

ORDINANCE 2019-05-02-0357

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

* * * * *

WHEREAS, the Department of Arts and Culture advertised an Open Call for Artists as part of a competitive and curated process to update the City's pre-qualified list of Public Art Professionals ("List") and after extensive outreach the Department received numerous responses in the categories of public artist and public art support services, and in April 2019, the San Antonio Arts Commission ("Commission") recommended 353 public art professionals for inclusion on 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 projects are a result of close coordination with City departments, community members, local art professionals and the Public Art Committee of the Commission and final artist selections are approved by the Commission; and

WHEREAS, some individuals and groups on the List for public art support services will be contracted to provide such services on an on-call basis; **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 her 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.

SECTION 3. Funds will be encumbered upon issuance of purchase orders and expenditures will be in accordance with the Fiscal Year 2019 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 Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts 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.

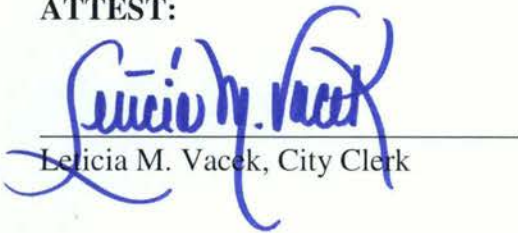
PASSED AND APPROVED this 2nd day of May, 2019.



M A Y O R

Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	15 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 23)						
Date:	05/02/2019						
Time:	09:38:36 AM						
Vote Type:	Motion to Approve						
Description:	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, authorizing contracts for such projects, and authorizing payment subject to the availability of funds. [Lori Houston, Assistant City Manager; Debbie Racca-Sittre, Director, Arts & Culture]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				x
Art A. Hall	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6	x					
Ana E. Sandoval	District 7		x			x	
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10	x					

LB
05/2/19
Item No. #15

EXHIBIT I

EXHIBIT I

2019-2021

Pre-Qualified List: Public Artists

(L): San Antonio-based Applicant

(TX): Texas-based applicant

(I): International Applicant

Alcala	Angel	(L)	Felix	Nathan	(L)
Al-Hadid	Diana		Fernandez	Ana	(L)
Allbritton Lee, LLC (dba RE:site)		(TX)	Fernandez	Teresita	
Alvarado	Oscar	(L)	FitzGibbons	Bill	(L)
Andea	Adela	(TX)	Fleisher	Emily	(L)
Animalis Works, LLC		(TX)	Flores	Anel I.	(L)
Aschheim	Deborah		Fourtrac Creative		(L)
Bailey	Radcliffe		Francis	Anthony	(L)
Bannerworks Inc (dba) Koryn Rolstad Studios			Frank	Adam	
Barbara Grygutis Sculpture LLC			Frederick	Joan	(L)
Beyond Metal, Inc.			Frelin	Adam	
Bishop	Kim	(L)	Friend Gay	Dixie	(TX)
Booth	Sabra	(L)	Friends of Spare Parts		(L)
Boyd	Justin	(L)	Future Cities Lab		
Boyer	Penelope	(L)	Galloway	Stephen	
Brad J. Goldberg, Inc.		(TX)	Garcia	Adriana M.	(L)
Bradshaw	Cade	(L)	Garcia	Gini	(L)
Brawley	Cakky	(L)	Garten	Clifford	
Brown	Maureen	(L)	Garza	Doroteo	(L)
Buentello	Ruth	(L)	Gayer	Tamara	
Cabrera	Margarita	(L)	Geller	Matthew	
Carpenter	Ed		Gibson	Jeffrey	
Carrington	Adrian Rahm	(L)	Glassford	Thomas	(I)
Carrington	Elizabeth	(L)	Godfrey	DeWitt	
Castillo	Veronica	(L)	Goldlust	Pete	
Chang	Jackie		Gonzalez	Jesus David	(L)
Cheng	Amy		Gonzalez	Raul Rene	(L)
Christophel	Hennessy		González	Suzanne 'Suzy'	(L)
Cisneros	Joseph George	(L)	Harrison	Megan	(L)
Colombik	Roger	(L)	Hayes	Paula	
Coron	Béatrice		Helmick	Ralph	
Corona	Hosey	(I)	Helms	Adam	
Cortes	Carlos	(L)	Hermann	Jennifer	(L)
Cortez	Sol	(L)	Hernandez	Jonathan	(L)
Craig	Margaret	(L)	Hernandez Burwell	Ana	(L)
Creative Machines Inc.			Herrera	Rudy M.	(L)
Cross	Hunter	(TX)	Hetherington	James	(L)
Curry	Aaron	(L)	Heye Mosaics LLC		(L)
De La Cruz	Joe	(L)	Hiscock	Carina	(L)
Delgado	Esteban	(L)	Hobson	Paul	
Díaz Frances Horcasitas	Carla	(L)	Holmgreen Iron Works, LLC		(L)
Didier	Jenna		Ibanez	Ernesto	(L)
Dow	Kaldric	(L)	Ink and Movement		(I)
Duncan	David	(TX)	Isherwood	Jon	
Elastic City			Janet Lofquist LLC		
Escobedo	Frida	(I)	Janney	Christopher	
Esparza	Jenelle	(L)	Jen Lewin Studio		
Ettun	Tamar		Jenssen	Dale	(L)
Fabian	Joan	(L)	Jonas	Paul Ramirez	
Falon Land Studio LLC		(TX)	Jonathan Brown Art & Design, LLC		(TX)

