

**AGREEMENT FOR COMMISSION OF PUBLIC ART WORK BETWEEN THE CITY
OF AUSTIN AND Janet Echelman, Inc.**

This Agreement is entered into this 31 day of January, 2019 by and between the **Parties**.

Section 1. DEFINITIONS

- 1.1. **"Agreement"** means this Agreement for Design and Commission of Public Art Work between the City of Austin and the **Studio**, entered into by the **Parties**, including any and all attachments and exhibits.
- 1.2. **"Artist"** means Janet Echelman.
- 1.3. **"Studio"** means Janet Echelman, Inc. located at 64 Coolidge Street, Brookline, Massachusetts 02446.
- 1.4. **"City"** means the City of Austin, a Texas home-rule municipal corporation acting by and through its duly authorized City Manager or her designee.
- 1.5. **"Facility"** means the Terminal Expansion of Austin-Bergstrom International Airport owned, operated, or controlled by the **Sponsoring Department** and located at 2716 Spirit of Texas Drive, Austin TX 78749.
- 1.6. **"Contract Administrator"** means the Art in Public Places Administrator, the Director of the City's Economic Development Department, or their respective designee.
- 1.7. **"Contract Price"** means the total compensation to be paid to the **Studio** pursuant to this Agreement, to be paid on such terms as are set out in 4.7.2.
- 1.8. **"Default"** means the willful or negligent failure of one **Party** to timely and properly fulfill its obligations under this Agreement, and further means the violation by one **Party** of any material covenants, agreements, or stipulations set out in this Agreement.
- 1.9. **"Effective Date"** means the date on which this Agreement becomes fully effective as between the **Parties**, and is the date on which the last **Party** executes this Agreement unless specified elsewhere in this Agreement.
- 1.10. **"Final Design"** means the final design of the **Work** as approved by the City of Austin Arts Commission on June 19, 2017, pursuant to Exhibit F and expressly represented in Exhibit G.
- 1.11. **"Party"** means either the **City** or the **Studio**, and **"Parties"** means the **City** and the **Studio** collectively.
- 1.12. **"Project"** means the **City** construction project at which the **Work** will be installed.
- 1.13. **"Schedule"** means the full and complete schedule developed and prepared by the **Studio**, with input and approval from the **City**, for the design, fabrication, delivery, transportation, and installation of the **Work**, which schedule complies with the **Project** completion schedule that the **City** provides to the **Studio**, and which schedule may be modified from time to time by the **Parties** as set out in this Agreement.
- 1.14. **"Site"** means the portion of the **Facility** at which the **Work** will be installed, more particularly set out in Exhibit A.
- 1.15. **"Sponsoring Department"** means the Austin Aviation Department of the **City**.

- 1.16. **"Work"** means an original piece of public art conceived, designed, implemented, constructed, and installed by or under the ultimate direction of the **Studio** as set out in this **Agreement**, and more particularly described as a dynamic entrance installation on a monumental scale that reflects the nature and character of Austin.
- 1.17. Terms not defined in this **Agreement** will have their ordinary and customary meanings, as generally used in the field of public art.

Section 2. EXHIBITS

- 2.1. With the exception of Exhibit F, which is attached for reference only, the following documents are attached to this **Agreement**, and are incorporated into this **Agreement** by reference:

Exhibit A. Facility/Site Plan

Exhibit B. Request for Qualifications

Exhibit C. Artist Qualifications

Exhibit D. Permit Fee Waiver Memo

Exhibit E. Insurance Requirements

Exhibit F. November 30, 2015 Agreement for Design of Public Artwork Between the City of Austin and Janet Echelman, Inc.

Exhibit G. Final Design of the Work, approved by the Arts Commission on June 19, 2017.

