

AN ORDINANCE 2007-11-01-1163

AUTHORIZING THE ACCEPTANCE OF A GRANT FROM THE TEXAS COMMISSION ON THE ARTS IN THE AMOUNT OF \$39,331.00 TO SUPPORT THE PROJECTS OF FOUR LOCAL ARTS AGENCIES; AND AUTHORIZING THE EXECUTION OF CONTRACTS WITH THESE AGENCIES.

* * * * *

WHEREAS, the Office of Cultural Affairs received notification from the Texas Commission on the Arts (“TCA”) on September 7, 2007, of financial assistance for local subgranting efforts and, as in the past, the state funds shall be awarded to applicants who apply through the regular process and undergo the same review process as the other applicants who were recommended for funding by the Cultural Arts Board; and

WHEREAS, the TCA awarded OCA a sub-grant of \$39,331.00 and those funds were utilized as part of the Fiscal Year 2007-2008 Art Funding process and included in the Cultural Arts Board’s final funding recommendations, which recommended that the funds be awarded to four (4) local arts agencies; and

WHEREAS, staff recommends that City Council accept the grants from the TCA and award \$39,331.00 to the four (4) local arts agencies identified in Exhibit I; **NOW THEREFORE:**

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

SECTION 1. The City Manager, or her designee, is authorized to accept \$39,331.00 from the Texas Commission on the Arts, and an in-kind match of \$117,993.00 is authorized and will provide all applicable matching funds from the grantee recipients for the grant period September 1, 2007 through August 31, 2008.

SECTION 2. Fund number 2600528001, entitled “TCA Grant 2007-08,” and SAP Internal Order number 128000000012, entitled “TCA Subgranting Grant 07-08,” are designated for use in the accounting for the fiscal transaction in the acceptance of this grant.

SECTION 3. The budget, which is attached to this Ordinance and incorporated for all purposes as Exhibit I, is approved and adopted for entry in the City books.

LB
11/01/07
Item #37

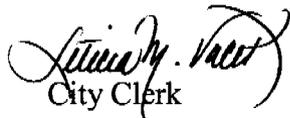
SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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. The City Manager or a designee is authorized to execute delegate agency contracts with each of the agencies listed in Exhibit I. A form copy of the Arts Agency Contract is attached as Exhibit II.

SECTION 6. This Ordinance shall be effective on and after the tenth day after passage.

PASSED AND APPROVED this 1st day of November, 2007


M A Y O R
PHIL HARDBERGER

ATTEST: 
City Clerk

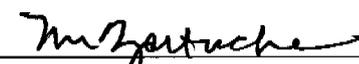
APPROVED AS TO FORM: 
for City Attorney

Exhibit
I

FY 2007-2008 Texas Commission on the Arts
Fund No. 26005000
Fund Center 2801010001
Contract Period: 9/01/07 to 08/31/08

ESTIMATED REVENUES

CURRENT BUDGET

Texas Commission on the Arts Grant No. 08-29057	\$ 39,331
In-Kind Match Contribution	\$ 117,993
Total Estimated Revenues:	<u>\$ 157,324</u>

Internal Order No. 128000000012

ESTIMATED EXPENDITURES

Mexican American Unity Council	\$ 11,640
S. A. Black History Month Calendar sponsored by Ella Austin Community Center	\$ 10,175
The Jazz Market sponsored by Building a Better World	\$ 8,490
Bihl Haus Arts	\$ 9,026
In-Kind Match Contribution	<u>\$ 117,993</u>
Total Estimated Expenditures	\$ 157,324

Exhibit
II

**ARTS AGENCY CONTRACT
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STATE OF TEXAS *

COUNTY OF BEXAR * ARTS AGENCY CONTRACT WITH (Name of Contractor)

CITY OF SAN ANTONIO *

This Contract is entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and the (agency name), (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Office of Cultural Affairs is designated as the managing City department (hereinafter referred to as "OCA") for the City; and

WHEREAS, City has provided certain funds from a grant from the Texas Commission on the Arts; and

WHEREAS, City has adopted a budget for expenditure of such funds, and included therein is an allocation of funds for a project entitled (project/program name) (hereinafter referred to as "the Project"); and

WHEREAS, City wishes to engage Contractor to carry out the Project; NOW THEREFORE:

The parties hereto agree as follows:

I. SCOPE OF WORK

1.1 Contractor will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to City and in compliance with the Program Statement, Budget and Performance Measures, affixed hereto and incorporated herein for all purposes as Attachment I.

II. TERM

2.1 Except as otherwise provided for pursuant to the provisions hereof, this Contract shall begin on _____ and shall terminate on _____.

2.2 Contractor understands that this Contract will terminate as provided in Section 2.1, or sooner as provided in Article XVI. There is no guarantee of renewal for the following fiscal year.

III. CONSIDERATION

3.1 In consideration, City will reimburse Contractor for expenses incurred in accordance with the budget approved by City Council in Ordinance No. _____. Said budget is part of Attachment I to this Contract. It is specifically agreed that reimbursement hereunder shall not exceed the amount of \$ _____.

3.2 The funding level of this Contract is based on the allocation awarded to OCA by the City of San Antonio. The allocation is based on an appropriation for the (enter name of project/program) and OCA's receipt of said allocation. The budget to this Contract may be adjusted to correspond to the actual allocation awarded.

3.3 Contractor understands and agrees that this is a contract to provide matching funds for funding already received by Contractor and that City shall have no obligation to provide any funds hereunder until Contractor has received the matching funds required by the Arts Funding guidelines. City shall require sufficient evidence that such funding is in place prior to making any payments under this Contract.

- 3.4 Consequently, Contractor agrees to comply with the Special Provisions set forth in Article XX, below.