Jones	Zachary	(L)
Kass	Deborah	(L)
Kelm	Carl Addison	
Kersey Ceramics LLC		(L)
Khoshbin	Jennifer	(L)
Klein	Sheila	
Krivaneck+Breaux/ Art+Design		
Lance	Mary	(L)
LC Studio Tutto		
Lee	Catherine	(TX)
Legge Lewis Legge		(TX)
Lerma	Sam	(L)
Lester	Leigh Anne	(L)
Leticia Huerta Studio LLC		(L)
Lewis	Ann	
Living Lenses Artist Team		
Lopez	Blas	(L)
Lucking	Mary	
Luftwerk Studio		
Maeder	Cheryl	
Mark Grieve and Ilana Spector		
Martin	Scott	(L)
Martinez	Cesar	(L)
Mazzotta	Matthew	
McConnel	Michael	
Medina	John	(L)
Menchaca	Michael	(L)
Mersky	Deborah	(L)
Michael Clapper Studios		
Mincemoyer	Carin	
Mireles	Ashley	(L)
mi-workshop		
Moffett	Donald	
Monseau	Michele	(L)
Moore	Norma	(L)
Morrel	Owen	
Munro	Cherise	(L)
Mythograph Inc.		
Nagasawa	Nobuho	
Narduli Studio		
Neto	Ernesto	(I)
Nolan	Timothy	
O'Brien	Michael	(L)
Oring	Sheryl	
Ortiz	Ben	(L)
Ortiz	Patricia	(L)
Otabenga Jones & Assoc.		(TX)
Parker	Steve	(TX)
Phillipsz	Susan	(I)
Public Workshop		

Rainey		(L)
RDG IA Inc		
RE:site Studio		(TX)
Redl	Erwin	
Reed	Marisol	(L)
Reigelman	Mark	
Reyes	Pedro	(I)
Robbins	Jack	(L)
Robinson	Riley	(L)
Robleto	Dario	(L)
Rondinone	Ugo	(I)
Roth	Yumi Janairo	
Roy Secord Fine Artist		
Saenz	Rocio	(I)
Sage Studio		(L)
Saleh	Autumn	(L)
Saleh	Simon	(L)
Salinas	Kara	(L)
Samandari	Ramin	(L)
Sauter	Chris	(L)
Schnitzer	Nick	(TX)
Scholnick	Jaime	
Schroeder	George	(L)
Schwulst	Laurel	
Seale	Ansen	(L)
Sebastián/Fundacion Sebastián		(I)
Sharp	Peter	(L)
Shaw	Bart	(TX)
Shipton	Ethel	(L)
Simpson	Gail	
Skyrim Studio Inc		
Snook	Kelly	(TX)
Sosa	Kathy	(L)
Steinkamp	Jennifer	
Stephan	Aaron	
Stern	Arthur	
Stimson	Stephen	
Stuart Allen Art Services		(L)
Studio Balcones		(TX)
Sun	May	
Surls	James	(TX)
Swift Lee Office		
Sze	Sarah	
Takaba	Ryan	(L)
Tavira	Cruz	(L)
THEVERYMANY, LLC		
Thomas	Hank Willis	
Trenchard	Kathleen	(L)
Unnasch	Karl	
UrbanRock Design		

Valderas	Luis	(L)
Valdez	Vincent	(L)
Varejao	Adriana	(I)
Vega	Joe Raymond	(L)
Velasquez	Josue Romero	(L)
Vicki Scuri SiteWorks		
Victoria University Skunk Control		(I)
Vicuna	Cecilia	
Villareal	Leo	
Wallace	Anne	(L)
Wanjiku	Naomi	(L)
Ward	Nari	
Weber	Doerte	(L)
Weems	Carrie Mae	
Welker	Joshua	(L)
Westover	Amy	
Whipple	Jeff	
Widgery Studio, LLC		
Wood	Nancy	(L)
Younse	Noa	
Ysasi	Michael	(L)
Zabala	Guillermina	(L)
Zivadinovic	Stevan	(L)
Zubiate	Peter	(L)