Exhibit H. Final Construction Documents, dated April 2, 2018

Exhibit I. Sculpture Budget

Section 3. BACKGROUND, RECITALS, AND STATEMENT OF PUBLIC PURPOSE

- 3.1. The City is implementing the Art in Public Places Program pursuant to Chapter 7-2 of the Austin City Code by appropriating certain funds for the establishment of artworks in public places and authorizing payments for the design, execution, fabrication, transportation, acquisition, installation, and maintenance of works of art and the support of an artist selection process.
- 3.2. The Public Art Fund for the **Sponsoring Department** and its **Facility** has been allocated for the selection, purchase, and placement of a work of art at, in, or near the **Facility**.
- 3.3. The City, by and through the Austin Arts Commission and in accordance with the current Art in Public Places Program Guidelines, selected the **Studio** to design, execute, fabricate, and install the **Work** at the **Site**.
- 3.4. Under the Agreement in Exhibit F, the **Studio** agreed to engage the services of the **Artist** for design of the **Work**.
- 3.5. The **Studio** previously designed the **Final Design** pursuant to Exhibit F, and attached as Exhibit G, and the City intends for the **Studio** to fabricate and install **Work** in accordance with the **Final Design**.

- 3.6. The Parties acknowledge that the Artist's qualifications, set out in Exhibit C, were reviewed, approved, and relied on by the Art in Public Places Panel and the Austin Arts Commission prior to execution of this Agreement.

Section 4. SCOPE OF SERVICES

- 4.1. The Studio agrees to provide the following services to the City under this Agreement:

- 4.1.1. The Studio will require the Artist to determine the aesthetic artistic expression, scope, design, color, size, material, and texture of the Work, subject to approval by the City.
- 4.1.2. The exact location of the Site will be mutually agreed upon by the Parties.
- 4.1.3. The City will provide the Studio with all reasonably available investigations of existing conditions at or near the Site. The Studio may request at any time all construction information regarding the Site, and any reasonable assistance required by the Studio to allow the Studio to perform the services required by this Agreement. To the extent such information is available to the City or to third parties under the City's control, the City, either through the Contract Administrator or through the applicable Facility design professional or project manager, will promptly provide such information to the Studio.
- 4.1.4. The Studio will support the City's commitment to sustainability throughout the entirety of this Agreement. The City is dedicated to sustainability, which is defined as finding a balance among three sets of goals: 1) prosperity and jobs, 2) conservation and the environment, and 3) community health, equity, and cultural vitality. The Studio will take steps appropriate to the Work to enhance and promote green purchasing, energy conservation, solid waste recycling, green building, resource and water conservation, greenhouse gas reduction, and environmental reporting metrics. On request, the City will coordinate with the Studio to provide information on sustainability opportunities.
- 4.1.5. The Studio is obligated to engage the services of its principal, Janet Echelman.

4.2. SCHEDULING

- 4.2.1. After the Effective Date and prior to beginning installation of the Work, the Studio will develop and provide the City a tentative Schedule in accordance with the project construction schedule, when applicable.
 - 4.2.1.1. The Studio will coordinate with the City in order to ensure that all relevant dates and times are included and accounted for in the Schedule.
 - 4.2.1.2. The City will either approve, approve with modifications, or reject the draft Schedule submitted by the Studio. If the City rejects the draft Schedule submitted by the Studio, the Studio will revise and resubmit the Schedule within the time period required by the City in its notice of rejection.
 - 4.2.1.3. Once approved by the City, the Schedule will control all review, fabrication, implementation, transportation, installation, and completion of the Work.

