

ORDINANCE 2021-03-04-0136

APPROVING A PRE-QUALIFIED LIST OF ART PROFESSIONALS WHO MAY BE USED TO IMPLEMENT ART PROJECTS IN AMOUNTS NOT TO EXCEED THE ELIGIBLE ALLOCATION, APPROVING CONTRACTS FOR SUCH PROJECTS, AND AUTHORIZING PAYMENT SUBJECT TO THE AVAILABILITY OF FUNDS.

* * * * *

WHEREAS, in November 2020, the Department of Arts and Culture (“Department”) issued an open call as part of a competitive and curated process to update the City’s pre-qualified list of public art professionals (“List”), comprised of public artists and art support services, and undertook extensive outreach efforts in an effort to seek new art professionals to be added to the already active List, with a specific focus on attracting a more diverse artist pool; and

WHEREAS, the Department evaluated the submitted qualifications of public artists and art support service providers and recommended the addition of 158 public art professionals, including 100 public artists, 45 art support services and 13 who applied in both categories, and in February, the San Antonio Arts Commission (“Commission”) and its Public Art Committee approved the additions to the List; and

WHEREAS, individuals and groups are placed on the List for a three-year period, however, inclusion on the List does not guarantee that an individual or group will be provided a contracting opportunity, as final selections for public art project commissions will be made through an evaluation process that will include representatives of the Public Art Committee, the Commission, stakeholders, such as local art professionals, neighborhood and community members, and representatives of City departments where the art will be located and final artist selections and projects are reviewed and approved by the Public Art Committee and the Commission; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. City Council approves the pre-qualified list of Public Art Professionals and authorizes contracts for services in amounts not to exceed the eligible allocations with individuals and groups from the List who are selected to implement projects, provide artworks or to provide public art services. A copy of the List is attached to this Ordinance as **Exhibit I**.

SECTION 2. The City Manager, or his designee, is authorized to execute contracts with Public Art Professionals from the List selected to implement projects, provide artworks or provide services in amounts not-to-exceed the eligible funding. The template agreements attached to this Ordinance as **Exhibits II, III and IV** shall be utilized to contract for such services, as appropriate. As not all template provisions apply to all contracts, the City Attorney’s Office shall provide assistance in determining the necessary provisions from the attached templates.

Individuals and groups on the List may be contracted on an on-call basis for work across several projects.

SECTION 3. Funds will be encumbered upon issuance of purchase orders and expenditures will be in accordance with the Fiscal Year 2021 and subsequent budgets that fall within the term period of the contracts authorized by City Council.


SECTION 4. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.

PASSED AND APPROVED this 4th day of March, 2021.



M A Y O R
Ron Nirenberg

ATTEST:



Tina J. Flores, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney



City of San Antonio

City Council

March 04, 2021

Item: 17

File Number: 21-1671

Enactment Number:

2021-03-04-0136

Ordinance approving a Pre-Qualified List of Art Professionals who may be used to implement art projects in amounts not to exceed the eligible allocation, approving contracts for such projects, and authorizing payment subject to the availability of funds. [Lori Houston, Assistant City Manager; Debbie Racca-Sittre, Director, Arts & Culture]

Councilmember John Courage made a motion to approve. Councilmember Manny Pelaez seconded the motion. The motion passed by the following vote:

Aye: 11 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia, Gonzales, Cabello Havrda, Sandoval, Pelaez, Courage and Perry

LB
03/04/21
Item No. 17

EXHIBIT I

2021-2024**Pre-Qualified List: Public Artists**

(L): San Antonio-based Applicant

220 Designs			James Carpenter Design Associates	
Adam Kuby LLC			Janet Zweig, LLC	
Akers	Larry		Jill Anholt Studio Incorporated	
Antill	Katy		Jim Hirschfield and Sonya Ishii, LLC	
Arango	Jhonattan		Kaprov	Susan
Arteclettica			Kistler Studio LLC	
Atkins	John	(L)	Korver	Justin (L)
Babcock Artworks LLC			Lipski	Donald
Ball-Nogues Design Studio, LLC			Lopez	Luis (L)
Barrera	Marisela	(L)	Made514	
Blanco	Rafael		Manning	Christine
Borrell	Melissa		Martinez	Angelica (L)
Branchaud	Kameko		Mata	John (L)
Cadena	Katherine	(L)	McKinney	Malachy (L)
Canfield	Rick	(L)	McVain	Timothy (L)
Chadbourne	Danville	(L)	Medrano	James (L)
Charl	Jana		Meyer	Melissa
Chen	Lena		Moore	Daniel
Christensen	John		Moya	Regina (L)
Confehr Studio			Neale	Scott (L)
Croom	Corinthia	(L)	Ollervidez	Rikko (L)
Daas	None		Ortega	Marco (L)
Daniel Borup Studio LLC			Palmiter	Seth
Danna	Alyssa	(L)	Pantuso	Mindy (L)
David Rubin Photography			Perez	Ashley (L)
De La Cruz	Adrian	(L)	Perry	Pat
Englehardt	Kari	(L)	Picquet	Wardell (L)
Escobedo	Juan	(L)	Pittman	Kathleen (L)
Fernandez	Fausto		Polli	Andrea
Francesco Simeti LLC			Pozo	Gonzalo (L)
Garcia	Gerardo	(L)	Priscila De Carvalho Studio	
Garza-Sullivan	Monique	(L)	Project One Studio	
Gnehm	Cassie	(L)	Quiroz	Joao (L)
Gonzales	Albert	(L)	Ramsay	Eloise (L)
Gonzalez	Sandra	(L)	Reyes	Aaron (L)
Guevara	Jesse	(L)	Ribas-Berain	Fernando (L)
Hall	Alexandria		Richardson	Michelle
Hazel	Peter		Roberto L. Delgado, Inc.	
Hogensen	Mark	(L)	Rodriguez	Agustina
Huether	Gordon		Ride Art, LLC	
Jaime	Susan	(L)	Roache	Daniel

Rogers	Joseph	(L)
Ronen	Anat	
Rude	Brad	
Salas	Roberto	
Sandoval	Isaiah	(L)
Santisteban	Ray	(L)
Seese	Kirk	
Sellers	Suzanne	
Senft	Sabine	
Serna	Alan	(L)
Serrao	Linda	
Shelton	Mac	(L)
Shipley	Wilfred	(L)
Singer Studio LLC		
Smith	Tim	(L)
Spinello	Jamie	
Stevens	Ronney	(L)
Studio Lejeune LLC		
Surmon	Angelita	
Suttin	Caterina	(L)
Sweeney	Gary	(L)
The Art of Four		(L)
Thornton	Simone	
Tobar	Jacob	(L)
Treviño	Jonathan	(L)
Tumlinson	Matt	(L)
Umlang	Kaitlin	(L)
Valerie Britton/Britton Studio LLC		
Vucevic	Drasko	
Welch	Kathryn	
Willington	Scotch	(L)

2021-2024

Pre-Qualified List: Support Services

(L): San Antonio-based Applicant

220 Designs			Santisteban	Ray	(L)
Alexis Bierman - Creative Fox Studio		(L)	SAY SI		(L)
Barrera	Marisela	(L)	Senft	Sabine	
Berrueto Cordova	Aurora	(L)	Shipley	Wilfred	(L)
Bihl Haus Arts Inc.		(L)	Smith	Tim	(L)
Blonde Creative, LLC		(L)	Sotheby's, Inc.		
Booth	Sabra	(L)	SprATX LLC		
C Clear Photography		(L)	Squinted Cinema		(L)
Canfield	Rick	(L)	Sweeney	Gary	(L)
CAPITAL INTEGRATED ARTS LLC			Tamez	Crystal	(L)
Croom	Corinthia	(L)	Texas Contracting Services, Inc		(L)
David Pinckney Photography			Textile Preservation Services of Texas, LLC		
Day	Margaret	(L)	The AM Project		(L)
Dunaway Associates		(L)	The Museum Practice, Inc.		(L)
Euclid Media Group, dba San Antonio Current		(L)	Treviño	Jonathan	(L)
Faust	Piper		Vigil	John	(L)
Feola	Josh	(L)	Wheeler	Jeff	(L)
Fermin	Miles	(L)	Wide Awake Creative LLC		(L)
Freckles Studio			WXYZr Inc		(L)
Gonzales Busse	Sarah	(L)	Zokaites Sculpture L.L.C.		
Gordon Huether					
Jaime	Susan	(L)			
Kuest Corporation		(L)			
Lambe	Sue				
LAMP MEDIA LLC		(L)			
Lopez	Mia				
Machina Cinema, LLC		(L)			
Mark Henry Wayne Hiebert dba Hiebert Photography		(L)			
McCleary	Badir				
Mireles	Arturo	(L)			
Novaby Ltd					
Ortega	Marco	(L)			
Public Art Services					
Reyes	Aaron	(L)			
Robot Creative Management LLC		(L)			
Rodriguez	Ismael	(L)			
Rogers	Gideon	(L)			
San Antonio Children's Museum		(L)			

LB
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EXHIBIT II

INCOMING ART LOAN AGREEMENT

This Agreement is entered into by the **CITY OF SAN ANTONIO**, (“**CITY**”) acting by and through its Executive Director of the Department of Arts & Culture, and _____ (“**LENDER**”) for the loan of artwork described more specifically in Attachment A, which is attached and incorporated into this Agreement (“**ARTWORKS**”). The **ARTWORKS** shall be displayed at the _____ (“**LOCATION**”), located at _____ for the _____ (“**EXHIBITION**”).

In consideration of the terms, covenants, agreements, and duties contained in this Agreement, and other good and valuable consideration, the sufficiency and receipt of which are acknowledged, **CITY** and **LENDER** (collectively “Parties”) agree as follows:

1. The term of the **EXHIBITION** shall run from _____ to _____. The term of the **EXHIBITION** may be extended by mutual written agreement of the Parties. Either Party may terminate this Agreement with thirty (30) days written notice to the other Party.
2. **LENDER** shall loan **ARTWORKS** for display to the public at the **LOCATION**. **CITY** will be responsible for the transportation, delivery, and installation of **ARTWORKS** at **LOCATION**, no later than _____. **CITY** is responsible for removal of the **ARTWORKS** from **LOCATION** after the closing date of the **EXHIBITION** and for returning the **ARTWORKS** to **LENDER** within seven (7) days after such closing date. Prior to installation, **LENDER** must provide **CITY** with the appraised value of **ARTWORKS**, which shall be included in Attachment A.
3. **CITY** acknowledges that the acquisition of the **ARTWORK** will benefit **CITY** in its goal to develop a permanent collection of artworks that will increase public awareness and support for public art. **CITY** may seek to acquire the **ARTWORKS** as part of **CITY**’s collection in accordance with the terms of the Art Acquisition Agreement in Attachment B, which is attached and incorporated into this Agreement.
4. In consideration of **LENDER** loaning the **ARTWORKS** to **CITY**, **CITY** shall pay **LENDER** an amount not to exceed \$ _____ to be paid upon _____.

To be paid as follows:

Payment Date _____
Payment Date _____

CITY shall pay invoice within 30 days of receipt, subject to **LENDER**’s compliance with all provisions of this Agreement.

-OR-

In consideration of the publicity and goodwill associated with the **EXHIBITION**, **LENDER** shall loan the **ARTWORKS** to **CITY** at no charge.

5. **LENDER** acknowledges that **CITY** will not store the **ARTWORKS** beyond thirty (30) days after termination of the **EXHIBITION**.
6. General Terms and Conditions.