2019-2021

Pre-Qualified List: Support Services

(L): San Antonio-based Applicant

(TX): Texas-based Applicant

(I): International Applicant

AIA San Antonio		(L)
Alphagraphics #600		(L)
aMAEzing Marketing Group		(L)
American Indians in Texas Spanish Colonial Missions		(L)
American Scan Mill & Engrave		(L)
Artpace, Inc.		(L)
augzoo LLC		(TX)
B.R. Howard Associates, Inc.		
Bandera Art Services, LLC		(L)
BCAD Zion Corporation		(TX)
Bishop	Kim	(L)
Borcherding	James	(L)
Boyer	Penelope	(L)
Bridge Projects LLC		(L)
Brown	Maureen	(L)
Budge	Susan	(TX)
Centro Cultural Aztlan		(L)
CineVeliz Production Company		(L)
Cinnabar Bazaar LLC		(L)
Cirlos	Michael	(L)
Comet Signs		(L)
Contemporary Art for San Antonio		(L)
Cordova	Ruben	(L)
Cowles	Madison	(L)
De La Cruz	Joe	(L)
Decision Support Partners, Inc.		
DeCuir	Jeff	(L)
Designing Local		
Diaz	Coral	(L)
Eckmann	Teresa	(L)
EHCÜ Public Relations		(L)
Epstein	Evan	(TX)
ESD & Associates		(L)
Esperanza Peace & Justice Center		(L)
F&M Projects		(L)
Fahim	Kazim	(L)
Fine Art Conservation Services, LLC		(L)
Fisch	Sarah	(L)
FitzGibbons	Bill	(L)
Forecast Public Art		
Fourtrac Creative		(L)
French & Michigan		(L)
Friends of Spare Parts		(L)
Fulton	Heather Snow	(L)
Furey	Aidan	(L)
Garcia	Adriana M.	(L)
Garcia	Lisa	(L)
Garza	Luis	(L)
George Gadson & Beth Ravitz		
Gilmore	Xavier	(L)

Gollan	Casey	
Gonzales-Martinez	Jason E.	(L)
Gretchen Freeman & Company		
Guadalupe Cultural Arts Center		(L)
Gustavo Ocampo LLC		
Harrison	Jack	(L)
Hemisfair Park Area Redevelopment Corporation (HPARC)		(L)
Hernandez Burwell	Ana	(L)
Holder Construction Services		(L)
Holmgreen Iron Works, LLC		(L)
Hunt	Dorothy	(L)
J&R Tile		(L)
Jonathan Brown Art and Design, LLC		(TX)
Julie Unruh, LLC		(TX)
Kathryn R Martin		
Khoshbin	Jennifer	(L)
Kurt Youngblood Framing and Art		(L)
Lance	Mary	(L)
Land Art Generator Initiative		
LeBasse Projects		
LeMelle	Veronique	(L)
Lewis	Jennifer	(TX)
LMG Photography & Art		(L)
Lopez	Patricia	(L)
Lopez	Vianney	(L)
Luera	Pedro	(L)
Luminaria		(L)
Luna	Rigoberto	(L)
Mainstreet Architects, LLC.		(L)
Martinez	Martha	(TX)
Mathis	Don	(L)
McVey	Benjamin	(L)
Military City Demolition		(L)
Mosaika Art and Design		(L)
Munro	Cherise	(L)
National Association of Latino Arts and Cultures (NALAC)		(L)
Nishimoto	Taeg	(L)
Novelli	Amy	
Ortiz	Patricia	(L)
Participation Studio		(L)
Patrias	Jordyn	(L)
Production Corp		(L)
Quintanilla Schmidt Consulting		(L)
Rachel Mauldin Art Services, LLC		(L)
Radius Center		(L)
Robinson	Riley	(L)
Rocha-Zivadinovic	Leticia	(L)
Samandari	Ramin	(L)
San Anto Cultural Arts, Inc.		(L)
San Antonio Photolab		(L)

San Antonio River Authority		(L)
San Antonio River Foundation		(L)
San Antonio Street Art Initiative		(L)
Sanders, Jr.	James E.	(L)
Santiago	Gabriela	(L)
Scobey Moving & Storage		(L)
Screenville Films		(L)
Shipton	Ethel	(L)
Spectrum Lighting		(L)
Strategy & Leadership, LLC		(L)
Studio Falcones		(TX)
Tavira	Francisco	(L)
Trenchard	Kathleen	(L)
Two Ravens Studio		
Underground Planet Art Studio, LLC dba UP Art Studio, LLC		(TX)
UpWrite, LLC		(L)
Urban-15		(L)
US Art		
US STARS		(L)
Valderas	Luis	(L)
Vega	Joe	(L)
Wanderlust Ironworks, LLC.		(L)
Weissling	Alan	(L)
WHY Group		(L)
Ximenes & Associates, Inc.		(L)
Zabala	Guillermina	(L)
Zanikos	Anne	(L)
Zarazua	Victor	(L)
Zivadinovoc	Stevan	(L)

LB
05/2/19
Item No. #15

EXHIBIT II

ART ACQUISITION AGREEMENT

This Art Acquisition Agreement ("Agreement") is made this ____ day of ____, 2019, 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 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 **TBD**. 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 **\$TBD** as total compensation. These funds shall be paid to Artist as follows:

Payment

Payment

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

Exhibit I
Description of Artwork

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
05/2/19
Item No. #15

EXHIBIT III

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.