IV. PAYMENT

- 4.1 Prior to the payment of any funds under this Contract, and throughout the term of this Contract, Contractor shall be financially stable and operate in a fiscally responsible and prudent manner, as determined in the sole discretion of City. Contractor shall provide any records requested by City that City deems necessary to making such a determination.
- 4.2 Contractor agrees that this is a cost reimbursement contract and that City's liability hereunder is limited to making reimbursements for allowable costs incurred as a direct result of City-funded services provided by Contractor in accordance with the terms of this Contract. Allowable costs are defined as those costs which are necessary, reasonable and allowable under applicable Federal, State, and local law, for the proper administration and performance of the services to be provided under an agreement. All requested reimbursed costs must be consistent with the terms and provisions of the approved budgeted line items described in Attachment I of this Contract. In no event shall City be liable for any cost of Contractor not eligible for reimbursement as defined within the Contract. If specific circumstances require an advance payment on this Contract, Contractor must submit to the Executive Director of OCA a written request for such advance payment, including the specific reason for such request. The Executive Director of OCA may, in his sole discretion, approve an advance payment on this Contract. It is understood and agreed by the parties hereto that (a) each request requires submission to the Executive Director of OCA no less than ten (10) business days prior to the actual ostensible cash need; (b) each request will be considered by the Executive Director of OCA on a case-by-case basis and the decision by the Executive Director of OCA whether or not to approve an advance payment is final. For purposes of this Contract, the term, "business day" shall mean every day of the week except all Saturdays, Sundays and those scheduled holidays officially adopted and approved by the San Antonio City Council for City of San Antonio employees. In those instances in which advance payments are authorized:
- (A) Funds received from City by Contractor in advance for payments to vendors shall be remitted to the vendors in a prompt and timely manner, defined as not later than ten (10) calendar days after Contractor is notified that a check is available from City.
 - (B) Contractor must deposit City funds in an account in a bank insured with the Federal Deposit Insurance Corporation (FDIC) and shall maintain separate records for City funds. In those situations where Contractor's total deposits in said bank, including all City funds deposited in such separate account, exceed the FDIC insurance limit, Contractor must arrange with said bank to automatically have the excess collaterally secured. A written copy of the collateral agreement must be obtained by Contractor from Contractor's banking institution, maintained on file and be available for City monitoring reviews and audits. Advanced funds that causes Contractor's account balance to exceed \$100,000.00 shall be deposited in a manner consistent with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code) as amended.
- 4.3 Contractor agrees that reimbursements of eligible expenses shall be made monthly or bi-weekly, as determined by the Executive Director of OCA according to standard procedures followed by City's Finance Department. The Executive Director of OCA may require the Contractor's submission of original or certified copies of invoices, cancelled checks, and/or receipts to verify invoiced expenses.
- ~~4.4 Contractor agrees that all requests for reimbursement shall be accompanied with documentation as may be required by the Executive Director of OCA.~~
- 4.5 Contractor shall submit to City all final requests for payment no later than thirty (30) days from the termination date of this Contract, unless Contractor receives written authorization from the Executive Director of OCA prior to such thirty (30) day period allowing Contractor to submit a request for payment after such thirty (30) day period.

- 4.6 Contractor agrees that City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of Contractor).
- 4.7 Contractor shall maintain a financial management system, and acceptable accounting records that provide for:
- (A) accurate, current, and complete disclosure of financial support from each Federal, State and locally sponsored project and program in accordance with the reporting requirements set forth in Article VIII. of this Contract. If accrual basis reports are required, Contractor shall develop accrual data for its reports based on an analysis of the documentation available;
 - (B) adequate identification of the source and application of funds for City-sponsored activities. Such records shall contain information pertaining to City awards, authorizations, obligations, un-obligated balances, assets, equity, outlays, and income;
 - (C) effective control over and accountability for all funds, property, and other assets. Contractor shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;
 - (D) comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by City, financial information should be related to performance and unit cost data;
 - (E) procedures to minimize the time elapsing between the transfer of funds from City and the disbursement of said funds by Contractor;
 - (F) procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, and the terms of the award, grant, or contract, with City;
 - (G) accounting records that are supported by source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City). Contractor shall maintain records and shall meet necessary requirements under Generally Accepted Accounting Principles [GAAP]; and
 - (H) an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project/Projects. A Receipts and Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.
- 4.8 Contractor agrees that Contractor costs or earnings claimed under this Contract will not be claimed under another contract or grant from another agency.
- 4.9 Contractor shall establish and utilize a cost allocation methodology and plan which ensures that City is paying only its fair share of the costs for services, overhead, and staffing not solely devoted to the project or projects funded by this Contract. The Cost Allocation Plan and supportive documentation shall be included in the financial statement, as required by Section 7.1, that is applicable to the Contractor's Project. The Cost Allocation Plan is a plan that identifies and distributes the cost of services provided by staff and/or departments or functions. ~~It is the means to substantiate and support how the costs of a program are charged to a particular cost category or to the program.~~
- 4.10 Upon completion or termination of this Contract, or at any time during the term of this Contract, all unused funds, rebates, or credits on-hand or collected thereafter relating to the Project/Projects, must immediately, upon receipt, be returned by Contractor to City.
- 4.11 Upon execution of this Contract or at any time during the term of this Contract, City's Director of Finance, the City Auditor, or a person designated by the Executive Director of OCA may review and approve all

Contractor's systems of internal accounting and administrative controls prior to the release of funds hereunder.

