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CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Publicartist.Org
For
Application System

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Publicartist.Org. ("Contractor"), having offices at 415 Burr Rd. San Antonio, TX 78209.

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.

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 Ansen Seale, Phone: (210) 348-0800, Email Address: ansen@publicartist.org. The City's Contract Manager for the engagement shall be Michelle Clemons, Phone: (512) 974-2713, Email Address: Michelle.Clemons@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 Contractor's Obligations. The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer 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 as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$40,000.00 for all fees and expenses.

3.2 Invoices.

3.2.1 Invoices shall contain a unique 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. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. 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:	Account Payable

Address	2006 E. 4th Street
City, State, Zip Code	Austin, TX 78701

3.2.2 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.

3.3.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

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

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

3.3.3.2 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;

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

3.3.3.4 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;

3.3.3.5 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;

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

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

3.3.4 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.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

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 nor removal fees charged to the City.

3.5 **Final Payment and Close-Out.**

3.5.1 The making and acceptance of final payment will constitute:

3.5.1.1 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

3.5.1.2 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.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 60 months.

4.1.1 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract (not exceed 120 calendar days unless mutually agreed on in writing).

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 material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

SECTION 5. OTHER DELIVERABLES

5.1 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.1.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

SECTION 6. MISCELLANEOUS

6.1 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

6.2 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

6.2.1 disposal of major assets;

6.2.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

6.2.3 any significant termination or addition of provider contracts;

6.2.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

6.2.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

6.2.6 reorganization, reduction and/or relocation in key personnel;

6.2.7 known or anticipated sale, merger, or acquisition;

6.2.8 known, planned or anticipated stock sales;

6.2.9 any litigation against the Contractor; or

6.2.10 significant change in market share or product focus.

6.3 Audits and Records.

6.3.1 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.

6.3.2 Records Retention:

6.3.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

6.3.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.

6.3.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

6.4 Indemnity.

6.4.1 Definitions:

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

6.4.1.1.1 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;

6.4.1.1.2 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),

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

6.4.2 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 DIRECTLY 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.

6.5 **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.

6.6 **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, Purchasing Office

ATTN: Contract Administrator
P O Box 1088
Austin, TX 78767

To the Contractor:
Publicartist.Org

ATTN: Ansen Seale, Contract Manager
415 Burr Rd.
San Antonio, TX 78209

6.7 **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.

6.8 **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.

6.9 **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.

6.10 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 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.

6.11 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.

6.12 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.

6.13 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.

6.14 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.

6.15 Modifications. The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

6.16 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.

6.17 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.

6.18 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.

6.19 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.

6.20 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.

6.21 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 Vendor 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.

6.22 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:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

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

PUBLICARTIST.ORG
PUBLICARTIS.ROG

By: _____
Signature

Name: ANSEN SEALE
Printed Name

Title: PRESIDENT

Date: MAY 15, 2018

CITY OF AUSTIN

By: _____
Signature

Name: JAMES T. HOWARD
Printed Name

Title: IT Procurement Mgr.

Date: 5/16/2018

List of Exhibits

Exhibit A	Scope of Service and Pricing Agreement
Exhibit B	Non Discrimination Certification, Section 0800
Exhibit C	Non-Suspension or Debarment Certification (If it came with the Proposal)



415 Burr Rd.
San Antonio, Texas 78209
(210)348-0800

Professional Statement

The mission of PublicArtist.org is to facilitate the public art application process for both artists and arts administrators. We provide easy to understand online tools for creating RFQs, communicating with artists, and managing applications that come in.

PublicArtist.org was developed in order to create a platform for artists to find and apply to opportunities quickly and easily, while making sure their work is shown in the best light. At the same time, we wanted to give art administrators a framework for building robust calls to artists and managing the responses.

PublicArtist.org presents only public art opportunities. We do not list calls for festivals, shows, residencies, etc. This allows curators to hone in on artists who are both capable and interested in fulfilling their needs.

Our Goals:

- To make the application process for artists easier and less tedious.
- To be a dynamic catalog for artists to keep track of their work and career.
- To give curators and arts administrators a way to keep track of a personalized artist registry.
- To make creating an application easier and less confusing for arts administrators and curators.

HOW WE HELP ART ADMINISTRATORS

1. We can get your complete RFQ online in just minutes

Our system is formatted so that you can select what information you want to include in your RFQ with just a few clicks. We ask you the questions that you'd likely get from applying artists, before your call is made public. Time-consuming and confusing revisions to your call are a thing of the past!

2. Managing and reviewing applications is quick, easy, and effective

After your RFQ is made public, you can start reviewing submitted applications as soon as they come in. Our review platform allows each member of a selection panel to manage their personal list of selected artists. Everyone's prepared when it comes time to make a decision! Panel members can print out a list of their selected artists to take with them to selection panel meetings.