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

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
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 "**On Call Art Services**" 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:

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

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) 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 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/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 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.

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 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.

Signatures on following page

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

LB
05/2/19
Item No. #15

EXHIBIT IV

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 _____ ("ARTIST"), said Agreement being executed by the CITY pursuant to Ordinance No. 2019-05-02-____ or 2018-04-19-0299 (*pick one-depends what list they are on*) passed by City Council on April 19, 2018 and by the ARTIST, 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 a Artist Pool from which ARTIST 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, ARTIST 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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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 ARTIST 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 ARTIST'S final proposal to be submitted for review and approval of CITY.

1.2. "ARTIST" 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 representative 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 ARTIST 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 ARTIST and approved by CITY.

1.8. "Defects Notice" means notice by CITY to ARTIST 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 ARTIST to begin design, fabrication and installation 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 ARTIST 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 ARTIST's services, as stated in the Scope of Services, are to be provided pursuant to this Agreement

1.15. "Proposal" means ARTIST'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 ARTIST to complete work arising from this Agreement.

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

SECTION 2. ARTIST'S GENERAL RESPONSIBILITIES

2.0. The ARTWORK is to be an artistic product representing the creative talents of ARTIST and satisfies the specifications to be set forth in the Final Proposal and the Construction Documents for the ARTWORK. ARTIST 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. ARTIST 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. ARTIST is responsible for developing the Artwork Design so the ARTWORK can be constructed without exceeding the total compensation. ARTIST shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in ARTWORK.

2.0.2. ARTIST warrants that the ARTWORK, including the Artwork Design, is unique. ARTIST 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. ARTIST 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. ARTIST's opinions of probable project cost or construction cost are to be made on the basis of ARTIST's experience and qualifications representing ARTIST's best judgment as a design 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, ARTIST 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. ARTIST reserves the right to make minor adjustments to the ARTWORK as ARTIST 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 ARTIST 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 ARTIST seeks additional compensation will be provided nor charged without CITY's prior written authorization.

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

2.4. REPRESENTATIVES. Before starting installation, ARTIST shall designate in writing an authorized representative who shall have the authority to represent and act for ARTIST. ARTIST's authorized representative shall be present at the Site of the work at such times as designated by CITY.

2.5. COORDINATION. The Parties shall closely consult with each other during all stages of fabrication and installation of the ARTWORK. ARTIST agrees to meet with CITY, Design Consultant, and others as reasonably directed by CITY to ensure coordination of ARTIST's fabrication and installation of the ARTWORK.

2.6. PERMITS, FEES AND NOTICES. Unless otherwise provided in the Agreement, ARTIST shall give notices as required by law, and secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper fabrication and installation of the ARTWORK, which are customarily secured after execution of this Agreement. CITY and Design Consultant shall assist ARTIST, when reasonably requested, in obtaining such permits and licenses.

2.6.1. If ARTIST provides ARTWORK that is contrary to laws, statutes, ordinances, building codes, and rules and regulations, ARTIST shall assume appropriate responsibility for such ARTWORK and bear the costs attributable to the correction thereof.

2.6.2. ARTIST shall also assist CITY in obtaining all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System regulations, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the ARTWORK. Any drainage alterations made by ARTIST during the construction process, which require the issuance of a permit, shall be at ARTIST's sole cost.

2.7. USE OF SITE. ARTIST will abide by all applicable rules and regulations of CITY with respect to conduct, including smoking, parking of vehicles, security regulations and entry into adjacent facilities owned by CITY.

2.7.1. ARTIST shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall ARTIST subject any part of the ARTWORK or adjacent property to stresses or pressures that may endanger it.

2.7.2. ARTIST shall confine ARTIST's construction equipment, the storage of materials and equipment and the operations of ARTIST's personnel to areas permitted by law, ordinances, permits and the requirements of the Agreement and shall not encumber the Site unreasonably.

2.7.3. ARTIST shall provide reasonable access to residents and businesses affected by the fabrication and installation of the ARTWORK to the greatest extent possible.

2.7.4. During the progress of the ARTWORK, ARTIST shall keep the Site and surrounding area free from accumulations of waste materials, rubbish, and other debris resulting from fabrication and/or installation of the ARTWORK. ARTIST shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units, operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of resulting debris. ARTIST shall be given three days notice to clean the Site, otherwise CITY may do so and the cost shall be charged to ARTIST

2.7.5. Prior to Substantial Completion of the ARTWORK, ARTIST shall remove all waste materials, rubbish and debris from and about the Site as well as all tools, appliances, excess materials, construction equipment and machinery, and shall leave the Site clean and ready for acceptance by CITY. ARTIST shall restore to their original condition those portions of the Site not designated for alteration by the Agreement. If ARTIST fails to clean up the Site as provided in the Agreement after three days' notice from CITY, CITY may do so and the resulting cost shall be charged to ARTIST.

