LB
04/02/15
Item No. 37

AN ORDINANCE 2015-04-02-0237

APPROVING A PRE-QUALIFIED LIST OF PUBLIC ART PROFESSIONALS WHOSE SERVICES MAY BE USED TO IMPLEMENT PUBLIC ART PROJECTS ESTABLISHED BY THE PUBLIC ART PLAN; AUTHORIZING CONTRACTS FOR SUCH PROJECTS IN AN AMOUNT NOT-TO-EXCEED THE ELIGIBLE ALLOCATION; AND AUTHORIZING PAYMENTS SUBJECT TO THE AVAILABILITY OF FUNDS.

* * * * *

WHEREAS, the Department for Culture and Creative Development advertised a "Call for Artists" as part of an annual process to update the City's pre-qualified public artist list (the "List") and 260 submittals, in the categories of public artist, art inventory services, and collaborative partnership, were reviewed and scored by an ad-hoc selection panel that recommended 99 applicants for inclusion in the List, which was approved by the City's Public Art Board on February 25, 2015; and

WHEREAS, artists on the List may be considered for projects ("Projects") included in the annual Public Art Plan ("Plan"), however, inclusion on the List does not guarantee that the artist will be provided a contracting opportunity; and

WHEREAS, final Project selections are a result of close coordination with City departments and project stakeholders, including representatives from City Council appointed advisory committees, community members, and local art professionals, and final artist selections will be considered by the Public Art Board or a successor board or commission; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. City Council approves the pre-qualified list of artists and authorizes contracts for services in amounts not to exceed the eligible allocations with artists from the List who are selected to implement the Projects. A copy of the List is attached to this Ordinance as **Exhibit I**.

SECTION 2. The City Manager, or her designee, is authorized to execute contracts with artists from the List selected to implement the Projects in amounts not-to-exceed the eligible funding. The template agreements attached to this Ordinance as **Exhibits II, III** and **IV** shall be utilized to contract with artists for such services, as appropriate.

SECTION 3. Funding for this Ordinance will be identified when work orders are issued. If funding for any work orders is not previously appropriated, funding will be identified and appropriated through subsequent City Council action. Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with Operating and/or Capital Budgets for current and future fiscal years.

LB
04/02/15
Item No. 37

SECTION 4. Payment not to exceed the eligible allocation is authorized and shall be encumbered with a purchase order to the artists on the List whose services are used to implement Projects established by the Plan.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 6. This Ordinance shall take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.

PASSED AND APPROVED this 2nd day of April, 2015.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**37 (in consent vote: 5, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 41, 42, 43, 44)**
Date:	04/02/2015
Time:	11:33:45 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving a pre-qualified list of public art professionals whose services may be used to implement public art projects established by the public art plan in an amount not-to-exceed the eligible allocation; authorizing contracts for such projects; and authorizing payments subject to the availability of funds. [Ed Belmares, Assistant City Manager; Felix Padron, Director, Culture and Creative Development]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		x				x
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x			x	
Michael Gallagher	District 10		x				

Exhibit I

FY2015
Public Artist Qualifications Pre-qualified List

(L) - denotes San Antonio-based applicant
(TX) - denotes Texas-based applicant outside San Antonio

1	Rhiza	A+D	
2	Estevan	Arredondo*	(L)
3	Artist Foundation of San Antonio**		(L)
4	Artpace**		(L)
5	Twyla	Arthur*	(L)
6	Benjamin	Ball	
7	Brandon	Ballengée	
8	Dennis	Baltuskonis*	(L)
9	Michael	Beitz	
10	Bihl Haus Art**		(L)
11	Blue Star Contemporary Art Museum**		(L)
12	Ed	Carpenter	
13	Mike	Casey	(L)
14	Nate	Cassie***	(L)
15	Jackie	Chang	
16	John	Christensen	(TX)
17	Roger	Colombik	(TX)
18	Contemporary Art Month**		(L)
19	Béatrice	Coron	
20	Dan	Corson	
21	Cathy	Cunningham-Little	(L)
22	David	Dahlquist	
23	Joe	De La Cruz*	(L)
24	Jenna	Didier	
25	Eric	Eley	(TX)
26	Manuel	Elizondo*	(L)
27	Jenelle	Esparza	(L)
28	Joey	Fauerso	(L)
29	Christopher	Fennell	
30	Claudia	Fitch	
31	Bill	FitzGibbons	(L)
32	Marc	Fornes	
33	Lisa	Garcia*	(L)
34	Ann	Gardner	
35	Nataly	Gattegno	
36	Matthew	Geller	
37	Brian	Goggin	
38	Brad	Goldberg	(TX)
39	Tommy	Gregory*	(TX)
40	Mark	Grieve-Ilana Spector	
41	David	Griggs	
42	Harries	Héder	
43	Jim	Hirschfield	
44	Leticia	Huerta	(L)
45	Gordon	Huether	
46	Miki	Iwasaki	
47	Christopher	Janney	
48	Sook Jin	Jo	
49	Diana	Kersey*	(L)
50	Ray	King	
51	Kipp	Kobayashi	
52	BJ	Krivanek	
53	Michael	Krondl	
54	Linda Pace Foundation**		(L)
55	Donald	Lipski	
56	Ken	Little	(L)
57	Janet	Lofquist	
58	Luminaria**		(L)
59	Dana	Lynn Louis	
60	Elena	Manferdini	
61	Deborah	Mersky	(TX)
62	Joe	O'Connell	
63	Albert	Paley	
64	Dharmesh	Patel	(TX)
65	Tom	Patti	
66	Mia	Pearlman	
67	Erwin	Redl	
68	Riley	Robinson***	(L)
69	Sarah	Rodrigo	
70	John	Rogers	
71	Koryn	Rolstad	
72	Douglas	Rucker*	(L)
73	San Anto Cultural Arts**		(L)
74	Norie	Sato	
75	Thomas	Sayre	
76	Stu	Schechter	
77	Vicki	Scuri	
78	Ethel	Shipton*	(L)
79	Francescc	Simeti	
80	Buster	Simpson	
81	Andrew	Smith*	
82	Michael	Stutz	
83	Gary	Sweeney	(L)
84	Celeste	Wackenhut*	(L)
85	Anne	Wallace	(L)
86	Kenney	Warren*	(L)
87	John	Webb	(L)
88	Emily	White	
89	Susan	Zoccola	
90	Bob	Zoell	

(denotes **Art Inventory Services;* denotes ***Collaborative Partners;* denotes ****Public Artist & Art Inventory Services*)

Exhibit II

ART INVENTORY SERVICES AGREEMENT

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City") acting by and through its Executive Director of the Department for Culture and Creative Development and _____(hereinafter referred to as "Contractor"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

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

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Contractor" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the Executive Director of City's Department for Culture and Creative Development.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence upon execution ("Commencement Date") and terminate upon completion or _____.

III. SCOPE OF SERVICES

3.1 Contractor agrees to provide the art inventory services specified in its proposal which is attached to this Agreement and incorporated herein as Exhibit I ("Project").

May list services and/or attach proposal

3.2 All work performed by Contractor hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Contractor which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be

satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONTRACTOR

4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Contractor an amount not to exceed $XXXX as total compensation. These funds shall be paid to Contractor as follows:

Specify payment terms

4.2 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. The Parties hereby agree that all compensable expenses of Contractor have been provided for in the total payment to Contractor as specified in Section 4.1 above. Total payments to Contractor cannot exceed that amount set forth in Section 4.1 above, without prior approval and agreement of all Parties, evidenced in writing in accordance with Article XIV. Amendments.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be Director. City shall not be obligated or liable under this Agreement to any party, other than Contractor, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Contractor pursuant to this Agreement is the exclusive property of City; and shall not be the subject of any copyright or proprietary claim by Contractor.

5.2 Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

5.3 No reports, information, project evaluation, designs, data or any other documentation developed by, given to, prepared by, or assembled by Contractor under this Agreement shall be disclosed or made available to any individual or organization by Contractor without the express prior written approval of City. In the event Contractor receives any such request, Contractor shall forward such request to City immediately.

VI. RECORDS RETENTION

6.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the

record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Contractor to return said documents to City prior to or at the conclusion of said retention.

6.3 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Contractor understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by either party upon 10 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XI. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this Section 6.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new contractor against Contractor's future or

unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant herein required

7.4.3 Performing unsatisfactorily

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Contractor shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Contractor, or provided to Contractor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Contractor of any and all right or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

VIII. NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper

postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:	City of San Antonio Department for Culture and Creative Development Attn:Public Art San Antonio P.O. Box 839966 San Antonio, Texas 78283-3966
If intended for Contractor, to:	*Address*

IX. INSURANCE

A) Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Department for Culture and Creative Development, which shall be clearly labeled "XXX" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Department for Culture and Creative Development. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) 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.

C) A contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence

D) Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the City as additional insureds. Respondent shall provide City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

E) As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

City of San Antonio
Department for Culture and Creative Development
Attn: Public Art San Antonio
PO Box 839966
San Antonio, Texas 78283

F) Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where City is an additional insured shown on the policy;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of City.

- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

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

I) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.

J) It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K) 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..

L) Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNIFICATION

10.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR's activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, artist or consultant of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

10.2 The provisions of this INDEMNITY are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Contractor shall advise City in writing within 24 hours of any claim or demand against City or Contractor known to Contractor related to or arising out of Contractor's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at Contractor's cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Contractor of any of its obligations under this paragraph.

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

10.4 Employee Litigation – In any and all claims against any Party indemnified hereunder by any employee of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation 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 Contractor or any subcontractor under worker's compensation or other employee benefit acts.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

11.2 The use of any subcontractor(s) require the prior written approval of Director.

11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees.

11.4 Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of Director. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee or subcontractor.

11.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XII. INDEPENDENT CONTRACTOR

12.1 Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The parties

hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the City.

XIII. CONFLICT OF INTEREST

13.1 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIV. AMENDMENTS

14.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor, and approved by City Council when required.

XV. SEVERABILITY

15.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVI. LICENSES/CERTIFICATIONS

16.1 Contractor warrants and certifies that Contractor and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVII. COMPLIANCE

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

17.2 Trademarked and Copyrighted Usage Contractor agrees to obtain all necessary licenses and take all other necessary steps to insure that all use of trademarked and/or copyrighted materials in the Project complies with United States and any other applicable trademark and copyright law.

XVIII. NONWAIVER OF PERFORMANCE

18.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the parties in accordance with Article XIV. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XIX. LAW APPLICABLE

19.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

19.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XX. LEGAL AUTHORITY

19.1 The signer of this Agreement for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

XXI. PARTIES BOUND

21.1 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXII. CAPTIONS

22.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIII. ENTIRE AGREEMENT

23.1 This Agreement and its Exhibit constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIV. Amendments. Should there be any conflict between this Agreement and any Exhibits, this Agreement shall control.

EXECUTED and **AGREED** to this the _____ day of _____, 2015.

