

STATE OF TEXAS	§	PUBLIC ART
	§	
COUNTY OF BEXAR	§	DESIGN AGREEMENT
	§	
CITY OF SAN ANTONIO	§	

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. \_\_\_\_\_ passed by City Council on \_\_\_\_\_ and by the ARTIST, for the design services for CITY's \_\_\_\_\_.

**WHEREAS**, CITY issues an annual Call for Public Art Qualifications to create and pre-qualify an 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

**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 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:

## TABLE OF CONTENTS

<u>SECTION</u>	<u>TITLE</u>	<u>PAGE</u>
1.	DEFINITIONS	3
2.	ARTISTS GENERAL RESPONSIBILITIES	4
3.	CITY'S RESPONSIBILITIES	5
4.	DESIGN DEVELOPMENT OF THE ARTWORK	5
5.	SCHEDULE	7
6.	ARTIST'S COMPENSATION	8
7.	ARTIST'S WARRANTIES	9
8.	ARTIST IS INDEPENDENT CONTRACTOR	9
9.	INDEMNIFICATION	9
10.	INSURANCE	10
11.	COPYRIGHTS	12
12.	REPUTATION AND CREDIT	13
13.	COMPLIANCE WITH LAWS	14
14.	DEFAULT/TERMINATION AND/OR SUSPENSION	15
15.	ASSIGNMENT	17
16.	SUBCONTRACTS	17
17.	NOTICE	18
18.	CONFLICT OF INTEREST	18
19.	GIFTS TO PUBLIC SERVANTS	19
20.	VENUE	19
21.	RIGHT TO AUDIT CONTRACTOR'S RECORDS	20
22.	MISCELLANEOUS	20

ATTACHMENTS:	Exhibit A-1	SCHEDULE OF PERFORMANCE & SCOPE OF WORK
	Exhibit B-1	PAYMENT SCHEDULE
	Exhibit C-1	ARTIST'S WAIVER OF MORAL RIGHTS

## **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 DESIGN meets the requirements of this Agreement.

1.1. "ARTWORK" means the fabricated and installed component consistent with CONTRACTOR'S ARTWORK DESIGN.

1.2. "ARTWORK DESIGN" means the final art design reviewed and approved of CITY.

1.3. "ARTIST" is \_\_\_\_\_.

1.4. "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.

1.5. "Compensation Schedule" means the values allocated to services associated with the public art design services, prepared in such form, and supported by such data as required by CITY.

1.6. "Defects Notice" means notice by CITY to ARTIST that the ARTWORK does not meet the requirements of this Agreement.

1.7. "Design Consultant" means the individual or firm engaged by CITY to design a facility or project.

1.8. "Director" means the Director of the Department of Arts & Culture.

1.9. "Notice to Commence" means notice by CITY to ARTIST to begin design of the ARTWORK.

1.10 "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.

1.11. "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.

1.12. "Proposal" means ARTIST's Proposal to provide public art design services for this Project.

1.13. "Public Art Division" means the CITY's Department of Arts & Culture's Public Art Division and is responsible for public art.

1.14. "Schedule of Performance" means the schedule for the design of the ARTWORK set out in **EXHIBIT A-1**, attached to and incorporated in this Agreement.

1.15. "Site" means the physical place located at \_\_\_\_\_ where the ARTWORK will be installed.

1.16. "Subcontractor" means a person or entity hired by ARTIST to complete work arising from this Agreement.

## **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 for the ARTWORK. ARTIST shall be responsible for performing work as follows: \_\_\_\_\_ are out of the public art scope and are not a part of this Agreement.

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 the design of the ARTWORK.

2.0.2. ARTIST warrants that 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, based on provided budget.

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.

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. 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, Fabricator, Installer and others as reasonably directed by CITY to ensure coordination of fabrication and installation of the ARTWORK.

2.5. 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.

2.6. 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 DESIGN. ARTIST shall be responsible for arranging with ARTIST's subcontractors for reasonable access for review and inspection of ARTWORK DESIGN at any subcontractor's place of business.

