documents, the inconsistency shall be

resolved by giving precedence first to this Agreement. Further, this Agreement shall be interpreted to be consistent with Title 59, Chapter 12, Part 7, Utah Code Ann. 1953, as amended; and Title 34 Chapter 6, Weber County Ordinances, as amended.

11.12 **No Officer or Employee Interest**. It is understood and agreed that no officer or employee of the COUNTY has or shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. No officer, employee or board member of RECIPIENT or any member of their families shall serve on a COUNTY board or committee that authorizes funding or payments to RECIPIENT unless the position held is clearly disclosed to the committee or board and the person does not participate in the deliberation and the funding decision.

11.13 **Termination**. The COUNTY may terminate this Agreement in whole or in part due to the failure of the RECIPIENT to fulfill its contract obligations. Unless otherwise stated in this Agreement, the COUNTY shall terminate by delivering to the RECIPIENT a Notice of Termination specifying the nature, extent and effective date of the termination. Upon receipt of the notice, the RECIPIENT shall immediately deliver to the COUNTY all unused Funds previously paid to RECIPIENT under this Agreement. The rights and remedies of the COUNTY provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year recited above.

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By_____
Scott Jenkins, Chair

Commissioner Froerer voted _____
Commissioner Harvey voted _____
Commissioner Jenkins voted _____

ATTEST:

_____
Ricky Hatch, CPA
Weber County Clerk/Auditor

RECIPIENT

By _____

Title Executive Director

STATE OF UTAH)
:ss
COUNTY OF WEBER)

MICHELLE K HALACY
NOTARY PUBLIC • STATE of UTAH
COMMISSION NO. 693248
COMM. EXP. 01/20/2021

On the 23 day of August, 2019, personally appeared before me Susan Campbell who being by me duly sworn did say that she/he is the Executive Director of the NEXT Ensemble, and that said instrument was signed in behalf of said corporation by authority of its bylaws, and said person acknowledged to me that said corporation executed the same.

Michelle K Halacy
NOTARY PUBLIC