- a) **LENDER** warrants and represents that it owns the **ARTWORKS**.
- b) **CITY** will exercise due diligence to provide professional level of care of the **ARTWORKS**.
- c) **LENDER** must provide written instructions for special or restricted care of the **ARTWORKS**.
- d) **CITY** will inform **LENDER** as soon as possible after discovery of any theft, damage or threat to **ARTWORKS**.
- e) **CITY** will conduct inventory and condition reporting upon **ARTWORK's** arrival at **LOCATION** and departure from **LOCATION**. A copy of the report will be maintained by **CITY**.
- f) **CITY** will repack the **ARTWORKS** in accordance with **LENDER's** written instruction, if provided, or if not so instructed will repack the **ARTWORKS** in a manner to protect them during transportation and to minimize potential risk of damage in transit. Original packing as provided by **LENDER** will be used unless **CITY** determines such packing to be insufficient to properly protect the **ARTWORKS** upon their return. In such case, **CITY** will repack the **ARTWORKS** in materials deemed more appropriate for object transportation.
- g) **LENDER** must provide correct delivery information and any specific return instructions and ensure ability to receive the shipment as agreed to prior to shipping.
- h) **LENDER** is responsible for informing **CITY** in writing of any change in ownership of the **ARTWORKS** or if there is a change in address of **LENDER**. **CITY** will attempt to contact **LENDER** at the last provided contact information prior to returning **ARTWORKS** to verify the return address and will make a reasonable effort to locate **LENDER** should the contact information be out of date. **CITY** assumes no responsibility to perform extended searches for **LENDER**. If **LENDER** or a legally recognized representative cannot be located at the expiration of the term of this Agreement, the **ARTWORKS** will be deemed abandoned and **CITY** may place the **ARTWORKS** in storage at the sole risk and expense of **LENDER** or dispose of the **ARTWORKS**.
- i) **LENDER** must provide **CITY** copies of permits or legal documentation of imported or exported culturally sensitive artifacts, if required, or if **ARTWORKS** are otherwise controlled by local, state or federal law.
- j) Except where the terms of this Agreement expressly provide otherwise, any communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in first class mail, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Department of Arts & Culture
Attn: Contract Manager

203 S. St. Mary's Street, Ste. 120
San Antonio, Texas 78205

If intended for Contractor, to:

7. **CITY** reserves the right to remove, relocate and/or cover the **ARTWORKS** anytime during the **EXHIBITION** period if the space becomes obligated for another service or if **CITY** determines the **EXHIBITION** is not in the best interest of **CITY**. **CITY** shall promptly notify **LENDER** of the necessity of removal or relocation of the **ARTWORKS**, and make a good faith effort to accommodate **LENDER's** preferences in such event. **CITY** shall be responsible for all costs associated with such removal, relocation and/or coverage.
8. **LENDER** warrants that items exhibited do not violate any local, state, or federal laws.
9. **LENDER** warrants and represents to **CITY** that **LENDER** owns all intellectual property rights in the **ARTWORKS** and has the legal right to convey certain rights to **CITY**.
10. Prior to the date of installation, **LENDER** shall provide **CITY** with written information about the **ARTWORKS** to be used in press releases and exhibition signage including credit lines and biographies. All signage will include a credit line referencing **LENDER**, as set forth in Attachment A, unless specifically requested in writing by **LENDER** prior to installation of the **EXHIBITION**.
11. **LENDER** acknowledges that **CITY** permits non-commercial photography in the **LOCATION** and **LENDER** understands that **ARTWORKS** may be photographed by visitors for their personal use.
12. **LENDER** grants **CITY** a nonexclusive, royalty-free, perpetual license to photograph, film, and videotape any or all of the **ARTWORKS** exhibited for the purpose of publicizing or documenting the **EXHIBITION** or any other non-commercial purpose. **CITY** shall provide a credit line for **LENDER** whenever exercising this license, unless specifically requested in writing by **LENDER** prior to installation of the **EXHIBITION**.
13. **LENDER** 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, intellectual property rights infringement and property damage, made upon CITY directly or indirectly arising out of, resulting from or related to LENDER's activities under this Agreement, including any acts or omissions of LENDER, any agent, officer, director, representative, employee, LENDER or subcontractor of LENDER, 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 LENDER 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 CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

14. CITY maintains a program of property insurance which protects the fine art owned by CITY and fine art loaned to CITY while in the custody and control of CITY. Pursuant to the terms and conditions of this insurance program, CITY will protect the condition and value of the ARTWORKS loaned to CITY while in transit to or from LOCATION, while on display at LOCATION and during installation and removal. Upon execution of this Agreement, LENDER shall provide appraised valuation data for insurance purposes. Such value shall be reflected in Attachment A.

15. **Insurance**

Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Department of Arts & Culture, which shall be clearly labeled "Department of Arts & Culture" 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. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Department of Arts & Culture. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof 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.

A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor'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:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage must be on a per project aggregate.
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. Professional Liability	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service. Coverage to be maintained and in effect for no less than two (2) years subsequent to the completion of the professional service.

Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names Contractor and City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Contractor shall provide City with said certificate and endorsement prior to the commencement of any work by the 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.

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 required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

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

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

- Name the 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 the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor'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.

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

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

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

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 the City shall be limited to insurance coverage provided.

Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

16. **CITY** will refer all inquiries regarding purchase of the **ARTWORKS** to **LENDER**. **CITY** shall not be or act as sales agent for **LENDER** for any **ARTWORKS** sold during the **EXHIBITION**. Should **LENDER** sell the **ARTWORKS** during the term of this Agreement, **LENDER** shall provide **CITY** with written instructions for returning the **ARTWORKS** upon the closing of the **EXHIBITION**.

17. This Agreement does not create an employer-employee relationship between **LENDER** and **CITY**, or any other relationship whatsoever, except for the relationship based on the loan of the **ARTWORKS**. **LENDER** is an independent contractor, and in no event shall **LENDER** be or act as agent, partner, employee, tenant, licensee or joint venture or as any other representative whatsoever of **CITY**.

18. **CONFLICT OF INTEREST**.

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 the 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 or her parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his/her 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.

LENDER warrants and certifies as follows:

- (i) **LENDER** and its officers, employees and agents are neither officers nor employees of **CITY**.

LENDER acknowledges that **CITY's** reliance on the above warranties and certifications is reasonable.

19. **NON-DISCRIMINATION**. As a party to this Agreement, **LENDER** 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.

Agreed to be effective this the ___ of _____, 20__.

CITY OF SAN ANTONIO:

LENDER:

Debbie Racca-Sittre
Executive Director
Department of Arts & Culture

Name
Title

Approved as to Form:

City Attorney

Attachment A

DESCRIPTION OF ARTWORKS

Date: _____

Name: _____

Address: _____

City / State / Zip: _____

Phone: _____

Email: _____

D.B.A. Name (if applicable): _____

ARTWORKS on loan to the CITY OF SAN ANTONIO for temporary display at

_____ (“LOCATION”) located at _____

for the _____ (“EXHIBITION”) from _____ to

_____.

Credit Line: (examples: Courtesy of the artist. -or- Loan of artwork courtesy of *(lender's name)*).

LIST OF ARTWORKS

LOCATION:

ARTIST

TITLE/DATE:

MEDIUM:

DIMENSIONS:

VALUE

LOCATION:

ARTIST

TITLE/DATE:

MEDIUM:

DIMENSIONS:

VALUE

Attachment B

ART ACQUISITION/DONATION AGREEMENT

This Art Acquisition Agreement ("Agreement") is made this ____ day of _____, 20____, by and between NAME ("Artist"), and the City of San Antonio, Texas, a Texas Municipal Corporation, acting by and through its Department of Arts & Culture ("City").

WITNESSETH:

WHEREAS, Artist is the owner of artwork(s) ("Artwork") described in Exhibit I; and

WHEREAS, Artist desires to sell or donate the Artwork to City in accordance with the terms hereof; and

WHEREAS, City acknowledges that the sale of the Artwork will benefit City and desires to purchase the Artwork in accordance with the terms of this Agreement;

NOW, THEREFORE, in consideration of the foregoing, which is deemed a part of this Agreement, and in consideration of the mutual promises, covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties do agree as follows:

1. Closing. Artist agrees to transfer to the City all of their interest in the Artwork at a closing ("Closing") on a mutually agreed upon date subsequent to the date of this Agreement, but not later than _____. The transfer of the Artwork may require a bill of sale or other document of conveyance, should such be reasonably requested by City.

2. City agrees to pay Artist an amount not to exceed \$_____ as total compensation. OR City agrees that donated artwork is valued at \$_____.

3. No additional fees or expenses of Artist shall be charged by Artist nor be payable by City. Total payments to Artist cannot exceed that amount set forth in Section 2 above, without prior approval and agreement of all Parties, evidenced in writing by an amendment, which shall be subject to the approval of City Council, if required.

4. Condition of Artwork and Indemnity. City acknowledges and agrees that Artist is selling and City is purchasing the Artwork in new condition. Artist warrants that the Artwork is safely constructed and can be installed properly in accordance with all applicable laws, regulations, and City ordinances.

ARTIST 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, intellectual property infringement and property damage, made upon CITY directly or indirectly arising out of, resulting from or related to ARTIST'S activities under this

Agreement, including any acts or omissions of ARTIST, any agent, officer, director, representative, employee, consultant or subcontractor of ARTIST, 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 ARTIST 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 CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. ARTIST shall advise CITY in writing within 24 hours of any claim or demand against CITY or ARTIST known to ARTIST related to or arising out of ARTIST's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at ARTIST's cost. CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving ARTIST of any of its obligations under this Section 4.

5. Delivery and Possession. Artist shall deliver possession of the Artwork at Closing at which time title shall pass. At such time, the Artwork shall become part of the City of San Antonio Art Collection. Further, the Parties agree that delivery, placement, and installation of the Artwork shall be at the sole cost and expense of City.

6. Copyrights. City shall have ownership and possession of the Artwork upon final payment by City, including exclusive right to display the Artwork. Artist retains copyrights and intellectual property and/or patents related to the Artwork, including potentially those patents, related to materials used in the fabrication of the Artwork. However, any use of the Artwork by Artist or any third party must be approved, in advance, by City except that Artist is expressly allowed to use reproductions of the Artwork self-promotion, presentation and portfolio use. Artist grants City a license to make any and all reproductions or derivatives in whatever form of the Artwork for educational, public relations, arts promotional, or any other non-commercial purpose and such uses will not result in any additional payments to Artist.

7. Moral Rights. It is the understanding of the Parties that by executing the Artist's Waiver of Moral Rights which is attached and incorporated as Exhibit II, Artist has consented and agreed that upon passage of title in the Artwork to City upon Closing, any removal or relocation of the Artwork, if practical and economically feasible as determined by City, in its sole discretion, will occur in conformity with the City's Public Art Policy. City's decisions regarding removal or relocation of the Artwork are final and may occur at any time. City has the right to remove the Artwork at any time. City's removal of the Artwork may result in the Artwork's distortion, mutilation or modification. In addition, in the event that any element of the Artwork constitutes a public safety hazard, in City's sole discretion, City has the right to remove only the element posing the public safety hazard without prior written notice to Artist.

Additionally, City has the right to donate or sell the Artwork at any time. Before exercising this right, City shall give Artist 30 days from issuance of written notice to Artist to purchase the Artwork for the greater of the total price or market value, plus all costs associated with the removal of the Artwork from the site, clean-up of the site and delivery to Artist.

8. Mutual Representations. The Parties represent that they each have the full right, power, and authority to execute and deliver this Agreement and to consummate the transaction provided for without obtaining any further consents or approvals from, or the taking of any other actions with respect to third parties.

9. Artist's Representations. Artist covenants, represents and warrants to City that as of the date hereof and as of Closing:

(a) Artist owns good and indefeasible title to the Artwork and that there are no other sales contracts outstanding for acquisition, license or lease of the Artwork;

(b) there are no actions, suits, claims, assessments, or proceedings pending or, to the knowledge of Artist, threatened that could materially adversely affect the ownership, operation, or maintenance of the Artwork or Artist's ability to perform hereunder; and

(c) Artist has exclusive copyrights in the Artwork.

10. Prior to Closing, Artist shall provide Technical and Maintenance Instructions, which shall be attached and incorporated as Exhibit III.

11. Notices.

(a) Any notice required or permitted under this Agreement shall be given in writing and shall be effective for all purposes if hand delivered to the Party designated below or if sent by (a) certified or registered United States mail, postage prepaid; or (b) by expedited delivery service, either commercial or United States Postal Service, with proof of delivery; or (c) by telecopy (provided that such telecopy is confirmed by expedited delivery service or by mail in the manner previously described), addressed as follows:

If to the ARTIST:

NAME
Address
City

If to the City:

City of San Antonio
Department of Arts & Culture
Attn: Contract Manager
203 S. St. Mary's St. Ste. 120
San Antonio, Texas 78205

or to such other address and person as shall be designated from time to time by either Party in a written notice to the other in the manner provided for in this paragraph. The notice shall be deemed to have been given at the time of delivery if hand delivered, or in the case of registered or certified mail, three (3) business days after deposit in the United States mail, or if by expedited delivery, upon first attempted

delivery on a business day. A Party receiving notice that does not comply with the technical requirements for notice under this paragraph may elect to waive any deficiencies and treat the notice as having been properly given.

IN WITNESS WHEREOF, the Parties have executed this Agreement, in duplicate originals, as of the date first above written.