V. PROGRAM INCOME

- 5.1 For purposes of this Contract, "program income" shall mean earnings of Contractor realized from activities resulting from this Contract or from Contractor's management of funding provided or received hereunder. Such earnings shall include, but shall not be limited to, interest income; usage or rental/lease fees; income produced from contract-supported services of individuals or employees or from the use of equipment or facilities of Contractor provided as a result of this Contract, and payments from clients or third parties for services rendered by Contractor pursuant to this Contract. Contractor shall be permitted to retain such funds to be:
- (A) added to the Project and used to further eligible Project and/or Contractor objectives, in which case proposed expenditures must first be approved by City; or
 - (B) deducted from the total Project cost for the purpose of determining the net cost reimbursed by City.
- 5.2 Contractor shall provide OCA with thirty (30) days written notice prior to the activity that generates program income. Such notice shall detail the type of activity, time, and place of all activities that generate program income.
- 5.3 Contractor shall fully disclose and be accountable to City for all program income. Contractor must submit a statement of expenditures and revenues to OCA within thirty (30) days of the activity that generates program income. The statement is subject to audit verification by OCA. Failure by Contractor to report program income as required is grounds for suspension, cancellation, or termination of this Contract.
- 5.4 Contractor shall include this Article, in its entirety, in all of its subcontracts involving income-producing services or activities.

VI. ADMINISTRATION OF CONTRACT

- 6.1 In the event that any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this Contract or its governing rules, regulations, laws, codes or ordinances, the City Manager, as representative of City, the party ultimately responsible for all matters of compliance with City of San Antonio rules and regulations, shall have the final authority to render or secure an interpretation.
- 6.2 City shall have the authority during normal business hours to make physical inspections to the operating facility occupied to administer this Contract and to require such physical safeguarding devices as locks, alarms, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment authorized by this Contract.

~~6.3 Contractor agrees to comply with the following check procedures:~~

(A) No blank checks are to be signed in advance;

(B) No checks are to be made payable to cash or bearer with the exception of those for petty cash reimbursement, not to exceed a \$100.00 maximum per check. Contractor agrees that the aggregate amount of petty cash reimbursement shall not exceed \$200.00 for any given calendar month during the term of this Contract unless Contractor receives prior written approval from OCA to exceed such limit. Such requests for petty cash must be supported by the submission to OCA of an original receipt; and

(C) Checks issued by City to Contractor shall be deposited into the appropriate bank account no later than three (3) business days of Contractor's receipt of each such check, and shall never be cashed for purposes of receiving the face amount back. If such check(s) are not cashed within ninety (90) days from the date of issue, such checks shall be investigated by City and stop-payment orders issued, as applicable. Upon cancellation of any outstanding check, if deemed appropriate by City, such check may be reissued to the Contractor or if deemed by City not to be a valid expense, such check shall be immediately returned to City.

- 6.4 City reserves the right to request Contractor to provide additional records for long distance calls, faxes and/or cell phone calls charged to City.

VII. AUDIT

- 7.1 If Contractor expends \$250,000.00 or more of City dollars, then during the term of this Contract, Contractor shall have completed an independent audit of its financial statements performed within a period not to exceed ninety (90) days immediately succeeding the end of Contractor's fiscal year or termination of this Contract, whichever is earlier. Contractor understands and agrees to furnish OCA a copy of the audit report within a period not to exceed fifteen (15) days upon receipt of the report. If the amount of funds to be paid to Contractor in Article III, Section 3.1 of this Contract is \$250,000.00 or more, then Contractor further agrees to provide a line item in its budget for a financial statement audit prepared by an independent certified public accountant. If City determines, in its sole discretion, that Contractor is in violation of the above requirements, City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have Contractor pay for such audit from non-City resources. If Contractor expends less than \$250,000.00 of City dollars, then during the term of this Contract, Contractor shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) days immediately succeeding the end of Contractor's fiscal year or termination of this Contract, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by Contractor attesting to the correctness of said financial statement.
- 7.2 Contractor agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of Contractor or its programs of any findings about accounting deficiencies, or violations of Contractor's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to OCA within a period of ten (10) days upon Contractor's receipt of the report.
- 7.3 The audited financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each program funded by or through City and a certification from Contractor stating whether or not the terms and conditions of the Contract were met.

City reserves the right to conduct, or cause to be conducted an audit of all funds received under this Contract at any and all times deemed necessary by City. City audit staff, a Certified Public Accounting firm, or other auditors as designated by City, may perform such audit(s). City reserves the right to determine the scope of every audit. In accordance herewith, Contractor agrees to make available to City all accounting and Project records.

Contractor shall, during normal business hours, and as often as deemed necessary by City and/or the applicable state or federal governing agency or any other auditing entity, make available to the auditing entity books, records, documents, reports, and evidence with respect to all matters covered by this Contract and shall continue to be so available for a minimum period of three (3) years or whatever period is determined necessary based on the **Records Retention guidelines, established by applicable law for this Contract**. Said records shall be maintained for the required period beginning immediately after Contract termination, save and except there is litigation or if the audit report covering such agreement has not been accepted, Contractor shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by Contractor

in accounting for expenses incurred under this Contract, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.

City may, at its sole discretion, require Contractor to use any and all of City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Contract, and Contractor shall abide by such requirements.

When an audit or examination determines that Contractor has expended funds or incurred costs which are questioned by City and/or the applicable state or federal governing agency, Contractor shall be notified and provided an opportunity to address the questioned expenditure or costs.

Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, Contractor will immediately refund such amount to City no later than ten (10) days from the date of notification of such disapproval or disallowance by City. At its sole option, OCA may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, Contractor shall provide to City a full refund of such amount no later than ten (10) days from the date of notification of such disapproval or disallowance by City. If Contractor is obligated under the provision hereof to refund a disapproved or disallowed cost incurred, such refund shall be required and be made to City by cashiers check or money order. If OCA elects to deduct such claims from subsequent reimbursements, during such time, Contractor is forbidden to reduce Project expenditures and Contractor must use its own funds to maintain the Project.

Contractor agrees and understands that all expenses associated with the collection of delinquent debts owed by Contractor shall be the sole responsibility of Contractor and shall not be paid from any Project funds received by Contractor under this Contract.