CITY:	**CONTRACTOR:**
CITY OF SAN ANTONIO	***Name***
_____	_____
Felix Padrón	*Signator's name*
Executive Director	*Title*
Culture and Creative Development	

Approved as to Form:

_____

City Attorney

Exhibit
I

Contractor's Proposal

Exhibit III

STATE OF TEXAS §
§ **COLLABORATIVE PARTNERSHIP**
§ **AGREEMENT**
COUNTY OF BEXAR §

This Agreement (the "Agreement") is hereby made and entered into by and between the City of San Antonio (referred to herein as the "City"), a Texas municipal corporation, and acting by and through its City Manager pursuant to Ordinance No. _____, dated _____ and _____ (referred to herein as "Partner"), a Texas non-profit corporation, acting by and through its duly authorized officers (City and Partner sometimes referred to individually each as a "Party" and collectively as the "Parties").

WHEREAS, City and Partner intend to collaborate on _____ ("Project") to be installed constructed on certain real property owned by _____ and commonly known as _____(address)_____; and

WHEREAS, pursuant to the terms, conditions and provisions set forth in this Agreement, City and Partner shall collaborate on the design, fabrication and installation of the Project;

NOW THEREFORE, the Parties severally and collectively agree, and by the execution hereof are bound, to the mutual obligations and to the performance and accomplishment of the tasks set forth in this Agreement.

I. TERM

The term of this Agreement shall commence on the date whereupon both Parties have executed this Agreement (the "Effective Date") and continue until the earlier of (a) Project completion or (b) ___(date schedule for completion)_ ("Term").

II. GENERAL RESPONSIBILITIES OF PARTNER

2.01 Partner is responsible for the design, fabrication and installation of the Project as set forth in Partner's Proposal, which is attached and incorporated into this Agreement as **Exhibit A**. Partner shall contract with one or more artists ("Artist") to provide such design, fabrication and installation services for the Project. Partner will complete design, fabrication and installation of the Project by _____, subject to Force Majeure.

2.02 All Artist(s) that work on the Project shall be mutually agreed upon by City and Partner. Partner shall enter a contract with all Artist(s), which includes Artist's waiver of moral rights in substantially the same form as **Exhibit B**, which is attached to this Agreement and incorporated herein.

2.03 Partner shall provide all necessary funding for the Project beyond the City's commitment of $_____ and provide evidence to City that all additional funds necessary for the Project have been secured prior to the receipt of any funding under this Agreement. In the event the scope of the Project is adjusted downward, City shall have the

option of adjusting its commitment downward accordingly. City is not responsible for any cost overruns unless agreed to in writing in accordance with this Agreement.

2.04 Partner shall provide to City the design plans and specifications for the Project, including an anticipated fabrication and installation schedule ("Plans"), and such Plans shall be subject to the prior review and approval of City. After approval by City, the Plans shall be attached and incorporated into this Agreement as **Exhibit C** and Partner shall not make any substantial changes to the Plans without the prior written approval of City. The approvals given in this Section do not relieve Partner of the burden of obtaining all necessary governmental approvals, including those provided by City through its relevant development departments and relevant boards and commissions including the Historic and Design Review Commission. City's approval of the Plans does not release Partner of the responsibility for the correction of Partner's mistakes, errors or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved.

2.05 Unless written notification by Partner to the contrary is received by City, Partner's *Executive Director* shall be Partner's designated representative responsible for the management of this Agreement and the point of contact for City on all matters regarding this Agreement.

2.06 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Plans. Upon request by City, Partner shall cause its design or construction professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans. Upon further request by City, any and all construction drawings must be certified by a qualified engineer or architect licensed by the State of Texas. All construction drawings must conform to all applicable federal, state and local laws and regulations. Upon request, Partner shall submit said certification to the Director of the Department for Culture and Creative Development ("Director") or his designee at the completion of the Project construction. City shall have the right to withhold funding until such certifications are provided.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 Partner warrants and represents that it will comply with all Federal, State and Local laws and regulations during the term of this Agreement, whether or not Partner's activities are related to the Project, and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on the Project.

3.02 To the extent applicable, Partner agrees to abide by Chapters 252, and 271 of the Texas Local Government Code, and Chapters 2254 and 2267 of the Texas Government Code or other competitive contracting processes allowed for as express exceptions to these laws.

3.03 SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM. City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"),

which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to City. The SBEDA Ordinance Compliance Provisions which Partner must comply with are contained in **Exhibit D** of this Agreement, which is attached hereto and incorporated herein, and are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by City pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement.

IV. OWNERSHIP, USE AND LICENSE

4.01 Partner acknowledges that it will construct the Project in a manner consistent with use by the general public.

4.02 The Project shall be owned by _____.

4.03 As part of its contract with Artist(s), Partner shall require each Artist to grant City a permanent, non-revocable, royalty-free license to use the Project for non-commercial purposes to promote public art and the City of San Antonio. Such license shall include the authority for the City to reproduce the Project in any medium.

4.04 _____ shall be responsible for the operation and maintenance of the Project and all associated costs will be the responsibility of _____.

V. FUNDING AND ASSISTANCE BY CITY

5.01 City shall reimburse Partner for all eligible expenses incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of $_____.

5.02 City shall not be obligated nor liable under this Agreement to any party, other than Partner, for payment of any monies or provision of any goods or services.

5.03 Funding shall consist of reimbursements paid to Partner for the Allowable Expenditures set forth below, not to exceed $_____. City funding provided under this Agreement shall only be used for the portions of the Project which are dedicated to public use/public purpose.

5.04 All funding provided by City shall come from available _____. City shall not be responsible for the payment of any eligible expenses until funds are available.

5.05 Director or his designee shall be responsible for the administration of this Agreement on behalf of City and the point of contact for all communication regarding this Agreement from Partner.

VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY PARTNER

6.01 Partner agrees to maintain readily identifiable records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. Partner further agrees:

A. That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and

B. That Partner's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

6.02 Partner agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials ("Records") pertaining to activities pertinent to this Agreement permanently. Records will be retained by Partner in an electronic format.

6.03 Partner shall maintain a numbered interest bearing account in an FDIC insured financial institution for the receipt and disbursement of all funds received pursuant to this Agreement and further agrees that all checks and withdrawals from such account shall have itemized documentation in support thereof pertaining to the use of City funds provided under this Agreement. All interest earned on funds in the account shall be applied to the allowable costs of construction of the Project in accordance with the provisions hereof.

6.04 City shall reimburse Partner on a monthly basis upon receipt and approval of an invoice through the City's Project Reporting Information Management Exchange Link (COSA PRIME*link*) or any other updated program used by City for this purpose. City shall pay approved invoices within 60 days of receipt from Partner, subject to Section 5.04.

6.05 All requests for reimbursement shall be submitted through the COSA PRIME*link*. Partner shall sign a Business Level Agreement and ensure that all of its employees or representatives utilizing PRIME*link* sign and comply with an Individual User Agreement. Such requests for reimbursement shall be completed on PRIME*link* and/or utilizing forms and instructions approved by CIMS. Prior to the initial request for reimbursement, Partner must submit a schedule of values for payment to be approved by CIMS, which approval shall not be unreasonably withheld, conditioned, or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the portal.

6.06 Prior to reimbursement, City will have the right to inspect work completed to ensure conformance with the approved Plans. Invoices should include all supporting documentation that costs have been incurred, as required by City.

6.07 City agrees to provide Partner written notice regarding any expenditure the City reasonably determines to be outside the permissible parameters of this Agreement. Said notice

will provide Partner 30 days from receipt of said notice to cure the deficiency or refund to the City any sum of money paid by City to Partner determined to:

A. Have not been spent by Partner strictly in accordance with the terms of this Agreement; or

B. Not be supported by adequate documentation to fully justify the expenditure.

6.08 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in Section 6 as a result of any auditing or monitoring by City, Partner shall refund such amount to City within 30 working days of City's written request specifying the amounts disallowed or disapproved.

VII. ALLOWABLE EXPENDITURES

7.01 Subject to the terms, provision and conditions hereof, Partner shall receive funding hereunder related to the Project:

(a) *Define what Project costs are allowable*

7.02 Upon preparation of Plans and budget for Project by Partner, Partner shall submit said budget to City for approval of any costs to be paid from funds received hereunder. Costs shall be considered allowable only if so approved in Partner's Project budget, or otherwise approved in advance by City in writing, and incurred directly and specifically in the performance of and in compliance with this Agreement and with all City, state and federal laws; regulations and ordinances affecting Partner's operations.

7.03 Only the following categories of costs shall be considered allowable expenditures under this Agreement ("Allowable Expenditures"):

(A) The cost and expense of constructing the Project, including the payments made under any construction contracts related thereto;

(B) If applicable: The cost and expense incurred with respect to any construction change orders approved by the City as required in Section 2.05;

(C) The cost and expense incurred in designing the Project, including payments made to any architectural firm or engineering firm employed by Partner for the design of the Project that satisfy the requirements of this Agreement;

(D) The cost and expense of evaluating the site conditions pertinent to the design and construction of the Project, including without limitation soil reports, environmental reports, surveys, and geotechnical reports;

(E) Costs or fees paid for consultant and/or professional services incurred in connection with the Project or Partner's performance under this Agreement; and

(F) Advertising expenses related to bidding of construction contracts, compliance with any API, goals or API Plans adopted by the City's SBEDA or other notices required by law or this Agreement.

Expenditures of the funds provided under this Agreement shall only be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement, for the public purpose/public use stated herein, and in compliance with all applicable City, state and federal laws, regulations and/or ordinances.

7.04 The following shall not be Allowable Expenditures under this Agreement:

(A) Personnel costs, salaries or wages paid directly by Partner or other similarly -affiliated organization;

(B) Travel and travel-related expenses;

(C) Costs or fees for consultant and/or professional services, except for those incurred in connection with the Project or in Partner's performance under this Agreement;

(D) Costs or fees associated with attendance at meetings, seminars, or conferences;

(E) Costs or fees associated with regular maintenance and operation;

(F) Fundraising expenses;

(G) Equipment and furnishings, except for items of a capital nature which are being provided by Partner's general contractor and shown on the approved Plans and specifically approved by City; and

(H) Advertising expenses, except for those permitted by Subsection 7.03 (F).

7.05 Written requests for prior approval shall be Partner's responsibility and shall be made 30 days from date necessary to permit a thorough review by City. Procurements and/or purchases which must be approved pursuant to the terms of this Agreement shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

8.01 Partner further represents and warrants that:

A. All information, data or reports heretofore or hereafter provided to City is and shall be complete and accurate as of the date shown on the information, data, or

report. Partner shall notify City in the event of any material change affecting the information, data or reports heretofore or hereafter provided to City.

B. It is financially stable and capable of fulfilling its obligations under this Agreement. Partner shall provide City immediate written notice of any adverse material change in the financial condition of Partner that may materially and adversely effect its obligations hereunder.

C No litigation or proceedings are presently pending or, to Partner's knowledge, threatened against Partner.

D. No provision contained herein contravenes or in any way conflicts with the authority under which Partner is doing business or with the provisions of any existing indenture or agreement of Partner.

IX. ACCESSIBILITY OF RECORDS & MONITORING

9.01 At any time and as often as City may deem necessary, upon three business (3) days prior written notice, Partner shall make the Records available to City or any of its authorized representatives, and shall permit City or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same.

