

Contract No. _____

**AGREEMENT TO USE FUNDS
of the City of San Antonio**

THIS AGREEMENT is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through its Assistant City Manager, or her designee, and Alamo Colleges Foundation, Inc. (“Recipient”);

WITNESSETH:

WHEREAS, the Department of Arts & Culture is designated as the managing City department for the City; and

WHEREAS, City has provided certain funds from the Hotel Motel Tax Fund for the promotion of tourism and the convention and hotel industry through the encouragement, promotion, improvement, application and exhibition of the arts; and

WHEREAS, Recipient has submitted a **\$100,000.00** request to City to provide support, as described in Attachment I –Scope of Work; and

WHEREAS, pursuant to Ordinance No. 2023-09-14-0623, passed and approved on September 14, 2023, the City Council authorized the expenditure of certain funds for cultural arts activities that benefit the citizens of San Antonio and the tourism and hotel industry; and

WHEREAS the City has allocated a total of **\$100,000.00**, \$25,000.00 from the Department of Arts & Culture budget and \$75,000.00 from the Mayor’s Office budget, for the above-described arts-related expenditures; **NOW THEREFORE:**

For and in consideration of the following mutual promises and obligations, and for the benefit of the City of San Antonio, the parties agree as follows:

1. In consideration of the payment of the sum of not to exceed \$100,000.00 to Recipient by City, Recipient agrees to provide, oversee, administer, and carry out all activities and services in a manner satisfactory to City as described in Attachment I - Services and Allowable Costs. Recipient will be paid a sum of one hundred thousand (**\$100,000.00**) upon Agreement execution.
2. Recipient agrees to provide City with invoices, including backup documentation, to support the expenditures under this Agreement no later than thirty (30) days from the date that Recipient makes such expenditures. Expenditures must be in accordance with the Budget and Payment schedule approved by City.
3. Accounting records for all expenditures shall be maintained by Recipient in accordance with generally accepted accounting practices, and shall be subject to audit by City or its contracted auditor. These records shall be maintained for a period of four years from the termination date of this Agreement.
4. This Agreement will commence immediately upon execution and terminate upon completion or February 28, 2025, whichever is sooner.

5. This Agreement is not assignable and funds received shall only be used by the parties stated herein.
6. In the event that all funds are not used for the purposes set out in Section 1 of this Agreement and in accordance with all its terms and provisions, Recipient agrees to refund any amounts to City which were not used in accordance with these terms and provisions within thirty (30) days of the end of the Project or **February 28, 2025**, whichever occurs earlier.
7. None of the performance rendered under this Agreement shall involve, and no portion of the funds received shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.
8. [This Section Intentionally Left Blank]
9. INDEMNITY

RECIPIENT 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, and intellectual property right infringement made upon CITY directly or indirectly arising out of, resulting from or related to RECIPIENT activities under this Agreement, including any acts or omissions of RECIPIENT, any agent, officer, director, representative, employee, consultant or subcontractor of RECIPIENT, 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 RECIPIENT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION 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.

Recipient shall advise City in writing within 24 hours of any claim or demand against City or Recipient known to Recipient related to or arising out of Recipient's activities under this Agreement.

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

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

10. Non-Discrimination. As a party to this Agreement, Recipient 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.
11. Recipient shall receive prior written approval from City before committing these funds as a match for any other funding. Recipient agrees that costs claimed under this Agreement will not be claimed under another contract or grant from City or another agency, and Recipient warrants that each invoice submitted for payment does not include any costs paid for by another funding source or submitted for payment to any other funding source.
12. Recipient agrees and understands that, it and all persons designated by it to provide services in connection with this Agreement, is (are) and shall be deemed to be an independent contractor(s), responsible for its (their) respective acts or omissions, and that City shall in no way be responsible for Recipients actions, and that none of the parties will have authority to bind the others or to hold out to third parties, that it has such authority.
13. For purposes of this Agreement, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY:

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

RECIPIENT:

Alamo Colleges Foundation, Inc.
Barton T. Simpson, Executive Director
2222 N. Alamo
San Antonio, TX 78215

Notices of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of the change.

14. If any provision of this Agreement is for any reason held to be unconstitutional, void, or invalid, the remaining provisions or sections contained herein shall remain in effect and the section so held shall be reformed to reflect the intent of the parties.
15. The signer of this Agreement for Recipient represents, warrants, assures and guarantees that the he or she has full legal authority to execute this Agreement on behalf of Recipient and to bind Recipient to all of its terms, conditions, provisions and obligations.
16. 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.

Recipient warrants and certifies that Recipient and its officers, employees and agents are neither officers nor employees of City.

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

17. 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 this Agreement. City relies on Company's verification. If found to be false, City may terminate this Agreement for material breach.

18. 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. Recipient shall comply with this policy in all interactions with Recipient's employees and subcontractors, artists, and volunteers if any, under this Agreement.

IN WITNESS OF WHICH this Agreement is executed on the ____ day of May, 2024.

CITY OF SAN ANTONIO

Krystal Jones
Executive Director,
Department of Arts & Culture
City of San Antonio

Approved as to Form: _____
Assistant City Attorney

RECIPIENT

DocuSigned by:

Barton T. Simpson

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Barton T. Simpson
Executive Director
Alamo Colleges Foundation, Inc.

APPROVED
AS TO FORM ONLY
Ross Laughead
GENERAL COUNSEL ALAMO COLLEGES

APPROVED
By Ross Laughead at 11:00 am, May 06, 2024

Attachments: Attachment I, Services and Allowable Costs

Attachment I

Services and Allowable Costs:

Recipient will utilize funding to support services for “El Otro Lado del Espejo,” an exhibit that showcases 15 San Antonio artists and 55 pieces of their artworks at the Museo de Arte de Querétaro September 20, 2024, through January 20, 2025. The exhibition will also feature ancillary events including panel discussions, workshops, performances, and demonstrations. In exchange, the City of San Antonio, the Mayor’s Office, Department of Arts & Culture, and Global Engagement Office will be promoted throughout the exhibit in exhibition materials and marketing activities and will be included in the run-of-show for the exhibition opening.

This agreement is not to exceed \$100,000.00, with the allotted funds approved for use for the following:

- \$25,000: to cover transportation and travel for participating artists and transportation / shipping of artworks and educational materials related to the exhibition
- \$75,000: to cover any expenses related directly to the exhibition including travel expenses for artists, packing and shipping expenses for artworks, marketing materials, production of artist videos, catalog development, translations, exhibition installation /deinstallation costs, and opening night production.

Term: Upon Agreement Execution through February 28, 2025.

Consideration:

Not to exceed \$100,000.00