3. We have a pool of capable and dedicated artists ready to apply

Since we only list calls for public art, only artists who are interested in public art have accounts on our site. We can minimize applications by artists with no experience, or who don't understand the magnitude of undertaking a public art project.

4. You can manage your organization's public art roster

You, as an administrator, are capable of maintaining a private roster of pre-qualified artists. If an artist applies to one of your open calls, but doesn't make the cut for that particular project, you can still keep track of that artist's portfolio via the Roster function. You can also open an invitational call for just those artists you specify.

Concept and Solution

Our system was developed in response to the frustrations experienced by art administrators due to inadequacies of application systems currently in use. We interviewed other public art agencies and artists to gain insight on what was needed from both sides to make the public art application process more manageable for artists and art administrators.

PublicArtist.org is organized in the following way:

Any artist may apply to any call hosted on our system for free. We offer 2 levels of service for artists, Premium (paid) and Basic (free).

Basic Members receive:

- An extensive database of public art calls
- The ability to apply to any call hosted at PublicArtist.org
- Email notification of calls based on their preferences
- Unlimited online Image Library storing their high resolution images for calls hosted at PublicArtist.org
- Automatic image resizing, renaming, and reordering as needed for calls hosted at PublicArtist.org
- Automatic Image List preparation with thumbnails for calls hosted at PublicArtist.org
- Resume Builder for calls hosted at PublicArtist.org
- "Letter of Interest" Composer for calls hosted at PublicArtist.org
- Professional References management for calls hosted at PublicArtist.org
- Artist Statement and Biography management for calls hosted at PublicArtist.org

Premium Members receive:

- All Basic Membership services above, plus ability to use all of their stored information to apply to call that are not hosted on our site. This service is called Folios.
- Unlimited online Image Library storing their high resolution images for applications and Folios
- Automatic image resizing, renaming, and reordering as needed for Folios
- Automatic Image List preparation with thumbnails for Folios
- Resume Builder for Folios
- "Letter of Interest" Composer for Folios
- Professional References management for Folios
- Artist Statement and Biography management for Folios
- Download PDFs and JPGs of their information any time, for any purpose - via "Folios"

All artists are allowed free Premium access for 30 days. Any images and documents they upload into their image library are kept on file, regardless of their membership level. Artists **MUST** upload images into the Image Library in order to show up in the "Browse Artists" portion of the site for Art Administrators. An artist either uses a Premium Application or a Basic Application to respond to a call based on whether they are utilizing the Image Library or prefer to upload images for individual applications.

PublicArtist.org offers Art Administrators the ability to:

- Post a call on PublicArtist.org that everyone can see
- Target notifications to all artists about your call based on the artist's preferences
- Browse all artist members, Premium and Basic
- Keep a roster of artists (for pre-approval or invitational calls)
- Manage communication with Premium Artists (contact info for individual Basic members available)

Receive an unlimited number of applications per call
Judge applications from artists online and/or receive bulk delivery of applications as PDFs
Find and invite new judges in the Judges Database

SCOPE OF WORK

Allow national, statewide and local artists to register their information so that they can easily use the Application System to be viewed as a Registry by those seeking to commission artists, or to apply for City art opportunities, including public art projects, People's Gallery Exhibition, and possibly, Austin's New Year, and Faces of Austin.

Serve as a database of artist information that can be updated by the artists on an ongoing basis that can be used by the Art in Public Places (AIPP) program to administer selection processes, attract more artist applicants, contain artist portfolio information and other data, generate a variety of statistical reports, and serve as a clearinghouse for commissioning purposes.

General

- a. ADA accessible
- b. Accessible from multiple web browsers on both PC and Mac platforms
- c. Secure, password-protected access for users on front end and back end
- d. Efficient/effective and user-friendly site navigation – detailed instructions, intuitive and clear to user, etc.
- e. Tech support offered at a minimum 9 am – 5 pm CST Monday through Friday, and by email after hours.
- f. Remote, password-protected access by designated users, including those outside the City of Austin email system.
- g. Capacity to list or link to public art Calls from other programs around the country

Artist Registry – Artist Portal (Front End)

- a. Allows secure, password-protected access at any time of day or night
- b. Allows easy upload of text, images and media files (if applicable), navigate, label, arrange, and update online
- c. Allows for upload of .jpg images, plain text, and .pdf documents, as well as media files (MOV, MP4, AVI, FLV, OGG, WMV)
- d. An Artist's image library can contain an unlimited number of images.
- e. View images as uploaded, not just thumbnails
- f. There is a 24-hour time limit before an artist is logged out due to inactivity.
- g. Image order can be changed by the user
- h. Character limits for letters of interest/artist statements are flexible (no cap).

