

STATE OF TEXAS

§

PUBLIC ART

COUNTY OF BEXAR

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DESIGN PROPOSAL AGREEMENT

CITY OF SAN ANTONIO

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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 CITY's _____ ("PROJECT").

WHEREAS, CITY issues an annual Call for Public Art Qualifications to create and pre-qualify a Capital Projects 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 will develop and submit a Proposal for ARTWORK to CITY that may lead to CITY's acquisition of an ARTWORK; and

WHEREAS, the CITY finds that it is in the best interest of the 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 promises, covenants, obligations and benefits in this Agreement, CITY and ARTIST agree as follows:

I. DEFINITIONS

As used in this AGREEMENT, the following terms shall have the meanings set out below:

1.0. "ARTWORK" means the finished object of art and design that may result from this Agreement through a separate contract for fabrication, or any intermediary stage of completion of such ARTWORK.

1.1. "PROPOSAL" means the preliminary drawings, sketches, prototypes, maquettes, models and the like created by the ARTIST in connection with ARTIST's obligations under this Agreement which are related, directly or indirectly, to the ARTWORK.

1.2. "ARTIST" means the ARTIST/Designer and its officers, managers, members, partners, employees, agents, subcontractors, and representatives, assigns, executors, heirs and all sub-ARTISTS, if any, and all other persons or entities for which the ARTIST is legally responsible.

1.3. "PASA" means Public Art San Antonio, which is in the CITY's Department of Arts & Culture and is responsible for public art.

1.4. "Proposal" is ARTIST's proposed Artwork Design for the ARTWORK to be included in the Project including a complete Concept Design Proposal Packet.

1.5. "PROJECT" means the Project contemplated by this Agreement, as further described in the attached **Exhibit B**, which is attached and incorporated for all purposes.

16.6 "Site" means the physical place located at _____, if fabricated, may be installed.

II. TERM

2.0. This AGREEMENT commences upon execution by all the Parties on _____ 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.

III. RESPONSIBILITIES

3.0. ARTIST shall perform the following services to the satisfaction of CITY and in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

3.0.1. ARTIST is responsible for the creation of a preliminary proposal for concept design for the Artwork to be incorporated into the Project which is unique and Site specific, in accordance with **Exhibit B**.

3.0.2. ARTIST will submit to CITY a complete preliminary concept design proposal ("Proposal"), which will include one digital copy of the following:

1. Letter of Interest (up to 1,500 words).
2. Current CV.
3. Artist statement.
4. At least three (3) work samples.
5. Between one (1) and up to five (5) digital concept renderings or maquette (jpg format, 300 dpi) that communicate your artistic approach.
 - a. A digital concept can be a 2D rendering, drawing, photograph, etc.
 - b. A maquette can be a small 3D sculptural mock-up of a variety of materials. Maquettes must be turned into the Department of Arts & Culture office by 4:30 pm on February 10, 2023 and prior arrangements to turn in such artwork must be made by February 8, 2023 at

4:30 pm.

6. One (1) written description (Between 120 and 750 words) to include:
 - a. Description of artwork concept and relevancy to Project
 - b. Description of form, size, materials, and method of implementation/installation
7. Any additional drawings, models, images, and support materials.

3.1. The services of ARTIST are to be completed according to the schedule set out in the **EXHIBIT A**, entitled “**SCHEDULE OF PERFORMANCE**,” attached and incorporated for all purposes.

3.2. DESIGN WITHIN BUDGET CONSTRAINTS. ARTIST is responsible for developing the Artwork Design so that the ARTWORK can be constructed without exceeding the total budget as set by CITY for the ARTWORK. ARTIST shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in ARTIST’s work.

3.2.1. PRELIMINARY COST ESTIMATE. Since ARTIST has no control over the cost of labor, materials, equipment, fabricator or sub-fabricator’s methods of determining prices, or over competitive bidding or market conditions, ARTIST’s preliminary cost estimate is 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. ARTIST cannot and does not guarantee that proposals, bids or the construction cost will not vary from the preliminary cost estimate prepared by ARTIST.

3.3. COORDINATION. ARTIST acknowledges that an essential element of ARTIST’s services is coordination with CITY staff and other persons who may be involved with the Artwork Design, as designated by CITY. ARTIST accepts responsibility for the coordination with persons designated by CITY to be necessary to complete ARTIST’s duties both as to design issues and budget or cost-related issues. ARTIST also agrees to meet and communicate with other persons involved with the ARTWORK as required by CITY to ensure proper coordination of the Artwork Design.

3.3.1. ARTIST shall be present at meetings and presentations of any official nature concerning the Artwork, of which ARTIST is given a seven day notice. ARTIST will be excused if ARTIST gives written notice to CITY within three days of such meeting. However, ARTIST will make reasonable best efforts to attend such meetings.

