

AN ORDINANCE 2013-08-01-0502

**AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH ALICIA VIERA IN AN AMOUNT NOT TO EXCEED \$67,184.00 PER YEAR FOR CULTURAL PROGRAMS DIRECTOR SERVICES ASSOCIATED WITH THE EDUCATIONAL & CULTURAL ARTS CENTER; AMENDING THE SERVICE CONTRACT BETWEEN THE CITY AND TAMUSA APPROVED BY CITY ORDINANCE NO. 2012-08-30-0645 BY EXTENDING THE TERM OF THE AGREEMENT BY ONE YEAR .**

\* \* \* \* \*

**WHEREAS**, on August 30, 2012, City Council approved City Ordinance No. 2012-08-30-0645 which authorized a three-year Service Agreement with TAMUSA to directly pay the operating and programming costs of the Educational & Cultural Arts Center (the "ECAC"), formerly known as the Museo Alameda, located in the City's Market Square; and

**WHEREAS**, the City and TAMUSA determined that it would be in the best interest of the ECAC to hire an independent contractor to provide cultural programs director services to the ECAC; and

**WHEREAS**, of twenty independent contractors whose qualifications were received and reviewed by a panel comprised of staff from both the City and TAMUSA, Alicia Viera was selected as the most qualified contractor; and

**WHEREAS**, in order to provide for the term of the Professional Services Agreement with Alicia Viera, the Services Agreement between the City and TAMUSA must be amended to extend the term to cover the time period when cultural programs director services will be provided; **NOW THEREFORE:**

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

**SECTION 1.** The City Council authorizes the execution of a Professional Services Agreement with Alicia Viera for cultural programs director services associated with the ECAC in an amount not to exceed \$67,184.00 per year. A copy of the Professional Services Agreement is attached as **Attachment I** and made a part of this Ordinance. The City Council also authorizes an amendment to extend the term of the Service Contract between the City and TAMUSA approved by City Ordinance 2012-08-30-0645, with respect to cultural program director services only. A copy of the Amendment is attached as **Attachment II** and made a part of this Ordinance.

**SECTION 2.** Funding in the amount of \$67,184.00 is available from a previously approved Ordinance 2012-08-30-0645.

**SECTION 3.** Payment not to exceed the budgeted amount is authorized and should be encumbered with a purchase order.

**SECTION 4.** 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 5.** This Ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise, it shall be effective on the tenth day after passage.

PASSED AND APPROVED this 1<sup>st</sup> day of August 2013.

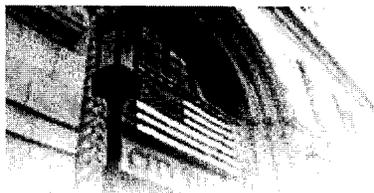
  
M A Y O R  
Julián Castro

**ATTEST:**

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Michael D. Bernard, City Attorney



Request for  
**COUNCIL**  
 ACTION

City of San Antonio



## Agenda Voting Results - 17

<b>Name:</b>	5, 6, 7, 9, 10, 11, 12, 14, 16A, 16B, 16C, 16D, 16E, 16F, 16G, 16H, 16I, 16J, 16K, 16L, 16M, 17, 18, 19						
<b>Date:</b>	08/01/2013						
<b>Time:</b>	09:36:42 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a Professional Services Agreement with Alicia Viera in an amount not to exceed \$67,184.00 per year for Cultural Programs Director Services associated with the Educational & Cultural Arts Center and amending the Service Contract between the City and Texas A&M University - San Antonio approved by Ordinance 2012-08-30-0645 by extending the term of the agreement by one year. [Ed Belmares, Assistant City Manager; Felix Padron, Director, Culture and Creative Development]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2	x					
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x			x	
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

Attachment  
I

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
CULTURAL PROGRAMS DIRECTOR SERVICES**

STATE OF TEXAS                    §  
  §  
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through its Director of the Department for Culture and Creative Development (“DCCD”) and Alicia Viera (“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:

1.1 “City” is defined in the preamble of this Agreement and includes its successors and assigns.

1.2 “Contractor” is defined in the preamble of this Agreement and includes its successors.

1.3 “Director” shall mean the acting director of City’s DCCD.

**II. TERM**

2.1 The term of this Agreement shall begin August 5, 2013 and end on August 4, 2016, unless terminated sooner under the provisions of this Agreement.

2.2 Funding for each fiscal year of this Contract is subject to annual budgetary appropriation by the City Council of the City of San Antonio. If such appropriation is not made, this Contract shall terminate upon written notice to Contractor. Similarly, Contractor understands that City’s funding for each fiscal year of this Contract is subject to annual budgetary appropriation by the Texas Legislature. If such appropriation is not made, this Contract shall terminate upon written notice to Contractor provided under Article VII Notice.

