

## AGREEMENT FOR SERVICES

THIS AGREEMENT FOR SERVICES (“Agreement”) is made and entered into by and between THE CITY OF FORT WORTH, a home rule municipal corporations of the State of Texas (hereinafter referred to as “City”), acting by and through its duly authorized Assistant City Manager, and ARTS COUNCIL OF FORT WORTH AND TARRANT COUNTY, INC., a Texas non-profit corporation (hereinafter referred to as “Contractor”), acting by and through its duly authorized President.

### RECITALS

**WHEREAS**, Contractor administers the City’s Competitive Grants Program for the Arts and the Fort Worth Public Art Program, to serve to enrich our community through the arts;

**WHEREAS**, such Services, defined below, serve a public purpose in promoting artistic and cultural activities benefiting the Fort Worth community as a whole;

**WHEREAS**, Contractor administers the Competitive Grants Program for the Arts, which includes the General Operating Support Grants, to provide funding and leadership to stimulate and ensure the advancement of the Arts throughout the entire community;

**WHEREAS**, through the Competitive Grants Program for the Arts, Contractor serves to benefit the Fort Worth community by supporting the various artistic and cultural organizations including Artes de la Rosa and the Community Arts Center;

**WHEREAS**, City implemented the Fort Worth Public Art Program pursuant to Chapter 2, Sections 2-56 through 2-61 of the Fort Worth City Code, to create an enhanced visual environment for Fort Worth residents, to commemorate City’s rich cultural and ethnic diversity, to integrate the design work of Artists into the development of City’s capital infrastructure improvements, and to promote tourism and economic vitality in the City through the artistic design of public spaces;

**WHEREAS**, the Fort Worth City Council has selected Contractor to provide the day-to-day administration of the Fort Worth Public Art Program pursuant to Chapter 2, Section 2-60 of the Fort Worth City Code; and

**WHEREAS**, City and Contractor wish to set out the terms and conditions under which said Services will be provided;

**NOW, THEREFORE**, City and Contractor for and in consideration of the mutual covenants and agreements hereinafter set forth, the sufficiency of which is hereby acknowledged, agree as follows:

**AGREEMENT**

**1. SCOPE OF SERVICES.**

Contractor covenants and agrees to fully perform, or cause to be performed, with good faith and due diligence, all oversight and administrative services for the City of Fort Worth Competitive Grants Program for the Arts and the City of Fort Worth Public Art Program, as described in **Exhibit “A”** and **Exhibit “B,”** respectively, which are attached and incorporated herein for all purposes incident to this Agreement (“**Services**”).

**2. COMPENSATION.**

- a. In consideration of the Services to be performed hereunder by Contractor, City promises and agrees to pay Contractor in one installment the sum of One Million, Seven Hundred Eighty Six Thousand, Three Hundred Seventy Dollars (\$1,786,370.00) (“**Funds**”) for and in support of the arts programming within the City as detailed in Exhibits A and B. For Fiscal Year 2021 (October 1, 2020, through September 30, 2021), Contractor shall expend and distribute these Funds as follows:

ITEM	AMOUNT
Management and distribution of Funds for Competitive Grants Program	\$1,031,075.00
Management of City Public Art Program	\$ 505,295.00
Management of Rose Marine Theatre & Arts Center	\$ 250,000.00
<b>TOTAL</b>	<b>\$1,786,370.00</b>

- b. Contractor shall receive direct payment in the amount of \$1,031,075.00, to run the comprehensive Grants Program for the Arts, which no more than ten percent (10%) (\$103,075.00) shall be used for administrative costs associated with the management of the program. This year the administrative cost amount is (9.5%) \$97,907.00. The remaining amount (\$933,168) shall be used for the Competitive Grants Program distribution of Funds via grants to artists and arts organizations that are to be selected by Contractor in accordance with the terms of this Agreement and in the exercise of Contractor’s reasonable discretion.
- c. The organizations selected by Contractor and those listed in the chart above (Rose Marine Theatre & the Community Arts Center) shall be referred to herein as “Recipients.” Recipients of grants shall be selected through a competitive grant process as outlined in Exhibit A.
- d. Contractor shall receive direct payment in the amount of \$505,295.00, for the public art program professional management Services, which are outlined in more detail in Exhibit B, with the expectation that Contractor will submit to City at the end of the

fiscal year a comprehensive listing of all Project Management hours associated with specific projects that have funds budgeted for Project Management hours. Contractor will work with City to allow City to reimburse the general fund through transfers from capital project funds related to specific projects. Reimbursable hours to City from Capital Project funds will also include development staff hours for Iconic Art works located in the Cultural District and downtown Fort Worth, when allowable under the capital funding source.