9.02 To the extent required by law, Partner shall cooperate with City to satisfy requests for information received by City under the Texas Public Information Act or related laws pertaining to this Agreement.

9.03 Partner agrees that City may carry out reasonable monitoring and evaluation activities so as to ensure compliance by Partner with this Agreement and with all other laws, regulations and ordinances related to the performance hereof, and Partner shall provide reasonable access to the City related to such activities.

X. TERMINATION

10.01 City shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of completion of the Term whenever City determines that Partner has failed to comply with any term of this Agreement, subject to the cure period. City will provide Partner with written notification as to the nature of the non-compliance, and give Partner a 30-day period from the date of City's written notification to cure any issue of non-compliance. Should Partner fail to cure any default within this period of time, City may terminate this Agreement immediately by providing written notice to Partner, withhold further payments to Partner and seek repayment of any and all funds disbursed by City.

10.02 In the event of termination of the Lease, for any reason, City shall have the right to immediately terminate this Agreement by providing written notice to Partner. Upon termination of this Agreement, Partner must pay City a sum equal to the amount of money received by Partner under this Agreement.

10.3 The Parties shall have the right to seek any remedy at law to which they may be entitled, in addition to termination, if Partner defaults under the material terms of this Agreement and fails to cure such default within the cure period set forth above subject to any and all lawful defenses, counterclaims, offsets, settlements, deductions or credits to which Partner may be entitled.

XI. INDEMNITY

11.01 Partner covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the 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 and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Partner's activities under this Agreement, including any acts or omissions of Partner, any agent, officer, director, representative, employee, consultant or subcontractor of Partner, 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 PARTNERAND 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.

11.02 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not indented to create or grant any rights, contractual or otherwise, to any other person or entity. Partner shall advise City in writing within 24 hours of any claim or demand against City or Partner known to Partner related to or arising out of Partner's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Partner's cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Partner of any of its obligations under this Article.

11.03 <u>Defense Counsel</u> - City shall have the right to select or to approve defense counsel to be retained by Partner in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Partner 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 Partner fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Partner shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.04 <u>Employee Litigation</u> – In any and all claims against any party

indemnified hereunder by any employee of Partner, 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 Partner or any subcontractor under worker's compensation or other employee benefit acts.

11.05. Acceptance of the Plans by City shall not constitute nor be deemed a release of the responsibility and liability of Partner, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, work drawings, Plans and specifications or other documents; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect in the designs, drawings, Plans and specifications or other documents prepared for the Project.

XII. INSURANCE & BONDS

12.01 Prior to the commencement of any work under this Agreement, Partner shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's Department for Culture and Creative Development, which shall be clearly labeled "_____" 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 have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Department for Culture and Creative Development. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

12.02 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.
HERE

12.03 Partner's financial integrity is of interest to the City; therefore, subject to Partner's right to maintain reasonable deductibles in such amounts as are approved by City, Partner shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Partner'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:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000

3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Explosion, Collapse, Underground g. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. h. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
5. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.

12.04 Partner agrees to require, by written contract, that all contractors and subcontractors of Partner working on the Project obtain the same insurance coverages required of Partner herein, and provide a certificate of insurance and endorsement that names Partner and City as additional insureds. Partner shall provide City with said certificate and endorsement prior to the commencement of any work by such contractor or subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

12.05 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). Partner shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Partner shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Department for Culture and Creative Development
P.O. Box 839966
San Antonio, Texas 78283-3966

12.06 Partner agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

(A) 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;

(B) Provide for an endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy;

(C) Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of City; and

(D) Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

12.07 Within five calendar days of a suspension, cancellation or non-renewal of coverage, Partner shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Partner'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.

12.08 In addition to any other remedies City may have upon Partner'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 Partner to stop work hereunder, and/or withhold any payment(s) which become due to Partner hereunder until Partner demonstrates compliance with the requirements hereof.

12.09 Nothing herein contained shall be construed as limiting in any way the extent to which Partner may be held responsible for payments of damages to persons or property resulting from Partner's or its contractor's or subcontractor's performance of the work covered under this Agreement.

12.10 It is agreed that Partner's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by City for liability arising out of operations under this Agreement.

12.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of City shall be limited to insurance coverage provided.

12.12 City shall not be responsible for damage resulting from the Project to the equipment and/or property of Partner and any contractors or subcontractors of Partner.

12.13 With respect to the Project, Partner shall comply with Texas Government Code Chapter 2253 provisions regarding performance and payment bonds on certain "Public Works" contracts (copies of required bonds must be provided to City prior to the start of construction).

XIII. NONDISCRIMINATION

13.01 As a party to this Agreement, Partner 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.

XIV. CONFLICT OF INTEREST

14.01 Partner covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with its performance under this Agreement. Partner further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

14.02 Partner further covenants that no member of its governing body or of its staff shall possess any separate interest in, or use their position in a manner that gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

14.03 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement shall:

A. Participate in any decision relating to this Agreement which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; nor

B. Have any direct or indirect interest in this Agreement or the proceeds thereof.

XV. POLITICAL OR RELIGIOUS ACTIVITY

15.01 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

15.02 None of the performances rendered by Partner under this Agreement shall involve, and no portion of the funds received by Partner under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

XVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

16.01 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, and any responses, inquiries, correspondence and related material submitted to City by Partner, shall, upon receipt, become the property of City.

XVII. CONTRACTING

17.01 Any work or services related to the Project contracted hereunder shall be contracted only by written contract or agreement and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by contractors with this Agreement shall be Partner's responsibility. Partner is responsible to ensure that all local, state and federal permits and approvals required by or for this Agreement are obtained.

17.02 City shall in no event be obligated to any third party, including any sub-contractor of Partner, for performance of or payment for work or services.

17.03 By signing this Agreement, Partner certifies that it will not award any funds provided under this Agreement to any party which it knows to be debarred, suspended or otherwise excluded from or ineligible for participation in programs with City.

XVIII. CHANGES AND AMENDMENTS

18.01 Unless this Agreement expressly provides otherwise, any alterations, additions, or deletions to the terms hereof shall only be by amendment in writing executed by both City and Partner under authority granted by formal action of the Parties' respective governing bodies.

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

XIX. ASSIGNMENTS

19.01 Partner shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of

the City. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XX. SEVERABILITY OF PROVISIONS

20.01 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXI. NON-WAIVER OF PERFORMANCE

21.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

21.02 No act or omission of either Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to either Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

21.03 No representative or agent of the City may waive the effect of the provisions of this Article without formal action from the City Council.

XXII. ENTIRE AGREEMENT

22.01 This Agreement constitutes the final and entire agreement between the Parties and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties unless the same are in writing, dated subsequent to the date hereof and duly executed by the Parties.

22.02 INCORPORATION OF ATTACHMENTS. Each of the Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the Parties.

Exhibit A – Proposal
Exhibit B – Artist's Waiver of Moral Rights
Exhibit C – Plans
Exhibit D -- SBEDA Ordinance Compliance Provisions

XXIII. NOTICES

23.01 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY: Felix Padron, Director
Department for Culture and Creative Development
Attn: Public Art San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

PARTNER: *Name*
Agency
ADDRESS

Notice of change of address by either Party must be made in writing and mailed to the other Party's last known address within five business days of such change.

XXIV. FORCE MAJURE

24.01 City or Partner 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, Partner must provide written notice to City of the occurrence of the Force Majeure event within 10 days following the date that Partner becomes aware of the event and the fact that it will delay Partner's performance of its obligations under this Agreement. City will not unreasonably withhold its consent.

XXV. RELATIONSHIP OF PARTIES

25.01 Partner is an independent contractor. Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of employer and employee, officer, principal and agent, partners, joint venturers or any other similar such relationship between the Parties.

XXVI. TEXAS LAW TO APPLY

26.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Bexar

County, Texas and venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

XXVII. GENDER

27.01 Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXVIII. CAPTIONS

28.01 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIX. LEGAL AUTHORITY

29.01 Partner represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.

29.02 The signer of this Agreement for Partner represents warrants and assures that he or she has full legal authority to execute this Agreement on behalf of Partner and to bind Partner to all terms, performances and provisions herein contained.

29.03 This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and affect of an original this the ___ day of _____, 201_.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

_____
Sheryl Sculley
CITY MANAGER

AGENCY NAME,
a 501(C)3 Non-profit

_____
Name: _____
Title: _____

ATTEST:

_____
Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Exhibit A
Proposal

To be attached upon completion

Exhibit B
Waiver of Moral Rights

WHEREAS, _____ employed the artist _____ ("Artist"), to create _____ ("Artwork") in collaborative partnership with the City of San Antonio; and

WHEREAS, *describe the Artwork*; and

WHEREAS, the Artwork is intended to be *permanently/temporarily* located on *City property/private property* at the ____*(address)*_____ in San Antonio, Texas ("Location"); **NOW THEREFORE:**

Artist consents and agrees to the *temporary/permanent* placement of the Artwork on *City property/private property* at the Location. Artist acknowledges that the incorporation and installation of the Artwork at the Location may subject the Artwork to destruction, distortion, mutilation, or other modification if and when removed. Removal or relocation of the Artwork, if practical and economically feasible as determined by the City in its sole discretion, will occur in conformity with the guidelines and review requirements listed in the City's Public Art San Antonio Policies and Guidelines. Artist agrees that a City decision made under this paragraph regarding if, when and how to remove the Artwork is final.

Artist hereby expressly consents to both the installation into and removal from the Location of the Artwork and thereby expressly waives his Moral Rights to the Artwork. It is agreed that if the Artwork, or any portion thereof, is removed from the Location causing it or any part thereof to be destroyed, distorted, mutilated or modified in any way, the Artwork may not thereafter be referred to as "an Artwork by the Artist".

Only applicable to works located on City Property: Artist understands that to the extent the City is required to move or relocate the Artwork and a suitable location on City Property cannot be located or in the event that the City no longer has the ability to display the Artwork, the Artwork shall be returned to _____, should it so desire, with the relocation costs at _____'s sole cost and expense. Artist further understands that if the City is required to relocate or disassemble the Artwork, City will notify Artist, or his descendants or assigns, immediately.

Executed to be effective this the ___ day of _____, 20__.

ARTIST

_____
Name

Exhibit C
Plans

To be attached upon completion

Exhibit D
SBEDA Ordinance Compliance Provisions

SBEDA language to be included following Goal Setting Committee

Exhibit IV

STATE OF TEXAS	§	**PUBLIC ART**
	§	
COUNTY OF BEXAR	§	**DESIGN, FABRICATION,**
	§	
CITY OF SAN ANTONIO	§	**& INSTALLATION AGREEMENT**

This Agreement ("Agreement") is made and entered into in San Antonio, Bexar County, Texas, between the City of San Antonio, a Municipal Corporation in the State of Texas ("CITY") and _____ ("ARTIST"), said Agreement being executed by the CITY pursuant to the Ordinance No. 2012-10-11-0796 passed by City Council on October 11, 2012and by the ARTIST, for the design, fabrication and installation services for CITY's _____.