- 4.2.1.4. The **Studio** may only make modifications to the approved **Schedule** upon written request to, and written approval of, the **City**. The **City** may request from the **Studio** any information or documentation it deems necessary in order to evaluate any request to amend the approved **Schedule**.
- 4.2.1.5. The **City** may, on its own initiative and at any time, direct any changes to the approved **Schedule** it deems necessary or appropriate, provided that, to the extent practical, the **City** has given the **Studio** (i) prior notice and (ii) opportunity to comment on such changes.
- 4.2.1.6. If the **Studio** is prevented at any time from complying with the **Schedule** through no fault of the **Studio**, the **City** may adjust the **Schedule** to accommodate the **Studio**. If the **City** determines that any delay is a result of the actions of the **City** or any third party in the **City's** control, or is a result of Site conditions or **Project** scheduling for which third parties are responsible, the **City** may, in its sole discretion, adjust the **Contract Price**. The **City**, and not the **Studio**, will initiate any changes to the **Contract Price** under this Section by requesting documentation from the **Studio** of any increased costs sustained by the **Studio** that are solely and directly attributable to the delay. The **City's** determination of the need for, and amount of, any adjustment to the **Contract Price** is final.
- 4.2.1.7. The **Parties** agree to grant each other a reasonable extension of time if any force majeure, Acts of God, flood, riot, civil insurrection, labor strikes, orders of local or federal government or other conditions beyond the other **Party's** control render timely performance of the **Parties'** respective obligations impossible or unexpectedly burdensome. A **Party** invoking Section 4.2.1.7 must give notice to the other **Party** within ten days of the onset of such performance delay, specifically stating the reasons for the delay. Any performance excused under this section will only be excused for a reasonable duration of the conditions preventing performance. The **Parties** will revise the **Schedule** to reflect any such delays.
- 4.2.2. The **Studio** will perform one or more investigations of existing Site conditions prior to beginning installation of the **Work**, so that the **Final Design** appropriately provides for all existing Site conditions. If the **Studio** believes any differences, discrepancies, errors, omissions, or inconsistencies exist between the **Studio's** inspection and the information provided by the **City** or the **Project** design professionals, the **Studio** must notify the **City** prior to continuing with any installation of the **Work**.
- 4.3. **FABRICATION AND INSTALLATION**
 - 4.3.1. After the **City** has approved the **Schedule**, the **City** will issue notice to proceed to the **Studio**. The notice to proceed will advise the **Studio** of any required modifications to the **Schedule**.
 - 4.3.2. After the **City** provides notice to proceed as set out in Section 4.3.1, the **Studio** will begin fabrication of the **Work** in accordance with the **Schedule**.
 - 4.3.3. The **City** will have the right, on notice to the **Studio**, to review the **Work** at reasonable times and locations throughout the **Work's** fabrication. The **Studio** will submit any progress reports requested by the **City** or identified in the **Schedule**.