- e. The City shall disburse to Contractor a total of \$250,000.00 for management of the City-owned facilities known as the Community Arts Center and the Rose Marine Theater. Of this amount, Contractor shall retain \$200,000.00 for its management of the Community Arts Center. Contractor shall distribute the remaining \$50,000.00 to Artes de la Rosa for its management of the Rose Marine Theater. Contractor shall make the distribution to Artes de la Rosa as soon as Funds are made available from the City.
- f. The City may reduce the Funds provided to Contractor under this Agreement at any time by up to two percent (2%) \$35,727.40 of the total Funds amount.

### **3. REPORTING OF EXPENDITURES AND SERVICES.**

- a. For the Competitive Grant Program, Contractor shall deliver to the City a quarterly statement of the total receipts and expenditures of Funds (“**Quarterly Report**”) detailing how the Funds were expended by Contractor itself and distributed to each Grant Recipient to accomplish performance of the Services. The quarterly statement shall include budget and expenditure update, program activity reports and an overall status of programs.
- b. For the Fort Worth Public Art program, Contractor shall deliver to the City a Quarterly Report including an operating budget and expenditure update and program activity reports.
- c. Each Quarterly Report must be prepared and signed by a representative of the Contractor who has responsibility for oversight of Contractor’s financial accounts and records. If the Contractor deviates from this reporting requirement, the Contractor will be considered in non-compliance with this Agreement.
- d. Each Quarterly Report must be submitted to the City not later than the 15<sup>th</sup> day of the first month after the end of each quarter. Therefore, each respective Quarterly Report must be submitted not later than January 15, 2021; April 15, 2021; July 15, 2021; and October 15, 2021.
- e. Any non-compliance by Contractor under Section 3 of this Agreement may jeopardize the Contractor’s ability to receive future funding from the City. In addition, failure to comply with Section 3 or any other term of this Agreement, including, but not limited to, requirements regarding location of arts programming, may result in forfeiture of grant monies not yet disbursed and/or required reimbursement of all monies awarded.

#### **4. REPORTING DEADLINES**

Not later than the 15<sup>th</sup> day of the first month after the end of each quarter, Contractor shall submit to the City a report of Services for its Competitive Grant Program and each Grant Recipient, and, separately, for the Fort Worth Public Art program. Therefore, each respective Quarterly Services Report must be submitted not later than January 15, 2021; April 15, 2021; July 15, 2021; and October 15, 2021.

#### **5. TERM AND TERMINATION.**

- a. This Agreement shall be for a Term beginning October 1, 2020 and ending September 30, 2021.
- b. Either party may cancel this Agreement upon thirty (30) days' notice in writing to the other party of such intent to terminate.
- c. The City may terminate this Agreement immediately for any violation by Contractor of Section 3, "Reporting of Expenditures" or Section 4, "Reporting Deadlines," above.
- d. In the event no Funds or insufficient Funds are appropriated by the City in any fiscal period for any payments hereunder, City will notify the Contractor of such occurrence, and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which Funds shall have been appropriated.
- e. The City may cancel this Agreement if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by Contractor or any agent or representative to any City official or employee with a view toward securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to performance under this Agreement. In the event this Agreement is canceled by City, City shall be entitled, in addition to any other rights and remedies, to recover from Contractor a sum equal in amount to the cost incurred by Contractor in providing such gratuities.
- f. In the event of any termination under this Section 5, Contractor shall reimburse to City all Funds that Contractor has received under this Agreement for purposes of discretionary distribution but that it not otherwise committed or encumbered by contract. Contractor shall include in its funding contract with each Recipient, that in the event of any termination of this Agreement or a Recipient contract, Recipient shall reimburse to the City all Funds that Recipient has received but that it has not otherwise committed or encumbered by contract.
- g. Further, upon termination of this Agreement for any reason, within a reasonable time, Contractor shall provide City with copies of all completed or partially completed documents prepared under this Agreement, including, but not limited to, all documents pertaining to the Fort Worth Public Art Program.

## 6. RIGHT TO MONITOR SERVICES.

Contractor covenants and agrees to fully cooperate with City in monitoring the effectiveness of the Services to be performed under this Agreement, and City shall have access at all reasonable hours to offices and records of Contractor for the purpose of such monitoring. Contractor further agrees to include in its agreement with each Recipient, that the Recipient agrees to fully cooperate with the City in monitoring the effectiveness of the Services to be performed under this Agreement, and City shall have access at all reasonable hours to offices and records of the Recipient for the purpose of such monitoring.