2.8. REVIEW OF PROGRESS AND REPORTS. At reasonable times and with advance notice to ARTIST, CITY has the right to review the work in progress and to require and receive progress reports from ARTIST. CITY shall have the right to visit ARTIST's studio at all reasonable times to inspect and review the progress of the ARTWORK. ARTIST shall be responsible for arranging with ARTIST's subcontractors for reasonable access for review and inspection of ARTWORK at any subcontractor's place of business.

2.9. RISK OF LOSS. Until the ARTWORK is formally accepted by CITY, any damage, theft, vandalism, or acts of God or nature affecting the ARTWORK are the responsibility of ARTIST, including, but not limited to, any loss occurring during the fabrication, storage, transportation, delivery or installation of the ARTWORK.

2.10. WAIVER OF MORAL RIGHTS. ARTIST agrees to the provisions of the Waiver of Moral Rights attached and incorporated into this Agreement as **Exhibit C-1**.

2.11. PREVAILING WAGE. The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to this Agreement. ARTIST shall pay, or cause to be paid, prevailing wages for all work under this Agreement and shall not accept affidavits.

2.11.1. In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, ARTIST shall request and CITY will provide the appropriate wage determination which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. ARTIST is required, and shall require its construction contractor and all subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time. ARTIST is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with any contractor and subcontractors for construction of ARTWORK. ARTIST 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 ARTIST or ARTIST'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 ARTIST 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, ARTIST 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 ARTIST and ARTIST's personnel, and shall make the software accessible via the Internet to ARTIST and ARTIST's personnel.

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

SECTION 3. CITY'S RESPONSIBILITIES.

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

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

SECTION 4. DESIGN DEVELOPMENT OF THE ARTWORK

4.0. ARTIST 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. ARTIST 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. ARTIST 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 ARTIST 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. ARTIST shall prepare one or more concept designs showing ARTIST's idea(s) for the ARTWORK ("Concept Design Proposal"). The Concept Design Proposal 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 Proposal, ARTIST shall prepare one or more designs showing ARTIST's schematic design for the ARTWORK ("Schematic Design Proposal"). The Schematic Design Proposal 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. ARTIST shall investigate and prepare preliminary cost estimates for the fabrication and installation of the ARTWORK proposed in the Schematic Design Proposal. The estimates shall indicate the feasibility of producing the proposed ARTWORK within CITY's budget ("Preliminary Cost Estimate") including a contingency equal to 10% of the fabrication and installation budget to cover unforeseen costs, which shall be retained by CITY until final payment.

4.2.4. The Schematic Design Proposal 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, ARTIST 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. ARTIST 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. 10% of the Artwork Budget will be set aside as a contingency to cover unforeseen costs, that may arise during the fabrication and installation.

4.3.3. 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. ARTIST 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 ARTIST to make modifications to the Artwork Design Development Proposal prior to submission.

4.4.3. ARTIST, 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, ARTIST, 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 ARTIST has performed the services set out in Agreement to the satisfaction of the CITY, ARTIST may be compensated to submit a modified design proposal as specified by the PASA Public Art Manager.

4.5. Construction Documents. ARTIST, 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, ARTIST 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 ARTIST in writing once the Construction Documents are approved. CITY's approval of the Plans shall not release ARTIST of the responsibility for correcting mistakes, errors or omissions, proximately

caused by ARTIST 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 ARTIST. 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 ARTIST 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. ARTIST 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 ARTIST 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, ARTIST will promptly remedy any defects to the reasonable satisfaction of CITY.

5.2. DELIVERY. Upon issuance of the Transport Notice To Proceed, ARTIST shall deliver the Off-Site Elements to the Site. ARTIST 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. ARTIST shall promptly remedy any deviation, defect or damage to the Off-SITE Elements to the reasonable satisfaction of the CITY.

5.3. PLANS. ARTIST 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 ARTIST of the responsibility for the correction of ARTIST'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 ARTIST to address the public safety issues. ARTIST 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 ARTIST 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. ARTIST 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 ARTIST of the same and ARTIST shall promptly cure such defect to the reasonable satisfaction of CITY.

5.4.3. Whenever the ARTIST or ARTIST'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 ARTIST's subcontractor and/or employees. At ARTIST'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. ARTIST 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 ARTIST 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 ARTIST in writing ("Defects Notice").

5.5.2. REMEDY OF DEFECTS. ARTIST shall promptly remedy at ARTIST'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, ARTIST 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, ARTIST shall supply CITY with at least three publication quality images of the installed ARTWORK in both slide and 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. ARTIST shall be available at such time or times as may be agreed upon between CITY and ARTIST to attend an inauguration or presentation ceremonies relating to the transfer of the ARTWORK to CITY.