VIII. RECORDS, REPORTING, AND COPYRIGHTS

- 8.1 OCA is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by OCA, Contractor shall furnish to OCA and the Grantor of the grant funds, if applicable, such statements, records, data, and information and permit City and Grantor of the grant funds, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Contract.
- 8.2 Contractor shall submit to OCA such reports as may be required by City, including the Monthly Operating Agency Report Form, which is affixed hereto and incorporated herein as Attachment II. Said report is to be submitted to OCA no later than the twentieth (20th) day of month following the month in which the reported activities occurred.
- 8.3 The Public Information Act, Government Code Section 552.021, requires City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Contract, Contractor shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to State or Federal law, Contractor shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of Contractor's receipt of such request.
- 8.4 In accordance with Texas law, Contractor acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code.

Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Contract, shall belong to and be the property of City and shall be made available to the City at any time. Contractor further agrees to turn over to City all such records upon termination of this Contract. Contractor agrees that it shall not, under any circumstances, release any records created during the course of performance of the Contract to any entity without the written permission of the Executive Director of OCA, unless required to do so by a court of competent jurisdiction. OCA shall be notified of such request as set forth in Article VIII., Section 8.3 of this Contract.

- 8.5 Ownership of Intellectual Property. Contractor and City agree that the Project/Projects shall be and remain the sole and exclusive proprietary property of City. The Project/Projects shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Project/Projects and all rights therein shall be solely vested in City. Contractor hereby grants, sells, assigns, and conveys to City all rights in and to the Project/Projects and the tangible and intangible property rights relating to or arising out of the Project/Projects, including, without limitation, any and all copyright, patent and trade secret rights. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, brand names, color schemes, designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the "Intellectual Property Rights") in the Project/Projects shall be solely vested in City. Contractor agrees to execute all documents reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. In the event City shall be unable, after reasonable effort, to secure Contractor's signature on any documents relating to Intellectual Property Rights in the Project/Projects, including without limitation, any letters patent, copyright, or other protection relating to the Project/Projects, for any reason whatsoever, Contractor hereby irrevocably designates and appoints City and its duly authorized officers and agents as Contractor's agent and attorney-in-fact, to act for and in Contractor's behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by Contractor. Provided, however, nothing herein contained is intended nor shall it be construed to require Contractor to transfer any ownership interest in Contractor's best practice and benchmarking information to City.

In the event that City is funding ten percent (10%) or less of the Project, the proceeding paragraph shall not apply to this Contract. City and Contractor agree that should City wish to obtain a license to use the Project, the parties shall negotiate such a license, upon mutually agreeable terms, at no cost to City.

- 8.6 Within a period not to exceed thirty (30) days from the termination date of the Contract, Contractor shall submit all final fiscal reports and all required deliverables to City. Contractor understands and agrees that in conjunction with the submission of the final report, Contractor shall execute and deliver to City a receipt for all sums and a release of all claims against the Project/the Projects.
- 8.7 Contractor shall provide to OCA all information requested by OCA relating to the Contractor's Board functions. Information that may be required for submission shall include, but may not be limited to:
- (A) Roster of current Board Members (name, title, address, telephone number, fax number and e-mail address);
 - (B) Current Bylaws and Charter;
 - (C) Terms of Officers;
 - (D) Amendments to Bylaws;
 - (E) Schedule of anticipated board meetings for current Fiscal Year;
 - (F) Minutes of board meetings that are approved by the Contractors board will become part of the Contractors project records and as such, must be available to City staff, upon request; and
 - (G) Board Agenda, to be submitted at least three (3) business days prior to each Board meeting.
- 8.8 Contractor agrees to comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto, referenced in section 12.3 of this Contract.

IX. INSURANCE

9.1 Contractor agrees to comply with the following insurance provisions:

- (A) Prior to the commencement of any work under this Contract, Contractor shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Office of Cultural Affairs, which shall be clearly labeled "*insert name of project/contract*" 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 Contract until such certificate and endorsements have been received and approved by the City's Office of Cultural Affairs. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- (B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Contract 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 Contract. In no instance will City allow modification whereupon 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 Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

[Insert Applicable Insurance Provisions after consultation with Risk Management and your legal counsel.]

- (D) The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City, 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
Attn: Office of Cultural Affairs
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the 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 the City is an additional insured shown on the policy;
 - Workers’ compensation and employers’ liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days 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 written notice for nonpayment of premium.
- (F) 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 Contract.
- (G) If Contractor fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Contract; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of Contractor to maintain said insurance or secure such endorsement. In addition to any other remedies the 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, the 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.
- (H) 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 Contract.
- (I) It is agreed that Contractor’s insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Contract.
- (J) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Contract.

X. INDEMNITY

10.1 CONTRACTOR AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:

- (A) Contractor covenants and agrees to **FULLY INDEMNIFY, and HOLD HARMLESS**, City the elected officials, employees, officers, directors, volunteers, and representatives of City, individually or 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 Contract, 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 Contract, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE**

NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Contractor shall promptly advise City in writing of any claim or demand against City or Contractor known to Contractor related to or arising out of Contractor's activities under this Contract and shall see to the investigation of 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.