## 7. INDEPENDENT CONTRACTOR.

Contractor shall operate hereunder as an independent contractor and not as an officer, agent, servant, or employee of City. Contractor shall have exclusive control of and the exclusive right to control the details of the Services performed hereunder and all persons performing same and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, subcontractors, and program participants. The doctrine of *respondent superior* shall not apply as between the City and Contractor, its officers, agents, servants, employees, subcontractors, or program participants. Nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor. It is expressly understood and agreed that no officer, agent, employee, or subcontractor of Contractor is in the paid service of City.

## 8. LIABILITY, INDEMNIFICATION, AND RELEASE.

- a. **CITY SHALL IN NO WAY OR UNDER ANY CIRCUMSTANCES BE RESPONSIBLE FOR ANY PROPERTY BELONGING TO CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, PROGRAM PARTICIPANTS, OR RECIPIENTS THAT MAY BE LOST, STOLEN, DESTROYED, OR IN ANY WAY DAMAGED. CONTRACTOR HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS CONCERNING SUCH PROPERTY. CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, CITY AND ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY LOSS OR DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH THE EXECUTION, PERFORMANCE, ATTEMPTED PERFORMANCE, OR NONPERFORMANCE OF THIS AGREEMENT AND/OR THE OPERATIONS, ACTIVITIES, AND SERVICES DESCRIBED HEREIN, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY ALLEGED NEGLIGENCE OF OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS OF CITY; AND CONTRACTOR HEREBY ASSUMES ALL LIABILITY AND RESPONSIBILITY OF CITY AND ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FOR ANY AND ALL CLAIMS OR**

**SUITS FOR PROPERTY LOSS OR DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KINDS OR CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH THE EXECUTION, PERFORMANCE, ATTEMPTED PERFORMANCE, OR NON-PERFORMANCE OF THIS AGREEMENT AND/OR THE OPERATIONS, ACTIVITIES, AND SERVICES DESCRIBED HEREIN, WHETHER OR NOT CAUSED IN WHOLE OR IN PART, BY ALLEGED NEGLIGENCE OF OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS OF CITY. CONTRACTOR LIKEWISE COVENANTS AND AGREES TO AND DOES HEREBY INDEMNIFY AND HOLD HARMLESS CITY FROM AND AGAINST ANY AND ALL INJURY, DAMAGE, OR DESTRUCTION OF PROPERTY OF CITY, ARISING OUT OF OR IN CONNECTION WITH ALL ACTS OR OMISSIONS OF CONTRACTOR, ITS OFFICERS, MEMBERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, INVITEES, LICENSEES, PROGRAM PARTICIPANTS, OR RECIPIENTS, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY ALLEGED NEGLIGENCE OF OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS OF CITY. CONTRACTOR AGREES TO AND SHALL RELEASE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY CITY'S SOLE OR CONCURRENT NEGLIGENCE.**

- b. Contractor shall require all of its subcontractors and Recipients to include in their subcontracts a release and indemnity in favor of City in substantially the same form as above.
- c. Release: Contractor agrees to and shall release City, its representatives, agents, employees, officers, and legal representatives from any and all liability for injury, death, damage, or loss to persons or property sustained by Contractor, its representatives, agents, employees, officers, and legal representatives in connection with or incidental to Contractor's performance of Services under this Agreement.
- d. This Section shall survive the expiration or termination of this Agreement.

## **9. MISAPPROPRIATION OF FUNDS.**

In the event it is determined that Contractor or any Grant Recipient has misused, misapplied, or misappropriated all or any part of the Funds provided hereunder, Contractor agrees to indemnify, hold harmless and defend the City of Fort Worth, its officers, agents, servants, and employees, from and against any and all claims or suits resulting from such misuse, misapplication, or misappropriation.

## **10. CHARITABLE IMMUNITY.**

If Contractor, as a charitable or nonprofit organization, has or claims an immunity or exemption (statutory or otherwise) from and against liability for damage or injury, including death, to persons or property, Contractor hereby expressly waives its rights to plead defensively such immunity or exemption as against the City.

## **11. ASSIGNMENT AND SUBCONTRACTING.**

Contractor shall not assign or subcontract all or any part of its rights, privileges, or duties under this Agreement without the prior written consent of City, and any attempted assignment or subcontract of same without such prior written approval shall be void and constitute a breach of this Agreement.

## **12. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.**

Contractor, its officers, agents, employees, and subcontractors shall abide by and comply with all federal, state, and local laws, including all ordinances, rules, and regulations of City. It is agreed and understood that, if City calls to the attention of Contractor any such violation on the part of Contractor or any of its officers, agents, employees, or subcontractors, then Contractor shall immediately desist from and correct such violation.