WHEREAS, City held a Bond Election on May 12, 2012 and received approval from the voters to fund a variety of Public Improvements including allocation of funds for construction, acquisition and development of public art and design enhancements related to the _____ from Proposition _____; and

WHEREAS, the City and voters approved allocating 1% of the fund from Proposition ___ to public art which was communicated to voters in official materials that the City is bound by; and

WHEREAS, the City issued an RFQ on July 9, 2012 to create a Capital Projects Artist Pool from which ARTIST was chosen to complete Public Improvement related to the approved _____ (Bond project(s)) 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 Public Art Board of San Antonio and upon approval proceed to fabrication and installation of the ARTWORK; and

WHEREAS, the CITY finds that it is in the best interest of the CITY, its citizens and visitors to enhance and enliven the CITY's public spaces through the design, fabrication and installation of this ARTWORK on the terms and conditions in this Agreement;

NOW THEREFORE, in consideration of the mutual benefits, covenants and obligations herein, and for other good, fair and valuable considerations, the Parties agree as follows:

TABLE OF CONTENTS

SECTION	TITLE	PAGE
1.	DEFINITIONS	3
2.	ARTISTS GENERAL RESPONSIBILITIES	4
3.	CITY'S RESPONSIBILITIES	8
4.	DESIGN DEVELOPMENT OF THE ARTWORK	9
5.	FABRICATION AND INSTALLATION OF THE ARTWORK	11
6.	SCHEDULE	14
7.	ARTIST'S COMPENSATION	15
8.	ARTIST'S WARRANTIES	16
9.	MAINTENANCE	17
10.	ARTIST IS INDEPENDENT CONTRACTOR	17
11.	INDEMNIFICATION	18
12.	INSURANCE	19
13.	COPYRIGHTS	21
14.	REPUTATION AND CREDIT	22
15.	COMPLIANCE WITH LAWS	23
16.	DEFAULT/TERMINATION AND/OR SUSPENSION	24
17.	ASSIGNMENT	27
18.	SUBCONTRACTS	27
19.	NOTICE	28
20.	PROTECTION OF PERSONS AND PROPERTY	28
21.	CONFLICT OF INTEREST	31
22.	GIFTS TO PUBLIC SERVANTS	31
23.	VENUE	32
24.	RIGHT TO AUDIT CONTRACTOR'S RECORDS	32
25.	MISCELLANEOUS	33

ATTACHMENTS:
Exhibit A-1 SCHEDULE OF PERFORMANCE
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 is installed at the SITE and meets the requirements of this Agreement.

1.1. "ARTWORK" means the design and art fabricated and installed consistent with ARTIST'S final proposal to be submitted for review and approval of CITY.

1.2. "ARTIST" is _____.

1.3. "CITY" means the CITY of San Antonio, Texas, a home-rule, Texas Municipal Corporation located in Bexar County, Texas. CITY shall also designate one or more authorized representative who shall have the authority to represent and act for CITY. If no representative is specified, City's Manager or her authorized representative shall be deemed authorized to act.

1.4. "PASA" means PUBLIC ART SAN ANTONIO, which is in the CITY's Department for Culture and Creative Development and is responsible for public art.

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

1.6. "COMPLETION NOTICE" means notice by ARTIST to CITY that ARTWORK has been installed at the SITE.

1.7. "CONSTRUCTION DOCUMENTS/PLANS" mean the drawings, specifications, and addenda for the ARTWORK, which were developed by ARTIST and approved by CITY.

1.8. "DEFECTS NOTICE" means notice by CITY to ARTIST that the ARTWORK does not meet the requirements of this Agreement.

1.9. "DESIGN CONSULTANT" means the individual or firm engaged by CITY to design a facility or project.

1.10. "DIRECTOR" means the Director of the Department for Culture and Creative Development, (DCCD).

1.11. "NOTICE TO COMMENCE" means notice by CITY to ARTIST to begin design, fabrication and installation of the ARTWORK.

1.12. "OFF-SITE Element" means an element of the ARTWORK fabricated away from the SITE for later installation as a component of the ARTWORK.

1.13. "OFF-SITE Defects Notice" means notice by CITY to ARTIST that defects or deficiencies of an OFF-SITE element do not meet the CITY's requirements for formal approval.

1.14. "PROJECT" means the capital improvement/public art development undertaking of CITY for which Artist's services, as stated in the Scope of Services, are to be provided pursuant to this Agreement

1.15. "PROPOSAL" means Artist's Proposal to provide public art design services for this Project.

1.16. "SCHEDULE OF PERFORMANCE" means the schedule for the design, fabrication and installation of the ARTWORK set out in **EXHIBIT A-1**, attached and incorporated herein.

1.17. "SITE" means the physical place located at _____ where the ARTWORK will be installed.

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

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

SECTION 2. ARTIST'S GENERAL RESPONSIBILITIES

2.0. The ARTWORK is to be an artistic product representing the creative talents of ARTIST and satisfies the specifications to be set forth in the Final Proposal and the Construction Documents for the ARTWORK. ARTIST shall fabricate the ARTWORK consistent with the Final Proposal and the Construction Documents, which were approved by CITY and include without limitation, supervising all aspects of the fabrication. ARTIST shall be responsible for the transportation, delivery and installation of the ARTWORK to the SITE consistent with the Final Proposal for the ARTWORK.

2.0.1. Design Within Budget Constraints. ARTIST is responsible for developing the Artwork Design so the ARTWORK can be constructed without exceeding the total compensation. ARTIST shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in ARTWORK.

2.0.2. ARTIST warrants that the ARTWORK, including the Artwork Design, is unique. ARTIST warrants that he/she will not replicate/duplicate the

same ARTWORK or Artwork Design without the express written consent of City. This Clause shall survive termination of this Agreement.

2.0.3. ARTIST is responsible for submitting the Final Proposal to CITY for approval at CITY's sole discretion. In the event of conflict between the Final Proposal and this Agreement as to any element of the Project unrelated to the size, scope and/or aesthetic of the ARTWORK itself, this Agreement will control.

2.0.4. ARTIST's opinions of probable project cost or construction cost are to be made on the basis of ARTIST's experience and qualifications representing ARTIST's best judgment as a design professional familiar with the construction industry.

2.1. DEVIATIONS FROM PROPOSAL. It is understood that changes from the Final Proposal may become desirable as the ARTWORK is fabricated.

2.1.1 Certain specifications regarding the ARTWORK, including, but not limited to, the size, color and/or type or grade of material of some of the elements of the ARTWORK may not be identified in either the Final Proposal or the Construction Documents. To the extent that any ARTWORK specification remains unidentified, ARTIST shall seek CITY's prior written approval of these specifications before commencing fabrication of the ARTWORK.

2.1.2. The Parties also recognize that shifts in scale from preliminary drawings and maquette to a full-scale work may require artistic adjustments. ARTIST reserves the right to make minor adjustments to the ARTWORK as ARTIST deems aesthetically necessary. However, in no event may a change in design increase the ARTWORK budget or require a modification of the Construction Documents without CITY's prior written approval.

2.1.3. MATERIAL DEVIATIONS. Any material deviation from the Final Proposal or the Construction Documents in the scope, design, color, size, material, utility requirements, support requirements, texture and/or location of the ARTWORK must be approved in writing and in advance by CITY before ARTIST proceeds with completion of the ARTWORK. Additionally, material deviation shall also include any change from the Final Proposal or the Construction Documents, which affects the fabrication, schedule of delivery or installation of the ARTWORK, preparation of the SITE and/or maintenance of the ARTWORK.

2.2. ADDITIONAL SERVICE AUTHORIZATION. No services for which ARTIST seeks additional compensation will be provided nor charged without CITY's prior written authorization.

2.3. PERSONNEL. ARTIST is responsible for providing, at ARTIST's expense, all personnel required by ARTIST to fulfill the responsibilities and obligations in this

Agreement. All persons retained by ARTIST shall possess the requisite licenses and permits.

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

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

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

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

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

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

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

2.7.2. ARTIST shall confine ARTIST's construction equipment, the storage of materials and equipment and the operations of ARTIST's personnel to areas

permitted by law, ordinances, permits and the requirements of the Agreement and shall not encumber the SITE unreasonably.

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

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

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

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

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

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

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

2.11.1. In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, ARTIST shall request and City will provide the appropriate wage determination which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. The ARTIST is required, and shall require its construction contractor and all subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time. The ARTIST is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with any contractor and subcontractors for construction of ARTWORK. ARTIST is responsible for and shall collect and monitor certified payrolls and perform SITE visits to ensure the prevailing wage is paid to all workmen.

2.11.2. City may audit certified payroll records as needed. Upon audit of the records and certified payrolls, should there be any violations the ARTIST or ARTIST's subcontractor shall forfeit as a penalty to the CITY $60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the stipulated rates for any work done under said contract, by the contractor or any subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code does not relieve Artist from its obligation under any federal or state law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed.

2.12. INTERNET-BASED PROJECT MANAGEMENT SYSTEMS. At its option, CITY may administer its design and construction management through an Internet-based management system. In such cases, ARTIST shall communicate through this media and perform all ARTWORK related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, or payment requests and processing, Amendments, Change Orders and other administrative activities. When such systems are employed, the CITY shall administer the software, shall provide training to ARTIST and ARTIST's personnel, and shall make the software accessible via the Internet to ARTIST and ARTIST's personnel.

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

SECTION 3. CITY'S RESPONSIBILITIES.

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

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

SECTION 4. DESIGN DEVELOPMENT OF THE ARTWORK

4.0. ARTIST shall perform the following design services to the satisfaction of CITY and within the deadlines set forth in **Exhibit A-1 Schedule of Performance**.

4.1. Research. ARTIST shall meet with CITY staff in order to understand the uses of the Project and facilities surrounding the Project for the purposes of defining goals for the ARTWORK appropriate to the general social and immediate physical environment of the ARTWORK. ARTIST shall also attend at least three individual meetings with local experts or other interested parties as designated by CITY. The times and dates of these meetings shall be subject to the mutual agreement of the Parties. Any required travel incurred by ARTIST above and beyond what is provided for by this Agreement shall be requested in writing, will need to be approved by both Parties and may be subject to a separate agreement.

4.2. Concept and Schematic Designs.

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

4.2.2. Following CITY's approval of the Concept Design Proposal, ARTIST shall prepare one or more designs showing ARTIST's schematic design for the ARTWORK ("Schematic Design Proposal"). The Schematic Design Proposal will include form, scale, and proposed materials (samples to be provided where appropriate) as well as information on structural considerations, surface integrity, permanence and protection against theft and vandalism.

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

4.2.4. The Schematic Design Proposal shall include an outline of the proposed installation method, and a schedule for the ARTWORK fabrication and installation (collectively, the "Proposed Installation Method").

4.3. Artwork Design Development Proposal. Upon receipt of CITY's Notice to Proceed, ARTIST shall develop a final proposal for the ARTWORK ("Artwork Design

Development Proposal") showing the details of the ARTWORK. The Artwork Design Development Proposal will include indication of form, scale, and proposed materials (samples to be provided when appropriate). The Artwork Design Development Proposal shall also include information on structural considerations, surface integrity, permanence, and protection against theft and vandalism (collectively, the "Artwork Design Specifications").