2.3 This Contract is a result of the Funding Agreement between the City and Texas A&M University-San Antonio. In the event the Funding Agreement is terminated for any reason prior to the termination of this Contract, this Contract shall terminate upon written notice to Contractor provided under Article VII Notice.

**III. SCOPE OF SERVICES**

3.1 Contractor agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV Compensation.

3.2 Contractor shall serve as Cultural Programs Director of the Texas A&M University-San Antonio Educational & Cultural Arts Center, located at 101 S. Santa Rosa Street, San Antonio, Texas, and be responsible for the following:

3.2.1 Planning and executing a program to integrate cultural and visual arts into the curriculum using exhibitions;

3.2.2 Developing collaboration opportunities with local cultural and education program and stakeholders that can enhance the cultural, artistic and education focus of the organization;

3.2.3 Developing exhibitions and other programming in the galleries;

3.2.4 Providing leadership to the university community about proper display, storage and handling of art and historic and cultural objects;

3.2.5 Partnering with campus stakeholders to integrate the exhibitions into communication and development programs, admissions, student life and the academic curriculum;

3.2.6 Producing interpretive texts and catalogs;

3.2.7 Fundraising and donor cultivation; and

3.2.8 Grant writing.

3.3 All work performed by Contractor hereunder shall be performed to the satisfaction of Director in consultation with Texas A&M University-San Antonio. 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 VI 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 an annual amount of \$ 67,184.00 as total compensation, to be paid to Contractor as follows:

4.1.1 Contractor shall be paid on a biweekly basis following City's receipt of an invoice covering the applicable period.

4.1.2 Contractor shall be paid within fifteen (15) days of the receipt of an invoice, provided such invoice is approved by the appropriate members of DCCD staff.

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 during the Agreement term cannot exceed the amount set forth in Section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the City Council by passage of an ordinance, if necessary.

4.3 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.

4.4 Director has the right, as determined solely by Director, to authorize advance payments up to an amount not to exceed \$ 25,000 to Contractor. Contractor agrees that all advance payments have not been earned until all the work/services that are required to be provided for such payment have been fully completed and documented to Director. The determination as to the adequate completion of said tasks shall be made solely by Director and shall be final, binding and conclusive on all Parties. In the event this Agreement is terminated prior to Contractor providing all the work/services covered by such an advance payment, Contractor shall return any unearned funds within thirty (30) days of such termination.

## V. RECORDS

5.1 Contractor shall establish a method to secure the confidentiality of records and information that Contractor may have access to in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting City's right of access to records or other information under this Agreement.

5.2 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.

5.3 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 at Contractor's expense.

5.4 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.

## VI. TERMINATION

6.1 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.

6.2 Termination Without Cause. This Agreement may be terminated by the City upon 60 calendar days' written notice, which notice shall be provided in accordance with Article VII Notice.

6.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VII 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:

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

6.3.2 Violation by Contractor of any law, rule, or regulation to which Contractor is bound or shall be bound under the terms of this Agreement.

6.4 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 VII 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.

6.4.1 Failing to perform or failing to comply with any covenant or provision required under this Agreement; or

6.4.2 Performing unsatisfactorily.

6.5 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.

6.6 If any financial advances have been made to Contractor, regardless of how this Agreement is terminated, Contractor shall return all unearned payments to City within 30 calendar days of such termination. Payments shall be deemed unearned if they are for work not accepted by City under Sections 3.3 and 4.1.

6.6 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.

6.7 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.

6.8 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.

6.9 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.

## VII. NOTICE

7.1 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  
Attn: Felix Padron, Director  
Department for Culture & Creative Development  
P.O. Box 839966  
San Antonio, Texas 78283-3966

If intended for Contractor, to:

Alicia Viera  
1956 Portland Avenue  
Tallahassee, FL 32303

VIII. [Reserved]  
IX. INSURANCE

9.1 In lieu of City's minimum insurance requirements, City will accept a waiver and release executed by Contractor. Such waiver and release is attached to this Agreement and incorporated herein as Exhibit A.

X. INDEMNIFICATION

10.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY 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 CONTRACTOR'S activities under this AGREEMENT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the 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 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 THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

10.2 The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

10.3 CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this AGREEMENT.

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

10.5 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 VI 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 Part B, Section 10 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 it 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 subject to City Council approval, 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.

#### **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 party to be charged. In case of City, such changes must be approved by the City Council, when required. 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**

20.1 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, together with its authorizing ordinance 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.