## **13. NON-DISCRIMINATION COVENANT.**

Contractor, for itself, its personal representatives, assigns, subcontractors and successors in interest, as part of the consideration herein, agrees that in the performance of Contractor's duties and obligations hereunder, it shall not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. **IF ANY CLAIM ARISES FROM AN ALLEGED VIOLATION OF THIS NON-DISCRIMINATION COVENANT BY CONTRACTOR, ITS PERSONAL REPRESENTATIVES, ASSIGNS, SUBCONTRACTORS OR SUCCESSORS IN INTEREST, CONTRACTOR AGREES TO ASSUME SUCH LIABILITY AND TO INDEMNIFY AND DEFEND CITY AND HOLD CITY HARMLESS FROM SUCH CLAIM.**

## **14. INSURANCE.**

- a. Contractor shall not commence work under this Agreement until it has obtained all insurance required under this Agreement, and City has approved such insurance, nor shall Contractor allow any subcontractor who is performing physical work on City property to commence work on its subcontract until all similar insurance of the subcontractor has been so obtained and approval given by City. Subcontractor insurance requirements shall not pertain to contract employees, selection panelists, artists under proposal or design team agreements, lecturers, workshop leaders, art appraisers, computer/website consultants, design consultants, printers, etc.

- b. Workers' Compensation Insurance: Contractor shall take out and maintain during the life of this Agreement statutory Workers' Compensation Insurance for all of its employees performing any of the services hereunder, and, in case any work is sublet, Contractor shall require the subcontractor similarly to provide Workers' Compensation insurance for all of the latter's employees unless such employees are covered by the protection afforded by Contractor's insurance. In case any class of employee who engages in hazardous work under this Agreement is not protected under the Workers' Compensation statute, Contractor shall provide and shall cause subcontractor to provide adequate and suitable insurance for the protection of employees not otherwise protected.
  
- c. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this and any renewal Agreement a commercial general liability ("CGL") insurance policy in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence with a Two Million Dollar (\$2,000,000.00) aggregate. The CGL policy shall protect Contractor, City, and any subcontractor performing work covered by this Agreement from and/or against any and all claims, suits, and/or causes of action for any and all types of damage, including, but not limited to, personal injury (including, but not limited to, death and/or bodily injury) and property damage or losses that may arise from the operations, services, and activities of the programs described under this Agreement, whether such operations, services, and activities be by Contractor, City, or by any subcontractor or by anyone directly or indirectly employed by any of them. The City shall be designated as an additional insured on the general liability policy, and the general liability policy shall be primary with respect to any insurance or self-insurance programs maintained by City.
  
- d. Non-Profit Organization Liability or Directors & Officers Liability: Contractor shall procure and maintain \$1,000,000.00 per occurrence, with a \$1,000,000.00 annual aggregate limit, in a form that is acceptable to the City's Risk Manager.
  
- e. Automobile Liability Insurance: Contractor shall procure and maintain automobile liability insurance with the following limits: a One Million Dollar (\$1,000,000) combined single limit, or split limits of (1) Two Hundred Fifty Thousand Dollars (\$250,000.00) bodily injury per person, (2) Five Hundred Thousand Dollar (\$500,000.00) bodily injury per accident, and (3) One Hundred Thousand Dollar (\$100,000.00) property damage. City shall be designated as an additional insured on the automobile liability insurance policy.
  
- f. Errors & Omissions (Professional Liability): Contractor shall procure and maintain an Errors and Omissions (Professional Liability) policy of insurance with minimum coverage of not less than One Million Dollars (\$1,000,000.00) per claim and aggregate. If coverage is written on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the contractual agreement. The certificate of insurance shall state that the coverage is claims-made and include the retroactive date. The insurance



shall be maintained for the duration of the Agreement and any renewal term and for five (5) years following completion of the Service provided under the Agreement and any renewal term. An annual certificate of insurance submitted to the City shall evidence coverage.

- g. Proof of Insurance Coverage: Contractor shall furnish City with a certificate of insurance as proof that it has obtained for the duration of this Agreement, and any renewal term, the insurance amounts required herein. Contractor's insurance policies shall provide that the insurer shall give City thirty (30) days' prior written notice before altering, modifying, or terminating the insurance coverage.
- h. Contractor's insurer(s) must be authorized to do business in the State of Texas for the lines of insurance coverage provided and be currently rated in terms of financial strength and solvency to the satisfaction of the City's Risk Manager.
- i. Each insurance policy required herein shall be endorsed with a waiver of subrogation in favor of the City. Each insurance policy required by this Agreement (except for policies of workers' compensation or accident/medical insurance, if required) shall list the City as an additional insured. City shall have the right to revise insurance coverage requirements under this Agreement.