5.6. DEATH OR INCAPACITY OF ARTIST. In the event of ARTIST'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 ARTIST 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 ARTIST's design, integrity and reputation, CITY may elect to proceed, under this Agreement, with completion and/or installation by ARTIST'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 _____, 2019 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. ARTIST is to complete the services required of ARTIST 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 ARTIST's services under this Agreement.

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

SECTION 7. ARTIST'S COMPENSATION.

7.0. COMPENSATION. ARTIST'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 ARTIST, 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 ARTIST unless and until CITY accepts the ARTWORK.

7.0.1. Payment Schedule. CITY shall make interim payments to ARTIST in the amounts and at the milestones as identified in the Payment Schedule, attached and incorporated as **Exhibit B-1**, as compensation to assist ARTIST 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 ARTIST's invoice indicating the appropriate milestone has been reached, CITY will pay ARTIST 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 ARTIST. CITY's PASA Program Manager may approve changes, which are not considered material by CITY.

7.1. COST OVERRUN. In the event ARTIST incurs costs over the TOTAL PRICE, ARTIST shall pay such excess at ARTIST'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 ARTIST within 10 days of receipt of such invoice, specifying the failure of performance for which CITY intends to withhold payment. ARTIST 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 ARTIST 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 ARTIST under this Agreement or by law, nor shall such payment constitute a waiver by the CITY of any failure or fault of ARTIST to perform satisfactorily under this Agreement. ARTIST expressly acknowledges that approval of work to permit an interim payment is solely to permit ARTIST 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 ARTIST.

7.4. If the Parties mutually agree in writing to a modification of the ARTWORK resulting in an increased cost to ARTIST, 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 ARTIST.

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 ARTIST within 10 days of receipt of such request for payment, specifying the failure of performance for which CITY intends to withhold payment. ARTIST shall cure such failure to the reasonable satisfaction of CITY.

SECTION 8. ARTIST'S WARRANTIES.

8.0. ARTIST 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. ARTIST's installation and fabrication services shall comply with the Construction Documents/Plans for the ARTWORK approved by CITY. Further ARTIST represents and warrants the following.

8.0.1. ARTIST 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 ARTIST under this Agreement, whether created by ARTIST alone or in collaboration, is wholly original and will not infringe upon or violate the rights of any third party.

8.0.3. ARTIST 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 ARTIST. ARTIST acknowledges that CITY desires that the ARTWORK be

unique, and ARTIST 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 Transportation and Capital Improvements, (TCI) Architectural Division. 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. ARTIST warrants that the ARTWORK will be free of defects in workmanship, including Inherent Vice, and that ARTIST will, at ARTIST's own expense, remedy any defects due to faulty workmanship, or Inherent Vice, which appear within a period of one year 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, ARTIST will repair or replace the ARTWORK without charge for ARTIST's services in supervising the work of others or for repairing the work that they originally performed on the ARTWORK and ARTIST will pay for the cost of labor rendered by persons other than ARTIST, materials and supplies.

8.1.2. ARTIST 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. ARTIST 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. These representations and warranties survive the Agreement's termination.

SECTION 9. MAINTENANCE.

9.0. CITY shall have the right to determine, after consultation with ARTIST 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 ARTIST regarding repairs and restoration, which are undertaken during ARTIST's lifetime.

9.1. All repairs and restorations, whether performed by ARTIST, 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 ARTIST pursuant to Section 5.5.3.

SECTION 10. ARTIST IS INDEPENDENT CONTRACTOR.

10.0. ARTIST 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 ARTIST. ARTIST has no authority to bind CITY. ARTIST 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. 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 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.

11.01. The provisions of this INDEMNITY are solely for the benefit of the Parties and not indented to create or grant any rights, contractual or otherwise, to any other person or entity. 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 Article.

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

defense counsel on its own behalf, and ARTIST 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.

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

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

11.05. Acceptance of the Plans by CITY shall not constitute nor be deemed a release of the responsibility and liability of ARTIST, 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.

SECTION 12. INSURANCE.

12.0. Prior to the commencement of any Services under this Agreement, ARTIST shall furnish copies of all required endorsements and an original 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 original 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 Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title 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 CITY's Risk Manager shall have authority to waive this requirement.

12.1. ARTIST's financial integrity is of interest to CITY. Therefore, subject to ARTIST's right to maintain reasonable deductibles in such amounts as are approved by CITY, ARTIST shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at ARTIST's sole expense, insurance coverage written on an occurrence or claims made basis, as appropriate, by companies authorized and approved 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:

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 Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

All notices under this Article shall be given to CITY at the following address:

CITY of San Antonio
Department of Arts & Culture
Attn: Public Art San Antonio
203 S. St. Mary's St. Ste. 120
San Antonio, Texas 78205

12.2. With respect to the above required insurance, ARTIST agrees that all insurance policies are to contain or be endorsed to contain the following required provisions:

- Name CITY and its officers, officials, employees, and elected representatives as an additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY;
- Provide for an endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy if such endorsement is permitted by law and regulations; and
- Provide 30 calendar days advance written notice directly to CITY of any suspension, cancellation or non-renewal or material change in coverage, and not less than 10 calendar days advance written notice for nonpayment of premium.