- (B) It is the EXPRESS INTENT of the parties to this Contract, that the INDEMNITY provided for in this Article is an INDEMNITY extended by Contractor to INDEMNIFY, PROTECT and HOLD HARMLESS, City from the consequences of City's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this Article SHALL APPLY only when the NEGLIGENT ACT of City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of City is the sole cause of the resultant injury, death, or damage. Contractor further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF CITY AND IN THE NAME OF CITY, any claim or litigation brought against City and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

XI. SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

11.1 Contractor agrees to comply with the following Small, Minority or Woman-owned Business Advocacy Policy:

- (A) Contractor is hereby advised that it is the policy of the City of San Antonio that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. Contractor agrees that Contractor will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. Contractor further agrees that Contractor will abide by all applicable terms and provisions of City's Non-Discrimination Policy, City's Small, Minority or Woman-owned Business Advocacy Policy and City's Equal Opportunity Affirmative Action policy, these policies being available in City's Department of Economic Development, and the City Clerk's Office.
- (B) If the amount of funds to be paid to Contractor in Article III., section 3.1 of this Contract is for \$200,000.00 or more, then the Contractor agrees to submit to the City a Good Faith Effort Plan ("GFEP") indicating Contractor's utilization of Small, Minority and Woman-owned Business Enterprises no later than fifteen (15) days from the date of execution of this Contract. If City approves the GFEP, and City subsequently finds material deficiencies in any aspect of the GFEP, Contractor will be required to submit a written report to City's Department of Economic Development. Contractor will also be required to submit a supplemental Good Faith Effort Plan indicating efforts to resolve any deficiencies. A denied Supplemental Good Faith Effort Plan, by City's Department of Economic Development, will constitute failure to satisfactorily resolve any deficiencies by Contractor. Failure to obtain an approved Supplemental Good Faith Effort Plan, within ninety (90) days of initial denial shall constitute a default and result in penalty on Contractor of \$1,000.00 per day as liquidated damages for the default until all deficiencies are resolved. Failure to cure all deficiencies within another ninety (90) days of the date the penalty is initially assessed constitute a further (additional) condition of default by Contractor and which can, at the option of the Executive Director of OCA, result in forfeiture of the entirety of this Contract.

XII. APPLICABLE LAWS

- 12.1 Contractor certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above-referenced law and regulations could subject the Contractor to suspension of payments, termination of Contract, and debarment and suspension actions.
- 12.2 Contractor understands that certain funds provided it pursuant to this Contract are funds which have been made available by City and/or by Federal, State, or other granting entities. Consequently, Contractor agrees to comply with all laws, rules, regulations, policies, and procedures applicable to the funds received by Contractor hereunder as directed by City or as required in this Contract. In addition Contractor shall comply with the following Office of Management and Budget (OMB) Circulars, as applicable to the funds received by Contractor hereunder:
- (A) OMB Circular A-21, entitled, "Cost Principles for Educational Institutions";
 - (B) OMB Circular A-87, entitled, "Cost Principles for State, Local and Indian Tribal Governments";
 - (C) OMB Circular A-102, entitled, "Grants and Cooperative Agreements with State and Local Governments";
 - (D) OMB Circular A-122, entitled, "Cost Principles for Non-Profit Organizations"; and
 - (E) OMB Circular A-133, entitled, "Audits of States, Local Governments, and Not for Profit Organizations".
- 12.3 All of the work performed under this Contract by Contractor shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the City of San Antonio and County of Bexar. Additionally, Contractor shall comply with the following:
- Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slr/recordspubs/gr.html>
 - Texas Government Code Chapter 552 pertaining to Texas Public Information Act
 - Texas Local Government Code Chapter 252 pertaining to purchasing and contracting authority of municipalities
 - Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services
 - Texas Local Government Code can be found at <http://www.capitol.state.tx.us/statutes/go/go0055200toc.html>
- In addition to the applicable laws referenced above, Contractor must also adhere to compliance requirements that are applicable to the specific funding source(s) from which funds paid to Contractor hereunder originated. For example, CDBG Contractors are required to follow applicable CDBG regulations.
- 12.4 Contractor shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, Contractor agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, Contractor certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:
- Title VII of the Civil Rights Act of 1964, as amended;
 - (A) Section 504 of the Rehabilitation Act of 1973, as amended;
 - (B) The Age Discrimination Act of 1975, as amended;
 - (C) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688)
 - (D) Fair-Labor Standards Act of 1938, as amended;
 - (E) Equal Pay Act of 1963, P.L. 88-38; and
 - (F) All applicable regulations implementing the above laws.

- 12.5 Contractor warrants that any and all taxes that Contractor may be obligated for, including but not limited to, Federal, State, and local taxes, fees, special assessments, Federal and State payroll and income taxes, personal property, real estate, sales and franchise taxes, are current, and paid to the fullest extent liable as of the execution date of the Contract. Contractor shall comply with all applicable local, State, and Federal laws including, but not limited to:
- (A) worker's compensation;
 - (B) unemployment insurance;
 - (C) timely deposits of payroll deductions;
 - (D) filing of Information on Tax Return form 990 or 990T, Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc;
 - (E) Occupational Safety and Health Act regulations; and
 - (F) Employee Retirement Income Security Act of 1974, P.L. 93-406.
- 12.6 Contractor agrees to comply with the Americans with Disabilities Act P.L. 101-336, enacted July 26, 1990, and all regulations thereunder.
- 12.7 Contractor agrees to abide by any and all future amendments or additions to such laws, rules, regulations, policies and procedures as they may be promulgated.
- 12.8 All expenditures by Contractor or any of its subcontractors exceeding \$25,000.00 must be pre-approved in writing by OCA. Furthermore, all expenditures by Contractor or any of its subcontractors must be made in accordance with all applicable federal, state and local laws, rules and regulations including all bidding requirements that City would be required to perform under Chapter 252 of the Texas Local Government Code which include groups of separate, sequential or component purchases, as such terms are defined in Section 252.001 of the Texas Local Government Code, exceeding a total cost of \$3,000.00 set forth in this section.
- 12.9 Contractor shall submit to OCA on an annual basis form 990 or 990T.