### **13. RIGHT TO AUDIT RECORDS.**

- a. Contractor agrees that the City shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine, whether in hard copy or electronic format, any directly pertinent books, documents, papers, and records of the Contractor involving transactions relating to this Agreement. Contractor agrees that the City shall have access during normal working hours to all necessary Contractor facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. The City shall give Contractor reasonable advance notice of intended audits.
- b. Contractor further agrees to include in all of its subcontractor and Recipient agreements hereunder a provision to the effect that the subcontractor and/or the Recipient agrees that the City shall, until the expiration of three (3) years after final payment under the subcontract or this Agreement, have access to and the right to examine, whether in hard copy or electronic format, any directly pertinent books, documents, papers, and records of such subcontractor or Recipient involving transactions relating to the subcontract or this Agreement, and further that City shall have access during normal working hours to all subcontractor or Recipient facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this paragraph. City shall give subcontractor or Recipient reasonable advance notice of intended audits.
- c. This Section shall survive the expiration or termination of this Agreement.

**14. GOVERNING LAW AND VENUE.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Should any action, whether real or asserted, at law or in equity, arise out of the execution, performance, or attempted performance of this Agreement, venue for said action shall lie in Tarrant County, Texas.

**15. NOTICES.**

Notices to be provided hereunder shall be sufficient if forwarded to the other party by hand-delivery or via U.S. Postal Service certified mail, postage prepaid, to the address of the other party shown below:

Planning and Data Analytics  
Department

Karen Wiley, President

City of Fort Worth

Arts Council of Fort Worth & Tarrant  
County, Inc.

200 Texas St.  
Fort Worth, Texas 76102

1300 Gendy Street  
Fort Worth, Texas 76107

(817) 392-8500

(817) 298-3022

**16. NO WAIVER.**

The failure of City or Contractor to insist upon the performance of any term or provision of this Agreement or to exercise any right conferred herein shall not be construed as a waiver or relinquishment to any extent of City's or Contractor's right to assert or rely upon any such term or right on any future occasion.

**17. DISCLOSURE OF CONFLICTS AND CONFIDENTIAL INFORMATION.**

- a. Contractor hereby warrants to the City that Contractor has made full disclosure in writing of any existing or potential conflicts of interest related to Contractor's Services under this Agreement. In the event that any conflicts of interest arise during the time in which this Agreement is in effect, Contractor hereby agrees immediately to make full disclosure to the City in writing.
- b. Contractor, for itself, its officers, agents, and employees, further agrees that it shall treat all information provided to it by the City ("City Information") as confidential and shall not disclose any such information to a third party without the prior written approval of the City. Contractor shall store and maintain City Information in a secure

manner and shall not allow unauthorized users to access, modify, delete, or otherwise corrupt City Information in any way. Contractor shall notify the City immediately if the security or integrity of any City Information has been compromised or is believed to have been compromised.

**18. SEVERABILITY.**

If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

**19. FORCE MAJEURE.**

The City and Contractor shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement. If either party is unable, either in whole or part, to fulfill its obligations under this Agreement due to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; wars; blockades; insurrections; riots; epidemics; public health crises; earthquakes; fires; floods; restraints or prohibitions by any court, board, department, commission, or agency of the United States or of any state; declaration of a state of disaster or of emergency by the federal, state, county, or City government in accordance with applicable law; issuance of a Level Orange or Level Red Alert by the United States Department of Homeland Security; any arrests and restraints; civil disturbances; or explosions; or some other reason beyond the party's reasonable control (each a "Force Majeure Event"), the obligations so affected by such Force Majeure Event will be suspended only during the continuance of such event.

**20. HEADINGS NOT CONTROLLING.**

Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**21. REVIEW OF COUNSEL.**

The parties acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibit hereto.

**22. ENTIRETY OF AGREEMENT.**

This written instrument (together with all exhibits and schedules attached hereto and incorporated herein) constitutes the entire understanding of the parties hereto concerning the subject matter and transaction addressed herein. Any prior or contemporaneous, oral or written agreement that purports to vary from the terms hereof shall be void.

### **23. IMMIGRATION NATIONALITY ACT.**

Contractor shall verify the identity and employment eligibility of its employees who perform work under this Agreement, including completing the Employment Eligibility Verification Form (I-9). Upon request by City, Contractor shall provide City with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. Contractor shall adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any Contractor employee who is not legally eligible to perform such services. **CONTRACTOR SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY CONTRACTOR, CONTRACTOR'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** City, upon written notice to Contractor, shall have the right to immediately terminate this Agreement for violations of this provision by Contractor.

