



MEMORANDUM

**City of Austin
Financial Services Department
Purchasing Office**

DATE: March 30, 2018
TO: Memo to File
FROM: Marty James, Procurement Specialist III
RE: MA 5500 NA170000011 MINDPOP

EDD has administratively extended MA 5500 NA170000011 with MINDPOP through April 30, 2018. This agreement was created by the Economic Development Department and is administered and maintained by same.

- According to Texas Local Government Code, Chapter 380, Section 380.001 regarding Economic Development Programs,

The governing body of a municipality may establish and provide for the administration of one or more programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality.

City of Austin Administrative Bulletin Number 84-07 states the authority granted to the Economic Development Department (formerly EGRSO).

Procurement authority for certain economic development contracts as described in Local Government Code, Chapter 380 is delegated to the Director of EGRSO.

There is no procurement function other than the creation of the payment vehicle.



MEMORANDUM

**City of Austin
Financial & Administrative Services Department
Purchasing Office**

DATE: October 21, 2016
TO: Memo to File
FROM: Claudia Rodriquez
RE: MA 5500 NA170000011

This agreement was created by Economic Development Department and is administered and maintained by same.

According to Texas Local Government Code, Chapter 380, Section 380.001 regarding Economic Development Programs,

The governing body of a municipality may establish and provide for the administration of one or more programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality.

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**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
MINDPOP**

This Contract is made by and between MINDPOP ("Contractor") having offices at 5511 Parkcrest, Suite 207, Austin, Texas 78731 and the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas.

WHEREAS, the City seeks to provide educational and promotional campaign services as part of the Creative Learning Initiative; and

WHEREAS, the City is providing funding to Contractor, which provides creative sector services; and

WHEREAS, Contractor is intended to provide research and data on the benefits of creative learning both in school and out-of-school; and

WHEREAS, Contractor desires to work with the City to enhance arts education, arts appreciation and creative workforce development; and

WHEREAS, the City desires to partner in the implementation of the Kennedy Center for the Performing Arts' Any Given Child Award plan developed in partnership with Austin Independent School District, MINDPOP, business and philanthropic leaders, and arts organizations and to leverage statewide findings from the Texas Cultural Trust research to inform a local art education awareness campaign; and

WHEREAS, City support for Contractor as provided in this Contract is an economic development program of the City, and is intended to raise awareness of the critical need for arts in education including sequential fine arts learning, arts-integrated strategies for academic success, and access to after school opportunities with arts service organizations; and

WHEREAS, the grant of public funds provided herein serve the City's goals of promoting local economic development, increasing high school retention and graduation rates, increasing academic scores in STEM learning and elimination of unemployment and underemployment, authorized under Texas Local Government Code Sections 380.001 and 380.002 and the Texas Constitution.

NOW THEREFORE, the City and Contractor, hereby agree to the following terms and conditions:

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES.

- 1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.
- 1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services in writing.
- 1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate.

The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

- 1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Dr. Brent Hasty, Phone: (512) 751-1944. The City's Contract Manager for the engagement shall be Meghan Wells, (512) 974-9314.

SECTION 2. SCOPE OF WORK.

- 2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide the services more fully described on Exhibit A attached hereto and incorporated by reference. All deliverables described herein and in the Contractor's Offer shall be in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

SECTION 3. COMPENSATION.

- 3.1 **Contract Amount.** The Contractor will be paid upon the successful completion of the Scope of Work, as described in Exhibit A and accepted in writing by the City. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$50,000 for all fees and expenses, including travel. Payments to be made by the City under this Agreement shall be made from current revenues available to the City.

The project has five (5) milestones for payment as outlined by Exhibit A. Payments for each milestone are payable upon completion and acceptance in writing by the City.

- 3.1.1 \$2,500 (5%) within thirty (30) days after the City verifies completion of the Research and Planning Phase.
 - 3.1.2 \$2,500 (5%) within thirty (30) days after the City verifies that the AI&D Facility Inventory and Assessment Phase is complete.
 - 3.1.3 \$2,500 (5%) within thirty (30) days after the City verifies that the Arts Organization Outreach and Coordination Phase is complete.
 - 3.1.4 \$40,000 (80%) within thirty (30) days after the City approves Artistic Performance Schedule submitted by contractor.
 - 3.1.5. \$2,500 (5%) within thirty (30) days after the City verifies that the Evaluation Phase is complete.
- 3.2 **Invoices.** Invoices shall contain a non-duplicated invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department, and . Invoices shall be itemized. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Economic Development Department
Attn:	Meghan Wells
Address:	201 E. 2 nd Street
City, State, Zip Code	Austin, TX 78701

Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 Payment.

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.1.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.1.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.1.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment, failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.3.1.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.1.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.1.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.1.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.1.8 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.4 **Non-Appropriation.** The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this contract. The absence of appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non- or inadequate appropriation of funds, there will be no penalty, payment, nor removal fees charged to the City.

3.5 **Travel Expenses.** The City will not reimburse Contractor for any travel, lodging, or per diem expenses in connection with the Contract.