CITY OF SAN ANTONIO, TEXAS:
a Texas Municipal Corporation

Debbie Racca-Sittre
Executive Director,
Department of Arts & Culture

ARTIST:

Name

Approved as to Form:

City Attorney

Attachments: Exhibit I, Description of Artworks
Exhibit II, Waiver of Moral Rights
Exhibit III, Technical and Maintenance Instructions

Exhibit I

DESCRIPTION OF ARTWORKS

Date: _____

Name: _____

Address: _____

City / State / Zip: _____

Phone: _____

Email: _____

D.B.A. Name (if applicable): _____

ARTWORKS on loan to the **CITY OF SAN ANTONIO** for temporary display at

_____ (“**LOCATION**”) located at _____

for the _____ (“**EXHIBITION**”) from _____ to

_____.

Credit Line: (examples: Courtesy of the artist. -or- Loan of artwork courtesy of *(lender’s name)*).

LIST OF ARTWORKS

LOCATION:

ARTIST
TITLE/DATE:
MEDIUM:
DIMENSIONS:
VALUE

LOCATION:

ARTIST
TITLE/DATE:
MEDIUM:
DIMENSIONS:
VALUE

Exhibit II
Waiver of Moral Rights

WHEREAS, Artist created Artwork and sold Artwork to the City of San Antonio; and

WHEREAS, the Artwork is intended to be located on City property in City facilities in San Antonio, Texas **NOW THEREFORE:**

Artist consents and agrees to the placement of the Artwork on City property in City facilities. Artist acknowledges that the incorporation and installation of the Artwork at City facilities 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 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 City facilities 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."

Executed to be effective this the ____ day of _____, 20__.

ARTIST

Name

Exhibit III
Technical and Maintenance Instructions

LB
03/04/21
Item No. 17

EXHIBIT III

STATE OF TEXAS	§	PUBLIC ART
COUNTY OF BEXAR	§	DESIGN, FABRICATION,
CITY OF SAN ANTONIO	§	& INSTALLATION AGREEMENT

This Agreement ("Agreement") is made and entered into in San Antonio, Bexar County, Texas, between the City of San Antonio, a Municipal Corporation in the State of Texas ("CITY"), by and through the Executive Director of the Department of Arts & Culture, and _____ ("CONTRACTOR"), said Agreement being executed by the CITY pursuant to Ordinance No. _____ passed by City Council on _____ and by the CONTRACTOR, for the design, fabrication and installation services for CITY's _____.

WHEREAS, CITY issues an annual Call for Public Art Qualifications to create and pre-qualify an Artist Pool from which CONTRACTOR was chosen to complete public art improvements related to eligible capital improvement projects in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and

WHEREAS, CONTRACTOR has/will complete a design for the ARTWORK that shall be approved by the San Antonio Arts Commission and upon approval proceed to fabrication and installation of the ARTWORK; and

WHEREAS, CITY finds that it is in the best interest of CITY, its citizens and visitors to enhance and enliven CITY's public spaces through the design, fabrication and installation of this ARTWORK on the terms and conditions in this Agreement;

NOW THEREFORE, in consideration of the mutual benefits, covenants and obligations herein, and for other good, fair and valuable considerations, the Parties agree as follows:

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ATTACHMENTS: Exhibit A-1 SCHEDULE OF PERFORMANCE
 Exhibit B-1 PAYMENT SCHEDULE
 Exhibit C-1 CONTRACTOR'S WAIVER OF MORAL RIGHTS

SECTION 1. DEFINITIONS

The following terms in this Agreement shall have the meanings set out below:

1.0. "Acceptance Notice" means notice by CITY to CONTRACTOR that the completed ARTWORK is installed at the Site and meets the requirements of this Agreement.

1.1. "ARTWORK" means the design and art fabricated and installed consistent with CONTRACTOR'S final proposal to be submitted for review and approval of CITY.

1.2. "CONTRACTOR" is _____.

1.3. "CITY" means the City of San Antonio, Texas, a home-rule, Texas Municipal Corporation located in Bexar County, Texas. CITY shall also designate one or more authorized representatives who shall have the authority to represent and act for CITY. If no representative is specified, CITY's Manager or her authorized representative shall be deemed authorized to act.

1.4. "PASA" means Public Art San Antonio, which is in the CITY's Department of Arts & Culture and is responsible for public art.

1.5. "Compensation Schedule" means the values allocated to services associated with the public art design, fabrication and installation services, prepared in such form, and supported by such data as required by CITY.

1.6. "Completion Notice" means notice by CONTRACTOR to CITY that ARTWORK has been installed at the Site.

1.7. "Construction Documents/Plans" mean the drawings, specifications, and addenda for the ARTWORK, which were developed by CONTRACTOR and approved by CITY.

1.8. "Defects Notice" means notice by CITY to CONTRACTOR that the ARTWORK does not meet the requirements of this Agreement.

1.9. "Design Consultant" means the individual or firm engaged by CITY to design a facility or project.

1.10. "Director" means the Director of the Department of Arts & Culture.

1.11. "Notice to Commence" means notice by CITY to CONTRACTOR to begin fabrication of the ARTWORK.

1.12. "Off-Site Element" means an element of the ARTWORK fabricated away from the Site for later installation as a component of the ARTWORK.

1.13. "Off-Site Defects Notice" means notice by CITY to CONTRACTOR that defects or deficiencies of an Off-Site element do not meet CITY's requirements for formal approval.

1.14. "Project" means the capital improvement/public art development undertaking of CITY for which CONTRACTOR's services, as stated in the Scope of Services, are to be provided pursuant to this Agreement.

1.15. "Proposal" means CONTRACTOR's Proposal to provide public art design services for this Project.

1.16. "Schedule of Performance" means the schedule for the design, fabrication and installation of the ARTWORK set out in **EXHIBIT A-1**, attached to and incorporated in this Agreement.

1.17. "Site" means the physical place located at _____ where the ARTWORK will be installed.

1.18. "Subcontractor" means a person or entity hired by CONTRACTOR to complete work arising from this Agreement.

1.19. "Transport Notice To Proceed" means a notice issued by CITY to CONTRACTOR approving the transportation of an Off-Site element of the ARTWORK to the Site.

SECTION 2. CONTRACTOR'S GENERAL RESPONSIBILITIES

2.0. The ARTWORK is to be an artistic product representing the creative talents of CONTRACTOR and satisfies the specifications to be set forth in the Final Proposal and the Construction Documents for the ARTWORK. CONTRACTOR shall fabricate the ARTWORK consistent with the Final Proposal and the Construction Documents, which were approved by CITY and include without limitation, supervising all aspects of the fabrication. CONTRACTOR shall be responsible for the transportation, delivery and installation of the ARTWORK to the Site consistent with the Final Proposal for the ARTWORK.

2.0.1. Design Within Budget Constraints. CONTRACTOR is responsible for developing the Artwork Design so the ARTWORK can be constructed without exceeding the budget for the ARTWORK. CONTRACTOR shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in ARTWORK.

2.0.2. CONTRACTOR warrants that the ARTWORK, including the Artwork Design, is unique. CONTRACTOR warrants that he/she will not replicate/duplicate the same ARTWORK or Artwork Design without the express written consent of CITY. This Clause shall survive termination of this Agreement.

2.0.3. CONTRACTOR is responsible for submitting the Final Proposal to CITY for approval at CITY's sole discretion. In the event of conflict between the Final Proposal and this Agreement as to any element of the Project unrelated to the size, scope and/or aesthetic of the ARTWORK itself, this Agreement will control.

2.0.4. CONTRACTOR's opinions of probable project cost or construction cost are to be made on the basis of CONTRACTOR's experience and qualifications representing CONTRACTOR's best judgment as a design, fabrication and installation professional familiar with the construction industry.

2.1. DEVIATIONS FROM PROPOSAL. It is understood that changes from the Final Proposal may become desirable as the ARTWORK is fabricated.

2.1.1. Certain specifications regarding the ARTWORK, including, but not limited to, the size, color and/or type or grade of material of some of the elements of the ARTWORK may not be identified in either the Final Proposal or the Construction Documents. To the extent that any ARTWORK specification remains unidentified, CONTRACTOR shall seek CITY's prior written approval of these specifications before commencing fabrication of the ARTWORK.

2.1.2. The Parties also recognize that shifts in scale from preliminary drawings and maquette to a full-scale work may require artistic adjustments. CONTRACTOR reserves the right to make minor adjustments to the ARTWORK as CONTRACTOR deems aesthetically necessary. However, in no event may a change in design increase the ARTWORK budget or require a modification of the Construction Documents without CITY's prior written approval.

2.1.3. MATERIAL DEVIATIONS. Any material deviation from the Final Proposal or the Construction Documents in the scope, design, color, size, material, utility requirements, support requirements, texture and/or location of the ARTWORK must be approved in writing and in advance by CITY before CONTRACTOR proceeds with completion of the ARTWORK. Additionally, material deviation shall also include any change from the Final Proposal or the Construction Documents, which affects the fabrication, schedule of delivery or installation of the ARTWORK, preparation of the Site and/or maintenance of the ARTWORK.

2.2. ADDITIONAL SERVICE AUTHORIZATION. No services for which CONTRACTOR seeks additional compensation will be provided nor charged without CITY's prior written authorization.

2.3. PERSONNEL. CONTRACTOR is responsible for providing, at CONTRACTOR's expense, all personnel required by CONTRACTOR to fulfill the responsibilities and obligations in this Agreement. All persons retained by CONTRACTOR shall possess the requisite licenses and permits.

2.4. REPRESENTATIVES. Before starting installation, CONTRACTOR shall designate in writing an authorized representative who shall have the authority to represent

CONTRACTOR is responsible for and shall collect and monitor certified payrolls and perform Site visits to ensure the prevailing wage is paid to all workmen.

2.11.2. CITY may audit certified payroll records as needed. Upon audit of the records and certified payrolls, should there be any violations CONTRACTOR or CONTRACTOR's subcontractor shall forfeit as a penalty to CITY \$60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the stipulated rates for any work done under said contract, by the contractor or any subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code does not relieve CONTRACTOR from its obligation under any federal or state law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed.

2.12. INTERNET-BASED PROJECT MANAGEMENT SYSTEMS. At its option, CITY may administer its design and construction management through an Internet-based management system. In such cases, CONTRACTOR shall communicate through this media and perform all ARTWORK related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, or payment requests and processing, Amendments, Change Orders and other administrative activities. When such systems are employed, the CITY shall administer the software, shall provide training to CONTRACTOR and CONTRACTOR's personnel, and shall make the software accessible via the Internet to CONTRACTOR and CONTRACTOR's personnel.

2.13. Tax Identification Number. No later than the date of CONTRACTOR's execution of this Agreement, CONTRACTOR shall provide City with CONTRACTOR's Tax Identification Number and any proof of CONTRACTOR's Tax Identification Number as requested by CITY. CONTRACTOR shall notify CITY of any change in CONTRACTOR's Tax Identification Number.

SECTION 3. CITY'S RESPONSIBILITIES.

3.0. SITE Information. CITY shall be responsible for providing CONTRACTOR, at no cost to CONTRACTOR, copies of existing designs, drawings, reports, and other existing relevant Site data, if any are required by CONTRACTOR.

3.1. CITY is under no obligation to supervise CONTRACTOR's performance of services under this Agreement but may help facilitate meetings with the community.

SECTION 4. DESIGN DEVELOPMENT OF THE ARTWORK

4.0. CONTRACTOR shall perform the following design services to the satisfaction of CITY and within the deadlines set forth in **Exhibit A-1 Schedule of Performance**.

4.1. Research. CONTRACTOR shall meet with CITY staff in order to understand the uses of the Project and facilities surrounding the Project for the purposes of defining goals for the ARTWORK appropriate to the general social and immediate physical

environment of the ARTWORK. CONTRACTOR shall also attend at least three individual meetings with local experts or other interested parties as designated by CITY. The times and dates of these meetings shall be subject to the mutual agreement of the Parties. Any required travel incurred by CONTRACTOR above and beyond what is provided for by this Agreement shall be requested in writing, will need to be approved by both Parties and may be subject to a separate agreement.

4.2. Concept and Schematic Designs.

4.2.1. CONTRACTOR shall prepare one or more concept designs showing CONTRACTOR's idea(s) for the ARTWORK ("Concept Design"). The Concept Design will include the general intent, the proposed form and indication of location, scale and proposed materials of the ARTWORK.