- 4.3.4. Upon completing fabrication of the **Work** and prior to beginning any transportation or installation, the **Studio** will:
- 4.3.4.1. Notify the **City** that any and all pre-installation fabrication is complete and that the **Studio** is ready to begin installation of the **Work** at the **Site**.
 - 4.3.4.2. Conduct any further **Site** inspections necessary to confirm that installation of the **Work** can proceed according to the **Final Design**. The **Studio** will immediately notify the **City** of any changes to the **Site** observed since the inspection conducted pursuant to Section 4.2.2, and the **Parties** will resolve any such changes via the change procedures set out in Section 4.4 prior to any installation.
 - 4.3.4.3. In the discretion and at the direction of the **City**, attend, either in person or via telephone or video conference, one or more pre-installation meetings with one or more of the following: (1) the AIPP project manager; (2) the **Sponsoring Department** project manager; (3) the **Project** general contractor; and (4) the **Project** design professional, all as necessary to allow the **Studio** to adequately plan for delivery and installation of the **Work**. The **City** may, in its sole discretion, require or allow the **Studio** to attend the official pre-construction meeting for the **Project** in order to fulfill this requirement.
 - 4.3.4.4. Obtain all required permits for delivery and installation of the **Work**.
- 4.3.5. If the **City** fails to provide notice to proceed with installation of the **Work** within the time specified in the **Schedule** despite the fact that the **Studio** is ready and able to begin installation, the **Studio** agrees to arrange for storage of the **Sculpture** at the **Studio's** fabrication facility at no cost to the **City**. If the **Studio** is unable to do so, after documenting the inability, the **City** may either: (1) make arrangements for storage of the **Work** at a **City**-controlled or commercial storage facility; or (2) direct the **Studio** to obtain 3 quotes for storage at a commercial storage facility, approve 1 of the quotes obtained by the **Studio**, and agree to reimburse the **Studio** for any direct, out-of-pocket, reasonable transportation and storage costs incurred by the **Studio**. Any reimbursements to which the **City** agrees will be in accordance with Section 4.4.4
- 4.3.6. Subject to any changes under Section 4.3.4.2, the **Studio** will remain responsible for all expenses, labor, and equipment necessary to prepare the **Site** for installation of the **Work** in accordance with the **Final Design**.
- 4.3.7. The **Studio** will take all necessary precautions to protect and preserve the integrity and finish of adjacent surfaces and landscaping features while the **Work** is installed. If requested by the **City**, the **Studio** will return adjacent surfaces or landscape features impacted by the **Studio's** work to the condition that existed prior to installation of the **Work**. Not within **Studio** and/or its subcontractor's scope of work are: tree planting, tree irrigation, rock wall replacement, prairie grass maintenance after planting, furnishing of light fixtures, and furnishing of mini power zone. Such services are responsibility of **City** or others.
- 4.3.8. At all times during the installation of the **Work**, the **Studio** will comply with all posted safety information signs at the **Project**, and will comply with all requirements for use of personal protective equipment. At the **City's** direction, the **Studio** and/or its subcontractors may be required to successfully complete any **Site-specific**, **Project-**

specific, or general safety training prior to entering the Site. The Studio will further comply with any directive necessary for the preservation of life, health, or property that is given by the City, the City's project managers, the Project's design professionals, or any law enforcement or administrative officer with jurisdiction over the Project location.

4.4. CHANGES TO THE WORK

- 4.4.1. At any time before closeout as set out in Section 4.5, the Studio may make changes to the **Final Design**, whether for aesthetic, safety, construction, or other reasons, and the City may likewise direct the Studio to make changes to the **Final Design** for any non-aesthetic reason. Such changes to the **Final Design** or to the **Work** itself will be made in accordance with the procedures set out in this section.
- 4.4.2. Minor changes to the **Final Design** or to the **Work** initiated by the Studio do not require prior approval by the City, but do require notice to the City. Minor changes are changes that do not impact the overall scope, layout, color, shape, size, material, texture, or structural elements of the **Work**. The City retains the right to reject any minor changes for non-aesthetic reasons. The City will retain sole discretion to determine what constitutes a minor or major change.
- 4.4.3. Major changes to the **Final Design** or to the **Work** initiated by the Studio require prior approval by the City. Major changes include, but are not limited to, changes to the overall scope, layout, imagery, color, shape, size, material, texture, or structural elements of the **Work**. The **Contract Administrator** may reject any proposed major changes for any non-aesthetic reason. If the City rejects a major change, the Studio will either continue with the **Final Design** as approved by the City, or will revise and resubmit the proposed major change within 10 days of the City's original rejection. If the City rejects any re-submitted change, this the City may terminate this Agreement for convenience pursuant to Section 10.7.1.
- 4.4.4. All changes initiated and approved under Section 4.4 will be documented via formal written change order signed by both Parties, which will be incorporated into and become a part of the **Final Design**. The City may, in its sole discretion, determine that any change, whether initiated by the City or by the Studio, warrants an adjustment of the **Contract Price** or the **Schedule**, or both. Any adjustment to the **Contract Price** or the **Schedule** must be documented on the same change order on which the work causing the adjustment in the **Contract Price** is documented. If the City does not change the **Contract Price**, the Studio will bear the sole risk and cost of any changes to the **Final Design** or to the **Work**.