3.6 Final Payment and Close-Out.

3.6.1 The making and acceptance of final payment will constitute:

3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION.

- 4.1 **Term of Contract.** This Contract shall become effective on date of City signature and shall remain in effect until March 31, 2018.
- 4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
- 4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 4.2, or (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States.
- 4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
- 4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
- 4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES.

- 5.1 **Insurance.** The following insurance requirement applies.

5.1.1 **General Requirements**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation / Contract number, the City's name, and the Contractor's email address, and shall be mailed to the following address:

City of Austin
Attn: Economic Development Dept, Cultural Arts Division
Meghan Wells
P. O. Box 1088
Austin, Texas 78767

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Independent Contractor's Coverage.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily

injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC 420601, or equivalent coverage.

5.1.2.4 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

5.1.2.5 **Certificate:** The following statement must be shown on the Certificate of Insurance.

The City of Austin is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability, auto liability and workers compensation policies.

5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor or Contractor's agent or subcontractor, shall engage in any discriminatory employment practice as defined in chapter 5-4 of the City Code. Contractor must execute keep on file with the City Purchasing Office a current Non-Discrimination Certification.

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** Contractor shall not engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5.3 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES.

6.1 **Warranty – Services.** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

SECTION 7. MISCELLANEOUS.

7.1 **Right To Audit.**

7.1.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are

resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.1.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

7.2 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.3 **Indemnity.**

7.3.1 Definitions:

7.3.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.3.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.3.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.3.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.3.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.4 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.5 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested.

Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Cultural Arts Division

ATTN: Meghan Wells, Cultural Arts Manager

P O Box 1088

Austin, TX 78767

To the Contractor:

MINDPOP

ATTN: Dr. Brent Hasty

5511 Parkcrest, Suite 207

Austin, TX 78731

- 7.6 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
- 7.7 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
- 7.8 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
- 7.9 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 7.10 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation

of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

- 7.11 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
- 7.12 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
- 7.13 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
- 7.14 **Modifications.** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
- 7.15 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
- 7.16 **Dispute Resolution.**
- 7.16.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- 7.16.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract

interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the costs of mediation equally.

7.17 Living Wages and Benefits.

In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum wage for City employees is \$13.00 per hour. This minimum wage is required for any Contractor employee directly assigned to this City Contract.

7.17.1 The City requires Contractors to provide a signed certification within five (5) calendar days of contract execution certifying that all employees directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$13.00 per hour (see Exhibit B-1, Living Wages and Benefits Contractor Certification). The certification shall include a list of all employees directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.

7.17.2 The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). Basic employment records shall at a minimum include:

7.17.2.1 employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;

7.17.2.2 time and date of week when employee's workweek begins;

7.17.2.3 hours worked each day and total hours worked each workweek;

7.17.2.4 basis on which employee's wages are paid;

7.17.2.5 regular hourly pay rate;

7.17.2.6 total daily or weekly straight-time earnings;

7.17.2.7 total overtime earnings for the workweek;

7.17.2.8 all additions to or deductions from the employee's wages;

7.17.2.9 total wages paid each pay period; and

7.17.2.10 date of payment and the pay period covered by the payment.

7.17.3 The Contractor shall provide with the first invoice and as requested by the Department's Contract Manager, individual Employee Certifications for all employees directly assigned to the contract containing (see Exhibit B-2, Living Wages and Benefits Employee Certification):

7.17.3.1 the employee's name and job title;

7.17.3.2 a statement certifying that the employee is paid at a rate equal to or greater than the Living Wage of \$13.00 per hour;

7.17.3.3 a statement certifying that the employee is offered a health care plan with optional family coverage.

7.17.4 The employee certifications shall be signed by each employee directly assigned to the contract.

7.17.5 Contractor shall submit employee certifications quarterly with the respective invoice to verify that employees are paid the Living Wage throughout the term of the Contract.

7.17.6 The Department's Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records identified above in this paragraph verify compliance with this provision.

7.18 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.19 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.20 **Holidays.** The following holidays are observed by the City:


<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

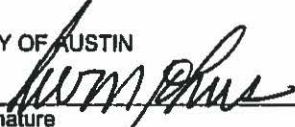
- 7.21 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.
- 7.22 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Contractor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 7.23 **Incorporation of Documents.** Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address <http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf>

In witness whereof, the parties have caused duly authorized representatives to execute this Agreement on the dates set forth below.

MINDPOP

By: 
Signature
Name: Brent Hasty
Printed Name
Title: EXECUTIVE DIRECTOR
Date: 9-16-16

CITY OF AUSTIN

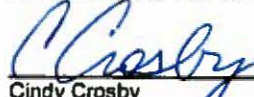
By: 
Signature
Name: KEVIN JOHNS
Printed Name
Title: DIRECTOR
Date: 9-29-16

List of Exhibits / and Incorporated Documents

EXHIBITS

- Exhibit A Scope of Work
Exhibit B Non-discrimination Certificate

APPROVED AS TO FORM:


Cindy Crosby
Assistant City Attorney

**EXHIBIT A – SCOPE OF WORK
CONTRACT BETWEEN CITY OF AUSTIN AND MINDPOP**

RESEARCH AND PLANNING PHASE

\$2,500

Contractor shall:

- Develop a working timeline with tasks and target dates for MINDPOP, Austin Independent School District (AISD) and the City.
- Coordinate and host planning meetings to ensure all partners agree on roles and responsibilities.
- Identify resources needed and establish points of contact for coordination and communication.