4.2.2. Following CITY's approval of the Concept Design, CONTRACTOR shall prepare one or more designs showing CONTRACTOR's schematic design for the ARTWORK ("Schematic Design"). The Schematic Design will include form, scale, and proposed materials (samples to be provided where appropriate) as well as information on structural considerations, surface integrity, permanence and protection against theft and vandalism.

4.2.3. CONTRACTOR shall investigate and prepare preliminary cost estimates for the fabrication and installation of the ARTWORK proposed in the Schematic Design. The estimates shall indicate the feasibility of producing the proposed ARTWORK within CITY's budget ("Preliminary Cost Estimate").

4.2.4. The Schematic Design shall include an outline of the proposed installation method, and a schedule for the ARTWORK fabrication and installation (collectively, the "Proposed Installation Method").

4.3. Artwork Design Development Proposal. Upon receipt of CITY's Notice to Proceed, CONTRACTOR shall develop a final proposal for the ARTWORK ("Artwork Design Development Proposal") showing the details of the ARTWORK. The Artwork Design Development Proposal will include indication of form, scale, and proposed materials (samples to be provided when appropriate). The Artwork Design Development Proposal shall also include information on structural considerations, surface integrity, permanence, and protection against theft and vandalism (collectively, the "Artwork Design Specifications").

4.3.1. CONTRACTOR shall develop a detailed budget estimate ("Artwork Budget Estimate") covering all estimated costs to fabricate and install the ARTWORK, including, but not limited to: itemized cost estimates for materials including applicable sales tax; Off-Site fabrication costs; itemized General Contractor and sub-contractor costs; permits or other fees; insurance; transportation of the ARTWORK to Site; and itemized installation costs.

4.3.2. The Artwork Design Development Proposal shall include a detailed written description of the fabrication and installation method ("Installation Specifications"), detailed fabrication and installation schedule ("Installation

Schedule”) and the description of any operational, maintenance and conservation requirements for the ARTWORK (“Maintenance Specifications”).

4.4. Artwork Design Development Proposal Review.

4.4.1. CONTRACTOR shall provide presentation quality visual material of the Artwork Design Development Proposal in conjunction with the review by CITY staff, the Reviewing Body, and for release to the press. CITY shall dictate the specific types of presentation materials to be used.

4.4.2. The Artwork Design Development Proposal shall be submitted to CITY for review and submittal to the Reviewing Body. CITY may require CONTRACTOR to make modifications to the Artwork Design Development Proposal prior to submission.

4.4.3. CONTRACTOR, at CITY's option, shall be available to present the Artwork Design Development Proposal, in the form approved by CITY, at one or more meetings of the Reviewing Body.

4.4.4. The Reviewing Body may recommend approval, approval with minor changes or disapproval. If the Reviewing Body recommends disapproval or approval with minor changes, CONTRACTOR, upon written notification by CITY, shall respond to the recommended changes in writing and submit a revised Artwork Design Development Proposal to CITY for review. The Reviewing Body may assess the Artwork Design Development Proposal as revised and make additional recommendations.

4.4.5. Should the final design proposal be disapproved and the CONTRACTOR has performed the services set out in Agreement to the satisfaction of the CITY, CONTRACTOR may be compensated to submit a modified design proposal as specified by the PASA Capital Programs Manager

4.5. Construction Documents. CONTRACTOR, at CITY's option, is responsible for the preparation of any drawings depicting both the fabrication and installation of the Artwork as proposed by the Artwork Design Development Proposal (“Construction Documents”) and for obtaining any and all information necessary to prepare the Construction Documents, including without limitation, any field measurements of the proposed Site.

4.5.1. Construction Documents must conform to all applicable federal, state and local laws and regulations. If applicable or upon request by CITY, any and all drawings must be certified by a qualified engineer or architect, licensed by the State of Texas; and

4.5.2. When seeking approval of the Construction Documents, CONTRACTOR shall submit the following to CITY unless notified otherwise by CITY:

- A. plans on reproducible sheets measuring 24 inches by 36 inches, and provided in digital PC-compatible format;
- B. all engineering calculations associated with the submitted Construction Documents; and
- C. specifications for ARTWORK including a final budget estimate listing the quantities and unit prices for fabrication and installation of Artwork.

4.5.3. The Construction Documents for the ARTWORK are subject to approval by CITY who will notify CONTRACTOR in writing once the Construction Documents are approved. CITY's approval of the Plans shall not release CONTRACTOR of the responsibility for correcting mistakes, errors or omissions, proximately caused by CONTRACTOR which may be the result of circumstances unforeseen when the Plans were developed or approved.

4.6. Notice of Acceptance. If all approvals are secured, the CITY will issue a written Notice of Acceptance of the Artwork Design Development Proposal to CONTRACTOR. CITY's acceptance does not obligate the CITY to commission fabrication and/or install the ARTWORK.

SECTION 5. FABRICATION AND INSTALLATION OF THE ARTWORK

5.0. INSPECTION NOTICE. CITY and CONTRACTOR agree that various elements of the ARTWORK may be fabricated at locations away from the Site (collectively, "Off-Site Elements"). The Off--Site Elements, include, but are not limited to, the elements described in the ARTWORK Design Development Proposal and Construction Documents. CONTRACTOR shall notify CITY in writing when each element of the ARTWORK is ready for inspection, prior to transporting the Off-Site Elements to the SITE ("Inspection Notice"). CITY has the right to inspect each of the Off-Site Elements and all other aspects of the construction of ARTWORK.

5.1. NOTICE TO COMMENCE WORK. Within 15 business days of CITY's receipt of the Inspection Notice for each of the Off-Site Elements, CITY will inform CONTRACTOR in writing that either: (1) the OFF-SITE Elements have been completed in accordance with this Agreement and are formally approved in writing for transport to the Site ("Transport Notice To Proceed"); or (2) there are identified defects or deficiencies in the Off-Site Elements which prevent formal approval ("Off-Site Defects Notice"). In the event that an Off-Site Element is fabricated outside San Antonio, CITY may, at its sole discretion, delay inspection until the Off-Site Element is delivered to the SITE. If CITY fails to issue the Transport Notice to Proceed or the Off-Site Defects Notice within the 15 business days inspection period, the Transport Notice To Proceed will be deemed issued at the end of 15 business days. In the event that CITY issues an Off-Site Defects Notice, CONTRACTOR will promptly remedy any defects to the reasonable satisfaction of CITY.

5.2. DELIVERY. Upon issuance of the Transport Notice To Proceed, CONTRACTOR shall deliver the Off-Site Elements to the Site. CONTRACTOR shall coordinate with CITY regarding the time, place and manner of the ARTWORK delivery

and installation. CITY shall have the right to inspect the Off-Site Elements at the time each arrives at the SITE to determine if there is any damaged from transit or any deviations from the Off-Site Element previously approved by CITY or from the terms of this Agreement. CONTRACTOR shall promptly remedy any deviation, defect or damage to the Off-SITE Elements to the reasonable satisfaction of the CITY.

5.3. PLANS. CONTRACTOR shall cause all labor and material incorporated in the ARTWORK to be furnished in accordance with the requirements and specifications approved by CITY (collectively, the "Plans"). The Plans, once approved by CITY, are final and, except as expressly provided in this Subsection, no revisions shall be permitted except with CITY's prior written approval.

5.3.1. CITY's approval of the Plans shall not release CONTRACTOR of the responsibility for the correction of CONTRACTOR's mistakes, errors or omissions in the Plans, including any mistakes, errors or omissions resulting from unforeseen circumstances. If public safety issues arise that, require any change to the Plans as determined at CITY's sole discretion, CITY can require CONTRACTOR to address the public safety issues. CONTRACTOR shall then propose modifications to CITY for review and approval provided such modifications do not increase the Total Price.

5.3.2. All completed drawings submitted by CONTRACTOR for final approval or issuance of a permit that require the seal and certification of a licensed engineer or architect shall bear the seal with signature and date of a Texas registered architect/engineer licensed to practice in Texas.

5.4. WORK AT THE SITE

5.4.1. INSTALLATION. CONTRACTOR shall be responsible for installation of ARTWORK at the Site, including without limitation, supervising the work of any subcontractors and coordinating the inspection of the installation of ARTWORK with CITY. The ARTWORK will not be formally accepted until CITY issues the ACCEPTANCE NOTICE approving the ARTWORK installation at the Site.

5.4.2. CITY'S ACCESS TO SITE. CITY's staff and designated representatives shall have free access to the ARTWORK for inspection purposes at all times during the progress of work on the ARTWORK at the Site. If CITY determines that all or any portion of the work done on the ARTWORK is not in compliance with the Plans, CITY shall notify CONTRACTOR of the same and CONTRACTOR shall promptly cure such defect to the reasonable satisfaction of CITY.

5.4.3. Whenever the CONTRACTOR or CONTRACTOR's authorized representative are not present on the Site and it becomes necessary to give direction for safety reasons, the Director or her designee shall have the right to give orders, which shall be obeyed by CONTRACTOR's subcontractor and/or employees. At CONTRACTOR's request, any order given by the Director or her designee will be confirmed in writing.

5.5. COMPLETION OF SERVICES.

5.5.1. COMPLETION NOTICE. CONTRACTOR shall notify CITY when the ARTWORK is fully installed at the SITE ("Completion Notice"). Within 30 days of CITY's receipt of the Completion Notice, CITY shall notify CONTRACTOR in writing that the ARTWORK as completed and installed meets the Agreement's requirements ("Acceptance Notice") or if the ARTWORK does not meet this Agreement's requirements, CITY shall notify CONTRACTOR in writing ("Defects Notice").

5.5.2. REMEDY OF DEFECTS. CONTRACTOR shall promptly remedy at CONTRACTOR's own cost any defects noted in CITY's Defects Notice to CITY's reasonable satisfaction.

5.5.3. MAINTENANCE INSTRUCTIONS. As a condition of CITY's acceptance of the ARTWORK, CONTRACTOR shall supply CITY with written maintenance instructions for the ARTWORK. These instructions shall include information in sufficient detail regarding the proper care, repair and maintenance of the ARTWORK.

5.5.4. FINAL DOCUMENTATION. As a condition of CITY's acceptance of the ARTWORK, CONTRACTOR shall supply CITY with at least three publication quality images of the installed ARTWORK in digital formats and other information on the ARTWORK requested by CITY for its registration files. Use of these images will be in accordance with Section 13.2 of this Agreement.

5.5.5. CONTRACTOR shall be available at such time or times as may be agreed upon between CITY and CONTRACTOR to attend an inauguration or presentation ceremonies relating to the transfer of the ARTWORK to CITY.

5.6. DEATH OR INCAPACITY OF CONTRACTOR. In the event of CONTRACTOR's physical incapacity or death prior to the completion of the ARTWORK, all payments made up to the point of incapacity or death will be retained by CONTRACTOR and all work performed to date of incapacity or death will be compensated. Upon payment, the incomplete ARTWORK and any materials paid for by CITY will become CITY property. However, if the ARTWORK is substantially designed and/or completed and it is feasible for the ARTWORK to be fully completed without undue delay while remaining faithful to the CONTRACTOR's design, integrity and reputation, CITY may elect to proceed, under this Agreement, with completion and/or installation by CONTRACTOR's REPRESENTATIVE. All remaining work to be completed in accordance with this Agreement will be delegated to: [NAME, ADDRESS, PHONE NUMBER] ("REPRESENTATIVE").

SECTION 6. SCHEDULE.

6.0. This Agreement commences upon execution by all the Parties on _____, 20__ and shall terminate upon completion of all services required by this Agreement unless either Party terminated this Agreement earlier in accordance with the terms of this Agreement.

6.1. CONTRACTOR is to complete the services required of CONTRACTOR in accordance with the schedule set out in the attached **EXHIBIT A-1**, entitled "Schedule of Performance".

6.1.1. Prior to commencement of the work, the Parties shall mutually agree to an inspection schedule, which may be adjusted from time to time by mutual written agreement.

6.1.2. When work is not in progress and/or suspended, arrangements acceptable to CITY shall be made for any required emergency work.

6.2. TIME. All limitations of time set forth in this Agreement are material and time is of the essence in the performance of CONTRACTOR's services under this Agreement.

6.3. FORCE MAJEURE. CITY or CONTRACTOR 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, CONTRACTOR must provide written notice to CITY of the occurrence of the Force Majeure event within 10 days following the date that CONTRACTOR becomes aware of the event and the fact that it will delay CONTRACTOR's performance under this Agreement. CITY will not unreasonably withhold consent.

SECTION 7. CONTRACTOR'S COMPENSATION.

