

STATE OF TEXAS

§

§ COLLABORATIVE PARTNERSHIP

§ AGREEMENT

COUNTY OF BEXAR

§

This Agreement (“Agreement”) is hereby made and entered into by and between the City of San Antonio (“City”), a Texas municipal corporation, acting by and through its Executive Director of the Department of Arts & Culture, pursuant to Ordinance No. \_\_\_\_\_, dated \_\_\_\_\_ and \_\_\_\_\_ (“Partner”), a Texas non-profit corporation, acting by and through its duly authorized officers (collectively the “Parties”).

WHEREAS, City and Partner intend to collaborate on \_\_\_\_\_ (“Project”) to be installed constructed on certain real property owned by \_\_\_\_\_ and commonly known as \_\_\_\_\_ (address); and

WHEREAS, pursuant to the terms, conditions and provisions set forth in this Agreement, City and Partner shall collaborate on the design, fabrication and installation of the Project;

NOW THEREFORE, the Parties severally and collectively agree, and by the execution of this Agreement are bound, to the mutual obligations and to the performance and accomplishment of the tasks set forth in this Agreement.

**I. TERM AND DEFINITIONS**

1.01 The term of this Agreement shall commence on the date whereupon both Parties have executed this Agreement (the “Effective Date”) and continue until the earlier of (a) Project completion or (b) \_\_\_\_\_ (date schedule for completion) (“Term”).

1.02 The following terms shall have the meaning set forth below:

“Finalized Task Order” means a written agreement, authorized by both Parties in City’s Portal system and made a part of this Agreement, setting forth the agreed to scope, pricing and associated terms for an individual Project.

“On-Call Contract” means a contract used by City, through which a task order, on an as-needed basis, shall be issued for work or services, as determined by City.

“PRIME*Link*” means City’s internet-based project management software for submitting and approving Task Orders, Applications for Compensation and all other forms of correspondence between City and Partner.

“Proposed Service Plan” means a detailed plan outlining how and when the City-requested Work or services shall be provided by Partner.

“Proposed Task Order Request” means a request to Partner to submit a proposal for a specific Project.

“Services” means those services described in the Scope of Services, as set out in an issued Task Order.

“Task Order” means a work order issued to Partner setting forth the agreed to Scope of Services, pricing and associated terms for an individual Project.

## **II. GENERAL RESPONSIBILITIES OF PARTNER**

2.01 This Agreement is an on-call, Task Order or indefinite delivery agreement for Collaborative Partner opportunities and such other services that are required for Partner to provide or are associated with such Collaborative Partner opportunities. Specific requirements as to location, conditions, procedures and associated services pertaining to a particular Project shall be negotiated and set out in individual Task Orders for each request. Assigned and accepted Task Orders regarding services to be provided by Partner shall be incorporated into and become a part of this Agreement as **Exhibit D**. If Partner is selected to provide services under this Agreement, Partner shall be responsible for the design, fabrication and installation of the Project as set forth in the corresponding Task Order. Partner shall contract with one or more artists (“Artist”) to provide such design, fabrication and installation services for the Project. Partner will complete the Project by the date set forth in such Task Order, subject to Force Majeure.

2.02 Partner shall submit a Proposed Service Plan for each project that City requests to be performed under this Agreement (“Project”). City either will approve or disapprove each Proposed Service Plan. City’s approval shall be evidenced by a finalized Task Order executed by both Parties in *PRIMELink*. Task Orders shall be numbered sequentially, starting with number one (1), shall reference this Agreement and shall be entered into *PRIMELink*. Each finalized Task Order, as entered into *PRIMELink*, shall become a part of this Agreement.

2.03 Partner understands and agrees that City may have entered into multiple professional services agreements for similar services with other contractors and City has the authority to assign Work/Task Orders at its sole discretion.

2.04 Partner understands and agrees that City makes no minimum guarantees, with regard to the amount of services, if any, Partner may be extended under this Agreement.

2.05 Each Task Order amount shall be based on the Scope of Services for a particular Project and will be based on the not to exceed pre-priced tasks and or hourly rates included in **Exhibit A**, which is attached and incorporated into this Agreement.

2.06 Partner shall perform its obligations under this Agreement in accordance with the Scope of Services outlined in each City-authorized Task Order and in accordance with **Exhibit A**. The Scope of Services shall be described in Partner's Proposal, as revised in accordance with

negotiations with City and with the approval of Director for each authorized Task Order and as provided in this Agreement.