2.7. RISK OF LOSS. Until the ARTWORK DESIGN is formally accepted by CITY, any damage, theft, vandalism, or acts of God or nature affecting the ARTWORK DESIGN are the responsibility of ARTIST.

2.8. 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**.

2.9. 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.

2.9.1. 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 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 subcontractors for design 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.

2.9.2. 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.

2.10. INTERNET-BASED PROJECT MANAGEMENT SYSTEMS. At its option, CITY may administer its design management through an Internet-based management system. In such cases, ARTIST shall communicate through this media and perform all ARTWORK DESIGN 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

**Commented [KM(1)]:** Lisa, prevailing wage was not previously in the design only contract but we do have artists subcontract out engineering or renderings so thought it should go in. What do you think?

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.

2.10. 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.

3.2. CITY reserves the right to name the ARTWORK created under this Agreement. In so doing, CITY shall either name the ARTWORK itself or have the final right of approval over the name selected by CONTRACTOR.

### **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 scope of the Project for the purposes of defining goals for the ARTWORK appropriate to the general social and immediate physical environment of the ARTWORK and in response to the Community Engagement. ARTIST shall also attend at least three individual meetings with local experts or other stakeholders 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 Design.**

4.2.1. ARTIST shall prepare one or more concept designs showing ARTIST's idea(s) for the ARTWORK ("Concept Design"). The Concept Design will include one more more renderings showing general intent, proposed form and indication of location, scale and proposed materials and artist narrative of the ARTWORK,.

4.2.2. ARTIST shall investigate and prepare preliminary cost estimates for the fabrication and installation of the ARTWORK proposed in the Concept Design. The estimates shall indicate the feasibility of producing the proposed ARTWORK within CITY's budget ("Preliminary Cost Estimate").

4.2.3. CITY, at CITY's option, shall own any models or mock-ups of design. If CITY does not wish to keep model or mock-ups, ARTIST will not sell object without prior written consent from CITY.

4.3. Final Design. Upon receipt of CITY's Notice to Proceed, ARTIST shall develop a final design for the ARTWORK ("Final Design") showing the details of the ARTWORK. The Final Design will include indication of form, scale, and proposed materials (samples to be provided when appropriate).

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 ARTIST and sub-contractor costs; permits or other fees; insurance; transportation of the ARTWORK to Site; and itemized installation costs.

4.3.2 CITY, at CITY's option, shall own any models or mock-ups of design. If CITY does not wish to keep model or mock-ups, ARTIST will not sell object without prior written consent from CITY.

**Commented [KM(2)]:** LISA: we want to be clear that we have right of refusal for owning any mockups or models created as part of the design. We touch slightly on this in Copyrights Section, but it has become more of a conversation with artists who want to sell the model.

4.4. Final Design Review.

4.4.1. ARTIST shall provide presentation quality visual material of the Final Design 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 Final Design shall be submitted to CITY for review and submittal to the Reviewing Body. CITY may require ARTIST to make modifications to the Final Design prior to submission.

4.4.3. ARTIST, at CITY's option, shall be available to present the Final Design, in the form approved by CITY, at three or more meetings of stakeholders and the Reviewing Bodies.

4.4.4. The Reviewing Bodies may recommend approval, approval with minor changes or disapproval. If the Reviewing Bodies recommend disapproval or approval with minor changes, ARTIST, upon written notification by CITY, shall respond to the recommended changes in writing and submit a revised Final Design to CITY for review. The Reviewing Bodies may assess the Artwork Design Development Proposal as revised and make additional recommendations.

4.4.5. Should the final design 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 Public Art Program 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 Final Design ("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 provided in digital PC-compatible format;
- B. all engineering calculations associated with the submitted Construction Documents; and

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. ARTIST shall meet with CITY for one or more Construction Documents review meetings. 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. SCHEDULE.**

5.0. This Agreement commences upon execution by all the Parties 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.

5.1. 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".

5.1.1. 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.

5.1.2. When work is not in progress and/or suspended, arrangements acceptable to CITY shall be made for any required emergency work.

5.2. 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.



5.3. 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 6. ARTIST'S COMPENSATION.**

6.0. 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.