4.3.1. ARTIST shall develop a detailed budget estimate ("Artwork Budget Estimate") covering all estimated costs to fabricate and install the ARTWORK, including, but not limited to: itemized cost estimates for materials including applicable sales tax; OFF-SITE fabrication costs; itemized General Contractor and sub-contractor costs; permits or other fees; insurance; transportation of the ARTWORK to SITE; and itemized installation costs.

4.3.2. 10% of the Artwork Budget will be set aside as a contingency to cover unforeseen costs, that may arise during the fabrication and installation.

4.3.3. The Artwork Design Development Proposal shall include a detailed written description of the fabrication and installation method ("Installation Specifications"), detailed fabrication and installation schedule ("Installation Schedule") and the description of any operational, maintenance and conservation requirements for the ARTWORK ("Maintenance Specifications").

4.4. Artwork Design Development Proposal Review.

4.4.1. ARTIST shall provide presentation quality visual material of the Artwork Design Development Proposal in conjunction with the review by CITY staff, the Reviewing Body, and for release to the press. CITY shall dictate the specific types of presentation materials to be used.

4.4.2. The Artwork Design Development Proposal shall be submitted to the CITY for review and submittal to the Reviewing Body. CITY may require ARTIST to make modifications to the Artwork Design Development Proposal prior to submission.

4.4.3. ARTIST, at CITY's option, shall be available to present the Artwork Design Development Proposal, in the form approved by the CITY, at one or more meetings of the Reviewing Body.

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

4.4.5. Should the final design proposal be disapproved and the ARTIST has performed the services set out in Agreement to the satisfaction of the CITY, ARTIST may be compensated to submit a modified design proposal as specified by the PASA 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 Artwork Design Development Proposal ("Construction Documents") and for obtaining any and all information necessary to prepare the Construction Documents, including without limitation, any field measurements of the proposed SITE.

4.5.1. Construction Documents must conform to all applicable federal, state and local laws and regulations. If applicable or upon request by CITY, any and all drawings must be certified by a qualified engineer or architect, licensed by the State of Texas; and

4.5.2. When seeking approval of the Construction Documents, ARTIST shall submit the following to CITY unless notified otherwise by CITY:

A. plans on reproducible sheets measuring 24 inches by 36 inches, and provided in digital PC-compatible format;

B. all engineering calculations associated with the submitted Construction Documents; and

C. specifications for ARTWORK including a final budget estimate listing the quantities and unit prices for fabrication and installation of Artwork.

4.5.3. The Construction Documents for the ARTWORK are subject to approval by CITY who will notify ARTIST in writing once the Construction Documents are approved. CITY's approval of the Plans shall not release ARTIST of the responsibility for correcting mistakes, errors or omissions, proximately caused by ARTIST which may be the result of circumstances unforeseen when the Plans were developed or approved.

4.6. Notice of Acceptance. If all approvals are secured, the CITY will issue a written Notice of Acceptance of the Artwork Design Development Proposal to ARTIST. CITY's acceptance does not obligate the CITY to commission fabrication and/or install the ARTWORK.

SECTION 5. FABRICATION AND INSTALLATION OF THE ARTWORK

5.0. INSPECTION NOTICE. CITY and ARTIST agree that various elements of the ARTWORK may be fabricated at locations away from the SITE (collectively, "OFF-

SITE Elements"). The OFF-SITE Elements, include, but are not limited to, the elements described in the ARTWORK Design Development Proposal and Construction Documents. ARTIST shall notify CITY in writing when each element of the ARTWORK is ready for inspection, prior to transporting the OFF-SITE Elements to the SITE ("Inspection Notice"). CITY has the right to inspect each of the OFF-SITE Elements and all other aspects of the construction of ARTWORK.

5.1. NOTICE TO COMMENCE WORK. Within 15 business days of CITY's receipt of the Inspection Notice for each of the OFF-SITE Elements, CITY will inform ARTIST in writing that either: (1) the OFF-SITE Elements have been completed in accordance with this Agreement and are formally approved in writing for transport to the SITE ("Transport Notice To Proceed"); or (2) there are identified defects or deficiencies in the OFF-SITE Elements which prevent formal approval ("OFF-SITE Defects Notice"). In the event that an OFF-SITE Elements is fabricated outside San Antonio, the CITY may, at its sole discretion, delay inspection until the OFF-SITE Elements is delivered to the SITE. If CITY fails to issue the Transport Notice to Proceed or the OFF-SITE Defects Notice within the 15 business days inspection period, the Transport Notice To Proceed will be deemed issued at the end of 15 business days. In the event that CITY issues an OFF-SITE Defects Notice, ARTIST will promptly remedy any defects to the reasonable satisfaction of the CITY.

5.2. DELIVERY. Upon issuance of the Transport Notice To Proceed, ARTIST shall deliver the OFF-SITE Elements to the SITE. ARTIST shall coordinate with the CITY regarding the time, place and manner of the ARTWORK delivery and installation. CITY shall have the right to inspect the OFF-SITE Elements at the time each arrives at the SITE to determine if there is any damaged from transit or any deviations from the OFF-SITE Element previously approved by CITY or from the terms of this Agreement. ARTIST shall promptly remedy any deviation, defect or damage to the Off-SITE Elements to the reasonable satisfaction of the CITY.

5.3. PLANS. ARTIST shall cause all labor and material incorporated in the ARTWORK to be furnished in accordance with the requirements and specifications approved by CITY (collectively, the "PLANS"). The PLANS, once approved by CITY, are final and, except as expressly provided in this subsection, no revisions shall be permitted except with CITY's prior written approval.

5.3.1. CITY's approval of the Plans shall not release ARTIST of the responsibility for the correction of ARTIST's mistakes, errors or omissions in the PLANS, including any mistakes, errors or omissions resulting from unforeseen circumstances. If public safety issues arise that, require any change to the PLANS as determined at CITY's sole discretion, CITY can require ARTIST to address the public safety issues. ARTIST shall then propose modifications to the CITY for review and approval provided such modifications do not increase the TOTAL PRICE.

5.3.2 All completed drawings submitted by ARTIST for final approval or issuance of a permit that require the seal and certification of a licensed engineer or architect shall bear the seal with signature and date of a Texas registered architect/engineer licensed to practice in Texas.

5.4. WORK AT THE SITE

5.4.1. INSTALLATION. ARTIST shall be responsible for installation of ARTWORK at the SITE, including without limitation, supervising the work of any subcontractors and coordinating the inspection of the installation of ARTWORK with the CITY. The ARTWORK will not be formally accepted until CITY issues the ACCEPTANCE NOTICE approving the ARTWORK installation at the SITE.

5.4.2. CITY'S ACCESS TO SITE. CITY's staff and designated representatives shall have free access to the ARTWORK for inspection purposes at all times during the progress of work on the ARTWORK at the SITE. If CITY determines that all or any portion of the work done on the ARTWORK is not in compliance with the Plans, CITY shall notify ARTIST of the same and ARTIST shall promptly cure such defect to the reasonable satisfaction of CITY.

5.4.3. Whenever the ARTIST or ARTIST's authorized representative are not present on the SITE and it becomes necessary to give direction for safety reasons, the DCCD Director or his designee shall have the right to give orders, which shall be obeyed by ARTIST's subcontractor and/or employees. At ARTIST's request, any order given by the DCCD Director or his designee will be confirmed in writing.

5.5. COMPLETION OF SERVICES.

5.5.1. COMPLETION NOTICE. ARTIST shall notify CITY when the ARTWORK is fully installed at the SITE ("Completion Notice"). Within 30 days of CITY's receipt of the Completion Notice, CITY shall notify ARTIST in writing that the ARTWORK as completed and installed meets the Agreement's requirements ("Acceptance Notice") or if the ARTWORK does not meet this Agreement's requirements, CITY shall notify ARTIST in writing ("Defects Notice").

5.5.2. REMEDY OF DEFECTS. ARTIST shall promptly remedy at ARTIST's own cost any defects noted in CITY's Defects Notice to CITY's reasonable satisfaction.

5.5.3. MAINTENANCE INSTRUCTIONS. As a condition of CITY's acceptance of the ARTWORK, ARTIST shall supply CITY with written maintenance instructions for the ARTWORK. These instructions shall include information in sufficient detail regarding the proper care, repair and maintenance of the ARTWORK.

5.5.4. FINAL DOCUMENTATION. As a condition of CITY's acceptance of the ARTWORK, ARTIST shall supply CITY with at least three publication quality images of the installed ARTWORK in both slide and digital formats and other information on the ARTWORK requested by CITY for its registration files. Use of these images will be in accordance with Section 12.2 of this Agreement.

5.5.5 ARTIST shall be available at such time or times as may be agreed upon between CITY and ARTIST to attend an inauguration or presentation ceremonies relating to the transfer of the ARTWORK to CITY.

5.6. DEATH OR INCAPACITY OF ARTIST. In the event of ARTIST's physical incapacity or death prior to the completion of the ARTWORK, all payments made up to the point of incapacity or death will be retained by ARTIST and all work performed to date of incapacity or death will be compensated. Upon payment, the incomplete ARTWORK and any materials paid for by CITY will become CITY property. However, if the ARTWORK is substantially designed and/or completed and it is feasible for the ARTWORK to be fully completed without undue delay while remaining faithful to the ARTIST's design, integrity and reputation, CITY may elect to proceed, under this Agreement, with completion and/or installation by ARTIST's REPRESENTATIVE. All remaining work to be completed in accordance with this Agreement will be delegated to: [NAME, ADDRESS, PHONE NUMBER] ("REPRESENTATIVE").

SECTION 6. SCHEDULE.

6.0. This Agreement commences upon execution by all the Parties on _____, 2014 and shall terminate upon completion of all services required by this Agreement unless either Party terminated this Agreement earlier in accordance with the terms herein.

6.1. ARTIST is to complete the services required of ARTIST herein in accordance with the schedule set out in the attached **EXHIBIT A-1**, entitled "Schedule of Performance".

6.1.1. Prior to commencement of the work, the Parties shall mutually agree to an inspection schedule, which may be adjusted from time to time by mutual written agreement.

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

6.2. TIME. All limitations of time set forth in this Contract are material and time is of the essence in the performance of ARTIST's services under this Agreement.

6.3. FORCE MAJEURE. CITY or ARTIST may grant temporary relief from any deadline for performance of any term of this Agreement if either Party is prevented from compliance and performance by an act of war, order of legal authority, act of God,

terrorism, social unrest, strike, natural disaster, supply shortage, or other unavoidable cause not attributed to the fault or negligence of the Party. To obtain an extension based upon Force Majeure, ARTIST must provide written notice to CITY of the occurrence of the Force Majeure event within 10 days following the date that ARTIST becomes aware of the event and the fact that it will delay ARTIST's performance under this Agreement. CITY will not unreasonably withhold consent.

SECTION 7. ARTIST'S COMPENSATION.