2.07 Partner shall not proceed with the next appropriate Task Order without a written authorization from City. City may elect to discontinue Partner's services at the end of any Task Order for any reason or for no reason. However, if circumstance dictates, City retains the right to make adjustments to the scope of Partner's Task Order obligations at any time to achieve the required services.

2.08 All Artist(s) that work on the Project shall be mutually agreed upon by City and Partner. Partner shall enter a contract with all Artist(s), which includes Artist's waiver of moral rights in substantially the same form as **Exhibit B**, which is attached and incorporated into this Agreement.

2.09 Partner shall provide all necessary funding for the Project beyond the City's commitment identified in each Task Order and provide evidence to City that all additional funds necessary for the Project have been secured prior to the receipt of any funding under this Agreement. In the event the scope of the Project is adjusted downward, City shall have the option of adjusting its commitment downward accordingly. City is not responsible for any cost overruns unless agreed to in writing in accordance with this Agreement.

2.10 Partner shall provide to City the design plans and specifications for the Project, including an anticipated fabrication and installation schedule ("Plans"), and such Plans shall be subject to the prior review and approval of City. After approval by City, the Plans shall be attached and incorporated into this Agreement as **Exhibit C** and Partner shall not make any substantial changes to the Plans without the prior written approval of City. The approvals given in this Section do not relieve Partner of the burden of obtaining all necessary governmental approvals, including those provided by City through its relevant development departments and relevant boards and commissions including the Historic and Design Review Commission. City's approval of the Plans does not release Partner of the responsibility for the correction of Partner's mistakes, errors or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved.

2.11 Unless written notification by Partner to the contrary is received by City, Partner's *Executive Director* shall be Partner's designated representative responsible for the management of this Agreement and the point of contact for City on all matters regarding this Agreement.

2.12 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Plans. Upon request by City, Partner shall cause its design or construction professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans. Upon further request by City, any and all construction drawings must be certified by a qualified engineer or architect licensed by the State of Texas. All construction drawings must conform to all applicable federal, state and local laws and regulations. Upon request, Partner shall submit said certification to the

Director of the Department of Arts & Culture (“Director”) or his designee at the completion of the Project construction. City shall have the right to withhold funding until such certifications are provided.

### **III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

3.01 Partner warrants and represents that it will comply with all Federal, State and Local laws and regulations during the term of this Agreement, whether or not Partner’s activities are related to the Project, and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on the Project.

3.02 To the extent applicable, Partner agrees to abide by Chapters 252, and 271 of the Texas Local Government Code, and Chapters 2254 and 2267 of the Texas Government Code or other competitive contracting processes allowed for as express exceptions to these laws.

### **IV. OWNERSHIP, USE AND LICENSE**

4.01 Partner acknowledges that it will construct the Project in a manner consistent with use by the general public.

4.02 The Project shall be owned by \_\_\_\_\_.

4.03 As part of its contract with Artist(s), Partner shall require each Artist to grant City a permanent, non-revocable, royalty-free license to use the Project for non-commercial purposes to promote public art and the City of San Antonio. Such license shall include the authority for the City to reproduce the Project in any medium.

4.04 \_\_\_\_\_ shall be responsible for the operation and maintenance of the Project and all associated costs will be the responsibility of \_\_\_\_\_.

### **V. CITY FUNDING**

5.01 City shall reimburse Partner for all eligible expenses incurred under this Agreement. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City shall not exceed the amount set forth in the corresponding Task Order.

5.02 City shall not be obligated nor liable under this Agreement to any party, other than Partner, for payment of any monies or provision of any goods or services.

5.03 Funding shall consist of reimbursements paid to Partner for the Allowable Expenditures identified in Exhibit D. City funding provided under this Agreement shall only be used for the portions of the Project which are dedicated to public use/public purpose.

5.04 All funding provided by City shall come from available \_\_\_\_\_. City shall not be responsible for the payment of any eligible expenses until funds are available.

5.05 Director or her designee shall be responsible for the administration of this Agreement on behalf of City and the point of contact for all communication regarding this Agreement from Partner.

## **VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY PARTNER**

6.01 Payments to Partner shall be in the amount shown on the invoices, consistent with an issued Task Order and its supporting documentation submitted, and shall be subject to City's approval. All services shall be performed to City's satisfaction, which satisfaction shall be judged by the Director in his/her sole discretion, and City shall not be liable for any payment under this Agreement for services which are judged unsatisfactory and which previously have not been approved by the Director. The final payment shall not be paid until all reports, data and documents have been submitted, received, accepted and approved by City.