7.0. COMPENSATION. CONTRACTOR's total compensation for full and timely completion of the services required by this Agreement is \$ _____ (the "TOTAL PRICE"). Such payment shall be full and complete compensation for work performed and services rendered by or on behalf of CONTRACTOR, including, but not limited to, professional services and expenses, for all supervision, labor, supplies, materials, equipment or use thereof and for all other necessary incidentals. CITY is not obligated to compensate CONTRACTOR unless and until CITY accepts the ARTWORK.

7.0.1. Payment Schedule. CITY shall make interim payments to CONTRACTOR in the amounts and at the milestones as identified in the Payment Schedule, attached and incorporated as **Exhibit B-1**, as compensation to assist CONTRACTOR with financing the fabrication, delivery and installation of the ARTWORK. The form of the invoice shall be subject to the reasonable approval of CITY. Within 30 days of CITY's receipt of CONTRACTOR's invoice indicating the appropriate milestone has been reached, CITY will pay CONTRACTOR amount allocated in the Payment Schedule.

7.0.2. Parties agree that the Payment Schedule may be modified only upon prior written authorization of CITY and CONTRACTOR. CITY's PASA Capital Programs Manager may approve changes, which are not considered material by CITY.

7.1. COST OVERRUN. In the event CONTRACTOR incurs costs over the TOTAL PRICE, CONTRACTOR shall pay such excess at CONTRACTOR's sole cost. CITY is not responsible for any part of such excess.

7.1.1. In the event that work for which CITY has been invoiced does not meet the specifications required by this Agreement, CITY in its sole discretion shall have the right to withhold such payment until such deficiency is corrected. In such event, CITY shall provide detailed written notice to CONTRACTOR within 10 days of receipt of such invoice, specifying the failure of performance for which CITY intends to withhold payment. CONTRACTOR shall work to cure such failure in order to meet the Agreement standards to the reasonable satisfaction of CITY.

7.2. NO WAIVER OF RIGHTS. No payment to CONTRACTOR for any work performed or services rendered shall constitute a waiver or release by CITY of any claims, rights or remedies CITY may have against CONTRACTOR under this Agreement or by law, nor shall such payment constitute a waiver by the CITY of any failure or fault of CONTRACTOR to perform satisfactorily under this Agreement. CONTRACTOR expressly acknowledges that approval of work to permit an interim payment is solely to permit CONTRACTOR to receive an interim payment. Unless and until the CITY issues an Acceptance Notice for the ARTWORK, no interim approval shall constitute acceptance or approval of the ARTWORK by CITY nor is it a waiver of CITY's right to require that the ARTWORK conform strictly to the approved Construction Documents/Plans.

7.3. If CITY approves a modification of the Final Proposal or Plans resulting in cost savings such as but not limited to, the deletion of an element, substitution of lesser quality materials with no offsetting upgrade of other materials, or reduction in the size/scale, the cost savings from the modification will not be paid to CONTRACTOR.

7.4. If the Parties mutually agree in writing to a modification of the ARTWORK resulting in an increased cost to CONTRACTOR, including but not limited to the addition of an element, the substitution of more expensive materials, or the increase in size/scale, the resulting cost increases shall be paid to CONTRACTOR.

7.5. If work for which CITY has received a request for payment does not meet specifications required by this Agreement, CITY in its sole discretion shall have the right to withhold such payment until the deficiency is corrected. In such event, CITY shall provide detailed written notice to CONTRACTOR within 10 days of receipt of such request for payment, specifying the failure of performance for which CITY intends to withhold payment. CONTRACTOR shall cure such failure to the reasonable satisfaction of CITY.

SECTION 8. CONTRACTOR'S WARRANTIES.

8.0. CONTRACTOR warrants that the services required by this Agreement will be performed with the same degree of professional skill and care that are typically exercised by similar professionals performing similar services. CONTRACTOR's installation and fabrication services shall comply with the Construction Documents/Plans for the ARTWORK approved by CITY. Further CONTRACTOR represents and warrants the following.

8.0.1. CONTRACTOR has not previously sold, assigned, licensed, granted, encumbered, or utilized the ARTWORK, the ARTWORK'S design or any element thereof, in any manner, which may affect or impair the rights granted pursuant to this Agreement.

8.0.2. All work created or performed by CONTRACTOR under this Agreement, whether created by CONTRACTOR alone or in collaboration, is wholly original and will not infringe upon or violate the rights of any third party.

8.0.3. CONTRACTOR has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.

8.0.4. The ARTWORK is a unique edition resulting from the artistic efforts of CONTRACTOR. CONTRACTOR acknowledges that CITY desires that the ARTWORK be unique, and CONTRACTOR agrees not to duplicate the ARTWORK without CITY's written consent.

8.0.5. All services shall be performed in accordance with City's Standard Specifications if applicable, which are on file with the CITY's Public Works Department. To the extent that CITY's Standard Specifications conflict with the provisions set forth in this Agreement, this Agreement shall control.

8.0.6. ARTWORK will be delivered free and clear of any liens.

8.1. DEFECTS IN MATERIAL WORKMANSHIP AND INHERENT VICE. CONTRACTOR warrants that the ARTWORK will be free of defects in workmanship, including Inherent Vice, and that CONTRACTOR will, at CONTRACTOR's own expense, remedy any defects due to faulty workmanship, or Inherent Vice, which appear within a minimum period of two years from the date the ARTWORK is formally accepted. The term "Inherent Vice" means any quality within the material or materials incorporated into the ARTWORK that alone or in combination result in the unreasonable deterioration of the ARTWORK.

8.1.1. If the ARTWORK deteriorates due to Inherent Vice within one year from the date the ARTWORK is formally accepted, CONTRACTOR will repair or replace the ARTWORK without charge for CONTRACTOR's services in supervising the work of others or for repairing the work that they originally performed on the ARTWORK and CONTRACTOR will pay for the cost of labor rendered by persons other than CONTRACTOR, materials and supplies.

8.1.2. CONTRACTOR further warrants that the ARTWORK shall not constitute any threat to the safety of persons or property when used in the manner for which it is designed. CONTRACTOR agrees to cooperate with CITY in making or permitting adjustments to the ARTWORK if needed to eliminate hazards, which become apparent after the ARTWORK is formally accepted by CITY.

8.2 MATERIALS WARRANTY. CONTRACTOR warrants materials and equipment furnished and installed under the Agreement shall be new and of good quality, unless otherwise required or permitted by the CONTRACTOR, the ARTWORK shall be free from defects not inherent in the quality required or permitted and the ARTWORK shall conform to the requirements of the CONTRACTOR. Work not conforming to this warranty and these requirements, including substitutions not properly approved and authorized by CONTRACTOR and CITY, may be considered defective. CONTRACTOR's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the CONTRACTOR, improper or insufficient maintenance, improper operation, normal wear and tear and normal usage, and additional damage or defects caused by CITY's failure to promptly notify Contractor. If required by CITY, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

All warranties shall be at minimum for two years and shall be in form and content otherwise reasonably satisfactory to CITY. CONTRACTOR shall provide CITY with all manufacturers' warranties. CITY and CONTRACTOR acknowledge the Project may involve construction work on more than one (1) ARTWORK. While the overall Project shall have a single date for Substantial Completion of the ARTWORK and Final Completion of the ARTWORK, each ARTWORK, section of infrastructure or approved phase of each section of infrastructure may have its own separate and independent date of Substantial Completion or Final Completion.

Warranties shall become effective on the date of Substantial Completion of the entire ARTWORK, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the Parties, except for ARTWORK to be completed or corrected after the date of Substantial Completion and prior to final. Warranties for ARTWORK to be completed or corrected after the date of Substantial Completion and prior to Final Completion shall become effective on the later of the date the ARTWORK is completed or corrected and accepted by CITY and CONTRACTOR or the date of Final Completion of the ARTWORK.

8.3. These representations and warranties survive the Agreement's termination.

SECTION 9. MAINTENANCE.

9.0. CITY shall have the right to determine, after consultation with CONTRACTOR or with a professional conservator, when and if repairs and restorations to the ARTWORK will be made. It is the policy of CITY to consult with CONTRACTOR regarding repairs and restoration, which are undertaken during CONTRACTOR's lifetime.

9.1. All repairs and restorations, whether performed by CONTRACTOR, CITY, or third parties, shall be made in accordance with professionally recognized principles of conservation of ARTWORK and in accordance with the maintenance instructions provided to CITY by CONTRACTOR pursuant to Section 5.5.3.

SECTION 10. CONTRACTOR IS INDEPENDENT CONTRACTOR.

10.0. CONTRACTOR is an independent contractor and not an officer, agent, servant or employee of CITY and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between CITY and CONTRACTOR. CONTRACTOR has no authority to bind CITY. CONTRACTOR shall have exclusive control of and exclusive right to control the details of the work performed under this Agreement and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants.

10.1. CITY shall not be liable for any third party claims, which may be asserted in connection with the performance of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give any third party any legal or equitable right, remedy or claim under or in respect of this Agreement or any authority to enforce this Agreement.

SECTION 11. INDEMNIFICATION.

11.0. CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the 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, property damage and intellectual property right infringement, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, contractor or subcontractor of CONTRACTOR, 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 CONTRACTOR 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. In addition, CONTRACTOR agrees to INDEMNIFY, DEFEND, AND HOLD CITY HARMLESS from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.

11.1. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR

related to or arising out of CONTRACTOR'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

11.2 Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. CONTRACTOR 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 CONTRACTOR fails to retain counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONTRACTOR 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.

11.3 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, 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 herein 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 CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

SECTION 12. INSURANCE.

A) Prior to the commencement of any work under this Agreement, CONTRACTOR shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Department of Arts and Culture, which shall be clearly labeled "Department of Arts & Culture" 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. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Department of Arts and Culture. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof 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.

C) A contractor's financial integrity is of interest to the City; therefore, subject to CONTRACTOR's right to maintain reasonable deductibles in such amounts as are approved by the City, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at CONTRACTOR'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:

INSURANCE TYPE	LIMITS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
5. 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.
6. Professional Liability	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service. Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.

D) CONTRACTOR agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of CONTRACTOR herein, and provide a certificate of insurance and endorsement that names the CONTRACTOR and CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of CONTRACTOR. CONTRACTOR shall provide CITY with said certificate and endorsement prior to the commencement of any work by the 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.

E) 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 required

endorsements. CONTRACTOR shall be required to comply with any such requests and shall submit requested documents to CITY at the address provided below within 10 days. CONTRACTOR shall pay any costs incurred resulting from provision of said documents.

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

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

- 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;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where CITY is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of CITY.
- Provide advance written notice directly to CITY of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, CONTRACTOR shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONTRACTOR'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.

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

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

J) It is agreed that CONTRACTOR'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.

K) 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..

L) CONTRACTOR and any Subcontractors are responsible for all damage to their own equipment and/or property.

SECTION 13. COPYRIGHTS.

13.0. CITY shall have ownership and possession of the Artwork Design upon acceptance of the final Artwork Design Proposal, approval of the Construction Documents and final payment by CITY. Upon completion of fabrication and installation of the ARTWORK and full payment for the ARTWORK, CITY shall have ownership and possession of the ARTWORK including exclusive right to display the ARTWORK, subject to this Agreement. CITY may make any and all reproductions or derivatives in whatever form of the ARTWORK or Artwork Design for educational, public relations, arts promotional, commercial or any other purpose and such uses will not result in any additional payments to CONTRACTOR.

13.1. CONTRACTOR retains copyrights and intellectual property and/or patents related to the ARTWORK and the Artwork Design including potentially those patents, related to materials used in the fabrication or installation of the ARTWORK. However, any use of the Artwork Design by CONTRACTOR or any third party must be approved, in advance, by CITY except that CONTRACTOR is expressly allowed to use reproductions of the Artwork Design and documentation of ARTWORK for self-promotion, presentation and portfolio use.

13.2 If CITY obtains a commercial benefit from the ARTWORK, or Artwork Design, by sale of reproductions or images of same, or by licensing same, revenues received by CITY from such commercial ventures shall be directed to long-term maintenance of the ARTWORK.

13.3. CITY has the exclusive right to display the ARTWORK and Artwork Design, including drawings, models, or any reproduction of the ARTWORK and to loan the ARTWORK, in whole or in part, including to other persons or institutions with authority to display it publicly. CITY acknowledges CONTRACTOR's co-right to display images of the ARTWORK and to display the Artwork Design or images or reproductions of the Artwork Design, and to display or exhibit such images and/or reproductions, including the Artwork Design itself, so long as such display or exhibition is consistent with attribution to CITY.