**EXECUTED** and **AGREED** to by the Parties as indicated below.

**CITY OF SAN ANTONIO**

**CONTRACTOR**



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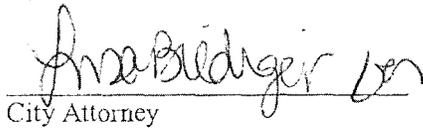
Sheryl Sculley  
City Manager

Name: Alicia Vera  
Title: Cultural Programs Director

Date: July 26, 2013

Date: July 12, 2013

Approved as to Form:



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City Attorney

Exhibit A: Insurance Waiver and Release

CITY OF SAN ANTONIO

AGREEMENT INCLUDING WAIVER AND RELEASE

The City of San Antonio ("City") on condition of your signing this waiver and affirming the promises and statements contained below, agrees to permit you to participate in the Professional Services Agreement for Cultural Programs Director Services.

I, Alicia Viera acknowledge the following statements are true:

I certify that I have adequate insurance to cover any injury or damage I may cause or suffer while performing this work, or else agree to bear the costs of such injury or damage myself. I further certify that I am willing to assume the risk of any medical or physical condition I may have.

On behalf of myself, my heirs, personal representatives and executors, I hereby disclaim, release and waive any and all claims against the CITY for personal injuries or damages to property sustained by myself or any other person arising out of my performing this work, including claims and damages arising in whole or in part from the negligence or the CITY, its agents or employees.

IT IS MY EXPRESS INTENT TO RELEASE THE CITY FROM ANY AND ALL CLAIMS ARISING FROM MY PERFORMING THIS WORK REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED NEGLIGENCE OF CITY, ITS AGENTS OR EMPLOYEES.

In signing this release and waiver I am relying wholly upon my own judgment, belief and knowledge. By signing this document, I acknowledge that I may be found by a court of law to have waived my right to maintain a lawsuit against the City on the basis of any claim from which I have released them herein. I have had sufficient opportunity to read this entire document. I have read it, I understand it, and I agree to be bound by its terms.

Alicia Viera  
SIGNATURE

7/12/2013  
DATE

1956 Portland Ave.  
ADDRESS

Tallahassee FL  
CITY STATE

32303  
ZIP CODE

(850) 591-3109  
TELEPHONE NUMBER

(850) 320-1486  
EMERGENCY NUMBER

Attachment  
II

**FIRST AMENDMENT TO  
SERVICES CONTRACT WITH TEXAS A&M UNIVERSITY - SAN ANTONIO**

**FOR VALUE RECEIVED**, the receipt and sufficiency of which is hereby acknowledged, this First Amendment to the Services Contract with Texas A&M University - San Antonio ("First Amendment") is entered into by the City of San Antonio, a Texas Municipal corporation ("City"), acting by and through its City Manager pursuant to and duly authorized by Ordinance No. \_\_\_\_\_, passed and approved on August \_\_, 2013, and Texas A&M University - San Antonio ("Contractor") acting by and through its duly authorized designated officer.

A. City and Contractor entered into the Services Contract ("Contract") pursuant to City of San Antonio Ordinance No. 2012-08-30-0645, dated August 30, 2012.

B. City and Contractor agree to amend Section 2.1 of the Contract as follows:

**Section 2.1 is amended to reflect that the term for payment of consideration totaling \$67,184 under Section 3.1(B) shall be extended until September 4, 2016. The termination date for all remaining provisions of the Contract shall remain September 30, 2015.**

Except as otherwise expressly modified hereby, all terms and provisions of the Contract are ratified and confirmed and shall remain in full force and effect, enforceable in accordance with their terms.

EXECUTED AND SIGNED this 31 day of JULY, 2013.

CITY OF SAN ANTONIO:

\_\_\_\_\_  
Sheryl Sculley  
City Manager

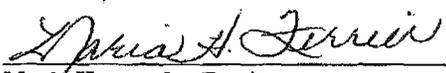
ATTEST:

\_\_\_\_\_  
City Clerk

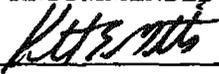
APPROVED AS TO FORM:

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

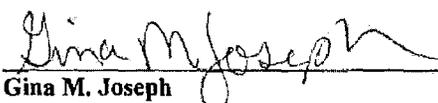
TEXAS A&M UNIVERSITY-SAN ANTONIO

  
\_\_\_\_\_  
Maria Hernandez Ferrier  
President

RECOMMENDED APPROVAL:

  
\_\_\_\_\_  
Ken Mitts  
Vice President for Finance and  
Administration

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Gina M. Joseph  
Assistant General Counsel  
The Texas A&M University System