6.01.1 Payment may be made based solely on the units of services completed and approved by City and the associated unit price for such service, as may be described in Partner's fee schedule (as shown in **Exhibit A**) and the approved Task Order.

6.01.2 Monthly payments for services performed in the various additional services shall be reviewed by Director upon Partner entering itemized invoices, with required back-up and reference to the individual Task Order, in *PRIMELink*, as described below. Entered invoices shall indicate the value of the additional services performed to date on that Task Order and any other invoices or payments made related to that Task Order.

6.02 Partner may submit a request for Partial Compensation, prior to a Task Order's completion. A request for Partial Compensation shall be accompanied by a progress report detailing the Services performed. Any partial payment made shall be in proportion to the Services performed, as reflected in the progress report, and approved by the Director and at City's sole discretion. Compensation also may be made based solely on the tasks and services completed and approved by City and the associated unit price for each service/Project, as may be described in fee schedule and/or hourly rates included in **Exhibit A**.

6.03 Project Close Out and Final Payment: Partner's final billing shall indicate on its face: "Final Bill - No Additional Compensation is Due to Partner."

6.04 Internet-based Project Management Systems. City shall administer its services through an Internet-Based Management System ("*PRIMELink*"). Partner shall conduct its communication with City through *PRIMELink* and Partner shall perform all project-related functions utilizing *PRIMELink*. Communications shall include correspondences, submittals, requests for information, vouchers, compensation requests and processing, amendment, change orders and any other administrative activities. City shall administer the software, shall provide

any necessary training and shall make the software accessible via the Internet to Partner. All of Partner's invoices shall be submitted through *PRIMELink*.

6.05 Partner agrees to maintain readily identifiable records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. Partner further agrees:

A. That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and

B. That Partner's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

6.06 Partner agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials ("Records") pertaining to activities pertinent to this Agreement permanently. Records will be retained by Partner in an electronic format.

6.07 Partner shall maintain a numbered interest bearing account in an FDIC insured financial institution for the receipt and disbursement of all funds received pursuant to this Agreement and further agrees that all checks and withdrawals from such account shall have itemized documentation in support thereof pertaining to the use of City funds provided under this Agreement. All interest earned on funds in the account shall be applied to the allowable costs of construction of the Project in accordance with the provisions of this Agreement.

6.08 Prior to reimbursement, City will have the right to inspect work completed to ensure conformance with the approved Plans. Invoices should include all supporting documentation that costs have been incurred, as required by City.

6.09 City agrees to provide Partner written notice regarding any expenditure the City reasonably determines to be outside the permissible parameters of this Agreement. Said notice will provide Partner 30 days from receipt of said notice to cure the deficiency or refund to the City any sum of money paid by City to Partner determined to:

A. Have not been spent by Partner strictly in accordance with the terms of this Agreement; or

B. Not be supported by adequate documentation to fully justify the expenditure.

6.10 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in Article VI as a result of any auditing or monitoring by City, Partner shall refund such amount to City within 30 working days of City's written request specifying the amounts disallowed or disapproved.

## **VII. ALLOWABLE EXPENDITURES**

7.01 The particular Task Order for each Project shall identify the allowable expenditures (“Allowable Expenditures”) for that Project and only such identified costs shall be paid by City.

7.02 Expenditures of the funds provided under this Agreement shall only be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement, for the public purpose/public use stated in this Agreement, and in compliance with all applicable City, state and federal laws, regulations and/or ordinances.

7.03 Procurements and/or purchases which must be approved pursuant to the terms of this Agreement shall be conducted entirely in accordance with all applicable terms, provisions and requirements.

## **VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS**

8.01 Partner further represents and warrants that:

A. All information, data or reports it shall provide to City shall be complete and accurate as of the date shown on the information, data, or report. Partner shall notify City in the event of any material change affecting the information, data or reports provided to City.

B. It is financially stable and capable of fulfilling its obligations under this Agreement. Partner shall provide City immediate written notice of any adverse material change in the financial condition of Partner that may materially and adversely effect its obligations.

C. No litigation or proceedings are presently pending or, to Partner’s knowledge, threatened against Partner.

D. No provision contained in this Agreement contravenes or in any way conflicts with the authority under which Partner is doing business or with the provisions of any existing indenture or agreement of Partner.

