

STATE OF TEXAS

§

§ COLLABORATIVE PARTNERSHIP

§ AGREEMENT

COUNTY OF BEXAR

§

This Agreement (the "Agreement") is hereby made and entered into by and between the City of San Antonio (referred to herein as the "City"), a Texas municipal corporation, and acting by and through its City Manager pursuant to Ordinance No. \_\_\_\_\_, dated \_\_\_\_\_ and \_\_\_\_\_ (referred to herein as "Partner"), a Texas non-profit corporation, acting by and through its duly authorized officers (City and Partner sometimes referred to individually each as a "Party" and collectively as the "Parties").

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

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

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

**I. TERM**

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

**II. GENERAL RESPONSIBILITIES OF PARTNER**

2.01 Partner is responsible for the design, fabrication and installation of the Project as set forth in Partner's Proposal, which is attached and incorporated into this Agreement as **Exhibit A**. Partner shall contract with one or more artists ("Artist") to provide such design, fabrication and installation services for the Project. Partner will complete design, fabrication and installation of the Project by \_\_\_\_\_, subject to Force Majeure.

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

2.03 Partner shall provide all necessary funding for the Project beyond the City's commitment of \$\_\_\_\_\_ and provide evidence to City that all additional funds necessary for the Project have been secured prior to the receipt of any funding under this Agreement. In the event the scope of the Project is adjusted downward, City shall have the

option of adjusting its commitment downward accordingly. City is not responsible for any cost overruns unless agreed to in writing in accordance with this Agreement.

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

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

2.06 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Plans. Upon request by City, Partner shall cause its design or construction professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans. Upon further request by City, any and all construction drawings must be certified by a qualified engineer or architect licensed by the State of Texas. All construction drawings must conform to all applicable federal, state and local laws and regulations. Upon request, Partner shall submit said certification to the Director of the Department of Arts & Culture (“Director”) or his designee at the completion of the Project construction. City shall have the right to withhold funding until such certifications are provided.

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

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

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

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

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

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

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

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

#### **V. FUNDING AND ASSISTANCE BY CITY**

5.01 City shall reimburse Partner for all eligible expenses incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of \$\_\_\_\_\_.

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

5.03 Funding shall consist of reimbursements paid to Partner for the Allowable Expenditures set forth below, not to exceed \$\_\_\_\_\_. City funding provided under this Agreement shall only be used for the portions of the Project which are dedicated to public use/public purpose.

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

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

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

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

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

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

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

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

6.04 City shall reimburse Partner on a monthly basis upon receipt and approval of an invoice through the City's Project Reporting Information Management Exchange Link (COSA PRIMElink) or any other updated program used by City for this purpose. City shall pay approved invoices within 60 days of receipt from Partner, subject to Section 5.04.

6.05 All requests for reimbursement shall be submitted through the COSA PRIMElink. Partner shall sign a Business Level Agreement and ensure that all of its employees or representatives utilizing PRIMElink sign and comply with an Individual User Agreement. Such requests for reimbursement shall be completed on PRIMElink and/or utilizing forms and instructions approved by CIMS. Prior to the initial request for reimbursement, Partner must submit a schedule of values for payment to be approved by CIMS, which approval shall not be unreasonably withheld, conditioned, or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the portal.

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

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

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

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

6.08 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in Section 6 as a result

of any auditing or monitoring by City, Partner shall refund such amount to City within 30 working days of City's written request specifying the amounts disallowed or disapproved.

## **VII. ALLOWABLE EXPENDITURES**

7.01 Subject to the terms, provision and conditions hereof, Partner shall receive funding hereunder related to the Project:

(a) *Define what Project costs are allowable*

7.02 Upon preparation of Plans and budget for Project by Partner, Partner shall submit said budget to City for approval of any costs to be paid from funds received hereunder. Costs shall be considered allowable only if so approved in Partner's Project budget, or otherwise approved in advance by City in writing, and incurred directly and specifically in the performance of and in compliance with this Agreement and with all City, state and federal laws; regulations and ordinances affecting Partner's operations.

7.03 Only the following categories of costs shall be considered allowable expenditures under this Agreement ("Allowable Expenditures"):

(A) The cost and expense of constructing the Project, including the payments made under any construction contracts related thereto;

*(B) If applicable: The cost and expense incurred with respect to any construction change orders approved by the City as required in Section 2.05;*

(C) The cost and expense incurred in designing the Project, including payments made to any architectural firm or engineering firm employed by Partner for the design of the Project that satisfy the requirements of this Agreement;

(D) The cost and expense of evaluating the site conditions pertinent to the design and construction of the Project, including without limitation soil reports, environmental reports, surveys, and geotechnical reports;

(E) Costs or fees paid for consultant and/or professional services incurred in connection with the Project or Partner's performance under this Agreement; and

(F) Advertising expenses related to bidding of construction contracts, compliance with any API, goals or API Plans adopted by the City's SBEDA or other notices required by law or this Agreement.