3.4. DEATH OR INCAPACITY OF CONTRACTOR. In the event of CONTRACTOR’S physical incapacity or death prior to the completion of the ARTWORK, all payments made up to the point of incapacity or death will be retained by CONTRACTOR and all work performed to date of incapacity or death will be compensated. Upon payment, the incomplete ARTWORK and any materials paid for by CITY will become CITY property. However, if the ARTWORK is substantially designed and/or completed and it is feasible

for the ARTWORK to be fully completed without undue delay while remaining faithful to the CONTRACTOR's design, integrity and reputation, CITY may elect to proceed, under this Agreement, with completion and/or installation by CONTRACTOR's REPRESENTATIVE. All remaining work to be completed in accordance with this Agreement will be delegated to: [NAME, ADDRESS, PHONE NUMBER] ("REPRESENTATIVE").

IV. RESPONSIBILITIES OF THE CITY

4.0. 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, which is needed by ARTIST in order to perform ARTIST's Services.

4.1. SUPERVISION. CITY is under no obligation to supervise the ARTIST's performance of services which are described under this Agreement.

V. COMPENSATION

5.0. CITY shall pay ARTIST an amount not to exceed the maximum sum of _____ for all design services rendered pursuant to this Agreement.

5.1. CITY shall pay ARTIST an amount not to exceed the maximum sum of _____ for all travel, lodging and related reimbursement costs rendered pursuant to this Agreement.

5.2. CITY will compensate ARTIST through one payment for up to _____ to be paid upon the delivery by ARTIST to CITY of an invoice for said amount and the approval of said invoice by the Public Art Manager of PASA Program. Such invoice shall be in the format set forth in **EXHIBIT C**, entitled "**INVOICE TEMPLATE**," attached and incorporated for all purposes.

5.3. CITY will not provide ARTIST with any additional compensation under this Agreement. Further, no services for which additional compensation will be charged shall be provided without prior written authorization of CITY.

5.4. RIGHT OF CITY TO WITHHOLD COMPENSATION. If CITY determines that work for which it has been invoiced does not meet the terms of this Agreement, CITY may withhold compensation to ARTIST. In the event CITY withholds any compensation, CITY shall provide detailed written notice to ARTIST within 15 days of receipt of ARTIST's invoice, specifying the failure of performance for which CITY intends to withhold compensation. Within 15 days of ARTIST's receipt of CITY's notice, ARTIST shall cure CITY's objection or if CITY's objections are not capable of cure within 15 days, ARTIST shall commence to cure CITY's objections and then promptly proceed to complete the cure. If ARTIST disputes CITY's determination that the Agreement's specifications have not been met, within 15 days of ARTIST's receipt of CITY's notice, ARTIST shall notify CITY in writing. In such event, CITY shall make reasonable efforts to resolve the dispute.

5.5. In the event of any disputes(s) regarding the amount of compensation, or regarding any amount that may be withheld by CITY, ARTIST shall be required to make a claim pursuant to and in accordance with the terms of this Agreement. Failure to do so in a timely manner will waive any such claim.

5.6. NO WAIVER OF RIGHTS. No compensation to ARTIST for any work performed or services rendered shall constitute a waiver or release by CITY of any claims, rights or remedies against ARTIST under this Agreement or by law. Nor shall such compensation constitute a waiver, remission, or discharge by CITY of any failure or fault of ARTIST to satisfactorily perform the work as required under this Agreement.

VI. RIGHTS TO ARTWORK AND ARTWORK DESIGN

6.0. Should ARTIST'S Proposal be chosen by CITY to be utilized for the Project then, CITY shall have ownership and possession of submitted ARTWORK design proposal materials as approved by ARTIST and upon the acceptance and final payment by CITY. Upon completion of fabrication and installation of the ARTWORK, if contracted for under a separate agreement, and full payment for the ARTWORK, CITY shall have ownership and possession of the ARTWORK.

6.1. ARTIST warrants that the ARTWORK, including the Proposal and Artwork Design, is a unique work of art. ARTIST agrees not to duplicate the ARTWORK or Artwork Design without the express written consent of CITY.

6.2. ARTIST hereby retains all copyrights and intellectual property and/or patents related to the ARTWORK and the Artwork Design. However, should ARTIST be chosen to proceed with the Project and sign a design fabrication contract, ARTIST shall then authorize and grant a non-exclusive license to CITY to make any and all reproductions or derivatives in whatever form of the ARTWORK for educational, public relations, arts promotional, or any other non-commercial purpose.

6.3. CITY and ARTIST agree that unless ARTIST requests to the contrary in writing, all references to the ARTWORK and all reproductions of the ARTWORK shall credit the ARTWORK to ARTIST.