## **IX. ACCESSIBILITY OF RECORDS & MONITORING**

9.01 At any time and as often as City may deem necessary, upon three business (3) days prior written notice, Partner shall make the Records available to City or any of its authorized representatives, and shall permit City or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same.

9.02 To the extent required by law, Partner shall cooperate with City to satisfy requests for information received by City under the Texas Public Information Act or related laws pertaining to this Agreement.

9.03 Partner agrees that City may carry out reasonable monitoring and evaluation activities so as to ensure compliance by Partner with this Agreement and with all other laws, regulations and ordinances related to its performance, and Partner shall provide reasonable access to the City related to such activities.

## **X. TERMINATION**

10.01 City shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of completion of the Term whenever City determines that Partner has failed to comply with any term of this Agreement, subject to the cure period. City will provide Partner with written notification as to the nature of the non-compliance, and give Partner a 30-day period from the date of City's written notification to cure any issue of non-compliance. Should Partner fail to cure any default within this period of time, City may terminate this Agreement immediately by providing written notice to Partner, withhold further payments to Partner and seek repayment of any and all funds disbursed by City.

10.02 In the event of termination of the Lease, for any reason, City shall have the right to immediately terminate this Agreement by providing written notice to Partner. Upon termination of this Agreement, Partner must pay City a sum equal to the amount of money received by Partner under this Agreement.

10.3 The Parties shall have the right to seek any remedy at law to which they may be entitled, in addition to termination, if Partner defaults under the material terms of this Agreement and fails to cure such default within the cure period set forth above subject to any and all lawful defenses, counterclaims, offsets, settlements, deductions or credits to which Partner may be entitled.

## **XI. INDEMNITY**

**11.01 Partner covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, City and the elected officials, employees, officers, directors, volunteers and representatives of City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Partner's activities under this Agreement, including any acts or omissions of Partner, any agent, officer, director, representative, employee, consultant or subcontractor of Partner, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT PARTNER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY**



**AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

**11.02** The provisions of this INDEMNITY are solely for the benefit of the Parties and not indented to create or grant any rights, contractual or otherwise, to any other person or entity. Partner shall advise City in writing within 24 hours of any claim or demand against City or Partner known to Partner related to or arising out of Partner's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Partner's cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Partner of any of its obligations under this Article.

**11.03 Defense Counsel** - City shall have the right to select or to approve defense counsel to be retained by Partner in fulfilling its obligation to defend and indemnify City, unless such right is expressly waived by City in writing. Partner shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Partner fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Partner shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

**11.04 Employee Litigation** - In any and all claims against any party indemnified by any employee of Partner, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Partner or any subcontractor under worker's compensation or other employee benefit acts.

**11.05** Partner shall FULLY INDEMNIFY CITY and DEFEND all suits or proceedings instituted against CITY and pay any award of damages or loss resulting from an injunction against CITY, to the extent that the Project constitutes an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.

11.06. Acceptance of the Plans by City shall not constitute nor be deemed a release of the responsibility and liability of Partner, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, work drawings, Plans and specifications or other documents; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect in the designs, drawings, Plans and specifications or other documents prepared for the Project.

**XII. INSURANCE & BONDS**

12.01 Prior to the commencement of any work under this Agreement, Partner shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's Department of Arts & Culture, which shall be clearly labeled "\_\_\_\_\_ " in the

”Description of Operations” block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent’s signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City’s Department of Arts & Culture. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

12.02 City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement, and any extension or renewal, and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

12.03 Partner’s financial integrity is of interest to the City; therefore, subject to Partner’s right to maintain reasonable deductibles in such amounts as are approved by City, Partner shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension or renewal, at Partner’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Explosion, Collapse, Underground g. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. h. Damage to property rented by you	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

5. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
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12.04 Partner agrees to require, by written contract, that all contractors and subcontractors of Partner working on the Project obtain the same insurance coverages required of Partner, and provide a certificate of insurance and endorsement that names Partner and City as additional insureds. Partner shall provide City with said certificate and endorsement prior to the commencement of any work by such contractor or subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

12.05 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any such policies). Partner shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Partner shall pay any costs incurred resulting from said changes.

City of San Antonio  
 Attn: Department of Arts & Culture  
 P.O. Box 839966  
 San Antonio, Texas 78283-3966

12.06 Partner agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- (A) Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability policies;
- (B) Provide for an endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy;
- (C) Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of City; and

(D) Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

12.07 Within five calendar days of a suspension, cancellation or non-renewal of coverage, Partner shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Partner's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

12.08 In addition to any other remedies City may have upon Partner's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City shall have the right to order Partner to stop work, and/or withhold any payment(s) which become due to Partner until Partner demonstrates compliance with such requirements.