13.4. CONTRACTOR expressly consents to both the installation and removal from the Project of the ARTWORK and expressly waives his/her Moral Rights, as defined in the Visual Rights Act 17 U.S.C. § 106(A), to the ARTWORK, as more fully set forth in **Exhibit C-1**. Further, CONTRACTOR understands that the incorporation and installation of the ARTWORK into a CITY facility may subject the ARTWORK to destruction, distortion, mutilation, or other modification if and when removed. It is agreed that if the ARTWORK, or any portion thereof is removed causing destruction, distortion, mutilation

or modification in any significant way, the ARTWORK may no longer be referred to as “an Artwork by the Artist”.

13.5. The clauses in Section 13 shall survive termination of this Agreement.

SECTION 14. REPUTATION AND CREDIT.

14.0. Unless CONTRACTOR requests to the contrary in writing, all references to the ARTWORK and all reproductions of the ARTWORK will credit the ARTWORK to CONTRACTOR.

14.1. CITY may fabricate and install an identification plaque for the completed ARTWORK, which will include the following information: CONTRACTOR's name, year in which ARTWORK is completed, ARTWORK title, funding agency and commissioning agency.

14.2. CONTRACTOR agrees that all formal references to the ARTWORK made or authorized to be made by CONTRACTOR shall include the following credit: “Collection of the City of San Antonio, Commissioned through Public Art San Antonio,” or other language agreed to by the Parties.

14.3. CONTRACTOR and CONTRACTOR's contractors and subcontracts shall coordinate any releases of information regarding the ARTWORK to the public and news media with CITY staff. In all communications to the public and news media, CONTRACTOR must fully and accurately identify the CONTRACTOR's relationship to CITY and credit CITY for its role in funding the Project.

14.4. FUTURE MODIFICATION OR RELOCATION. Removal or relocation of the ARTWORK, if practical and economically feasible as determined by CITY, in its sole discretion, will occur in conformity with the City's Public Art Policy. CITY's decisions regarding removal or relocation of the ARTWORK is final and may occur at any time.

14.4.1. CITY has the right to remove the ARTWORK from the Site at any time. In addition, in the event that any element of the ARTWORK constitutes a public safety hazard, CITY has the right to remove only the element posing the public safety hazard without prior written notice to CONTRACTOR.

14.4.2. CITY has the right to donate or sell the ARTWORK at any time. Before exercising this right, CITY shall give CONTRACTOR 30 days from issuance of written notice to CONTRACTOR to purchase the ARTWORK for the greater of the Total Price or market value, plus all costs associated with the removal of the ARTWORK from the Site, clean-up of the Site and delivery to CONTRACTOR.

14.4.3. CITY agrees to not intentionally modify the ARTWORK without providing CONTRACTOR prior written notice. Should the need arise; CITY may negotiate with CONTRACTOR to conduct or supervise ARTWORK restoration.

14.4.4. CONTRACTOR's rights under this Agreement cease with CONTRACTOR's death and do not extend to CONTRACTOR's heirs, successors

or assigns except that CONTRACTOR will still receive credit for the ARTWORK and in the case of death or incapacity of CONTRACTOR

SECTION 15. COMPLIANCE WITH LAWS.

15.0. CONTRACTOR shall comply with all applicable federal, state and local laws, ordinances, codes and regulations and will use reasonable efforts to ensure compliance by any and all contractors and subcontractors that may work on the ARTWORK.

15.1. CONTRACTOR shall comply with all local, state and federal environmental requirements including all City applicable construction and development regulations as well as federal Environmental Protection Agency, Texas Department of State Health Services and Texas Commission on Environmental Quality rules and regulations and all other regulations and laws relating to the environment, Hazardous Substances or exposure to such.

15.2. Non-Discrimination. CONTRACTOR 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 herein.

15.3. None of CONTRACTOR's services shall involve, and no portion of the funds received by CONTRACTOR shall be used to support any sectarian or religious activity.

15.4. 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.

This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"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 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. This term does not include a sole proprietorship.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

15.5. It is the policy of the City of San Antonio to provide a work environment to all employees and applicants free of **employment discrimination, harassment and sexual harassment**. In addition, any behavior, regardless of intent or severity, that could be deemed inappropriate workplace behavior, but may not legally constitute **employment discrimination, harassment, or sexual harassment**, is prohibited. **Harassment and sexual harassment** are forms of discrimination that violate Title VII of the Civil Rights Act of 1964, (as amended), the Civil Rights Act of 1991, the American with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and related State of Texas statutes. Retaliation against employees for opposing alleged **employment discrimination, harassment, or sexual harassment** or for filing a charge, testifying, assisting, or participating in any manner in an Equal Employment Opportunity (EEO) investigation, proceeding, or hearing is prohibited. CONTRACTOR shall comply with this policy in all interactions with CONTRACTOR'S employees, subcontractors, and volunteers, if any, under this Agreement.

SECTION 16. DEFAULT/TERMINATION AND/OR SUSPENSION

16.0. **TERMINATION WITH CAUSE**. Right of Either Party to Terminate for Default.

16.0.1. This Agreement may be terminated by either Party for substantial failure by the other Party to perform (through no fault of the terminating Party) in accordance with this Agreement and a failure to cure as provided in this Section.

16.0.2. The Party not in default must issue a signed, written notice of default and intent to terminate (citing this paragraph) to the other Party declaring the other Party to be in default and stating the reason(s) why they are in default. Upon receipt of such written notice of default, the party in receipt shall have a period of 10 days to cure any default. Upon the completion of such 10-day cure period, if such Party has not cured any failure to perform, such termination shall become effective without further written notice.

16.1. **RIGHT OF CITY TO TERMINATE**. CITY reserves the right to terminate this Agreement for reasons other than substantial failure by the CONTRACTOR to perform by issuing a signed, written notice of termination (citing this paragraph) which shall take effect upon effective notice to CONTRACTOR and/or upon the scheduled completion date of the performance phase in which CONTRACTOR is currently working, whichever occurs first. In the event of termination by CITY without cause, CONTRACTOR shall be entitled to payment for all work performed by or on behalf of CONTRACTOR to date, together with reimbursement for all legitimate expenses incurred by CONTRACTOR up to CONTRACTOR's receipt of such notice.

16.2. RIGHT OF CITY TO SUSPEND GIVING RISE TO RIGHT OF CONTRACTOR TO TERMINATE. CITY reserves the right to suspend this Agreement at the end of any phase for CITY's convenience by issuing a signed, written notice of suspension (citing this paragraph) outlining the reasons for the suspension and the expected duration of the suspension. Such expected duration shall in no way be a guarantee of the length of the suspension. Such suspension shall take effect immediately upon receipt of said notice of suspension by CONTRACTOR.

16.2.1 CONTRACTOR has the right to terminate if such suspension extends for more than 120 days. CONTRACTOR may exercise this right by issuing a signed, written notice of termination (citing this paragraph) to CITY after 120 days have passed from the effective date of the suspension. Termination shall be effective upon receipt of said written notice by CITY. In the event of termination by CONTRACTOR after such suspension, CONTRACTOR shall be entitled to payment for all work performed by or on behalf of CONTRACTOR, together with reimbursement for all legitimate expenses incurred by CONTRACTOR prior to CONTRACTOR's suspension.

16.3. PROCEDURES CONTRACTOR TO FOLLOW UPON RECEIPT OF NOTICE OF TERMINATION WITH CAUSE. Upon receipt of a notice of termination with cause and prior to the effective date of termination, unless the notice otherwise directs or CONTRACTOR immediately takes action to cure under the set cure period, CONTRACTOR shall immediately discontinue all services performed in connection with this Agreement and promptly cancel all existing orders and contracts chargeable to this Agreement. Within 30 days after receipt of such notice of termination (unless CONTRACTOR has successfully cured a failure to perform), CONTRACTOR shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. CITY shall have the option to grant an extension to the time period for submittal of such statement.

16.3.1. Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and exhibits prepared under this Agreement prior to the effective date of termination shall be delivered to CITY, in the form requested by CITY as a pre-condition to final payment, subject to the restrictions of this Agreement.

16.3.2. CITY has a duty to document the use of public funds. To this end, CONTRACTOR understands that failure to comply with the submittal of the statement and documents shall constitute a waiver by CONTRACTOR of any and all rights or claims to payment for services performed under this Agreement by CONTRACTOR.

16.3.3. Upon the above conditions being met, CITY shall pay CONTRACTOR that proportion of the compensation, which the services actually performed bear to the total services called for under this

Agreement, less any previous payments.

16.4. PROCEDURES CONTRACTOR TO FOLLOW UPON RECEIPT OF NOTICE OF SUSPENSION. Upon the effective date of suspension, CONTRACTOR shall, immediately phase-out and discontinue all services associated with the performance of this Agreement including promptly suspending all existing orders and contracts chargeable to this Agreement, unless the notice directs otherwise.

16.4.1. CONTRACTOR shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

16.4.2. Copies of all completed or partially completed designs, plans and specifications prepared prior to the effective date of suspension shall be prepared for possible delivery to the CITY but shall be retained by the CONTRACTOR until such time as CONTRACTOR may exercise the right to terminate.

16.4.3. CONTRACTOR shall promptly cancel or suspend all existing orders and contracts chargeable to this Agreement. If CONTRACTOR is terminating, CONTRACTOR is responsible for submitting to CITY the above mentioned statement showing in detail the services performed prior to the effective date of suspension within thirty 30 days after receipt by CITY of CONTRACTOR's notice of termination.

16.4.4. Any documents prepared in association with this Agreement shall be delivered to CITY as a pre-condition to final payment.

16.4.5. CONTRACTOR's failure to comply with this Section may constitute a waiver by CONTRACTOR of any portion of the fee for which CONTRACTOR did not supply such necessary statements and/or documents.

16.4.6. Upon the above conditions being met, CITY shall promptly pay CONTRACTOR that proportion of the prescribed fee, which the services actually performed bear to the total services called for by this Agreement, less any previous payments, together with reimbursement for legitimate expenses incurred by CONTRACTOR up to CONTRACTOR's receipt of such notice.

16.5. COMPENSATION. If CITY terminates, CITY shall pay CONTRACTOR for services performed up to date of termination consistent with this Agreement.

16.6. REMEDIES. The remedies under this Agreement are cumulative and are in addition to the rights available to the Parties at law or in equity. Nevertheless, if CONTRACTOR breaches this Agreement, CITY has the right to exercise its termination rights as described herein and at its option proceed with the design, fabrication and installation of the ARTWORK without utilizing CONTRACTOR's services. If CITY

exercises its option to proceed, then CITY, upon CONTRACTOR's written request will refrain from referencing the ARTWORK as the work of CONTRACTOR.

SECTION 17. ASSIGNMENT

17.0. The expertise and experience of CONTRACTOR are material considerations for this Agreement; therefore, CONTRACTOR shall not assign or transfer any interest in this Agreement nor the performance of any of CONTRACTOR's obligations. Any attempt by CONTRACTOR to assign this Agreement or any rights, duties or obligations arising under this Agreement shall be void unless prior written consent is given by CITY. This Section does not prevent CONTRACTOR, at CONTRACTOR's sole expense, from relying on or utilizing the services of such other consultant or artist as CONTRACTOR may require to complete the ARTWORK.

SECTION 18. SUBCONTRACTS.

18.0. Prior to entering into any subcontractor agreements, CONTRACTOR shall notify CITY in writing of the names of all proposed first-tier Subcontractors.

18.1. CONTRACTOR shall not employ any Subcontractor, person or organization (including those who are to furnish the primary materials or equipment), whether initially or as a substitute, against whom CITY may have reasonable objection. A Subcontractor other person or organization identified in writing to CITY prior to the Notice of Award and not objected to in writing by CITY will be deemed acceptable to CITY. However, acceptance by CITY is not a waiver of any right of CITY to reject defective Work. If CITY, after due investigation, has reasonable objection to any Subcontractor, person or organization proposed by CONTRACTOR after the Notice of Award, CONTRACTOR will be required to submit an acceptable substitute. The TOTAL PRICE will be equitably adjusted for any change in the price of the subcontract work resulting from such substitution. CONTRACTOR is not required to employ any Subcontractor, person, or organization against whom CONTRACTOR has a reasonable objection.