7.0. COMPENSATION. ARTIST's total compensation for full and timely completion of the services required by this Agreement is **$**_____ (the "TOTAL PRICE"). Such payment shall be full and complete compensation for work performed and services rendered by or on behalf of ARTIST, including, but not limited to, professional services and expenses, for all supervision, labor, supplies, materials, equipment or use thereof and for all other necessary incidentals. CITY is not obligated to compensate ARTIST unless and until CITY accepts the ARTWORK.

7.0.1 Payment Schedule. CITY shall make interim payments to ARTIST in the amounts and at the milestones as identified in the Payment Schedule, attached and incorporated as **Exhibit B-1**, as compensation to assist ARTIST with financing the fabrication, delivery and installation of the ARTWORK. The form of the invoice shall be subject to the reasonable approval of the CITY. Within 30 days of CITY's receipt of ARTIST's invoice indicating the appropriate milestone has been reached, CITY will pay ARTIST amount allocated in the Payment Schedule.

7.0.2. Parties agree that the Payment Schedule may be modified only upon prior written authorization of the CITY and ARTIST. CITY's PASA Program Manager may approve changes, which are not considered material by CITY.

7.1. COST OVERRUN. In the event ARTIST incurs costs over the TOTAL PRICE, ARTIST shall pay such excess at ARTIST's sole cost. CITY is not responsible for any part of such excess.

7.1.1 In the event that work for which the CITY has been invoiced does not meet the specifications required by this Agreement, CITY in its sole discretion shall have the right to withhold such payment until such deficiency is corrected. In such event, CITY shall provide detailed written notice to ARTIST within 10 days of receipt of such invoice, specifying the failure of performance for which CITY intends to withhold payment. ARTIST shall work to cure such failure in order to meet the Agreement standards to the reasonable satisfaction of CITY.

7.2. NO WAIVER OF RIGHTS. No payment to ARTIST for any work performed or services rendered shall constitute a waiver or release by CITY of any claims, rights or remedies CITY may have against ARTIST under this Agreement or by law, nor shall such payment constitute a waiver by the CITY of any failure or fault of ARTIST to

perform satisfactorily under this Agreement. ARTIST expressly acknowledges that approval of work to permit an interim payment is solely to permit ARTIST to receive an interim payment. Unless and until the CITY issues an Acceptance Notice for the ARTWORK, no interim approval shall constitute acceptance or approval of the ARTWORK by CITY nor is it a waiver of CITY's right to require that the ARTWORK conform strictly to the approved Construction Documents/PLANS.

7.3. If CITY approves a modification of the Final Proposal or PLANS resulting in cost savings such as but not limited to, the deletion of an element, substitution of lesser quality materials with no offsetting upgrade of other materials, or reduction in the size/scale, the cost savings from the modification will not be paid to ARTIST.

7.4. If the Parties mutually agree in writing to a modification of the ARTWORK resulting in an increased cost to ARTIST, including but not limited to the addition of an element, the substitution of more expensive materials, or the increase in size/scale, the resulting cost increases shall be paid to ARTIST.

7.5. If work for which the CITY has received a request for payment does not meet specifications required by this Agreement, CITY in its sole discretion shall have the right to withhold such payment until the deficiency is corrected. In such event, CITY shall provide detailed written notice to ARTIST within 10 days of receipt of such request for payment, specifying the failure of performance for which CITY intends to withhold payment. ARTIST shall cure such failure to the reasonable satisfaction of CITY.

SECTION 8. ARTIST'S WARRANTIES.

8.0. ARTIST warrants that the services required by this Agreement will be performed with the same degree of professional skill and care that are typically exercised by similar professionals performing similar services. ARTIST's installation and fabrication services shall comply with the Construction Documents/PLANS for the ARTWORK approved by CITY. Further ARTIST represents and warrants the following.

8.0.1. ARTIST has not previously sold, assigned, licensed, granted, encumbered, or utilized the ARTWORK, the ARTWORK'S design or any element thereof, in any manner, which may affect or impair the rights granted pursuant to this Agreement.

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

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

8.0.4. The ARTWORK is a unique edition resulting from the artistic efforts of ARTIST. ARTIST acknowledges that CITY desires that the ARTWORK be

unique, and ARTIST agrees not to duplicate the ARTWORK without CITY's written consent.

8.0.5. All services shall be performed in accordance with City's Standard Specifications if applicable, which are on file with the CITY's Transportation and Capital Improvements, (TCI) Architectural Division. To the extent that the CITY's Standard Specifications conflict with the provisions set forth in this Agreement, this Agreement shall control.

8.0.6. ARTWORK will be delivered free and clear of any liens.

8.1. DEFECTS IN MATERIAL WORKMANSHIP AND INHERENT VICE. ARTIST warrants that the ARTWORK will be free of defects in workmanship, including Inherent Vice, and that the ARTIST will, at the ARTIST's own expense, remedy any defects due to faulty workmanship, or Inherent Vice, which appear within a period of one year from the date the ARTWORK is formally accepted. The term "Inherent Vice" means any quality within the material or materials incorporated into the ARTWORK that alone or in combination result in the unreasonable deterioration of the ARTWORK.

8.1.1 If the ARTWORK deteriorates due to Inherent Vice within one year from the date the ARTWORK is formally accepted, ARTIST will repair or replace the ARTWORK without charge for ARTIST's services in supervising the work of others or for repairing the work that they originally performed on the ARTWORK and ARTIST will pay for the cost of labor rendered by persons other than the ARTIST, materials and supplies.

8.1.2. ARTIST further warrants that the ARTWORK shall not constitute any threat to the safety of persons or property when used in the manner for which it is designed. ARTIST agrees to cooperate with CITY in making or permitting adjustments to the ARTWORK if needed to eliminate hazards, which become apparent after the ARTWORK is formally accepted by CITY.

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

SECTION 9. MAINTENANCE.

9.0. CITY shall have the right to determine, after consultation with ARTIST or with a professional conservator, when and if repairs and restorations to the ARTWORK will be made. It is the policy of CITY to consult with ARTIST regarding repairs and restoration, which are undertaken during ARTIST's lifetime.

9.1. All repairs and restorations, whether performed by ARTIST, CITY, or third parties, shall be made in accordance with professionally recognized principles of conservation of ARTWORK and in accordance with the maintenance instructions provided to CITY by ARTIST pursuant to Section 5.2.3.

SECTION 10. ARTIST IS INDEPENDENT CONTRACTOR.

10.0. ARTIST is an independent contractor and not an officer, agent, servant or employee of CITY and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between CITY and ARTIST. ARTIST has no authority to bind the CITY. ARTIST shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants.

10.1 CITY shall not be liable for any third party claims, which may be asserted in connection with the performance of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give any third party any legal or equitable right, remedy or claim under or in respect of this Agreement or any authority to enforce this Agreement.

SECTION 11. INDEMNIFICATION.

11.0. The ARTIST, whose work product and services are the subject of this Agreement for professional services, agrees to INDEMNIFY 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, 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, OR OF 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.

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

11.2. 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.

11.3. Acceptance of the Final PLANS by the CITY shall not constitute nor be deemed a release of the responsibility and liability of the ARTIST, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, work drawings, Plans and Specifications or other documents; nor shall such acceptance be deemed an assumption of responsibility or liability by the CITY for any defect in the designs, work drawings, Plans and Specifications or other documents prepared by ARTIST, its employees, sub-artists, and agents.

11.4. **THE ARTIST SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST THE CITY AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST THE CITY, TO THE EXTENT THAT THE ARTWORK PROVIDED UNDER THIS AGREEMENT CONSTITUTES AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

11.5. <u>Employee Litigation</u> – 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 12. INSURANCE.

12.0. Prior to the commencement of any Services under this Agreement, ARTIST shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY's Department for Culture and Creative Development, which shall be clearly labeled "_____" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the CITY's Department for Culture and Creative Development. No officer or employee other than the CITY's Risk Manager shall have authority to waive this requirement.

12.1. ARTIST's financial integrity is of interest to the CITY. Therefore, subject to the ARTIST's right to maintain reasonable deductibles in such amounts as are approved by the CITY, the ARTIST shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the ARTIST's sole expense, insurance coverage written on an occurrence or claims made basis, as appropriate, by companies authorized and approved to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence

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

CITY of San Antonio
Department for Culture and Creative Development
Attn: Public Art San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

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

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

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

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

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

12.6. The ARTIST's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the CITY for liability arising out of operations under this Agreement.

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

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

12.9 If applicable ARTIST shall comply with Texas Government Code Chapter 2253 provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).

SECTION 13. COPYRIGHTS.

13.0. CITY shall have ownership and possession of the Artwork Design upon acceptance of the final Artwork Design Proposal, approval of the Construction Documents and final payment by CITY. Upon completion of fabrication and installation of the ARTWORK and full payment for the ARTWORK, CITY shall have ownership and possession of the ARTWORK including exclusive right to display the ARTWORK, subject to this Agreement. CITY may make any and all reproductions or derivatives in whatever form of the ARTWORK or Artwork Design for educational, public relations, arts promotional, commercial or any other purpose and such uses will not result in any additional payments to ARTIST.

13.1. ARTIST retains copyrights and intellectual property and/or patents related to the ARTWORK and the Artwork Design including potentially those patents, related to materials used in the fabrication or installation of the ARTWORK. However, any use of the Artwork Design by ARTIST or any third party must be approved, in advance, by CITY except that ARTIST is expressly allowed to use reproductions of the Artwork Design and documentation of ARTWORK for self-promotion, presentation and portfolio use.

13.2 If CITY obtains a commercial benefit from the ARTWORK, or Artwork Design, by sale of reproductions or images of same, or by licensing same, revenues received by CITY from such commercial ventures shall be directed to long-term maintenance of the ARTWORK.

13.3. CITY has the exclusive right to display the ARTWORK and Artwork Design, including drawings, models, or any reproduction of the ARTWORK and to loan the ARTWORK, in whole or in part, including to other persons or institutions with authority to display it publicly. CITY acknowledges ARTIST's co-right to display images of the ARTWORK and to display the Artwork Design or images or reproductions of the Artwork Design, and to display or exhibit such images and/or reproductions, including the Artwork Design itself, so long as such display or exhibition is consistent with attribution to the CITY.

13.4. ARTIST expressly consents to both the installation and removal from the Project of the ARTWORK and expressly waives his/her Moral Rights, as defined in the Visual Rights Act 17 U.S.C. § 106(A), to the ARTWORK. Further, ARTIST understands that the incorporation and installation of the ARTWORK into a CITY facility may subject the ARTWORK to destruction, distortion, mutilation, or other modification if and when removed. It is agreed that if the ARTWORK, or any portion thereof is removed causing destruction, distortion, mutilation or modification in any significant way, the ARTWORK may no longer be referred to as "an Artwork by the Artist".

13.5. The clauses in Section 13 shall survive termination of this Agreement.

SECTION 14. REPUTATION AND CREDIT.

14.0. Unless ARTIST requests to the contrary in writing, all references to the ARTWORK and all reproductions of the ARTWORK will credit the ARTWORK to ARTIST.