12.09 Nothing contained in this Agreement shall be construed as limiting in any way the extent to which Partner may be held responsible for payments of damages to persons or property resulting from Partner's or its contractor's or subcontractor's performance of the work covered under this Agreement.

12.10 It is agreed that Partner's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by City for liability arising out of operations under this Agreement.

12.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of City shall be limited to insurance coverage provided.

12.12 City shall not be responsible for damage resulting from the Project to the equipment and/or property of Partner and any contractors or subcontractors of Partner.

12.13 With respect to the Project, Partner shall comply with Texas Government Code Chapter 2253 provisions regarding performance and payment bonds on certain "Public Works" contracts (copies of required bonds must be provided to City prior to the start of construction).

### **XIII. NONDISCRIMINATION**

13.01 As a party to this Agreement, Partner understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established in this Agreement.

#### **XIV. CONFLICT OF INTEREST**

14.01 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns
  - (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

14.02 Contractor warrants and certifies as follows:

- (i) Contractor and its officers, employees and agents are neither officers nor employees of City.
- (ii) Contractor has tendered to City a Contracts Disclosure Statement in compliance with City’s Ethics Code.

14.03 Contractor acknowledges that City’s reliance on the above warranties and certifications is reasonable.

#### **XV. POLITICAL OR RELIGIOUS ACTIVITY**

15.01 None of the activities performed under this Agreement shall involve, and no portion of the funds received shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

15.02 None of the performances rendered by Partner under this Agreement shall involve, and no portion of the funds received by Partner under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

## **XVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL**

16.01 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, and any responses, inquiries, correspondence and related material submitted to City by Partner, shall, upon receipt, become the property of City.

## **XVII. CONTRACTING**

17.01 Any work or services related to the Project shall be contracted only by written contract or agreement and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by contractors with this Agreement shall be Partner's responsibility. Partner is responsible to ensure that all local, state and federal permits and approvals required by or for this Agreement are obtained.

17.02 City shall in no event be obligated to any third party, including any sub-contractor of Partner, for performance of or payment for work or services.

17.03 By signing this Agreement, Partner certifies that it will not award any funds provided under this Agreement to any party which it knows to be debarred, suspended or otherwise excluded from or ineligible for participation in programs with City.

## **XVIII. CHANGES AND AMENDMENTS**

18.01 Unless this Agreement expressly provides otherwise, any alterations, additions, or deletions to its terms shall only be by amendment in writing executed by both City and Partner and approved by City Council, when required.

18.02 It is understood and agreed by the Parties that each Party shall comply with any changes in local, state and federal rules, regulations or laws applicable to this Agreement that may occur during the Term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment, and shall become a part of this Agreement as of the effective date of the rule, regulation or law.

## **XIX. ASSIGNMENTS**

19.01 Partner shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising under this Agreement, without first procuring the written approval of City. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

## **XX. SEVERABILITY OF PROVISIONS**

20.01 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties that such invalidity, illegality or unenforceability shall not affect any other clause or provision and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained ; it is also the intention of the Parties that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

## **XXI. NON-WAIVER OF PERFORMANCE**

21.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

21.02 No act or omission of either Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to either Party under this Agreement or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved .

## **XXII. ENTIRE AGREEMENT**

22.01 This Agreement constitutes the final and entire agreement between the Parties and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties unless the same are in writing, dated subsequent to the effective date and duly executed by the Parties.

22.02 Incorporation of Attachments. Each of the Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the Parties. Should there be any conflict between this Agreement and any Exhibits, this Agreement shall control.

Exhibit A – Price Schedule

Exhibit B – Artist’s Waiver of Moral Rights

Exhibit C – Plans

Exhibit D – Task Order(s), as Assigned and Accepted

### **XXIII. NOTICES**

23.01 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY: Debbie Racca-Sittre, Director  
Department of Arts & Culture  
Attn: Public Art San Antonio  
P. O. Box 839966  
San Antonio, Texas 78283-3966

PARTNER: *Name*  
*Agency*  
*ADDRESS*

Notice of change of address by either Party must be made in writing and mailed to the other Party's last known address within five business days of such change.