18.2. CONTRACTOR is fully responsible to CITY for all acts and omissions of his/her Subcontractors, persons and organizations directly or indirectly employed and of persons and organizations who may be liable to the same extent that CONTRACTOR is responsible for the acts and omissions of persons directly employed by CONTRACTOR. CITY shall in no event be obligated to any third party, including any sub-contractor of CONTRACTOR, for performance of or payment for work or services.

18.3. All ARTWORK performed for CONTRACTOR by a subcontractor will be pursuant to a written agreement between CONTRACTOR and the subcontractor, which specifically binds the Subcontractor to the applicable terms and conditions of this Agreement. Where appropriate, CONTRACTOR shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. CONTRACTOR shall make copies of the Agreement available to each proposed Subcontractor, prior to the execution of the subcontract agreement.

SECTION 19. NOTICE

19.0. Submittals, requests, notices and reports (collectively, "Notices") required under this Agreement shall be delivered personally or through the mail, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a party. Notices may also be sent by facsimile.

For CONTRACTOR: _____

For CITY: City of San Antonio
Department of Arts & Culture
Attn: Contract Manager
203 S. St. Mary's St. Ste. 120
San Antonio, Texas 78205

19.1. Notices will be deemed effective on the date personally delivered, faxed, or sent by courier service. Notices which are mailed will be deemed effective three days after deposit in the mail.

19.2. CONTRACTOR agrees for the duration of CONTRACTOR's life, to provide CITY with CONTRACTOR's current mailing address and facsimile number in the event CONTRACTOR's address, as specified above, should change.

SECTION 20. PROTECTION OF PERSONS AND PROPERTY.

20.0. CONTRACTOR shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. CONTRACTOR shall adopt a reasonable safety program/policy applicable to the Site and to the ARTWORK, which shall be reviewed by CITY in advance of beginning the ARTWORK fabrication and installation. While CITY has the right to inspect and verify CONTRACTOR's compliance, CONTRACTOR is responsible for initiating, maintaining and supervising all safety precautions and programs.

20.0.1. CONTRACTOR has adopted or will adopt its own policy to assure a drug and alcohol free Site. CONTRACTOR's employees, agents, and subcontractors shall not perform any service for CITY while under the influence of alcohol or any controlled substance. CONTRACTOR, its employees, agents, and subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs or alcoholic beverages while performing the ARTWORK. CONTRACTOR will remove any of its employees from performing the ARTWORK any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. CITY has the right to require CONTRACTOR to remove employees any time cause exists to suspect alcohol or drug use or who either refuses to take, or tests positive in, any alcohol or drug test.

20.1. EMERGENCIES. In an emergency affecting safety of persons or property, the CONTRACTOR shall exercise best efforts to act to prevent or minimize threatened damage, injury or loss. CONTRACTOR shall also notify CITY immediately, by telephone with prompt confirmation in writing, of all injuries and fatalities, including but not limited to copies of all reports and other documents filed or provided to CONTRACTOR's insurers and the State of Texas in connection with such injuries or fatalities.

20.2. A breach or violation of this Section by CONTRACTOR will be a material and substantial breach of this Agreement. If CITY reasonably determines the CONTRACTOR has breached or violated this Section, then CITY shall notify CONTRACTOR whether such breach shall necessitate a suspension or termination of the Agreement. If the ARTWORK is suspended, the ARTWORK shall not recommence until CITY is satisfied that the safety breach or violation will not occur again.

20.3. CONTRACTOR shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- a. Employees and other persons who may be impacted;
- b. The ARTWORK and materials and equipment to be incorporated therein, whether in storage on or off the SITE, under the care, custody or control of the CONTRACTOR or the CONTRACTOR's Subcontractors or Sub-subcontractors; and
- c. Other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of Construction or Installation of the ARTWORK.

20.3.1. CONTRACTOR shall erect and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying CITY and users of adjacent sites and utilities.

20.3.2. When use or storage of explosives or other Hazardous Materials or equipment or unusual methods are necessary for the execution of the ARTWORK, CONTRACTOR shall exercise extraordinary care and shall carry on such activities under the direct supervision of properly qualified personnel.

20.3.3. CONTRACTOR shall not load or permit any part of the construction or Site to be loaded so as to endanger its safety or that of others.

20.4. Notwithstanding these provisions, CITY does not warrant nor represent to CONTRACTOR, CONTRACTOR's employees or agents, any subcontractors, or any other third party that CONTRACTOR's safety policy meets the requirements of any applicable law, code, rule, or regulation, nor that the proper enforcement will insure that no accidents or injuries occur. In addition, any action by CITY under these provisions in no way diminishes CONTRACTOR's obligations.

20.5. PUBLIC CONVENIENCE AND SAFETY. CONTRACTOR shall, at all times, place materials stored at the SITE and shall fabricate and install the ARTWORK in a manner that causes no greater obstruction to the public than is reasonably considered necessary by CITY.

20.5.1. Sidewalks or streets shall not be obstructed, except by special permission of CITY. Materials excavated and construction materials or plants used in the performance of the ARTWORK shall be placed in a manner that does not endanger the ARTWORK or prevent free access to public infrastructure. CONTRACTOR shall, when directed by CITY, keep any street or streets in condition for unobstructed use by CITY departments.

20.5.2. CITY reserves the right to remedy any neglect by CONTRACTOR regarding public convenience and safety, which may come to the CITY's attention, after 24 hours notice in writing to the CONTRACTOR. In case of an emergency, CITY shall have the right to immediately remedy any neglect without notice. In either case, the cost incurred by or for CITY to remedy the CONTRACTOR's neglect shall be deducted from the Total Price due CONTRACTOR.

20.6. If the ARTWORK is carried on, in, or adjacent to any street, alley or public place, CONTRACTOR shall, at CONTRACTOR's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights arrangements for crossing over ditches or around structures and danger signals, provide sufficient watchmen, and take other precautionary measures as necessary for the protection of persons, property and the ARTWORK. All barricades shall be painted in a color that will be visible at night, and shall be illuminated by lights (flares, flashers, or other illuminated devices) from sunset to sunrise. A sufficient number of barricades with adequate markings and directional devices shall also be erected to keep vehicles from driving on or into any ARTWORK under construction. CONTRACTOR is responsible for all damage to the ARTWORK due to failure to protect the ARTWORK. If evidence of such damage is found, CITY may order the damaged portion immediately removed and replaced by CONTRACTOR at CONTRACTOR's expense.

20.7. If it is necessary to change or move the property of CITY or of any telecommunications or public utility, such property shall not be removed or interfered with until cleared by CITY. CITY and any public or private utilities have the right to enter the Site to make such changes or repairs. CITY reserves the right of entry upon the Site for any purpose and at any time.

20.8. If CONTRACTOR encounters materials reasonably believed to be a Hazardous Substance at the Site, CONTRACTOR shall immediately stop work in the affected area and report such in writing to CITY. Work in the affected area shall not be resumed except by written order of CITY and consent of CONTRACTOR, and until the material is determined not to be a Hazardous Substance or is remediated. If the Hazardous Substance is in the affected area due to the fault or negligence of CONTRACTOR, or CONTRACTOR's subcontractor or supplier, CONTRACTOR shall be responsible for remediating at CONTRACTOR's sole expense.

SECTION 21. CONFLICT OF INTEREST.

21.0. 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 the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the 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/her parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his/her 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.

21.1. 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.

21.2. CONTRACTOR acknowledges that CITY's reliance on the above warranties and certifications is reasonable.

SECTION 22. GIFTS TO PUBLIC SERVANTS.

22.0. CITY may terminate this Agreement immediately if CONTRACTOR has offered, conferred, or agreed to confer any benefit on a CITY employee or official that CITY employee or official is prohibited by law from accepting. For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

22.1. Notwithstanding other remedies, CITY may require CONTRACTOR to remove any employee from the Site who violates these restrictions or any similar law, and may obtain reimbursement for any expenditure made to CONTRACTOR because of the improper offer, agreement to confer, or benefit conferred to a CITY employee or official.

SECTION 23. VENUE.

23.0. THIS AGREEMENT IS CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES ARE PERFORMABLE IN BEXAR COUNTY, TEXAS. Any legal action or proceeding brought or maintained, directly or indirectly, resulting from this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

SECTION 24. RIGHT TO AUDIT CONTRACTOR'S RECORDS.

24.0. CONTRACTOR grants CITY, or its designees, the right to audit, examine or inspect all of CONTRACTOR's records relating to CONTRACTOR's performance on the Agreement both during the term of the Agreement and retention period set below. The audit, examination or inspection may be performed by a CITY designee, which may include its internal auditors or an outside representative engaged by the CITY.

24.1. CONTRACTOR agrees to retain records relevant to this Agreement for a minimum of five years following completion of the ARTWORK and/or termination of the Agreement. CONTRACTOR's records include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of CONTRACTOR's records include but are not limited to billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, Agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question, and any and all other Agreements, sources of information and matters that may in CITY's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by this Agreement.

24.2. CITY will exercise the right to audit, examine or inspect only during regular business hours and with reasonable notice to CONTRACTOR. CONTRACTOR agrees to allow CITY's designee access to all of CONTRACTOR's Records, CONTRACTOR's facilities, and current or former employees of CONTRACTOR, deemed necessary by CITY or its designee(s), to perform such audit, inspection or examination. CONTRACTOR also agrees to provide adequate and appropriate work space necessary to CITY or its designees to conduct such audits, inspections or examinations.

24.3. CONTRACTOR must include this audit clause in any subcontractor, supplier or vendor contract.

24.4. If CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONTRACTOR's business, CITY may, by written request require that custody of the records be given to CITY to maintain. Access to such records and documents shall be granted to any party authorized by CONTRACTOR, CONTRACTOR's representatives, or CONTRACTOR's successors-in-interest.

SECTION 25. MISCELLANEOUS.

25.0. The captions to the Sections or paragraphs of this Agreement are for convenience only. They are not to be used in construing this Agreement.

25.1. This Agreement, including **Exhibits A-1, B-1 and C-1** and any other attachments including the Final Proposal for the ARTWORK, represents the entire understanding of the Parties. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may only be modified by a written amendment duly executed by the Parties.

25.2. If any term, covenant, condition or provision of this Agreement shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

25.3. NO WAIVER. The Parties agree that any breach or violation of this Agreement is not a waiver even if both Parties are aware of said breach or violation.

Signatures appear on the next page.

EXECUTED and AGREED to by the Parties on this the ____ day of _____, 20__.

CITY OF SAN ANTONIO

CONTRACTOR

Debbie Racca-Sittre
Executive Director
Department of Arts & Culture

(Name)
(Title)

APPROVED AS TO FORM

City Attorney

EXHIBIT A-1 Schedule of Performance
EXHIBIT B-1 Payment Schedule
EXHIBIT C-1 CONTRACTOR's Waiver of Moral Rights

EXHIBIT A – 1
SCHEDULE OF PERFORMANCE

CONTRACTOR shall not commence CONTRACTOR's services until this Agreement is fully executed and CITY issues a Notice to Commence Work. CONTRACTOR shall perform work according to the following schedule for design, fabrication and installation:

Design Development Phase

Execution of this Agreement / mobilization:	(X Days/Weeks)
Project team and community concept review meetings:	(X Days/Weeks)
Development of Final Artwork Design Proposal:	(X Days/Weeks)
Completion of the Construction Documents:	(X Days/Weeks)

Fabrication Phase

(TBD)	(X Days/Weeks)
(TBD)	(X Days/Weeks)
(TBD)	(X Days/Weeks)
(TBD)	(X Days/Weeks)

Installation Phase

(TBD)	(X Days/Weeks)
(TBD)	(X Days/Weeks)
(TBD)	(X Days/Weeks)
(TBD)	(X Days/Weeks)

Final Completion Date

The Schedule of Performance may be modified by mutual agreement only upon prior written authorization by CITY as evidenced by signature from the Director or her designee.

EXHIBIT B – 1

PAYMENT SCHEDULE

PAYMENT SCHEDULE	
MILESTONE	PAYMENT
TBD:	\$ _____
TBD:	\$ _____
TBD:	\$ _____
TBD:	\$ _____
TBD:	\$ _____
TOTAL PRICE	\$ _____

The Schedule for Payment shall occur in accordance with the milestones set forth. In the event that CITY accepts the ARTWORK, one or more payments may occur following the ARTWORK completion date.