XIII. NO SOLICITATION/CONFLICT OF INTEREST

- 13.1 Contractor warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of Contractor or City. For breach or violation of this warrant, City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.
- 13.2 Contractor 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 the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.
- 13.3 Contractor further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or 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.
- 13.4 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 Contract shall:

(A) Participate in any decision relating to this Contract 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; or

(B) Have any direct or indirect interest in this Contract or the proceeds thereof.

13.5 Contractor acknowledges that it is informed that Charter of 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 "prohibited financial interest" in a contract with the City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: 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 subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.6 Contractor warrants and certifies, and this Contract is made in reliance thereon, (that neither Contractor nor his or her spouse, parent, child, sibling or first-degree relative is a City officer or employee as defined by Section 2-52 (e) of the City Ethics Code. If Contractor is a business entity, Contractor representative further warrants and certifies that no City officer or employee nor any spouse, parent, child sibling or first-degree relative of a City officer or employee 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). 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. TERMINATION

14.1 Termination for Cause - Should Contractor fail to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by City, or if this Contractor should violate any of the covenants, conditions, or stipulations of the Contract, City shall thereupon have the right to terminate this Contract by sending written notice to Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the end of ten (10) days following the day on which such notice is sent). Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, Contractor's complete and satisfactory performance, of its obligations for which final payment is sought. Should Contractor be debarred by City pursuant to a debarment policy currently existing or hereafter adopted, said debarment shall be grounds for termination for cause.

14.2 Termination for Convenience - This Contract may be terminated in whole or in part when City determines that continuation of the Project or Projects would not produce beneficial results commensurate with the further expenditure of funds. Such termination by City shall specify the date thereof, which date shall not be sooner than thirty (30) days following the day on which notice is sent. Contractor shall also have the right to terminate this Contract and specify the date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which notice is sent. Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, Contractor's complete and satisfactory performance of its obligations for which final payment is sought.

14.3 Notwithstanding any other remedy contained herein or provided by law, City may delay, suspend, limit, or cancel funds, rights or privileges herein given Contractor for failure to comply with the terms and provisions of this Contract. Specifically, at the sole option of City, Contractor may be placed on probation

during which time City may withhold reimbursements in cases where it determines that Contractor is not in compliance with this Contract. Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract, and City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to City.

- 14.4 If an employee of Contractor is discharged or otherwise leaves employment with Contractor, then, in accordance with Article XII, Section 12.2 of this Contract, Contractor shall pay in full to such employee all of such employee's earned salaries and wages, within the timeframe specified in Chapter 61 of the Texas Labor Code. Upon the expiration of four (4) years from the end of said timeframe, Contractor must thereafter return to City any remaining funds received from City for salaries and wages. Such funds to be returned shall be classified as "disallowed costs" and refunded by Contractor in accordance with Article VII., Section 7.3 of this Contract. The obligations of Contractor to return such funds to City in accordance with this paragraph, however, shall be subject to compliance by Contractor of all applicable Texas Unclaimed Property laws.

XV. PROHIBITION OF POLITICAL ACTIVITIES

- 15.1 Contractor agrees that no funds provided from or through City shall be contributed or used to conduct political activities, including political activities for the benefit of any candidate for elective office, political party, organization or measure, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity.
- 15.2 Contractor agrees that no funds provided under this Contract may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.
- 15.3 The prohibitions set forth in Article XV., sections 15.1 and 15.2 of this Contract include, but are not limited to, the following:
- (A) 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;
 - (B) working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;
 - (C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and
 - (D) using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.
- 15.4 To ensure that the above policies are complied with, Contractor shall provide every member of its personnel paid out of City funds with a statement of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to **call and report the same to OCA. Contractor shall list the name and number of a contact person from OCA on the statement that Contractor's personnel can call to report said violations.**
- 15.5 Contractor agrees that in any instance where an investigation of the above is ongoing or has been confirmed, reimbursements paid to the Contractor under this Contract may, at City's discretion, be withheld until the situation is resolved.

- 15.6 This Article shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, Contractor and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with City funds.

XVI. PERSONNEL MANAGEMENT

- 16.1 Contractor agrees to establish internal procedures that assure employees of an established complaint and grievance policy. The grievance policy will include procedures to receive, investigate, and resolve complaints and grievances in an expeditious manner.
- 16.2 Contractor is permitted to pay its full time employees for the total number of holidays authorized by City Council for City employees. If Contractor elects to observe more than the total number of holidays, authorized by the City Council for City employees, then such additional days are not eligible for reimbursement under this Contract.
- 16.3 Contractor agrees that the job titles and descriptions set forth in the budget (Attachment I) that affect a salary or range increase may not be changed without justification and prior written approval from City, as evidenced through a written amendment to this Contract approved by the Executive Director of OCA.
- 16.4 Contractor agrees that all copies of written job descriptions will be filed in all individual personnel folders for each position in the organization.
- 16.5 The Contractor agrees to provide City with the names and license registration of any employees of Contractor regulated by State law whose activities contribute towards, facilitate, or coordinate the performance of this Contract.
- 16.6 At the sole discretion of the Executive Director of OCA, Contractor may be reimbursed by City for the cost of pay granted to full time, permanent employees that is not chargeable to annual or personal leave only for the reasons listed below:
- (A) To attend annual training in a branch of the Armed Services, not to exceed fifteen (15) business days during the term of this Contract;
 - (B) To serve as a juror;
 - (C) To attend the funeral of someone in the immediate family. Immediate family shall include father, mother, sister, brother, husband, wife or child, and other relatives, (including in-laws) if such other relatives are actually members of the employee's household. In such event, the Contractor may grant up to three (3) work days of leave with pay that is not chargeable to annual or personal leave; or
 - (D) To attend seminars or workshops;
- 16.7 Chief Executive Officers (CEOs), directors and other supervisory personnel of Contractor may not supervise a spouse, parents, children, brothers, sisters, and in-laws standing in the same relationship, (hereinafter referred to as "Relatives") who are involved in any capacity with program delivery supported through City funds. Relatives, however, may be co-workers in the same Project in a non-supervisory position.