6.0.1. 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 the design 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.

6.0.2. Parties agree that the Payment Schedule may be modified only upon prior written authorization of CITY and ARTIST. CITY's Public Art Division Capital Programs Manager may approve changes, which are not considered material by CITY.

6.1. 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.

6.1.1. 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.

6.2. 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 DESIGN, no interim approval shall constitute acceptance or approval of the ARTWORK DESIGN by CITY.

6.3. 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 7. ARTIST'S WARRANTIES.**

7.0. 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.

7.0.1. 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.

7.0.2. 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.

7.0.3. ARTIST has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.

7.0.4. The ARTWORK DESIGN 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.

7.0.5. All services shall be performed in accordance with CITY's Standard Specifications if applicable, which are on file with the CITY's Public Works Department. To the extent that CITY's Standard Specifications conflict with the provisions set forth in this Agreement, this Agreement shall control.

7.1. These representations and warranties survive the Agreement's termination.

## **SECTION 8. ARTIST IS INDEPENDENT CONTRACTOR.**

8.0 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.

8.1. 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 9. INDEMNIFICATION.**

9.0. ARTIST covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, property damage and intellectual property right infringement, made upon the 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, contractor 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 THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. In addition, ARTIST agrees to INDEMNIFY, DEFEND, AND HOLD CITY HARMLESS from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.

9.1. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. ARTIST shall advise the 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.

9.2 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. 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.

9.3 Employee Litigation – In any and all claims against any party indemnified hereunder 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 herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for ARTIST or any subcontractor under worker's compensation or other employee benefit acts.

## **SECTION 10. INSURANCE.**

10.0. Prior to the commencement of any work under this Agreement, ARTIST 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 "Department of Arts & Culture" in the Description of Operations block of the Certificate. The Certificate(s) shall be

completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. CITY will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall 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 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.

10.1. 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.

10.2. A contractor'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 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:

<b>INSURANCE TYPE</b>	<b>LIMITS</b>
<b>1. Professional Liability</b>	\$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.

10.3. ARTIST agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of ARTIST herein, and provide a certificate of insurance and endorsement that names the ARTIST and CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of ARTIST. ARTIST 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 Agreement for all purposes.

10.4. 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 required endorsements. ARTIST shall be required to comply with any such requests and shall submit requested documents to CITY at the address provided below within 10 days. ARTIST shall pay any costs incurred resulting from provision of said documents.

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

10.5. ARTIST 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 or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.6. Within five (5) 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 contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

10.7. 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 time herein required, CITY shall have the right to order ARTIST to stop work hereunder, and/or withhold any payment(s) which become due to ARTIST hereunder until ARTIST demonstrates compliance with the requirements hereof.

10.8. Nothing herein contained 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 subcontractors' performance of the work covered under this Agreement.

10.9. It is agreed that ARTIST'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.

10.10. 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.

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

#### **SECTION 11. COPYRIGHTS.**

11.0. CITY shall have ownership and possession of the Artwork DESIGN upon acceptance of the final Artwork Design Development Proposal, approval and final payment by CITY. CITY shall have ownership and possession of the ARTWORK DESIGN including exclusive right to display the ARTWORK, subject to this Agreement. CITY, or a subcontractor of

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. Additionally, CITY, or a subcontractor of CITY, may fabricate the ARTWORK without any additional payment to ARTIST.

11.1. ARTIST retains copyrights and intellectual property and/or patents related to the ARTWORK DESIGN. 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.

11.2 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.

11.3. 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.

11.4. 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".

11.5. The clauses in this Section shall survive termination of this Agreement.

## **SECTION 12. REPUTATION AND CREDIT.**

12.0. 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.

12.1. 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.

12.2. 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.

12.3. 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.

12.4. 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.

12.4.1. 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.

12.4.2. 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.

12.4.3. 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.

12.4.4. 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 13. COMPLIANCE WITH LAWS.**

13.0. 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.

13.1. 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.

13.2. 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.

13.3. 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.

13.4. 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, and volunteers, if any, under this Agreement.