4.5. COMPLETION

- 4.5.1. The Studio will give notice to the City that the Studio believes the installation of the **Work** is complete, and the Studio will require the Artist to attend an inspection of the **Work** by the City, which may be attended by the City's project manager, the Project's general contractor, the Project's design professionals, and the Sponsoring Department's project manager as necessary in the City's determination.
- 4.5.2. If the City, in consultation with the Project's general contractor and Sponsoring Department's project manager, determines that the implementation of the **Work** has

been executed improperly so as to cause the **Work** to be unsafe, incomplete, or materially inconsistent with the **Final Design**, the **City** may take any of the following actions:

- 4.5.2.1. Accept the **Work** as constructed, reserving its right to modify the **Contract Price** to address the unsafe incomplete, or materially inconsistent conditions.
 - 4.5.2.2. Direct the **Studio** to correct any unsafe, incomplete, or materially inconsistent condition of implementation of the **Work**, at the **Studio's** cost, reserving the **City's** right to modify the **Contract Price** in order to account for any delays caused by the deficiencies. The **Studio** will bear the sole risk that the time required to comply with the **City's** directions will exceed the time allotted under the **Schedule**.
 - 4.5.2.3. Reject the **Work** and terminate this **Agreement** for cause in the manner set out in Sections 10.6.1.1 through 10.6.1.4, reserving any and all other remedies available to the **City** under this **Agreement** or applicable law. If the **City** terminates this **Agreement** for cause under this Section, the opportunity to cure provided in Section 10.6.1.2 will not apply.
 - 4.5.3. The **Studio** will be responsible for any and all clean-up of the installation activities at the **Site**, including the proper recycling or disposal of any unused, excess, or leftover materials not incorporated into the **Work**. If the **Studio** fails to do so and the **City** incurs any additional costs necessary to complete such clean-up, the **City** will be entitled to deduct all such costs of such cleanup from the final milestone payment.
 - 4.5.4. If the **City** accepts the **Work**, either with or without modifications to the **Contract Price**, the **City** will issue a Certificate of Completion in a form provided by the **City**. The issuance of a Certificate of Completion does not waive any other rights or remedies afforded the **City** in this **Agreement**.
- 4.6. CLOSEOUT
- 4.6.1. Within 30 days after installation of the **Work** is complete and the **City** has accepted the **Work**, the **Studio** will submit to the **City** the following:
 - 4.6.1.1. A full set of as-builts reflecting the actual installation of the **Work**, and noting any deviations from the **Final Design**.
 - 4.6.1.2. A Maintenance Plan in a form provided by the **City**.
 - 4.6.1.3. A Final Budget Report in a form provided by the **City**.
 - 4.6.1.4. A Plaque Information Form in a form provided by the **City**.
 - 4.6.1.5. An Affidavit of Bills Paid in a form provided by the **City**.
 - 4.6.2. Within 30 days after the **Studio** completes the services set out in Section 4, the **Contract Administrator** will evaluate the **Studio's** compliance with the terms of this **Agreement**.
- 4.7. LECTURE
- 4.7.1. The **Studio** will require the **Artist**, if requested by the **City**, to attend and present one lecture or other public education event to an audience designated by the **City**, in the

format requested by the **City** and on a mutually agreeable date and time during the Scheduling Phase set out in Section 4.2 or the Fabrication and Installation Phase set out in Section 4.3.

- 4.7.2. The **Studio** acknowledges that the public education event set out in Section 4.7.1 is for the purpose of introducing the **Work** to the citizens of **Austin** and its surrounding communities, and that such public education is an integral part of the **City's** procurement of the **Work** and the installation of the **Work** at the **Site**. As such, the public education event, if required by the **City**, will be without additional speaking compensation to the **Artist** or the **Studio**, but may include travel reimbursement.

Section 5. PAYMENT

- 5.1. The **Contract Price** for this **Agreement** is \$1,776,887.00.