### **24. NO BOYCOTT OF ISRAEL.**

**If Contractor has fewer than 10 employees or this Agreement is for less than \$100,000, this section does not apply.** Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government Code, the City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. **By signing this Agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement.**

### **25. PUBLIC INFORMATION ACT.**

Contractor understands and acknowledges that City is a public entity under the laws of the State of Texas and as such, all documents held by City are subject to disclosure under Chapter 552 of the Texas Government Code. Contractor shall clearly indicate to City what information it deems proprietary. If City is required to disclose any documents that may reveal any of Contractor's Proprietary Information to third parties under the Texas Government Code, or by any other legal process, law, rule, or judicial order by a court of competent jurisdiction, City will notify Contractor prior to disclosure of such documents, and give Contractor the opportunity to submit reasons for objections to disclosure. City agrees to restrict access to Contractor's information to those persons within its organization who have a need to know for purposes of management of this Agreement. City agrees to inform its employees of the obligations under this paragraph and to enforce rules and procedures that will prevent any unauthorized disclosure or transfer of information. City will use its best efforts to secure and protect Contractor's information in the same manner and to the same degree it protects its own proprietary information; however, City does not guarantee that any information deemed proprietary by Contractor will be protected from public disclosure if release is required by law. The foregoing obligation regarding confidentiality shall remain in effect for a period of three (3) years after the expiration of this Agreement.

**26. NO THIRD-PARTY BENEFICIARIES.**

This Agreement shall inure only to the benefit of the parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third-party beneficiary of this Agreement. Each party hereto shall be solely responsible for the fulfillment of its own contracts or commitments.

**27. GOVERNMENTAL POWERS.**

It is understood and agreed that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.

**28. SIGNATURE AUTHORITY.**

The person signing this Agreement hereby warrants that he/she has the legal authority to execute this Agreement on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. Each party is fully entitled to rely on these warranties and representations in entering into this Agreement or any amendment hereto.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement in multiples in Fort Worth, Tarrant County, Texas, to be effective October 1, 2020.

**CITY OF FORT WORTH**

**ARTS COUNCIL OF FORT WORTH  
AND TARRANT COUNTY, INC.**

\_\_\_\_\_  
Fernando Costa  
Assistant City Manager

\_\_\_\_\_  
Karen Wiley  
President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
Mary Kayser  
City Secretary

\_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
Name: Thomas Royce Hansen  
Assistant City Attorney

**CONTRACT AUTHORIZATION:**

M&C: \_\_\_\_\_

Form 1295: \_\_\_\_\_

**City of Fort Worth Contract Compliance Manager**

By signing I acknowledge that I am the person responsible  
Fort the monitoring and administration of this contract, including  
Ensuring all performance and reporting requirements.

\_\_\_\_\_  
Name:

Title:

**STATE OF TEXAS           §**

**COUNTY OF TARRANT §**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas,  
on this day personally appeared **Karen Wiley**, known to me to be the person whose name is  
subscribed to the foregoing instrument and acknowledged to me that the same was the act of the  
**Arts Council of Fort Worth and Tarrant County, Inc.** and that she executed the same as the  
act of said **Arts Council of Fort Worth and Tarrant County, Inc.** for the purpose and  
consideration therein expressed and in the capacity therein stated.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE** this \_\_\_\_\_ day of \_\_\_\_\_,  
A.D. 2020.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**STATE OF TEXAS           §**

**COUNTY OF TARRANT §**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas,  
on this day personally appeared **Fernando Costa**, known to me to be the person whose name is  
subscribed to the foregoing instrument and acknowledged to me that the same was the act of the  
**City of Fort Worth** for the purpose and consideration therein expressed and in the capacity  
therein stated.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE** this \_\_\_\_\_ day of \_\_\_\_\_,  
A.D. 2020.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**EXHIBIT A**  
**Fiscal Year 2021**