EXHIBIT C – 1

CONTRACTOR'S WAIVER OF MORAL RIGHTS

WHEREAS, _____ employed _____ ("CONTRACTOR"), to create _____ ("ARTWORK"); and

WHEREAS, the ARTWORK is intended to be *permanently/temporarily* located on *City property/private property* at _____ (*address*) in San Antonio, Texas ("Location");
NOW THEREFORE:

CONTRACTOR consents and agrees to the *temporary/permanent* placement of the ARTWORK on *City property/private property* at the Location. CONTRACTOR 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. CONTRACTOR agrees that a CITY decision made under this paragraph regarding if, when and how to remove the Artwork is final.

CONTRACTOR expressly consents to both the installation into and removal from the Location of the ARTWORK and thereby expressly waives his/her 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 CONTRACTOR".

Only applicable to works located on City Property: CONTRACTOR understands that to the extent 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 CONTRACTOR, should it so desire, with the relocation costs at CONTRACTOR's sole cost and expense. CONTRACTOR further understands that if CITY is required to relocate or disassemble the ARTWORK, CITY will notify CONTRACTOR, or his/her descendants or assigns, immediately. Should CONTRACTOR, or his/her descendants or assigns, not want the ARTWORK, CITY may dispose of it in any manner CITY desires.

Executed to be effective this the ____ day of _____, 20__.

CONTRACTOR

Name

LB
03/04/21
Item No. 17

EXHIBIT IV

ART SERVICES AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through its Executive Director of the Department of Arts & Culture and _____ (“Contractor”), both of which may be referred to collectively as the “Parties.”

The Parties severally and collectively agree, and by the execution of this Agreement are bound, to the mutual obligations contained in this Agreement and to the performance and accomplishment of the tasks described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“Contractor” is defined in the preamble of this Agreement and includes its successors.

“Director” shall mean the Director of City’s Department of Arts & Culture.

“Director’s designee” shall mean the Department of Arts & Culture staff person assigned as official owner of this contract.

"Project" means the undertaking of work contemplated by this Agreement.

“Services” means the services or work described in the Scope of Services, set forth the agreed to Scope of Services, pricing and associated terms for the Project.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence upon execution (“Commencement Date”) and terminate upon completion or _____.

III. SCOPE OF SERVICES

3.1 This Agreement is to provide art services for the (Enter Name of Project) set forth in the Scope of Services, which is attached and incorporated into this Agreement as Exhibit I. Such services shall be completed and Consultant shall provide City with final deliverables in the format requested by City, no later than _____, 20__.

3.2 Contractor agrees to the following marketing and social media protocols regarding the Project:

- 3.2.1 Contractor will not post any news related to the Project on social media, websites, e-newsletters, etc. until such posting is approved by the Department of Arts & Culture.
- 3.2.2 It is the understanding of the Parties that the Department of Arts & Culture will be the first to post any news regarding the Project, unless the Department elects not to do so.
- 3.2.3 Once the Department of Arts & Culture provides permission to share such news, Contractor must tag the Department-(@getcreativesa) on social media posts regarding the Project.
- 3.2.4 Contractor must notify the Department of Arts & Culture of any media inquiries it receives regarding the Project within two (2) days of such inquiry.

3.3 All work performed by Contractor shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties. City shall be under no obligation to pay for any work performed by Contractor, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, even should City elect not to terminate.

3.4 All services and works provided or curated, as applicable, under this Agreement must be suitable for general audiences and people of all ages.

3.5 If applicable to the type of services provided, City in its sole discretion, will decide whether or not to display any works curated or created under this Agreement. City may elect to display all, some or none of such works. It is the understanding of the Parties that City maintains final decision regarding the installation and display of all artworks. Additionally, City makes no guarantees as to the display of the works and City reserves right to determine hours of operation and public access to the _____ (*insert name of facility* ("Facility")).

IV. COMPENSATION TO CONTRACTOR

4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director or Designee, of all services and activities set forth in this Agreement, City agrees to pay Contractor an amount not to exceed XX thousand dollars (\$XX,000.00) as total compensation, to be paid to Contractor as set forth in Exhibit I and as follows:

- 4.1.1 City shall pay such invoices within 30 days, subject to the provisions of Sections 3.3 and 4.1 and Exhibit I.

4.1.2 Payments to Contractor shall be in the amount shown on the invoices, consistent with the scope of this contract 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 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.

4.1.3 In the event of early termination of this Agreement, Contractor shall return any unearned compensation to City within 15 days of such termination.

4.2 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. The Parties agree that all compensable expenses of Contractor have been provided for in the total payment to Contractor as specified in section 4.1. Total payments to Contractor cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all Parties.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be Director's designee. City shall not be obligated or liable under this Agreement to any party, other than Contractor, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents, designs, works or information in whatsoever form and character produced by Contractor pursuant to this Agreement is the exclusive property of City; and shall not be the subject of any copyright or proprietary claim by Contractor. **All work product shall be considered a "work-for-hire" as defined by the U.S. Copyright Act.**

5.2 Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents, designs, works and information, City has the right to use all such writings, documents and information as City desires, without restriction.

5.3 No reports, information, project evaluation, designs, data or any other documentation developed by, given to, prepared by, or assembled by Contractor under this Agreement shall be disclosed or made available to any individual or organization by Contractor without the express prior written approval of City. In the event Contractor receives any such request, Contractor shall forward such request to City immediately.

5.4 City grants Contractor a perpetual, non-exclusive, worldwide, royalty-free license to use the works developed pursuant to this Agreement, or any portion thereof, for promotional purposes. "Promotional purposes" include, but are not limited to, displaying on any Contractor website and including in any portfolios or displays of Contractor's work.

VI. RECORDS RETENTION

6.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder ("documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established in Section 6.2, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years ("retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Contractor to return said documents to City prior to or at the conclusion of said retention.

6.3 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records of this Agreement. Contractor understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions of this Agreement.

7.2 Termination Without Cause. This Agreement may be terminated by either party upon 10 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XI. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this Section, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default.

Contractor shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new contractor against Contractor's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant as required

7.4.3 Performing unsatisfactorily

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties under this Agreement, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Impossibility of Performance. If the Facility, or any portion thereof, should be destroyed or damaged by fire or other calamity so as to prevent its use for display of the work created under this Agreement; or (b) if the use of the Facility shall be prevented by an act of God, strike, lockout, material or labor shortage, restrictions by any governmental authority, civil riot, flood, epidemic or any other cause beyond the control of City, then City may terminate this Agreement as of the date provided in the notice. City shall not be liable or responsible to Contractor for any damages caused by such termination and Contractor waives any claim against City for damages by reason of such termination. City shall pay Contractor for all services provided under this Agreement prior to such termination.

7.7 Regardless of how this Agreement is terminated, Contractor shall affect an orderly transfer to City or to such person(s) or firm(s) as City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Contractor, or provided to Contractor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested.

7.8 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Contractor of any and all right or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.9 Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

7.10 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

VIII. NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing, to include receipt by electronic mail (e-mail).

If intended for City, to:

City of San Antonio
Contract Manager
Department of Arts & Culture
203 S. St. Mary's St. Ste. 120
San Antonio, Texas 78205

If intended for Contractor, to:

IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Department of Arts & Culture, which shall be clearly labeled "Department of Arts & Culture" 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. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Department of Arts & Culture. No

officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

9.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof 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.

9.3 A contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor'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:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
5. 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.
6. Professional Liability	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service. Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.

9.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names Contractor and City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Contractor shall provide City with said

certificate and endorsement prior to the commencement of any work by the 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.

9.5 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 required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

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

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

- Name the 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 the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor'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.

9.8 In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or

withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

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

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

9.11 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 the City shall be limited to insurance coverage provided.

9.12 Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNIFICATION

10.1 CONTRACTOR 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 and intellectual property right infringement, made upon CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, contractor or subcontractor of CONTRACTOR, 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 CONTRACTOR 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. In addition, CONTRACTOR agrees to indemnify, defend, and hold City harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.

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

10.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by City in writing. Contractor 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 Contractor fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor 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.

10.4 Employee Litigation – In any and all claims against any party indemnified by any employee of Contractor, 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 Contractor any subcontractor under worker's compensation or other employee benefit acts.

10.5 Trademark and Copyright Indemnification **Contractor agrees to FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS, at its own expense City, its officials, agents and employees from any and all liability arising from copyright infringement and/or consequential damages that others may suffer as a result of the use by Contractor or its subcontractor or curated artist or designee, if applicable, of trademarked and/or copyrighted materials in the Project.**

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

11.2 The use of any subcontractor(s) requires the prior written approval of Director.

11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no

event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees.

11.4 Except as otherwise stated in this Agreement, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties, by transfer, by subcontracting or any other means, without the prior written consent of Director. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee or subcontractor.

11.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XII. INDEPENDENT CONTRACTOR

12.1 Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed under this Agreement and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The Parties understand and agree that City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by Contractor under this Agreement and that Contractor has no authority to bind City.

XIII. CONFLICT OF INTEREST

13.1 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/her parent, child or spouse;

- (iii) a business entity in which the officer or employee, or his/her 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.

13.2 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.

13.3 Contractor acknowledges that City's reliance on the above warranties and certifications is reasonable.

XIV. AMENDMENTS AND CHANGES

14.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor, and approved by City Council when required.

14.2 It is understood and agreed by the Parties that each Party shall comply with any changes in all applicable local, state and federal rules, regulations or laws 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.

XV. SEVERABILITY

15.1 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 hereof 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.

XVI. LICENSES/CERTIFICATIONS

16.1 Contractor warrants and certifies that Contractor and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided under this Agreement.

XVII. COMPLIANCE

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

17.2 Trademarked and Copyrighted Usage. Contractor 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, including requiring any curated artist or subcontractor to provide copies of any necessary licenses for their use of intellectual property owned by others. When requested by City, Contractor shall provide City with copies of any such licenses within ten (10) days of such request.

17.3 Non-Discrimination. As a party to this Agreement, Contractor 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.

17.4. 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.

This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"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 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. This term does not include a sole

proprietorship.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

17.5 It is the policy of the City of San Antonio to provide a work environment to all employees and applicants free of *employment discrimination, harassment* and *sexual harassment*. In addition, any behavior, regardless of intent or severity, that could be deemed inappropriate workplace behavior, but may not legally constitute *employment discrimination, harassment, or sexual harassment*, is prohibited. *Harassment* and *sexual harassment* are forms of discrimination that violate Title VII of the Civil Rights Act of 1964, (as amended), the Civil Rights Act of 1991, the American with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and related State of Texas statutes. Retaliation against employees for opposing alleged *employment discrimination, harassment, or sexual harassment* or for filing a charge, testifying, assisting, or participating in any manner in an Equal Employment Opportunity (EEO) investigation, proceeding, or hearing is prohibited. Contractor shall comply with this policy in all interactions with Contractor's employees, subcontractors, artists, and volunteers, if any, under this Agreement.

XVIII. NONWAIVER OF PERFORMANCE

18.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not 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 contained in this Agreement. 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 contained in this Agreement, 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 Parties in accordance with Article XIV. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party under this Agreement or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved.

XIX. LAW APPLICABLE

19.1 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.

19.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar

County, Texas.

XX. LEGAL AUTHORITY

20.1 The signer of this Agreement for Contractor represents, warrants, assures and guarantees that s/he has full legal authority to execute this Agreement on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations of this Agreement.

XXI. PARTIES BOUND

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

XXII. CAPTIONS

22.1 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.

XXIII. ENTIRE AGREEMENT

23.1 This Agreement and any Exhibits constitute the final and entire agreement between the Parties and contain 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 same be in writing, dated subsequent to the effective date, and duly executed by the Parties, in accordance with Article XIV. Amendments. Should there be any conflict between this Agreement and its Exhibits, this Agreement shall control.

EXECUTED and **AGREED** to this the _____ day of _____, 20__.

CITY:
CITY OF SAN ANTONIO

CONTRACTOR:
Name

Debbie Racca-Sittre
Executive Director
Department of Arts & Culture

Name
Title

Approved as to Form:

City Attorney

Exhibit I: Scope of Services

Exhibit I
Scope of Services

Contractor will provide the following art services -List Deliverables with Completion Dates, associated Payment Dates and Payment Amounts, for example:

If the required information for particular artworks is not submitted by the date indicated above, such artworks will not be included in the Exhibit. The City may, in its sole discretion, extend the deadline if such extension is due to events outside the control of Contractor.

- Contractor shall invoice City for \$_____.00 upon approval of curatorial plan.
- Contractor shall invoice City for \$_____.00 upon approval of artists selected.
- Contractor shall invoice City for \$_____.00 upon delivery of final report.

Department will (if applicable):

List of any requirements with Completion Dates:

Total fees associated with the performance of these services are \$_____