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

14.2. ARTIST agrees that all formal references to the ARTWORK made or authorized to be made by ARTIST shall include the following credit: "Collection of the City of San Antonio, Commissioned through Public Art San Antonio," or other language agreed to by the Parties.

14.3. ARTIST and ARTIST's contractors and subcontracts shall coordinate any releases of information regarding the ARTWORK to the public and news media with CITY staff. In all communications to the public and news media, the ARTIST must fully and accurately identify the ARTIST's relationship to the CITY and credit the CITY for its role in funding the Project.

14.4. FUTURE MODIFICATION OR RELOCATION. Removal or relocation of the ARTWORK, if practical and economically feasible as determined by CITY, in its sole discretion, will occur in conformity with the City's Public Art Policy. CITY's decisions regarding removal or relocation of the ARTWORK is final and may occur at any time.

14.4.1. CITY has the right to remove the ARTWORK from the SITE at any time. In addition, in the event that any element of the ARTWORK constitutes a public safety hazard, CITY has the right to remove only the element posing the public safety hazard without prior written notice to ARTIST.

14.4.2. CITY has the right to donate or sell the ARTWORK at any time. Before exercising this right, CITY shall give ARTIST 30 days from issuance of written notice to ARTIST to purchase the ARTWORK for the greater of the TOTAL PRICE or market value, plus all costs associated with the removal of the ARTWORK from the SITE, clean-up of the SITE and delivery to ARTIST.

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

14.4.3. 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 the ARTIST as delineated in 5.2.4.

SECTION 15. COMPLIANCE WITH LAWS.

15.0. ARTIST shall comply with all applicable federal, state and local laws, ordinances, codes and regulations and will use reasonable efforts to ensure compliance by any and all contractors and subcontractors that may work on the ARTWORK.

15.1. ARTIST shall comply with the all local, state and federal environmental requirements including all City applicable construction and development regulations as well as federal Environmental Protection Agency, Texas Department of State Health Services and Texas Commission on Environmental Quality rules and regulations and all other regulations and laws relating to the environment, Hazardous Substances or exposure to such.

15.2. Non-Discrimination. ARTIST understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

15.3 None of ARTIST's services shall involve, and no portion of the funds received by ARTIST shall be used to support any sectarian or religious activity.

SECTION 16. DEFAULT/TERMINATION AND/OR SUSPENSION

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

16.0.1. This Agreement may be terminated by either Party for substantial failure by the other Party to perform (through no fault of the terminating Party) in accordance with this Agreement and a failure to cure as provided in this Section.

16.0.2. The Party not in default must issue a signed, written notice of default and intent to terminate (citing this paragraph) to the other Party declaring the other Party to be in default and stating the reason(s) why they are in default. Upon receipt of such written notice of default, the party in receipt shall have a period of 10 days to cure any default. Upon the completion of such 10-day cure period, if such Party has not cured any failure to perform, such termination shall become effective without further written notice.

16.1. RIGHT OF CITY TO TERMINATE. CITY reserves the right to terminate this Agreement for reasons other than substantial failure by the ARTIST to perform by issuing a signed, written notice of termination (citing this paragraph) which shall take effect upon effective notice to ARTIST and/or upon the scheduled completion date of the performance phase in which ARTIST is currently working, whichever occurs first. In the event of termination by CITY without cause, ARTIST shall be entitled to payment for all work performed by or on behalf of ARTIST to date, together with reimbursement for all legitimate

expenses incurred by ARTIST up to ARTIST's receipt of such notice.

16.2. RIGHT OF CITY TO SUSPEND GIVING RISE TO RIGHT OF ARTIST TO TERMINATE. CITY reserves the right to suspend this Agreement at the end of any phase for CITY's convenience by issuing a signed, written notice of suspension (citing this paragraph) outlining the reasons for the suspension and the expected duration of the suspension. Such expected duration shall in no way be a guarantee of the length of the suspension. Such suspension shall take effect immediately upon receipt of said notice of suspension by the ARTIST.

16.2.1 ARTIST has the right to terminate if such suspension extends for more than 120 days. ARTIST may exercise this right by issuing a signed, written notice of termination (citing this paragraph) to the CITY after 120 days have passed from the effective date of the suspension. Termination shall be effective upon receipt of said written notice by the CITY. In the event of termination by ARTISTS after such suspension, ARTIST shall be entitled to payment for all work performed by or on behalf of ARTIST, together with reimbursement for all legitimate expenses incurred by ARTIST prior to ARTIST's suspension.

16.3. PROCEDURES ARTIST TO FOLLOW UPON RECEIPT OF NOTICE OF TERMINATION WITH CAUSE. Upon receipt of a notice of termination with cause and prior to the effective date of termination, unless the notice otherwise directs or ARTIST immediately takes action to cure under the set cure period, ARTIST shall immediately discontinue all services performed in connection with this Agreement and promptly cancel all existing orders and contracts chargeable to this Agreement. Within 30 days after receipt of such notice of termination (unless ARTIST has successfully cured a failure to perform), ARTIST shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. The CITY shall have the option to grant an extension to the time period for submittal of such statement.

16.3.1. Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and exhibits prepared under this Agreement prior to the effective date of termination shall be delivered to the CITY, in the form requested by the CITY as a pre-condition to final payment subject to the restrictions herein.

16.3.2. CITY has a duty to document the use of public funds. To this end, ARTIST understands that failure to comply with the submittal of the statement and documents shall constitute a waiver by ARTIST of any and all rights or claims to payment for services performed under this Agreement by ARTIST.

16.3.3. Upon the above conditions being met, CITY shall pay

ARTIST that proportion of the compensation, which the services actually performed bear to the total services called for under this Agreement, less any previous payments.

16.4. PROCEDURES ARTIST TO FOLLOW UPON RECEIPT OF NOTICE OF SUSPENSION. Upon the effective date of suspension, ARTIST shall, immediately phase-out and discontinue all services associated with the performance of this Agreement including promptly suspending all existing orders and contracts chargeable to this Agreement, unless the notice directs otherwise.

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

16.4.2. Copies of all completed or partially completed designs, plans and specifications prepared prior to the effective date of suspension shall be prepared for possible delivery to the CITY but shall be retained by the ARTIST until such time as ARTIST may exercise the right to terminate.

16.4.3. ARTIST shall promptly cancel or suspend all existing orders and contracts chargeable to this Agreement. If ARTIST is terminating, ARTISTS 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 the CITY of ARTIST's notice of termination.

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

16.4.5. ARTIST's failure to comply with this section may constitute a waiver by the ARTIST of any portion of the fee for which ARTIST did not supply such necessary statements and/or documents.

16.4.6. Upon the above conditions being met, CITY shall promptly pay ARTIST that proportion of the prescribed fee, which the services actually performed bear to the total services called for by this Agreement, less any previous payments, together with reimbursement for legitimate expenses incurred by ARTIST up to ARTIST's receipt of such notice.

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

16.6. REMEDIES. The remedies under this Agreement are cumulative and are in addition to the rights available to the Parties at law or in equity. Nevertheless, if ARTIST breaches this Agreement, CITY has the right to exercise its termination rights as described herein and at its option proceed with the fabrication and installation of the

ARTWORK without utilizing ARTIST's services. If CITY exercises its option to proceed, then CITY, upon ARTIST's written request will refrain from referencing the ARTWORK as the work of ARTIST.

SECTION 17. ASSIGNMENT

17.0. The expertise and experience of ARTIST are material considerations for this Agreement; therefore, ARTIST shall not assign or transfer any interest in this Agreement nor the performance of any of ARTIST's obligations. Any attempt by ARTIST to assign this Agreement or any rights, duties or obligations arising hereunder shall be void unless prior written consent is given by CITY. This section does not prevent ARTIST, at ARTIST's sole expense, from relying on or utilizing the services of such other consultant or artist as ARTIST may require to complete the ARTWORK.

SECTION 18. SUBCONTRACTS.

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

18.1. ARTIST shall not employ any Subcontractor, person or organization (including those who are to furnish the primary materials or equipment), whether initially or as a substitute, against whom CITY may have reasonable objection. A Subcontractor other person or organization identified in writing to CITY prior to the Notice of Award and not objected to in writing by CITY will be deemed acceptable to CITY. However, acceptance by CITY is not a waiver of any right of CITY to reject defective Work. If CITY, after due investigation, has reasonable objection to any Subcontractor, person or organization proposed by ARTIST after the Notice of Award, the ARTIST will be required to submit an acceptable substitute. The Contract Sum will be equitably adjusted for any change in the price of the subcontract work resulting from such substitution. ARTIST is not required to employ any Subcontractor, person, or organization against whom ARTIST has a reasonable objection.

18.2. ARTIST is fully responsible to CITY for all acts and omissions of his/her Subcontractors, persons and organizations directly or indirectly employed and of persons and organizations who may be liable to the same extent that ARTIST is responsible for the acts and omissions of persons directly employed by ARTIST. CITY shall in no event be obligated to any third party, including any sub-contractor of ARTIST, for performance of or payment for work or services.

18.3. All ARTWORK performed for ARTIST by a Subcontractor will be pursuant to a written agreement between ARTIST and the Subcontractor, which specifically binds the Subcontractor to the applicable terms and conditions of this Agreement. Where appropriate, ARTIST shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. ARTIST shall make copies of the Agreement available to each proposed Subcontractor, prior to the execution of the subcontract agreement.

SECTION 19. NOTICE

19.0. Submittals, requests, notices and reports (collectively, "Notices") required under this Agreement shall be delivered personally or through the mail, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a party. Notices may also be sent by facsimile.

For ARTIST:

For CITY: City of San Antonio
Department for Culture and Creative Development –
Attn: Public Art San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

19.1. Notices will be deemed effective on the date personally delivered, faxed, or sent by courier service. Notices which are mailed will be deemed effective three days after deposit in the mail.

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

SECTION 20. PROTECTION OF PERSONS AND PROPERTY.

20.0. ARTIST shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. ARTIST shall adopt a reasonable safety program/policy applicable to the SITE and to the ARTWORK, which shall be reviewed by CITY in advance of beginning the ARTWORK installation. While CITY has the right to inspect and verify ARTIST's compliance, ARTIST is responsible for initiating, maintaining and supervising all safety precautions and programs.

20.0.1. ARTIST has adopted or will adopt its own policy to assure a drug and alcohol free SITE. ARTIST's employees, agents, and subcontractors shall not perform any service for CITY while under the influence of alcohol or any controlled substance. ARTIST, its employees, agents, and subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs or alcoholic beverages while performing the ARTWORK. ARTIST will remove any of its employees from performing the ARTWORK any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. CITY has the right to require ARTIST to remove employees any time cause exists to suspect alcohol or drug use or who either refuses to take, or tests positive in, any alcohol or drug test.

20.1. EMERGENCIES. In an emergency affecting safety of persons or property, the ARTIST shall exercise best efforts to act to prevent or minimize threatened damage, injury or loss. ARTIST shall also notify CITY immediately, by telephone with prompt confirmation in writing, of all injuries and fatalities, including but not limited to copies of all reports and other documents filed or provided to ARTIST's insurers and the State of Texas in connection with such injuries or fatalities.