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

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

12.5. Nothing in this Agreement shall be construed as limiting in any way the extent to which ARTIST may be held responsible for payments of damages to persons or property resulting from ARTIST's or its sub-artist's performance of the services covered under this Agreement.

12.6. ARTIST'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.

12.7. The insurance required is in addition to and separate from any other obligation contained in this Agreement as respects additional insureds.

12.8. ARTIST and any subcontractors are responsible for all damage to their own property and/or equipment.

12.9 If applicable ARTIST 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).

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 ARTIST.

13.1. ARTIST 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 ARTIST or any third

party must be approved, in advance, by CITY except that ARTIST 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 ARTIST'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. ARTIST 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, ARTIST 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 ARTIST requests to the contrary in writing, all references to the ARTWORK and all reproductions of the ARTWORK will credit the ARTWORK to ARTIST.

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

14.2. ARTIST agrees that all formal references to the ARTWORK made or authorized to be made by ARTIST 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. ARTIST and ARTIST'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, ARTIST must fully and

accurately identify the ARTIST'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 ARTIST.

14.4.2. 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.

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

14.4.4. ARTIST's rights under this Agreement cease with ARTIST's death and do not extend to ARTIST's heirs, successors or assigns except that ARTIST will still receive credit for the ARTWORK and in the case of death or incapacity of ARTIST

SECTION 15. COMPLIANCE WITH LAWS.

15.0. ARTIST 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. ARTIST shall comply with the 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. ARTIST 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 ARTIST's services shall involve, and no portion of the funds received by ARTIST shall be used to support any sectarian or religious activity.

15.4. 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, ARTIST verifies that it does not boycott Israel, and will not boycott Israel during the term of this Agreement. CITY relies on ARTIST's verification. If found to be false, CITY may terminate this Agreement for material breach, without providing the opportunity to cure.

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. ARTIST shall comply with this policy in all interactions with ARTIST'S employees, subcontractors, artists, 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 ARTIST to perform by issuing a signed, written notice of termination (citing this paragraph) which shall take effect upon effective notice to ARTIST and/or upon the scheduled completion date of the performance phase in which ARTIST is currently working, whichever occurs first. In the event of termination by CITY without cause, ARTIST shall be entitled to payment for all work performed by or on behalf of ARTIST to date, together with reimbursement for all legitimate expenses incurred by ARTIST up to ARTIST's receipt of such notice.

16.2. RIGHT OF CITY TO SUSPEND GIVING RISE TO RIGHT OF ARTIST 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 ARTIST.

16.2.1 ARTIST has the right to terminate if such suspension extends for more than 120 days. ARTIST 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 ARTISTS after such suspension, ARTIST shall be entitled to payment for all work performed by or on behalf of ARTIST, together with reimbursement for all legitimate expenses incurred by ARTIST prior to ARTIST's suspension.

16.3. PROCEDURES ARTIST 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 ARTIST immediately takes action to cure under the set cure period, ARTIST 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 ARTIST has successfully cured a failure to perform), ARTIST 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, ARTIST understands that failure to comply with the submittal of the statement and documents shall constitute a waiver by ARTIST of any and all rights or claims to payment for services performed under this Agreement by ARTIST.

16.3.3. Upon the above conditions being met, CITY shall pay ARTIST 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 ARTIST TO FOLLOW UPON RECEIPT OF NOTICE OF SUSPENSION. Upon the effective date of suspension, ARTIST 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. ARTIST 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 ARTIST until such time as ARTIST may exercise the right to terminate.

16.4.3. ARTIST shall promptly cancel or suspend all existing orders and contracts chargeable to this Agreement. If ARTIST is terminating, ARTIST 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 ARTIST'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. ARTIST's failure to comply with this Section may constitute a waiver by ARTIST of any portion of the fee for which ARTIST did not supply such necessary statements and/or documents.

16.4.6. Upon the above conditions being met, CITY shall promptly pay ARTIST 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 ARTIST up to ARTIST's receipt of such notice.

16.5. COMPENSATION. If CITY terminates, CITY shall pay ARTIST 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 ARTIST breaches this Agreement, CITY has the right to exercise its termination rights as described herein and at its option proceed with the fabrication and installation of the ARTWORK without utilizing ARTIST's services. If CITY exercises its option to proceed, then CITY, upon ARTIST's written request will refrain from referencing the ARTWORK as the work of ARTIST.