6.4. ARTIST hereby grants to CITY the perpetual, exclusive right to display the Artwork Design, including drawings, models, or any reproduction of the ARTWORK.

6.6. Acceptance of the Proposal by CITY shall not constitute nor be deemed a release of the responsibility and liability of ARTIST, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, work drawings, plans and specifications or other documents for the ARTWORK; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY for any defect in the designs, work drawings, plans and specifications or other documents prepared by ARTIST, its employees, subcontractors, and agents.

VII. ARTIST'S WARRANTY

7.0. ARTIST'S WARRANTY. ARTIST represents and warrants that:

7.0.1. ARTIST warrants that it has not employed or retained any company or person other than a bona fide employee working solely for ARTIST to solicit or secure this Agreement. ARTIST further warrants that it has not, for the purpose of soliciting or securing this Agreement, paid or agreed to pay any company or person, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. CITY has the right to terminate this Agreement for breach of this warranty.

7.0.2. ARTIST has not previously sold, assigned, licensed, granted, encumbered, or utilized the Artwork Design or any element thereof, in any manner, which may affect or impair the rights granted pursuant to this Agreement.

7.0.3. All work created or performed by ARTIST under this Agreement will be wholly original and shall not infringe upon or violate the rights of any third party.

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

7.1. These representations and warranties shall survive the termination or other extinction of this Agreement.

VIII. TERMINATION

8.0 Right of Either Party to Terminate for Default

8.0.1. 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 the terms of this Agreement and a failure to cure as provided in this Agreement.

8.0.2. The Party not in default must issue a signed, written notice of termination (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 ten days to cure any failure to perform under this Agreement. Upon the completion of such ten-day period commencing upon receipt of notice of termination, if such Party has not cured any failure to perform, such termination shall become effective without further written notice.

8.1. 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 within one day of receipt of said

notice and upon the scheduled completion date of the performance phase in which ARTIST is then currently working, whichever effective termination date occurs first.

8.2. Procedures ARTIST is to follow upon Receipt of Notice of Termination

8.2.1. Upon receipt of a notice of termination, unless the notice otherwise directs or ARTIST immediately takes action to cure a failure to perform under the cure period set out above, ARTIST shall immediately begin the phase-out and the discontinuance of all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are 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.

8.2.2. Copies of all completed or partially completed designs and all reproductions of all completed or partially completed designs 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.

8.2.3. Upon the above conditions being met, CITY shall promptly pay ARTIST an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of ARTIST covered by this Agreement.

8.2.4. CITY, as a public entity, has a duty to document the expenditure of public funds. ARTIST acknowledges this and consequently understands that ARTIST's failure to comply with the submittal of the statement and documents as required shall constitute a waiver by ARTIST of any and all rights or claims to payment for services performed under this Agreement by ARTIST.

8.3. CITY's remedies under this Agreement are cumulative and are in addition to CITY's rights available at law or in equity.

IX. REPUTATION AND CREDIT.

9.0. 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.

9.1. 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 this Agreement.

X. COMPLIANCE WITH LAWS.

10.0. ARTIST shall comply with all applicable federal, state and local laws, rules, ordinances, codes and regulations and will use reasonable efforts to ensure compliance by any and all contractors and subcontractors that may do work arising from this Agreement.

11.1. NONDISCRIMINATION. As a Party to this Agreement, ARTIST understands and agrees to comply with the *Non-Discrimination Policy* of CITY 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.

11.2 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.

11.3 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.

XI. ASSIGNABILITY

11.0. The expertise and experience of ARTIST are material considerations for this Agreement. ARTIST will not assign or transfer any interest in this Agreement nor the performance of any of ARTIST's obligations unless specifically authorized under this Agreement. Any attempt by ARTIST to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by CITY.

11.0.1. Nothing in this section shall be deemed to prevent ARTIST, at ARTIST's sole expense, from relying on or utilizing the services of such other artist or contractor as ARTIST may require to complete the Artwork Design.

11.1. CITY shall have the right to assign or transfer any and all of CITY's rights and obligations under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of CITY.

XII. INDEPENDENT CONTRACTOR

12.0. ARTIST is an independent contractor and not an officer, agent, servant or employee of CITY and nothing in this Agreement shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between CITY and ARTIST. ARTIST shall have exclusive control of and exclusive right to control the details of the work performed and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants.

12.1. Neither Party has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

12.2. CITY shall not be liable for any third party claims, which may be asserted in connection with 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 pertaining to this Agreement or any authority to enforce this Agreement.

XIII. INDEMNIFICATION

13.0. ARTIST agrees to FULLY INDEMNIFY, DEFEND AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS against any and all claims by third parties, lawsuits, judgments, cost, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, intellectual property infringement or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY ARTIST'S NEGLIGENT ACT, ERROR, OR OMISSION OF ARTIST, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, ARTIST OR SUBARTIST

OF ARTIST, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the services, rights or 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 OF 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.