5.1.1. In exchange and consideration for the **Studio's** agreement to undertake the obligations in this **Agreement**, the **City** agrees to pay the **Studio** the **Contract Price**.

5.1.2. The **Contract Price** may be modified by the **City** in its sole discretion, as set out elsewhere in this **Agreement**.

5.1.3. The **Contract Price** is the full compensation owed to the **Studio** under this **Agreement**.

5.1.3.1. Except as expressly provided for elsewhere in this **Agreement**, the **Studio** agrees to be solely responsible for all costs related to the execution of the **Work**, including but not limited to design, fabrication, transportation, travel, delivery, mailing, shipping, installation, labor, insurance, permitting and licensing, and any other costs incurred by the **Studio** in fulfilling its obligations under this **Agreement**.

5.1.3.2. The **Studio** acknowledges that the **City** is a tax exempt organization, and that no state or local sales taxes, and no federal excise tax, will be due on the **Work** or the materials and supplies used in the design and fabrication of the **Work**. The **Studio** acknowledges receipt of a Texas Sales and Use Tax Exemption Certificate Form for use by the **Studio** in the design and completion of the **Work**.

5.1.3.3. For any permits required by **City** ordinance or administrative rule, the **Studio** will seek fee waivers as set out in Exhibit D.

5.1.3.4. The **Studio** has provided for payment to subcontractors for steel costs which are included in mast base and ground anchor footings, columns and cover plates of \$88,011 as outlined in Exhibit I. Should the **Studio** provide quotes showing the cost of these products above what was projected, due to steel tariff increases, the **City** will amend this **Contract** to pay the actual amount.

5.2. Payment of the **Contract Price** will be in the following percentages and at the following payment milestones:

5.2.1. Milestone 1 – 20% upon execution of this **Agreement**.

5.2.2. Milestone 2 – 20% within 14 days after the **City** receives documentation demonstrating that fabrication of the **Work** is 25% complete based on photo documentation demonstrating the **Sculpture** material manufacturing progress.

- 5.2.3. Milestone 3 – 20% within 14 days after the **City** receives documentation demonstrating that construction of the **Work** is 50% complete based on photo documentation demonstrating the progress of the site installation and manufacturing of the steel structural elements. If Milestone 3 is completed prior to Milestone 2, payment will proceed in the order of the milestone completion.
- 5.2.4. Milestone 4 – 25% within 14 days after the **City** receives documentation demonstrating construction of fully complete structural components of the **Work** on the **Site** such that it is ready to proceed with installation once completed **Sculpture** is delivered to site.
- 5.2.5. Milestone 5 - 10% within 14 days after the **City** receives documentation demonstrating that fabrication of the **Work** is fully complete based on the following: Studio will cause its contracted engineer to make on-site inspection of the fully complete **Sculpture**, and Studio will provide **City** with that engineer's written certification that the fabricated **Sculpture** corresponds correctly to the **Final Design**. If Milestone 5 is completed prior to Milestone 4, payment will proceed in the order of the milestone completion. The completion of both Milestones 4 and 5 constitutes notice to proceed with installation of the **Work**.
- 5.2.6. Milestone 6 – 5% within 14 days after the latest of the following:
 - 5.2.6.1. The **City** has confirmed installation of the **Work** is complete.
 - 5.2.6.2. The **Studio** has fulfilled all the requirements of Section 4.6.1.
 - 5.2.6.3. The **Studio** has transferred title to the **Work** to the **City**.
- 5.3. Pursuant to Section 2-8-3 of the Austin City Code, notice of which is acknowledged by the **Studio**, the **City** may withhold payment otherwise due under this **Agreement** in order to offset any debt owed by the **Studio** to the **City**, including but not limited to any tax debt owed by the **Studio** to the **City** pursuant to Article VIII, Section 1 of the Austin City Charter, notice of which is also acknowledged by the **Studio**.