SECTION 17. ASSIGNMENT

17.0. The expertise and experience of ARTIST are material considerations for this Agreement; therefore, ARTIST shall not assign or transfer any interest in this Agreement nor the performance of any of ARTIST's obligations. Any attempt by ARTIST 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 ARTIST, at ARTIST's sole expense, from relying on or utilizing the services of such other consultant or artist as ARTIST may require to complete the ARTWORK.

SECTION 18. SUBCONTRACTS.

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

18.1. ARTIST 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 ARTIST after the Notice of Award, ARTIST 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. ARTIST is not required to employ any Subcontractor, person, or organization against whom ARTIST has a reasonable objection.

18.2. ARTIST 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 ARTIST is responsible for the acts and omissions of persons directly employed by ARTIST. CITY shall in no event be obligated to any third party, including any sub-contractor of ARTIST, for performance of or payment for work or services.

18.3. All ARTWORK performed for ARTIST by a subcontractor will be pursuant to a written agreement between ARTIST and the subcontractor, which specifically binds the Subcontractor to the applicable terms and conditions of this Agreement. Where

appropriate, ARTIST shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. ARTIST 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 ARTIST:

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

SECTION 20. PROTECTION OF PERSONS AND PROPERTY.

20.0. ARTIST 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. ARTIST 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 installation. While CITY has the right to inspect and verify ARTIST's compliance, ARTIST is responsible for initiating, maintaining and supervising all safety precautions and programs.

20.0.1. ARTIST has adopted or will adopt its own policy to assure a drug and alcohol free Site. ARTIST's employees, agents, and subcontractors shall not perform any service for CITY while under the influence of alcohol or any controlled substance. ARTIST, 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. ARTIST 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 ARTIST 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 ARTIST shall exercise best efforts to act to prevent or minimize threatened damage, injury or loss. ARTIST 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 ARTIST's insurers and the State of Texas in connection with such injuries or fatalities.

20.2. A breach or violation of this Section by ARTIST will be a material and substantial breach of this Agreement. If CITY reasonably determines the ARTIST has breached or violated this Section, then CITY shall notify ARTIST 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. The ARTIST 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 ARTIST or the ARTIST'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. ARTIST 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, ARTIST shall exercise extraordinary care and shall carry on such activities under the direct supervision of properly qualified personnel.

20.3.3. ARTIST 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 ARTIST, ARTIST's employees or agents, any subcontractors, or any other third party that ARTIST'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 ARTIST's obligations.

20.5. PUBLIC CONVENIENCE AND SAFETY. ARTIST 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. ARTIST 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 ARTIST regarding public convenience and safety, which may come to the CITY's attention, after 24 hours notice in writing to the ARTIST. 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 ARTIST's neglect shall be deducted from the Total Price due ARTIST.

20.6. If the ARTWORK is carried on, in, or adjacent to any street, alley or public place, ARTIST shall, at ARTIST'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. ARTIST 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 ARTIST at ARTIST'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 ARTIST encounters materials reasonably believed to be a Hazardous Substance at the Site, ARTIST 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 ARTIST, 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 ARTIST, or ARTIST's subcontractor or supplier, ARTIST shall be responsible for remediating at ARTIST'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. ARTIST warrants and certifies as follows:

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

21.2. ARTIST 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 ARTIST 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 ARTIST to remove any employee from the Site who violates these restrictions or any similar law, and may obtain reimbursement for any expenditure made to ARTIST 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. ARTIST grants CITY, or its designees, the right to audit, examine or inspect all of ARTIST's records relating to ARTIST'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. ARTIST 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. Artist'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 ARTIST 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 ARTIST. ARTIST agrees to allow CITY's designee access to all of ARTIST's Records, ARTIST's facilities, and current or former employees of ARTIST, deemed necessary by CITY or its designee(s), to perform such audit, inspection or examination. ARTIST also agrees to provide adequate and appropriate work space necessary to CITY or its designees to conduct such audits, inspections or examinations.

24.3. ARTIST 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 ARTIST'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 ARTIST, ARTIST's representatives, or ARTIST'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.

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

CITY OF SAN ANTONIO

ARTIST

Debbie Racca-Sittre
Executive Director
Department of Arts & Culture

(Name)
(Title)

APPROVED AS TO FORM

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

City Attorney

EXHIBIT A – 1

SCHEDULE OF PERFORMANCE

ARTIST shall not commence ARTIST's services until this Agreement is fully executed and CITY issues a Notice to Commence Work. ARTIST 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

ARTIST'S WAIVER OF MORAL RIGHTS

WHEREAS, _____ employed the artist _____ ("Artist"), to create _____ ("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 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 Artist".

Only applicable to works located on City Property: Artist 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 Artist, should it so desire, with the relocation costs at Artist's sole cost and expense. Artist further understands that if City is required to relocate or disassemble the Artwork, City will notify Artist, or his/her descendants or assigns, immediately. Should Artist, 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__.

ARTIST

Name