

ON-CALL PROFESSIONAL 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 ("Department") and _____ ("Contractor"), by and through its authorized representative, both of which may be referred to collectively as the "Parties."

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

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 Executive Director of City's Department of Arts & Culture.

"Finalized Task Order" means a written agreement, authorized by both Parties in City's project management 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 System 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 _____, whichever is sooner.

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 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 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 terminate 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.

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

3.9.1 Contractor will not post any news related to the Project on social media, websites, enewsletters, etc. until such posting is approved by the Department of Arts & Culture.

3.9.2 It is the understanding of the Parties that the Department of Arts & Culture will be the first to post any news regarding the Project, unless the Department elects not to do so.

3.9.3 Once the Department of Arts & Culture provides permission to share such news, Contractor must tag the Department-(@getcreativesa) on social media posts regarding the Project.

3.9.4 Contractor must notify the Department of Arts & Culture of any media inquiries it receives regarding the Project within two (2) days of such inquiry.

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 Task Order 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 allowable costs under this Agreement shall be set forth in **Exhibit B Task Orders**. 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 Task Orders**, 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 the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall 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.

5.4 This Section is not intended to, and shall not, affect any of Contractor's intellectual property rights in any materials other than the final deliverables provided to City, such as discovery methods or processes, preliminary concepts, project files, works in progress, and individual design elements. Contractor expressly retains all of its right, title, and interest in such materials.

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

VI. RECORDS RETENTION

6.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered under this Agreement ("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, and the record retention period established in this Agreement, 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 under this Agreement 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, 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 referenced in 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 15 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 XII. 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 7.4 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 15 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 consultant 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 consultant 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 required by this Agreement

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, 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, 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 30 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 45 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 45 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 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 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 and Culture
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for Contractor, to:

Name
Title
Company
Address
San Antonio, Texas 782____

IX. [Reserved]

X. INSURANCE

10.0 Prior to the execution of this Agreement, CONTRACTOR must provide a completed Certificate(s) of Insurance to CITY's Department of Arts & Culture. The certificate must be:

- clearly labeled with the legal name of the agreement in the Description of Operations block;
- completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance);
- properly endorsed and have the agent's signature, and phone number,

10.1 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. 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 and Culture. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.

10.2 If CITY does not receive copies of insurance endorsement, then by executing this Agreement, CONTRACTOR certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for this Agreement.

10.3 CITY's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

10.4 CONTRACTOR shall obtain and maintain in full force and effect for the duration of this Agreement, at CONTRACTOR'S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted 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. If CONTRACTOR claims to be self-insured, they must provide a copy of their declaration page so CITY can review their deductibles:

INSURANCE TYPE	LIMITS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors* *f. Explosion, Collapse, Underground Property Hazard Liability *g. Damage to property rented by you	For Bodily Injury and Property Damage \$500,000 per occurrence; \$1,000,000 general aggregate, or its equivalent in Umbrella Liability Coverage must be on a per project aggregate. *g) \$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 \$250,000 per occurrence
5. Professional Liability	\$500,000 per claim damages by reason of any act, malpractice, error, or omission in the

	professional service. *Coverage to be maintained and in effect for no less than two (2) years subsequent to the completion of the professional service.
*6. Installation Floater	All Risk Policy written on occurrence basis for 100% replacement cost of "equipment & materials" to be installed to any new or existing structure.
*If Applicable	

Commented [JM(1)]: Only required if the on call contractor services will include installation of equipment and materials into a vertical structure.

10.5 CONTRACTOR must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of CONTRACTOR and provide a certificate of insurance and endorsement that names CONTRACTOR and CITY as additional insureds. CONTRACTOR shall provide CITY with subcontractor certificates and endorsements the subcontractor starts work.

10.6 If a loss results in litigation, then the CITY is entitled, upon request and without expense to CITY, to receive copies of the policies, declaration page and all endorsements. CONTRACTOR must comply with such requests within 10 days by submitting the requested insurance documents to the CITY at the following address:

City of San Antonio
Department of Arts & Culture
115 Plaza de Armas, Suite 102
San Antonio, TX 78205

10.7 CONTRACTOR's insurance policies must contain or be endorsed to contain the following provisions:

- Name CITY and 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. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy. CITY's insurance is not applicable in the event of a claim.
- CONTRACTOR shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of CITY; and
- Provide 30 days advance written notice directly to CITY of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

10.8 Within five (5) calendar days of a suspension, cancellation, material change in coverage, 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 Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

10.9 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 may order CONTRACTOR to stop work and/or withhold any payment(s) which become due to CONTRACTOR under this Agreement until CONTRACTOR demonstrates compliance with requirements.

10.10 Nothing contained in this Agreement shall be construed as limiting 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.

10.11 CONTRACTOR'S insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by CITY for liability arising out of operations under this Agreement.

10.12 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of CITY shall be limited to insurance coverage provided.

10.13 CONTRACTOR and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

XI. INDEMNIFICATION

11.1 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 activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS

LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.2 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.

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

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

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

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 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 may be sub-contractors or the employees of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

12.2 The use of any additional subcontractors shall require the prior approval of City.

12.3 Any work or services approved for subcontracting 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. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by City.

12.4 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 consent of the City Council, as evidenced by passage of an ordinance. 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.

12.5 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.

XIII. INDEPENDENT CONTRACTOR

13.1 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.

XIV. CONFLICT OF INTEREST

14.1 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 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 the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;

(ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

14.2 Contractor warrants and certifies as follows:

(i) Contractor and its officers, employees and agents are neither officers nor employees of the City.

(ii) Contractor has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

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

XV. AMENDMENTS AND CHANGES

15.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to its terms shall be effected by amendment, in writing, executed by both City and Contractor, and subject to approval by the City Council, as evidenced by passage of an ordinance, when required.

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

XVI. SEVERABILITY

16.1 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 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.

XVII. LICENSES/CERTIFICATIONS

17.1 Contractor warrants and certifies that Contractor and any other person designated to provide services under this Agreement 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.

XVIII. COMPLIANCE

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

18.2 Trademarked and Copyrighted Usage. Contractor agrees to obtain all necessary licenses and take all other necessary steps to insure that all use of trademarked and/or copyrighted materials in the Project complies with United States and any other applicable trademark and copyright law, including requiring any curated artist or subcontractor to provide copies of any necessary licenses for their use of intellectual property owned by others. When requested by City, Contractor shall provide City with copies of any such licenses within ten (10) days of such request.

18.3 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.

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

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

This section only applies to a contract that:

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

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

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

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

18.5 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 and subcontractors, artists and volunteers, if any, under this Agreement.

XIX. NONWAIVER OF PERFORMANCE

19.1 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, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XV. 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.

XX. LAW APPLICABLE

20.1 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.

20.2 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.

XXI. LEGAL AUTHORITY

21.1 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 contained in this Agreement.

XXII. PARTIES BOUND

22.1 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 for in this Agreement.

XXIII. CAPTIONS

23.1 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.

XXIV. ENTIRE AGREEMENT

24.1 This Agreement, together with its exhibit, constitutes 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 XV. Amendments.

EXECUTED and **AGREED** to be effective on the ____ day of _____, 20____.

CITY OF SAN ANTONIO

CONTRACTOR

Krystal Jones
Executive Director
Department of Arts & Culture

Name
Business Name

Approved as to Form:

City Attorney

Exhibit A, Contractor's Fee Schedule
Exhibit B, Task Order

Exhibit A
Contractor's Fee Schedule

Exhibit B
Task Order

To be attached upon assignment and acceptance