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

7.04 The following shall not be Allowable Expenditures under this Agreement:

- (A) Personnel costs, salaries or wages paid directly by Partner or other similarly -affiliated organization;
- (B) Travel and travel-related expenses;
- (C) Costs or fees for consultant and/or professional services, except for those incurred in connection with the Project or in Partner's performance under this Agreement;
- (D) Costs or fees associated with attendance at meetings, seminars, or conferences;
- (E) Costs or fees associated with regular maintenance and operation;
- (F) Fundraising expenses;
- (G) Equipment and furnishings, except for items of a capital nature which are being provided by Partner's general contractor and shown on the approved Plans and specifically approved by City; and
- (H) Advertising expenses, except for those permitted by Subsection 7.03 (F).

7.05 Written requests for prior approval shall be Partner's responsibility and shall be made 30 days from date necessary to permit a thorough review by City. Procurements and/or purchases which must be approved pursuant to the terms of this Agreement shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

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

8.01 Partner further represents and warrants that:

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

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

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

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

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

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

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

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

## **X. TERMINATION**

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

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

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

## **XI. INDEMNITY**

**11.01 Partner covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, 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 and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Partner's activities under this Agreement, including any acts or omissions of Partner, any agent, officer, director, representative, employee, consultant or subcontractor of Partner, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT PARTNER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

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

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

**11.04 Employee Litigation** - In any and all claims against any party indemnified hereunder by any employee of Partner, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation 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 Partner or any subcontractor under worker's compensation or other employee benefit acts.

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



City for any defect in the designs, drawings, Plans and specifications or other documents prepared for the Project.

**XII. INSURANCE & BONDS**

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

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

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

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Explosion, Collapse, Underground g. Environmental Impairment/ Impact – sufficiently broad to cover disposal	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

liability. h. Damage to property rented by you	\$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.

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

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

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

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

(A) Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability policies;

(B) Provide for an endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy;

(C) Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of City; and

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

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

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

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

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

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

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

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

### **XIII. NONDISCRIMINATION**

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

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

14.01 Partner covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with its performance under this Agreement. Partner further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

14.02 Partner further covenants that no member of its governing body or of its staff shall possess any separate interest in, or use their position in a manner that gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

14.03 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement shall:

- A. Participate in any decision relating to this Agreement which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; nor
- B. Have any direct or indirect interest in this Agreement or the proceeds thereof.

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

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

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

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

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

## **XVII. CONTRACTING**

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

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

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

## **XVIII. CHANGES AND AMENDMENTS**

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

18.02 This Agreement may be amended to increase the total compensation to an amount up to and including \$200,000 without further City Council approval, as long as the funding is appropriated in accordance with approved Public Art policies.

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

## **XIX. ASSIGNMENTS**

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

## **XX. SEVERABILITY OF PROVISIONS**

20.01 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the

City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto 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 herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

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

21.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. 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 herein contained, 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 hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

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

21.03 No representative or agent of the City may waive the effect of the provisions of this Article without formal action from the City Council.

## **XXII. ENTIRE AGREEMENT**

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

22.02 Incorporation of Attachments. Each of the Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the Parties.

- Exhibit A – Proposal
- Exhibit B – Artist’s Waiver of Moral Rights
- Exhibit C – Plans

## **XXIII. NOTICES**

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

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

PARTNER: *Name*  
*Agency*  
*ADDRESS*

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

#### **XXIV. FORCE MAJURE**

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

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

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

#### **XXVI. TEXAS LAW TO APPLY**

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

#### **XXVII. GENDER**

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

**XXVIII. CAPTIONS**

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

**XXIX. LEGAL AUTHORITY**

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

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

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

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

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

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

\_\_\_\_\_  
Sheryl Sculley  
CITY MANAGER

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

**ATTEST:**

\_\_\_\_\_  
Leticia Vacek  
CITY CLERK  
**APPROVED AS TO FORM:**

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



**Exhibit A  
Proposal**

*To be attached upon completion*

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

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

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

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

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

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

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

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

**ARTIST**

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

**Exhibit C  
Plans**

*To be attached upon completion*