XVII. ADVERSARIAL PROCEEDINGS

- 17.1 Contractor agrees to comply with the following provisions:

- (A) Under no circumstances will the funds received under this Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against City or any other public entity; and
- (B) Contractor, at City's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against City remains unresolved.

XVIII. CITY-SUPPORTED PROJECT

- 18.1 Contractor shall identify all events and activities funded in whole or in part by City by stating that the Project is "supported by the City of San Antonio's Office of Cultural Affairs." The list of events and activities to be funded as part of this Project is included in Attachment I to this Contract.
- 18.2 This requirement shall apply to all print and electronic media and any other media related to events and activities funded in whole or in part by City.
- 18.3 Contractor shall not identify City as a funding provider for any events and activities for which City has not authorized funding. Only events and activities identified within Attachment I of this Contract shall be considered to be authorized for funding by City.
- 18.4 If Contractor identifies City as a funding provider for any events and activities for which City has not authorized funding, City may require Contractor to issue a retraction in a format and timeframe directed by City. All costs for retractions shall be the responsibility of Contractor and such costs shall not be eligible for reimbursement by City.

XIX. EQUIPMENT

- 19.1 City retains ownership of all equipment/property purchased with funds received through City and such equipment/property shall, at City's sole option, revert to City at Contract's termination, for whatever reason. Contractor agrees to relinquish and transfer possession of and, if applicable, title to said property without the requirement of a court order upon termination of this Contract. Equipment that has reverted to Contractor through a City-paid lease agreement with option to buy will be considered the same as though the equipment was purchased outright with City funds. It is understood that the terms, "equipment" and "property", as used herein, shall include not only furniture and other durable property, but also vehicles.
- 19.2 Contractor agrees that no equipment purchased with City funds may be disposed of without receiving prior written approval from OCA. In cases of theft and/or loss of equipment, it is the responsibility of the Contractor to replace it with like equipment. City funds cannot be used to replace equipment in those instances. All replacement equipment will be treated in the same manner as equipment purchased with City funds.
- 19.3 Contractor shall maintain records on all items obtained with City funds to include:
 - (A) A description of the equipment, including the model and serial number, if applicable;
 - (B) The date of acquisition, cost and procurement source, purchase order number, and vendor number;
 - (C) An indication of whether the equipment is new or used;
 - (D) The vendor's name (or transferred from);
 - (E) The location of the property;
 - (F) The property number shown on the property tag; and,
 - (G) A list of disposed items and disposition
- 19.4 Contractor is fully and solely responsible for the safeguarding, maintaining, and reporting of lost, stolen, missing, damaged, or destroyed equipment/property purchased or leased with City funds. All lost, stolen, missing, damaged and/or destroyed equipment/property shall be reported to the local Police Department and, if applicable, the Federal Bureau of Investigation (FBI). The Contractor shall make such reports immediately and shall notify and deliver a copy of the official report to OCA within seventy-two (72) hours

from the date that Contractor discovers the lost, stolen, missing, damaged and/or destroyed equipment/property.

19.5 The report submitted by Contractor to OCA shall minimally include:

- (A) A reasonably complete description of the missing, damaged or destroyed articles of property, including the cost and serial number and other pertinent information;
- (B) A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and,
- (C) A copy of the official written police report or, should the Police not make such copy available, a summary of the report made to the Police, including the date the report was made and the name and badge number of the Police Officer who took the report.

19.6 All equipment purchased under this Contract shall be fully insured against fire, loss and theft.

19.7 The Contractor shall provide an annual inventory of assets purchased with City funds to OCA. Contractor shall report to OCA any changes monthly including destruction, theft, disappearance, etc.

XX. SPECIAL PROVISIONS

20.1 Indecency. The following is City's policy statement regarding material and/or performances under OCA's Arts Agency Contracts:

(A) Contractor is instructed to make the public aware that sensitive subject matter of graphically violent and/or sexually explicit nature may be preformed, sponsored or exhibited by displaying at all times during the term of this Contract an English/Spanish bilingual notice that viewer and/or parental discretion should be exercised.

(B) Contractor must make OCA aware in writing of the intent to perform, sponsor or exhibit the proposed event no less than thirty (30) days prior to the actual activity.

(C) The City Council shall have the right to terminate this Contract upon finding that Contractor's activities are not in compliance with the above provisions.

Contractor shall not knowingly encourage, foster, promote or fund any project, production, workshop or program that includes obscene material as defined by Section 43.21 of the Texas Penal Code.

20.2 Removal/Relocation. Contractor acknowledges that the location of the Project on City property may necessitate future removal or relocation that may subject the Project to destruction, distortion, mutilation or other modification if and when removed. Such removal or relocation of the Project, if practical and economically feasible as determined by City in its sole discretion, will occur in conformity with the guidelines and review requirements listed in City's Unified Development Code, Article VI, Division 5, Section 35-656. Contractor agrees that a City decision made under this paragraph regarding if, when and how to remove the Project is final.

Contractor hereby expressly consents to both the installation and removal of the Project and thereby expressly waives his/her Moral Rights to the Project. It is agreed that if the Project, or any portion thereof, is removed from its location causing it, or any part thereof, to be destroyed, distorted, mutilated or modified in any way, the Project may not thereafter be referred to as "a Project by Contractor".

20.3 Display and Maintenance. A label identifying Contractor, the title of the Project and the year it is completed shall be publicly displayed in the area adjacent to the Project.

Contractor agrees that all formal references to the Project shall include a credit line, as required by Section 18.1, that recognizes the contribution of City.

Contractor shall provide information on the Project requested by OCA for its files. Contractor shall provide the City with one 35-mm color slide of the Project, accurate in color and detail, within thirty (30) days after the Project has been completed.