Section 6. SUBCONTRACTING

- 6.1. The **Studio** may subcontract the services to be provided under this **Agreement**, at the **Studio's** sole expense, subject to the following limitations:
 - 6.1.1. The **Studio's** use of subcontractors may not affect the design, appearance, fabrication methodology, or visual quality of the **Work**.
 - 6.1.2. The **Studio** will remain responsible to the **City** for, the work performed by the **Studio's** subcontractors and will require of its subcontractors that their work comply with the requirements of this **Agreement**.
 - 6.1.3. The **Studio** will remain fully responsible to the **City** and third parties for the actions of any subcontractors engaged by the **Studio**. The **City** will be a third-party beneficiary of the contracts between the **Studio** and any licensed professional consultant and between the **Studio** and any subcontractor engaged to provide services required by this **Agreement**, and any such contracts will name the **City** as a third-party beneficiary of that contract. The **City** may directly enforce such contracts against any licensed professional consultant or subcontractor engaged by the **Studio**, including but not limited to any indemnification and insurance obligations under such contract. The

Studio will have no liability for errors or omissions by its licensed professional consultant or for acts or omissions by any subcontractors, and any licensed professional consultant or subcontractor will be directly liable to the **City** for any errors or omissions. The **City** will have no rights or obligations to direct any engineer or subcontractor engaged by the **Studio**, or to coordinate services or communications between the **Studio** and its subcontractors or consultants, except that the **City** will have the right at all times to remove any person from the **Site** or the **Project** in the event of any conduct that the **City** deems unsafe to life or property, non-secure, incompetent, disorderly or disobedient, or otherwise in conflict with any **City** policy applicable to the **Facility**, including but not limited to any activity involve the possession or use of a firearm, alcoholic or other intoxicating beverages, or illegal or controlled substances. The **City** will have the right but not the obligation to contact and communicate with the **Studio's** contracted subconsultant after the **Work** has been installed.

- 6.1.4. The **Studio** will require any licensed consultant or subconsultant to provide: (i) professional liability insurance with policy limits of not less than \$2,000,000 per claim and in the aggregate and (ii) all applicable insurance required under this Agreement. The **Studio** will further require any subcontractor to the **Studio** to provide all applicable insurance required of the **Studio** under this Agreement. Any insurance required to be provided by any subcontractor or subconsultant of the **Studio** will name the **City** as an additional insured and will contain a waiver of subrogation in favor of the **City**.
- 6.1.5. Any subcontract must be in writing, must attach this Agreement as an exhibit, and must acknowledge the supremacy of this Agreement in the case of any conflict between the two. All subcontractors will remain subject to the terms of this Agreement at all times.
- 6.1.6. Prior to the **Studio** entering into any subcontracts, the **Studio** will notify the **City** of the **Studio's** intent to do so, identifying the proposed subcontractor or subcontractors, the proposed scope or scopes of each subcontractor's work, and the dollar amount of each subcontract. The **City** may reject any one or more subcontractor proposed by the **Studio**.
- 6.1.7. The **Studio** will require of each subcontractor as a condition to entering into each subcontract, that the subcontractor comply with the **City's** insurance requirements as set out in Exhibit E. The **Studio** will further obtain, on demand from the **City**, a certificate or certificates of insurance sufficient to satisfy the **City** that each subcontractor is in compliance with the insurance requirements of this Agreement.
- 6.2. In an effort to further stimulate and positively impact the local economy, the **Studio** will make reasonable efforts, which the **Studio** will document upon request by the **City**, to:
 - 6.2.1. Provide minority-owned, women-owned, and local small businesses an equal opportunity to participate as suppliers for materials and labor services acquired or used by the **Studio** for the commission of the **Work**.
 - 6.2.2. Recruit residents of the Austin metropolitan area for available subcontracting opportunities.