**COMPETITIVE GRANTS PROGRAM FOR THE ARTS SERVICE ACTIVITIES**

**Through Contractor's administration and monitoring of contracts**

- Funds shall be expended solely for and in support of arts programming (exhibitions, installations, performances, concerts, culturally based public engagements, etc.) within the City as detailed in this Agreement.
- Manage and Coordinate the Grants Program for the Arts and contracts for cultural services, including:
  1. Provide for an open, unbiased, and competitive grants process.
  2. Ensure proposed grant activities involve arts programming within the City.
  3. Ensure diversity on grants panels.
  4. Require from Recipients, and provide to the City, quarterly monitoring of Recipients' grant goals.
  5. Ensure use of sound fiscal practices and encourage best practices throughout Recipient organizations.
  6. Ensure that Recipients maintain their base of operations in the City in order to promote a cultural economy.
  7. Promote equity, diversity, and inclusion of all peoples within the making, presentations and participation of the creative process
- Cost Allocation – \$97,907.00 of the total funding identified in the Agreement as being for the Grants Program for the Arts shall be retained by Contractor for its administration costs of the Grants Program, and the remaining Funds for Grants Program for the Arts shall be designated to recipients.
- All operating grants greater than \$10,000.00 will be distributed in quarterly installments, while operating grants of \$10,000.00 or less will be payable in one lump sum upon execution of the grant contract. Outreach Program Grants will be payable in two payments, regardless of the amount of the grant, with the first payment equaling fifty percent (50%) of the grant award and being payable on execution of the grant contract and the second payment equaling fifty percent (50%) of the grant award and being payable following completion of the project and submission of a final report. Smaller grants i.e. operations, capacity building, program grant, will be paid in full upon execution the contract.
- All Operating and Outreach Grants awarded require a 1:1 cash match.
- Distribute Annual Grant Funding to Fort Worth Community Arts Center and Rose Marine Theater.

Provide pass-through funding to Recipients as directed by the City of Fort Worth pursuant to Section 2 of this Agreement.
- Any unused or returned grant Funds shall be used for future grant awards and be included in the quarterly reports.



- Education workshops for Arts Organizations and within the City; During the Term of the Agreement, produce one or more workshops that support best practices in the industry. Topics may include but not limited to governance, board development, finance and human resources, grant application and compliance, ethics, marketing, and social media, inclusion and diversity.
- Annual Audit – Annual audit performed by an independent audit firm  
Report submitted to City upon completion
- Promote and credit the City of Fort Worth as a critical partner in funding for the arts.
  - Ensure the City of Fort Worth is credited in printed materials
  - Promote the City of Fort Worth as a cultural destination to visitors

**GRANTS PROGRAM FOR THE ARTS DESCRIPTION**

Nonprofit arts organizations that apply to the Arts Council of Fort Worth Grant Program must:

- Be a nonprofit arts organization whose primary mission is the presentation or production of artistic programming. (No academic institutions or their affiliated arts groups will be eligible for Funds.)
- Such organizations must be recognized by the IRS as a 501(c)(3) nonprofit organization;
- Have a business office address and maintain a base of operations in the City of Fort Worth accessible to the public; (PO Boxes are unacceptable);
- Demonstrate active operations and history of at least two years of consecutive related programming within the City of Fort Worth;
- Have a salaried full or part-time administrator that is responsible for and authorized to address the contractual obligations of the Arts Council Cultural Contract and the business management of the organization.
- Be in good standing and compliant with the Arts Council Grant Program

Artists that apply to the Arts Council of Fort Worth Project Grant Program must:

- Be 18 years or older. (No students receiving academic credit or affiliated with arts groups within an educational setting will be eligible for Funds);
- Artist(s) must be a resident of the City of Fort Worth;
- Be a practicing artist with a portfolio of recent artworks;
- Demonstrate the ability to work on community-based projects that enrich and enhance Fort Worth’s diverse cultural communities.

**QUARTERLY REPORT INFORMATION: Audiences Served**

*Goal: Through contracts for cultural services with area arts organizations, make available a variety of arts programming (events, performances, exhibits, and the like) to residents of and visitors to the City of Fort Worth:*

General Operations:

Number served annually:	650,000
Youth served annually	250,000

Admitted free of charge annually: 45%

Outreach Program(s):

Number served annually	90,000
Youth served annually:	75,000
Number of presentation days:	300
Number of council districts from which attendees are drawn:	8
Virtual Program Participation	30,000
Online Viewership of Artistic Presentations	1,000,000

*Requirement: Collect attendance data from all Arts Council-funded organizations*

- Documentation: quarterly summary attendance reports for both General Operations and outreach - funded programs.

*Goal: Provide low-cost arts and education opportunities for artists and arts administrators in the City:*

Educational workshops presented annually	10
Community Arts Center Gallery and Theater Rental annually	250 days
Community Arts Center attendance annually	40,000
Virtual Program Participation	5,000
Online Viewership of Artistic Presentations	30,000

*Requirement: Collect usage data for all Arts Center-based events*

- Documentation: Collect a minimum of one Visitor Surveys per year from visitors attending events at the Community Arts Center
- Documentation: Quarterly Arts Center traffic statistics
- Maximum allowable awards for Operating Grant Support are based on a percentage of the grant applicant's annual operating budget, as listed below. Due to funding limits and the increasing number of eligible applicants, awards rarely approach maximum eligible amounts.

