

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.

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

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

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

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

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

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

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

“Task Order” means a work order issued to Contractor setting forth the agreed to Scope of Services, pricing and associated terms for an individual 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 an on-call, Task Order or indefinite delivery agreement for Contractor opportunities and such other services that are required for Contractor to provide or are associated with such Contractor opportunities. Specific requirements as to location, conditions, procedures and associated services pertaining to a particular Project shall be negotiated and set out in individual Task Orders for each request. Assigned and accepted Task Orders regarding services to be provided by Contractor shall be incorporated into and become a part of this Agreement as **Exhibit B**. If Contractor is selected to provide services under this Agreement, Contractor shall provide the art inventory services as set forth in the corresponding Task Order. Contractor will complete the Project by the date set forth in such Task Order, subject to Force Majeure.

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

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

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

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

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

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

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

3.8 All work performed by Contractor under this Agreement 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 should City elect not to terminate.

IV. COMPENSATION TO CONTRACTOR

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

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

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

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

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

4.4 Internet-based Project Management Systems. City shall administer its services through an Internet-Based Management System ("PRIME*Link*"). Contractor shall conduct its communication with City through PRIME*Link* and Contractor shall perform all project-related functions utilizing PRIME*Link*. Communications shall include correspondences, submittals, requests for information, vouchers, compensation requests and processing, amendment, change orders and any other administrative activities. City shall administer the software, shall provide any necessary training and shall make the software accessible via the Internet to Contractor. All of Contractor's invoices shall be submitted through PRIME*Link*.

4.5 All the allowable costs under this Agreement shall be set forth in **Exhibit B**. No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. Total payments to Contractor cannot exceed that amount set forth in **Exhibit B**, without prior approval and agreement of all Parties, evidenced in writing in accordance with Article XIV. Amendments.

4.6 Final acceptance of work products and services require written approval by City. The approval official shall be Director. 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 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.

5.2 Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents 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.

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 6.4 below, 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 Regardless of how this Agreement is terminated, Contractor shall affect an orderly transfer to City or to such person(s) or firm(s) as the 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.

7.7 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.

7.8 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.

7.9 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.

If intended for City, to:

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

If intended for Contractor, to:

Address

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 “**XXX**” 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 have the agent’s signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to 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 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:

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

9.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Contractor under this Agreement, and provide a certificate of insurance and endorsement that names the Contractor and the City as additional insureds. Respondent 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 endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

City of San Antonio
Department of Arts & Culture

Attn: Public Art San Antonio
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 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, cancellation, non-renewal or material change 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 City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City shall have the right to order Contractor to stop work , and/or withhold any payment(s) which become due to Contractor until Contractor demonstrates compliance with these requirements.

9.9 Nothing contained in this Agreement 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 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, 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, artist or consultant 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 CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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 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 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 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.

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) require 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 the 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 the Contractor under this Agreement and that the Contractor has no authority to bind the 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 parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns
 - (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

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 This Agreement may be amended to increase the total compensation to an amount up to and including \$50,000, as long as the funding is appropriated in accordance with approved Public Art policies.

14.3 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.

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.

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

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

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

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 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 _____, 201_.

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
A

Contractor's Fee Schedule

Exhibit B

Task Order

To be attached upon assignment and acceptance