Contractor shall be available at such time or times as may be agreed between City and Contractor to attend any and all dedications of the Project. City may arrange for publicity for the complete Project in such art publications and other media as may be determined to be necessary by City.

City shall be responsible for all maintenance, repairs and restoration of the Project.

City, through OCA, shall consult with a Contractor regarding repairs and restoration which are undertaken during Contractor's lifetime, when practical. To facilitate such consultation, Contractor shall notify OCA of any change in Contractor's permanent address. If Contractor is unable or unwilling to perform any necessary repairs or restoration, City shall have such work performed in accordance with recognized principles of conservation.

XXI. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

- 21.1 Contractor agrees that none of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

XXII. ASSIGNMENT

- 22.1 Contractor shall not assign or transfer Contractor's interest in this Contract or any portion thereof without the approval of the City Council of San Antonio, evidenced by passage of a subsequent ordinance, and if applicable, the Grantor of the grant source. Any attempt to transfer, pledge or otherwise assign shall be void ab initio and shall confer no rights upon any third person or party.

XXIII. AMENDMENT

- 23.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Contractor and evidenced by passage of a subsequent City ordinance, as to City's approval; provided, however, the Executive Director of OCA shall have the authority to execute an amendment of this Contract without the necessity of seeking any further approval by the City Council of the City of San Antonio, if permitted by all applicable local, state and federal laws in the following circumstances:

- A. an increase in funding of this Contract in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Contract or (b) \$25,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments executed without City Council approval pursuant to this subsection during the term of this Contract shall not exceed the foregoing amount;
- B. modifications to the Performance Measures set forth in Attachment I hereto, so long as the terms of the amendment stay within the parameters set forth in the Program Statement, also set forth in Attachment I hereto;
- C. budget line item shifts of funds, so long as the total dollar amount of the budget set forth in section 3.1 of this Contract remains unchanged; provided, however, that budget line item shifts of funds related to personnel services cannot exceed the total dollar amount allocated to personnel services set forth in the budget (Attachment I) of this Contract;
- D. modifications to the insurance provisions described in Article IX of this Contract that receive the prior written approval of the City of San Antonio's Risk Manager and the Executive Director of OCA.

XXIV. SUBCONTRACTING

- 24.1 Any subcontracting of the services covered by this Contract shall be approved by City of San Antonio City Council, as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.
- 24.2 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract 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 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. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

XXV. OFFICIAL COMMUNICATIONS

- 25.1 For purposes of this Contract, 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:

City of San Antonio
Office of Cultural Affairs
P.O. Box 839966
San Antonio, Texas 78283-3966

Contractor:

Notices of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of the change.

XXVI. VENUE

- 26.1 Contractor and City agree that this Contract shall be governed by and construed in accordance with the laws of the State of Texas. Any action or proceeding brought to enforce the terms of this Contract or adjudicate any dispute arising out of this Contract shall be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas.

XXVII. GENDER

- 27.1 Words of any gender used in this Contract 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. AUTHORITY

- 28.1 The signer of this Contract for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained. Contractor shall provide evidence to City upon execution of this Contract that it is currently operating as a non-profit entity with a current Internal Revenue Code section 501(c)(3) status, or a for-profit entity governed by an autonomous governing body, acting in accordance with the governing instruments submitted to City in the application for funding. Whether a non-profit or for-profit entity, Contractor must be authorized to do business in the State of Texas and be formed under and operating in accordance with all applicable laws of the State of Texas. Contractor shall provide OCA verification of the foregoing requirements no later than the execution date of this Contract.

XXIX. LICENSES AND TRAINING

- 29.1 Contractor warrants and certifies that Contractor's employees and its subcontractors have the requisite training, license or certification to provide said services, and meet all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XXX. INDEPENDENT CONTRACTOR

- 30.1 It is expressly understood and agreed that the Contractor is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that City shall in no way be responsible therefore, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 30.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.

- 30.3 Any and all of the employees of Contractor, wherever located, while engaged in the performance of any work required by City under this Contract shall be considered employees of Contractor only, and not of City, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of Contractor.

XXXI. SEVERABILITY

- 31.1 If any clause or provision of this Contract 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 City, 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 Contract 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 Contract that is invalid, illegal or unenforceable, there be added as a part of this Contract 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.

XXXII. CONTRIBUTION PROHIBITIONS

32.1 The provisions of Article XXXIII shall apply to all contracts considered "high risk" as that term is defined in the City of San Antonio Contracting Policy and Process Manual.

Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-risk" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 Calendar days following the contract award. Contractor understands that if the legal signatory entering the Contract has made such a contribution, the City may not award the Contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-risk contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response

32.2 Contractor acknowledges that City has identified this Contract as high risk.

32.3 Contractor warrants and certifies, and this Contract is made in reliance thereon, that the individual signing this Contract has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Contract. Should the signor of this Contract violate this provision, the City Council may, in its discretion, declare the Contract void.

XXXIII. ENTIRE CONTRACT

33.1 This Contract and its attachments constitute the entire and integrated Contract between the parties hereto and contain all of the terms and conditions agreed upon, and supersede all prior negotiations, representations, or contracts, either oral or written.

In witness of which this Contract has been executed effective the _____ day of _____, _____.

CITY OF SAN ANTONIO:

CONTRACTING AGENCY:

Felix Padrón
Executive Director
Office of Cultural Affairs

(enter name of agency)

(address)

San Antonio, TX (zip code)

APPROVED BY:

Sheryl Sculley
City Manager

Executive Director

APPROVED AS TO FORM:

Board President (if required by Agency)

City Attorney

ATTACHMENTS

Attachment I – Program Statement, Budget and Performance Measures

Attachment II – Monthly Operating Agency Report Form