<u>Applicant's Annual Operating Budget</u>	<u>Maximum Award - Operating Support</u>
\$1 million or more	5% of Operating Budget
\$450,000 - \$999,999	10% of Operating Budget
\$100,000 - \$449,999	15% of Operating Budget
\$50,000 - \$99,999	\$3,000 Award
\$49,999 - \$10,000	\$1,000 Award

**EXHIBIT B**  
**Fiscal Year 2021**

**FORT WORTH PUBLIC ART PROGRAM SERVICE ACTIVITIES**

**Administration and monitoring of contracts:**

- Manage and Coordinate the selection process to contract with artists to integrate their artworks into the development of City's capital infrastructure for the purpose to enrich the cultural and ethnic diversity of Fort Worth.
- Serve as liaison between City Council offices, City Departments, community leaders, project team including contractors, citizens of Fort Worth and the artist(s).
- Ensure all legal agreements and contracts are followed.
- Monitor each contract's artist to ensure a favorable outcome.
- Provide staff support services to the Fort Worth Art Commission.
  
- *NOTE: Below are the general items we listed in the FY 2021 Annual Work Plan:*
- Staff the Fort Worth Art Commission;
- Plan, facilitate artist selection, and manage contracts for Public Art Capital projects;
- Fiscal Management of Public Art Capital Budgets in coordination with City staff;
- Continue implementing *Fort Worth Public Art Master Plan Update* recommendations;
- Implement the Pioneer Tower Iconic Public Art project;
- Provide community engagement programs related to the FWPA Collection; and
- Oversee maintenance and conservation projects on artworks in the FWPA Collection.

**Cost Allocation** - Contractor shall receive direct payment in one annual installment at the beginning of the year the amount of \$505,295.00, for the public art program professional management services.

- Specific public art projects that have funds budgeted for Project Management will be recorded on an ongoing basis and reported to the City at the end of the fiscal year. This report will consist of hours recorded for each project along with the project's account number for the City to then reimbursement the general fund.
- Projected hours to be charged to specific public art project budgets during Fiscal Year 2020/21 are estimated to generate \$150,000.00 that the City may be charged back to capital project accounts.
- **Note:** As Projects that do not have Project Management dollars budgeted are completed, and new projects that have Project Management funds budgeted are initiated, it is anticipated that the total reimbursable hours to be charged back to capital project accounts will increase in future Fiscal Years.
- **Project management costs will also include hours dedicated to the process of securing additional funding for the Pioneer Tower Iconic Public Art Project.**

**QUARTERLY REPORT INFORMATION: Project Activity**

Quarterly Report will be submitted to the City not later than the 15<sup>th</sup> day of the first month after the end of each quarter.

Information included:

Public Art Project Management:

- Total Projects Initiated
- Total Project Artists Selected
- Total Contracts Executed
- Total Artworks Completed

Collection Management:

- Total Artwork Treatments
- Total Completed Special Projects

Community Engagement:

- Total Project-specific Core Team/Community Meetings
- Total Artwork Dedications
- Total Artist Training Workshops
- Total Community Engagement events

**FY2021 Fort Worth Public Art Annual Work Plan attached here:**

## **CITY OF FORT WORTH PUBLIC ART PROGRAM FY 2021 PROGRAM SERVICES SUMMARY**

On September 14, 2020, the Fort Worth Art Commission formally recommended the *FY 2021 Fort Worth Public Art Annual Work Plan* to City Council for adoption, subject to City timeline changes for capital project for which public art is a component. The detailed work plan is attached.

### **PROGRAM ADMINISTRATION**

Under the proposed Fiscal Year 2021 Professional Services Agreement, the Arts Council of Fort Worth and Tarrant County, Inc., will continue to administer the Fort Worth Public Art Program (FWPA), including management of 49 ongoing and new public art projects from various funding sources, including the 2004 Bond Program, 2007 Critical Capital Needs Program, 2008 Bond Program, 2014 Bond Program, 2018 Bond Program, and the Public Art Fund (Specially Funded Projects Fund for Public Art) with combined budgets totaling over \$12.4 million in accordance with the *Fiscal Year 2021 Fort Worth Public Art Annual Work Plan*, as adopted by City Council.

In addition, the Arts Council will also:

- Staff the Fort Worth Art Commission;
- Plan, facilitate artist selection, and manage contract for Public Art Capital projects;
- Manage the Pioneer Tower Public Art Project;
- Fiscal Management of Public Art Capital Budgets in coordination with City staff;
- Continue implementing *Fort Worth Public Art Master Plan Update* recommendations;

- Provide community engagement programs related to the FWPA Projects and FWPA Collection; and
- Oversee maintenance and conservation projects on artworks in the FWPA Collection.

The Administrative Budget for Fiscal Year 2021 (\$505,295.00) includes personnel and general administrative costs, as well as Funds to support artist selection processes for new projects, certain collection management operating expenses, and community engagement programs.