### **XXIV. FORCE MAJURE**

24.01 City or Partner may grant temporary relief from any deadline for performance of any term of this Agreement if either Party is prevented from compliance and performance by an act of war, order of legal authority, act of God, terrorism, social unrest, strike, natural disaster, supply shortage, or other unavoidable cause not attributed to the fault or negligence of the Party. To obtain an extension based upon Force Majeure, Partner must provide written notice to City of the occurrence of the Force Majeure event within 10 days following the date that Partner becomes aware of the event and the fact that it will delay Partner's performance of its obligations under this Agreement. City will not unreasonably withhold its consent.

### **XXV. RELATIONSHIP OF PARTIES**

25.01 Partner is an independent contractor. Nothing contained in this Agreement shall be deemed or construed by the Parties, or by any third party, as creating the relationship of employer and employee, officer, principal and agent, partners, joint venturers or any other similar such relationship between the Parties.

### **XXVI. APPLICABLE LAW**

26.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created under this Agreement are performable in Bexar County, Texas and venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

26.02 Partner shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.



26.03 Trademarked and Copyrighted Usage. Partner agrees to obtain all necessary licenses and take all other necessary steps to insure that all use of trademarked and/or copyrighted materials in the Project complies with United States and any other applicable trademark and copyright law.

26.04 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of San Antonio, Contractor verifies that it does not boycott Israel, and will not boycott Israel during the term of this Agreement. City relies on Contractor's verification. If found to be false, City may terminate this Agreement for material breach, without providing the opportunity to cure.

## **XXVII. GENDER**

27.01 Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

## **XXVIII. CAPTIONS**

28.01 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

## **XXIX. LEGAL AUTHORITY**

29.01 Partner represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities required.

29.02 The signer of this Agreement for Partner represents warrants and assures that he or she has full legal authority to execute this Agreement on behalf of Partner and to bind Partner to all terms, performances and provisions.

29.03 This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided in this Agreement.

**EXECUTED IN DUPLICATE ORIGINALS**, each of which shall have the full force and affect of an original this the \_\_\_ day of \_\_\_\_\_, 201\_.

**CITY OF SAN ANTONIO,**  
a Texas Municipal Corporation

***AGENCY NAME,***  
a 501(C)3 Non-profit

\_\_\_\_\_  
Debbie-Racca Sittre  
Executive Director  
Department of Arts & Culture

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
CITY ATTORNEY

**Exhibit A  
Fee Schedule**

*To be attached upon completion*

**Exhibit B**  
**Waiver of Moral Rights**

**WHEREAS**, \_\_\_\_\_ employed the artist \_\_\_\_\_ (“Artist”), to create \_\_\_\_\_ (“Artwork”) in collaborative partnership with the City of San Antonio; and

**WHEREAS**, *describe the Artwork*; and

**WHEREAS**, the Artwork is intended to be *permanently/temporarily* located on *City property/private property* at the \_\_\_\_\_ (*address*) \_\_\_\_\_ in San Antonio, Texas (“Location”); **NOW THEREFORE:**

Artist consents and agrees to the *temporary/permanent* placement of the Artwork on *City property/private property* at the Location. Artist acknowledges that the incorporation and installation of the Artwork at the Location may subject the Artwork to destruction, distortion, mutilation, or other modification if and when removed. Removal or relocation of the Artwork, if practical and economically feasible as determined by the City in its sole discretion, will occur in conformity with the guidelines and review requirements listed in the City's Public Art San Antonio Policies and Guidelines. Artist agrees that a City decision made under this paragraph regarding if, when and how to remove the Artwork is final.

Artist hereby expressly consents to both the installation into and removal from the Location of the Artwork and thereby expressly waives his Moral Rights to the Artwork. It is agreed that if the Artwork, or any portion thereof, is removed from the Location causing it or any part thereof to be destroyed, distorted, mutilated or modified in any way, the Artwork may not thereafter be referred to as “an Artwork by the Artist”.

*Only applicable to works located on City Property:* Artist understands that to the extent the City is required to move or relocate the Artwork and a suitable location on City Property cannot be located or in the event that the City no longer has the ability to display the Artwork, the Artwork shall be returned to \_\_\_\_\_, should it so desire, with the relocation costs at \_\_\_\_\_’s sole cost and expense. Artist further understands that if the City is required to relocate or disassemble the Artwork, City will notify Artist, or his descendants or assigns, immediately.

Executed to be effective this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**ARTIST**

\_\_\_\_\_  
*Name*

**Exhibit C**  
**Plans**

*To be attached upon completion*

**Exhibit D**  
**Task Order**

*To be attached upon assignment and acceptance*