#### **SECTION 14. DEFAULT/TERMINATION AND/OR SUSPENSION**

14.0. **TERMINATION WITH CAUSE**. Right of Either Party to Terminate for Default.

14.0.1. 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.

14.0.2. 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.

14.1. **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.

14.2. **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.

14.2.1 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 ARTIST 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.

14.3. 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.

14.3.1. 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.

14.3.2. 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.

14.3.3. 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.

14.4. 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.

14.4.1. ARTIST shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

14.4.2. 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.

14.4.3. 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.

14.4.4. Any documents prepared in association with this Agreement shall be delivered to CITY as a pre-condition to final payment.

14.4.5. 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.

14.4.6. 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.

14.5. COMPENSATION. If CITY terminates, CITY shall pay ARTIST for services performed up to date of termination consistent with this Agreement.

14.6. 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 design, 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 15. ASSIGNMENT**

15.0. 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 16. SUBCONTRACTS.**

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

16.1. 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, 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.

16.2. 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.

16.3. 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 17. NOTICE**

17.0. Submittals, requests, notices and reports (collectively, "Notices") required under this Agreement shall be delivered personally, by electronic mail (e-mail) 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: [INSERT PROJECT MANAGER NAME]  
115 Plaza de Armas, Suite 102  
San Antonio, Texas 78205

17.1. 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.

17.2. 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 18. CONFLICT OF INTEREST.**

18.0. 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.

18.1. 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.

18.2. ARTIST acknowledges that CITY's reliance on the above warranties and certifications is reasonable.

#### **SECTION 19. GIFTS TO PUBLIC SERVANTS.**

19.0. 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.

19.1. 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 20. VENUE.**

**20.0. 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 21. RIGHT TO AUDIT ARTIST'S RECORDS.**

21.0. 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.

21.1. 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's 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.

21.2. 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.

21.3. ARTIST must include this audit clause in any subcontractor, supplier or vendor contract.

21.4. 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 22. MISCELLANEOUS.**

22.0. The captions to the Sections or paragraphs of this Agreement are for convenience only. They are not to be used in construing this Agreement.

22.1. This Agreement, including **Exhibits A-1, B-1 and C-1** and any other attachments including the Artwork Design Development 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.

22.2. 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.

22.3. **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.

22.4 ARTIST agrees and understands that members of the media may be present during the fabrication and/or transportation and/or installation of the Project. Media can film, photograph, and conduct interviews at this time should they be present.

**EXECUTED and AGREED** to by the Parties on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY OF SAN ANTONIO**

**ARTIST**

\_\_\_\_\_  
Krystal Jones  
Executive Director  
Department of Arts & Culture

\_\_\_\_\_  
Name  
Artist

**APPROVED AS TO FORM**

\_\_\_\_\_  
City Attorney

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

## 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 will design an original ARTWORK for \_\_\_\_\_ Public Art Project. ARTWORK will (list specifics). Under the direction of the Public Art Project Manager, CONTRACTOR will utilize the Public Art Community Engagement Results and conduct project-related research to inform the design of the ARTWORK. The CONTRACTOR will attend Public Art Committee and San Antonio Arts Commission Design Approval Meetings. Date of Design Approval Meetings will be provided by the Public Art Project Manager. The CITY reserves the right to ask for changes and alterations. Under the direction of the Public Art Project Manager, ARTIST will collaborate with CITY, including Department of Arts & Culture and other relevant Departments ARTIST shall perform work according to the following schedule for design:

#### Design Development Phase

Execution of this Agreement / mobilization:	DATE
Project team and community concept review meetings:	DATE
Development of Final Artwork Design Proposal:	DATE
Completion of the Construction Documents (if applicable):	DATE

#### Final Completion Date

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.

#### Scope of Work

Artist shall perform the following scope of work:

[INSERT SCOPE OF WORK DETAILS]

**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**, \_\_\_\_\_ contracted with \_\_\_\_\_ ("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 CITY in its sole discretion, will occur in conformity with the guidelines and review requirements listed in CITY's Public Art San Antonio Policies and Guidelines. ARTIST agrees that 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 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