Artist Registry – Admin Portal (Back End)

- a. Access to designated uploaded artist information excluding passwords
- b. Displays image and related information in user-friendly "slideshow" format
- c. Administrators can do targeted notifications to artists based on set criteria or artist preferences
- d. Bulk download available (documents in .pdf and images in .jpg format)
- e. Artist data can be searched according to criteria (artist name, geographic area, media, etc.).
- f. Generate reports based on these searchable categories; export as Word or Excel document

Artist Registry – Public Portal (desired, but not required)

- a. Allows viewing pre-qualified artists' images in slideshow format

- b. Posts currently open calls for the organization
- c. Displays contact information for the organization
- d. Links out to organization's website

Application System – Artist Portal (Front End)

- a. Artist may apply to multiple Calls to Artists concurrently
- b. Call may be public or private (generates link for targeted applications)
- c. Artist may select images from own Image Library to submit in response to particular Calls
- d. Artist may designate the order in which images will be viewed for each particular Call
- e. Unlimited character/word limit for Letter of Interest, Statement and Proposal submission.
- f. Artists may hold and edit their application up until the time they submit it
- g. Allows for artist teams to apply – pulling from more than one individual pages in Registry

Application System – Admin Portal (Back End)

- a. Allows for multiple Calls to be open at once and accepting of applications
- b. Admin can upload and edit text, upload multiple images, and set exact deadlines for Call to Artists
- c. Slide show component for jury review – with descriptive text, black background, text & image fit on screen without scrolling; prefer images same size
- d. Archivable Calls to Artists and corresponding artist applications
- e. Contains a juror database containing contact info and resumes
- f. Allow for reports to be generated

Application System – Juror Portal (Back End)

- a. Ability for jurors to record their confidential comments on artists
- b. Allows jurors to print screens or applications as needed
- c. Jurors can view and score work online (remotely), aggregate scores, and print out results

One of the main benefits of working with a shared system like PublicArtist.org is that, as updates are made to the system, all the members will benefit. Input from AIPP will help to make the system stronger, and AIPP will benefit from the input of other agencies and artists. A prime example of this is the Judges Database where qualified panelists and jurors from others areas would be available for AIPP's use.

In conclusion, we believe PublicArtist.org is uniquely qualified to provide this service to the City of Austin AIPP because of our long standing relationship and our willingness and capability to modify our platform to fit the needs of their program.

Cost of Services Proposal

The cost of service for public art administrators is based on the call budget as follows:

Up to \$40,000*	\$40,001-160,000	Over \$160,000
\$400	\$800	\$1600

Contact Information

Ansen Seale
President, PublicArtist.org
ansen@publicartist.org
210.348.0800

City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, 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 employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions 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, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said 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 policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are 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 do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL

Sanctions:

Our firm understands that non compliance with Chapter 5-4 and the City's Non Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 5th day of March, 2018

CONTRACTOR

Authorized
Signature

Title

PUBLIC ARTIST.ORG
Amber J. Smith
PRESIDENT

City of Austin, Texas
Section 0805
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. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:

ANSEN SEALE - PUBLIC ARTIST.ORG

Signature of Officer or
Authorized
Representative:



Date:

March 5, 2018

Printed Name:

ANSEN SEALE

Title

PRESIDENT



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 12/18/2017

DEPT: Economic Development

TO: Purchasing Officer or Designee

FROM: Susan Lambe

BUYER: Liz Lock - Purchase

PHONE: (512) 974-2713

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)
 - ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
 - ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
 - ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
 - ☒ a procurement for personal, professional, or planning services
 - ☐ a procurement for work that is performed and paid for by the day as the work progresses
 - ☐ a purchase of land or right-of-way
 - ☐ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
 - ☐ a purchase of rare books, papers, and other library materials for a public library
 - ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
 - ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- services performed by blind or severely disabled persons
- goods purchased by a municipality for subsequent retail sale by the municipality
- electricity
- advertising, other than legal notices
- Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

Since moving from an internal application system in 2013, the Art in Public Places program within the Cultural Arts Division, EDD, has worked with PublicArtist.org, an online tool for local/national artists to apply for AIPP commissions. AIPP made the switch from the internal system at the behest of CTM who was overburdened by the internal system's needs. PublicArtist.org is a simple system for artists to apply for AIPP commissions, saving both artists and the City time and expense. PublicArtist.org has created a proprietary platform for this purpose, and provides technical expertise by phone and email to make sure artists are well-supported. AIPP spent time and resources training artists to use PublicArtist.org and artists are familiar with the system-moving to a new system would create a disruption in service to our customers.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

The vendor is required to provide in-depth reporting and analytics to the City of Austin. The report displays a trend analysis on service levels and satisfaction.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with PublicArtist.Org.
which will cost approximately \$ 40,000.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification


Originator

3/8/18
Date

Approved
Certification

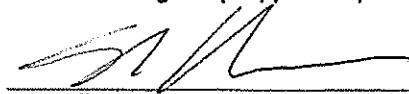

Department Director or designee

3/13/2018
Date

on behalf of Rebecca Grelle, Director

Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)


Buyer

4/10/18
Date

Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee

Date

02/26/2013