DELIVERABLE:

- Hosted meetings at least bi-weekly (or more frequently, as needed) via phone or in-person.
- Documentation of partnership development, and of project scope and resource allocations, in an electronic form acceptable to the City.

AISD FACILITY INVENTORY AND ASSESSMENT PHASE

\$2,500

Contractor shall:

- Conduct an inventory, in partnership with AISD, that can be used to identify various types, locations, and capacities of schools with available and appropriate arts creation and performance spaces within AISD.
- Examine data from the City's Cultural Asset Maps (in progress, through the Cultural Arts Division) to overlay onto AISD, to consider "arts deserts" and further refine targeted school locations.
- Receive input and approval from AISD leadership and staff for proposed school locations.

DELIVERABLE:

- Spreadsheet of approved AISD facilities with corresponding detail data to be utilized for scheduling of arts creation or performance, in electronic form acceptable to the City.

ARTS ORGANIZATION OUTREACH AND COORDINATION PHASE

\$2,500

Contractor shall:

- Identify local artists and arts organizations, with assistance from the Cultural Arts Division, for targeted outreach to gauge interest and suitability as arts providers within the scope of the project.
- Perform outreach and maintain communication with targeted list to narrow down final list of arts providers to be matched with school facilities.
- Schedule and coordinate, in partnership with AISD, specific arts activities/performances with corresponding schools.
- Identify any obstacles, challenges, or issues that need to be addressed before activities begin, and communicate or troubleshoot with arts providers.
- Contract with participating artists and arts organizations.

DELIVERABLE:

- Spreadsheet of Artistic Performance Schedule showing arts organizations and corresponding schools, provided in electronic form acceptable to the City.
- Copies of executed contracts with participating artists and arts organizations.

ARTISTIC ACTIVITY/PERFORMANCE PHASE

\$40,000

Contractor shall:

- Execute and monitor artistic activity/performance schedule, ensuring that good communication is maintained with AISD, and that any issues that arise are addressed or any that activity/performance is rescheduled.
- Document activities/performances.
- Survey participants and audiences as activities take place.
- Issue payments to participating artists and arts organizations based on contract milestones and AISD facility/staffing costs as agreed upon between Mindpop and AISD and invoiced to Mindpop by AISD.

DELIVERABLE:

- Updates (at least bi-weekly or more frequently, as needed) to AISD and CoA, via email, phone or in-person meetings.
- Documentation of payments issued to artists, arts organizations, and AISD.

EVALUATION PHASE

\$2,500

Contractor shall:

- Create a report detailing depth and breadth of arts activities in each school location, audience reach and measurable impacts, as supported by survey results.
- Identify challenges and successes among schools, arts organizations, neighborhoods, and businesses to be used to consider potential for future program expansion.
- Work with Creative Learning Initiative team (AISD, City of Austin, Mindpop) to communicate pilot results to relevant stakeholders.

DELIVERABLE:

- Project Evaluation Report, provided in electronic form acceptable to the City
- Activity/performance documentation.
- Participant/audience surveys.

SCHEDULE:

RESEARCH AND PLANNING PHASE	OCTOBER 2016
AISD FACILITY INVENTORY AND ASSESSMENT PHASE	OCTOBER – NOVEMBER 2016
ARTS ORGANIZATION OUTREACH AND COORDINATION PHASE	NOVEMBER 2016 - JANUARY 2017
ARTISTIC ACTIVITY/PERFORMANCE PHASE	JANUARY - DECEMBER 2017
EVALUATION PHASE	JANUARY 2018 - MARCH 2018

CONTACT:

Dr. Brent Hasty

5511 Parkcrest #207

Austin, TX 78731

Brent.hasty@mindpop.org


Exhibit B
City of Austin, Texas
Human Rights Commission
NON-DISCRIMINATION CERTIFICATION

I hereby certify that our firm conforms to the City Code, Chapter 5-4 as reiterated below:

TITLE 5, Chapter 5-4: Discrimination in Employment by City Contractors. Sec. 5-4-2 Requirements of contractors:

- B (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to insure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training or any other terms, conditions, or privileges of employment.
- (3) To post in conspicuous places, available to the employees and applicants for employment, notices to be provided by the Austin Human Rights Commission setting forth the provision of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to the contractors in which such union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement the policies and provisions of this chapter.
- (6) To cooperate fully with the City and the Austin Human Rights Commission in connection with any investigation or conciliation effort of the Austin Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practice is being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they not engage in any discriminatory employment practice as defined in this chapter.

Dated this 16 day of SEPT., 2016 Company's Name MINDPOP

Signature  Printed Name BRENT HASTY

Title EXECUTIVE DIRECTOR