20.2. A breach or violation of this Section by ARTIST will be a material and substantial breach of this Agreement. If CITY reasonably determines the ARTIST has breached or violated this Section, then CITY shall notify ARTIST whether such breach shall necessitate a suspension or termination of the Agreement. If the ARTWORK is suspended, the ARTWORK shall not recommence until CITY is satisfied that the safety breach or violation will not occur again.

20.3. The ARTIST shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

a. Employees and other persons who may be impacted;

b. The ARTWORK and materials and equipment to be incorporated therein, whether in storage on or off the SITE, under the care, custody or control of the ARTIST or the ARTIST's Subcontractors or Sub-subcontractors; and

c. Other property at the SITE or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of Construction or Installation of the ARTWORK.

20.3.1 The ARTIST shall erect and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying CITY and users of adjacent sites and utilities.

20.3.2. When use or storage of explosives or other Hazardous Materials or equipment or unusual methods are necessary for the execution of the ARTWORK, the ARTIST shall exercise extraordinary care and shall carry on such activities under the direct supervision of properly qualified personnel.

20.3.3. The ARTIST shall not load or permit any part of the construction or SITE to be loaded so as to endanger its safety or that of others.

20.4. Notwithstanding these provisions, CITY does not warrant nor represent to ARTIST, ARTIST's employees or agents, any subcontractors, or any other third party that ARTIST's safety policy meets the requirements of any applicable law, code, rule, or

regulation, nor that the proper enforcement will insure that no accidents or injuries occur. In addition, any action by CITY under these provisions in no way diminishes ARTIST's obligations.

20.5. PUBLIC CONVENIENCE AND SAFETY. ARTIST shall, at all times, place materials stored at the SITE and shall fabricate and install the ARTWORK in a manner that causes no greater obstruction to the public than is reasonably considered necessary by the CITY.

20.5.1 Sidewalks or streets shall not be obstructed, except by special permission of the CITY. Materials excavated and construction materials or plants used in the performance of the ARTWORK shall be placed in a manner that does not endanger the ARTWORK or prevent free access to public infrastructure. The ARTIST shall, when directed by the CITY, keep any street or streets in condition for unobstructed use by CITY departments.

20.5.2. CITY reserves the right to remedy any neglect by ARTIST regarding public convenience and safety, which may come to the CITY's attention, after 24 hours notice in writing to the ARTIST. In case of an emergency, CITY shall have the right to immediately remedy any neglect without notice. In either case, the cost incurred by or for the CITY to remedy the ARTIST's neglect shall be deducted from the TOTAL PRICE due ARTIST.

20.6. If the ARTWORK is carried on, in, or adjacent to any street, alley or public place, ARTIST shall, at the ARTIST's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights arrangements for crossing over ditches or around structures and danger signals, provide sufficient watchmen, and take other precautionary measures as necessary for the protection of persons, property and the ARTWORK. All barricades shall be painted in a color that will be visible at night, and shall be illuminated by lights (flares, flashers, or other illuminated devices) from sunset to sunrise. A sufficient number of barricades with adequate markings and directional devices shall also be erected to keep vehicles from driving on or into any ARTWORK under construction. ARTIST is responsible for all damage to the ARTWORK due to failure to protect the ARTWORK. If evidence of such damage is found, CITY may order the damaged portion immediately removed and replaced by the ARTIST at ARTIST's expense.

20.7. If it is necessary to change or move the property of the CITY or of any telecommunications or public utility, such property shall not be removed or interfered with until cleared by CITY. The CITY and any public or private utilities have the right to enter the SITE to make such changes or repairs. The CITY reserves the right of entry upon the SITE for any purpose and at any time.

20.8. If the ARTIST encounters materials reasonably believed to be a Hazardous Substance at the SITE, the ARTIST shall immediately stop work in the affected area and report such in writing to the CITY. Work in the affected area shall not be resumed except by written order of the CITY and consent of the ARTIST, and until the material is

determined not to be a Hazardous Substance or is remediated. If the Hazardous Substance is in the affected area due to the fault or negligence of the ARTIST, or ARTIST's subcontractor or supplier, ARTIST shall be responsible for remediating at ARTIST's sole expense.

SECTION 21. CONFLICT OF INTEREST.

21.0. The Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as CITY-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

a) a CITY officer or employee;
b) his parent, child or spouse;
c) a business entity in which the officer or employee, or his parent, child or spouse directly or indirectly owns 10% or more of the voting stock or shares of the business entity, or 10% or more of the fair market value of the business entity; or
d) a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner, or a parent or subsidiary business entity.

21.1. ARTIST warrants and certifies, and this Agreement is made in reliance that ARTIST, its officers, employees and agents are neither CITY officers nor employees. ARTIST further warrants and certifies that it has provided the CITY a Discretionary Contracts Disclosure Statement in compliance with CITY's Ethics Code. Any violation of this article shall constitute malfeasance in office, and any officer or employee of CITY guilty thereof shall forfeit his office or position. Any violation of this section, with the knowledge, express or implied, of the person(s), partnership, company, firm, association or corporation contracting with CITY shall void the Agreement.

SECTION 22. GIFTS TO PUBLIC SERVANTS.

22.0. The CITY may terminate this Agreement immediately if the ARTIST has offered, conferred, or agreed to confer any benefit on a CITY employee or official that the CITY employee or official is prohibited by law from accepting. For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

22.1. Notwithstanding other remedies, CITY may require ARTIST to remove any employee from the SITE who violates these restrictions or any similar law, and may

obtain reimbursement for any expenditure made to the ARTIST because of the improper offer, agreement to confer, or benefit conferred to a CITY employee or official.

SECTION 23. VENUE.

23.0. THIS AGREEMENT IS CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES ARE PERFORMABLE IN BEXAR COUNTY, TEXAS. Any legal action or proceeding brought or maintained, directly or indirectly, resulting from this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

SECTION 24. RIGHT TO AUDIT CONTRACTOR'S RECORDS.

24.0. The ARTIST grants the CITY, or its designees, the right to audit, examine or inspect all of the ARTIST's records relating to ARTIST's performance on the Agreement both during the term of the Agreement and retention period herein. The audit, examination or inspection may be performed by a CITY designee, which may include its internal auditors or an outside representative engaged by the CITY.

24.1. ARTIST agrees to retain records relevant to this Agreement for a minimum of five years following completion of the ARTWORK and/or termination of the Agreement. Artist's records" include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of ARTIST records include but are not limited to billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, Agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question, and any and all other Agreements, sources of information and matters that may in the CITY's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any the Agreement.

24.2 CITY will exercise the right to audit, examine or inspect only during regular business hours and with reasonable notice to the ARTIST. The ARTIST agrees to allow the CITY's designee access to all of the ARTIST's Records, ARTIST's facilities, and current or former employees of ARTIST, deemed necessary by CITY or its designee(s), to perform such audit, inspection or examination. ARTIST also agrees to provide adequate and appropriate work space necessary to CITY or its designees to conduct such audits, inspections or examinations.

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

24.4. If CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of ARTIST's business, CITY may, by written request require that custody of the records be given to CITY to maintain.

Access to such records and documents shall be granted to any party authorized by ARTIST, ARTIST's representatives, or ARTIST's successors-in-interest.

SECTION 25. MISCELLANEOUS.

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

25.1. This Agreement, including Exhibit A-1 and B-1 and any other attachments including the Final Proposal for the ARTWORK, represents the entire understanding of the Parties. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may only be modified by a written amendment duly executed by the Parties.

25.2. If any term, covenant, condition or provision of this Agreement shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

25.3. NO WAIVER. The Parties agree that any breach or violation of this Agreement is not a waiver even if both Parties are aware of said breach or violation.

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

CITY OF SAN ANTONIO	**ARTIST**
_____	_____
Sheryl Sculley	(Name)
City Manager	(Title)

APPROVED AS TO FORM

_____
City Attorney

EXHIBIT A -1	Schedule of Performance
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 shall perform work according to the following schedule for design, fabrication and installation:

Design Development Phase

Execution of this Agreement / mobilization:	**(X Days/Weeks)**
Project team and community concept review meetings:	**(X Days/Weeks)**
Development of Final Artwork Design Proposal:	**(X Days/Weeks)**
Completion of the Construction Documents:	**(X Days/Weeks)**

Fabrication Phase

(TBD)	**(X Days/Weeks)**
(TBD)	**(X Days/Weeks)**
(TBD)	**(X Days/Weeks)**
(TBD)	**(X Days/Weeks)**

Installation Phase

(TBD)	**(X Days/Weeks)**
(TBD)	**(X Days/Weeks)**
(TBD)	**(X Days/Weeks)**
(TBD)	**(X Days/Weeks)**

Final Completion Date

The Schedule of Performance may be modified by mutual agreement only upon prior written authorization by the CITY as evidenced by signature from the Director or his designee.

EXHIBIT B – 1

PAYMENT SCHEDULE

PAYMENT SCHEDULE	
MILESTONE	PAYMENT
TBD:	$_____
TBD:	$_____
TBD:	$_____
TBD:	$_____
TBD:	$_____
TOTAL PRICE	$_____

The Schedule for Payment shall occur in accordance with the milestones set forth. In the event that CITY accepts the ARTWORK, one or more payments may occur following the ARTWORK completion date.

EXHIBIT C – 1

ARTIST'S WAIVER OF MORAL RIGHTS

WHEREAS, _____ employed the artist _____ ("Artist"), to create _____ ("Artwork") in collaborative partnership with the City of San Antonio; and

WHEREAS, *describe the Artwork*; and

WHEREAS, the Artwork is intended to be *permanently/temporarily* located on *City property/private property* at the ____*(address)*_____ in San Antonio, Texas ("Location"); **NOW THEREFORE:**

Artist consents and agrees to the *temporary/permanent* placement of the Artwork on *City property/private property* at the Location. Artist acknowledges that the incorporation and installation of the Artwork at the Location may subject the Artwork to destruction, distortion, mutilation, or other modification if and when removed. Removal or relocation of the Artwork, if practical and economically feasible as determined by the City in its sole discretion, will occur in conformity with the guidelines and review requirements listed in the City's Public Art San Antonio Policies and Guidelines. Artist agrees that a City decision made under this paragraph regarding if, when and how to remove the Artwork is final.

Artist hereby expressly consents to both the installation into and removal from the Location of the Artwork and thereby expressly waives his Moral Rights to the Artwork. It is agreed that if the Artwork, or any portion thereof, is removed from the Location causing it or any part thereof to be destroyed, distorted, mutilated or modified in any way, the Artwork may not thereafter be referred to as "an Artwork by the Artist".

Only applicable to works located on City Property: Artist understands that to the extent the City is required to move or relocate the Artwork and a suitable location on City Property cannot be located or in the event that the City no longer has the ability to display the Artwork, the Artwork shall be returned to _____, should it so desire, with the relocation costs at _____'s sole cost and expense. Artist further understands that if the City is required to relocate or disassemble the Artwork, City will notify Artist, or his descendants or assigns, immediately.

Executed to be effective this the ___ day of _____, 20__.

ARTIST

_____

Name