13.1. ARTIST will, at its expense, FULLY INDEMNIFY AND HOLD HARMLESS CITY AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST CITY AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST CITY, INsofar AS THE SAME ARE BASED ON ANY CLAIM THAT THE ARTWORK OR ARTWORK DESIGN PROVIDED UNDER THIS AGREEMENT CONSTITUTES AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.

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

13.3. The provisions of this section 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.

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

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

XIV. INSURANCE

14.0 CONTRACTOR agrees to accept responsibility for damages to their property and any claims that arises during the duration of this Agreement. CONTRACTOR shall obtain their own insurance coverage to protect their property and in the event of a claim.

14.1 No later than 30 days before the services begin under 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 event 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,

14.2 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 & Culture. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.

14.3 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.

14.4 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.

14.5 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:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. 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.

14.6 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.

14.7 If a loss results in litigation, then 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 CITY at the following address:

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

14.8 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.

14.9 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.

14.10 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.

14.11 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.

14.12 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.

14.13 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.

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

XV. NON-WAIVER OF PERFORMANCE

15.0. ARTIST agrees that waiver by CITY of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition herein or a waiver of any subsequent breach or violation of the same or any other term or condition. Further that the acceptance by CITY of the performance of any work or services by ARTIST shall not be deemed to be a waiver of any term or condition of this Agreement.

XVI. CONFLICT OF INTEREST

16.0. 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 CITY or any CITY agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

16.0.1. A CITY officer or employee;

16.0.2. His or her parent, child or spouse;

16.0.3. A business entity in which the officer or employee, or his or 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;

16.0.4. 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.

16.1. ARTIST warrants and certifies as follows:

16.1.1. ARTIST and its officers, employees and agents are neither officers nor employees of CITY.

16.1.2. ARTIST has tendered to CITY a Contracts Disclosure Statement in compliance with the City's Ethics Code.

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

XVII. PRIOR AGREEMENTS AND AMENDMENTS.

17.0 This Agreement, including its exhibits, represents the entire understanding of the Parties as to such matters. No prior oral or written understanding shall be of any force or effect with respect to those matters.

17.1 Unless indicated otherwise, this Agreement may only be modified by a written amendment duly executed by the Parties as indicated by signature from the Director of the Department of Arts & Culture.

XVIII. VENUE

18.0. 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.

XIX. NOTICES

19.0 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:

If intended for the CITY, to:

City of San Antonio

If intended for the ARTIST, to:

Name

Department of Arts & Culture
Attn: Contract Manager
203 S. St. Mary's Street Ste. 120
San Antonio, Texas 78205

19.1. Notice shall be deemed effective on the date personally delivered or, if mailed, five days after deposit in the mail.

19.2. ARTIST agrees to provide CITY with ARTIST's current mailing address in the event the above address should change within five days of such change.

XX. SEVERABILITY OF PROVISIONS

20.0 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.

XXI. CAPTIONS

21.0. The captions in this Agreement are for informational purposes only and shall not be construed to effect or modify the substance of the terms of this Agreement.

Signatures on following page
Executed on the ____ day of _____ 2022.

CITY OF SAN ANTONIO

ARTIST

Krystal Jones
Executive Director
Department of Arts & Culture

Name
Artist

APPROVED AS TO FORM:

City Attorney

- Exhibit A – Schedule of Performance
- Exhibit B – Name Request for Proposals
- Exhibit C – Invoice Template

Exhibit D – Insurance Waiver

EXHIBIT A

SCHEDULE OF PERFORMANCE

Project Name:

1. Commencement of Work. ARTIST shall commence work upon full execution of this Agreement. **XX**
2. Preliminary Concept Proposal Submittal. ARTIST will submit a proposal as defined in Section 3.0.2. **XX**
3. Notification of Award: Selected ARTIST will be notified In writing by CITY of acceptance. **XX**

Modification of Schedule. The Parties agree that the Schedule set forth above may be modified only upon prior written authorization by CITY.

EXHIBIT B

[Insert Request for Proposals Document]

EXHIBIT C
INVOICE TEMPLATE

INVOICE

Invoice Date

Vendor Name: XXX

Remit To Address

Vendor #: XXX

Invoice Number: XXX

PO #: XXX

City of San Antonio
Department of Arts & Culture
Attn: Jordyn Patrias
115 Plaza de Armas, Ste102
San Antonio, TX 78205

Project: Name

Description

Amount

Submittal of Artwork Proposal

\$1,000.00

Total Invoice

\$1,000.00

Remit Payment to:

Artist Address

EXHIBIT D
INSURANCE WAIVER