Section 7. REPRESENTATIONS AND WARRANTIES

7.1. WARRANTIES OF TITLE

- 7.1.1. The Studio warrants that the Work is and will be original creation of the Artist.**
- 7.1.2. The Studio warrants and represents that the Studio has obtained, or will obtain prior to any incorporation or use, the written approval and consent of any required third party for the use of any portion of the Final Design or the Work that is not the original work of the Artist. The Studio agrees to indemnify, including at the option of the City assuming or reimbursing the reasonable costs of defense of the City, and hold harmless the City, including the City's officers, employees, agents, and contractors, from and against all claims, losses, damages, actions, or expenses of every type and description, including reasonable attorneys' fees, to which they may be subjected to the extent they result from the City's use or possession of the Final Design during the approval process or by reason of an alleged or actual copyright violation or other lack of ownership, authorship, or originality.**

7.2. WARRANTIES OF QUALITIES AND CONDITIONS

- 7.2.1. Except as otherwise disclosed to the City in writing, the Studio represents and warrants, from the Effective Date, through a date two years following the City's acceptance of the Work, that:**
 - 7.2.1.1. The execution and fabrication of the Work will be performed in a good and workmanlike manner.**
 - 7.2.1.2. The Work, as fabricated and delivered, will be free of defects in material and workmanship, including any defects consisting of "inherent vice" or qualities that may cause or accelerate deterioration of the Work.**
 - 7.2.1.3. Reasonable maintenance of the Work will not require procedures substantially in excess of those described in the Final Maintenance Plan required by Section 4.6.1.2.**
- 7.2.2. The City will give notice to the Studio of any observed breach of these representations and warranties. Once notified by the City, the Studio will, at no cost to the City, promptly cure the breach or breaches consistent with professional conservation standards, including but not limited to cure by means of repair or refabrication of the Work or any necessary portion of the Work.**

Section 8. OWNERSHIP, PUBLICITY, AND INTELLECTUAL PROPERTY RIGHTS

- 8.1. The Studio will remain the owners of the Work until title transfers to the City as follows:**
 - 8.1.1. Within 10 days of the City's acceptance of the Work, the City will issue to the Studio a Transfer of Title for Public Artwork in a form provided by the City.**
- 8.2. In City's sole discretion, City will take title to the physical possession of the electronic file copies sent to City by Studio of documents, sketches, models, maquettes and drawings, which constitute the Mid or Final Design upon City final approval of Work. Artist shall not use sketches, drawings, or models for any other commercial purposes unrelated to this Agreement for a period of two years from the date the Studio executes this Agreement. The Studio owns both the physical expressions of and all intellectual property rights in all documents, sketches, models, maquettes and drawings prepared**

under this Agreement, whether in electronic form (except for electronic file copies sent to City by Studio) or otherwise. However, City will be entitled to print and retain a depiction of each physical expressions and each other item of working materials (e.g., in the form of photographs of models, scans of original drawings or documents, and copies of digital files). Provided the City and Studio agree on terms for such loan and display at no cost to the City, other than reasonable shipping costs, the Studio will make available to the City the physical expressions and work materials prepared under this Agreement for display by the City in an exhibition or other event related to the Work.

8.3. The Parties will proactively collaborate to identify and pursue any appropriate and beneficial publicity for the Work.

8.3.1. For purposes of this Agreement, publicity means the manner, method, timing, and content of all efforts to generate public knowledge of, understanding of, and interest in the Work, including but not limited to any interviews, flyers, brochures, posters, mailings, advertisements, emails, social media postings, blog postings, electronic communications or presentations of any type, live or prerecorded television or other video presentations or commercials, live presentations, radio interviews or advertisements, and any other publications of any other kind and in any medium.

8.3.2. The Parties will each use their best efforts to arrange for publicity for the Work.

8.3.3. The Parties will identify various media for prospective publication of the Work throughout the course of the design, so that publicity for the Work may begin prior to or immediately upon completion.

8.3.4. The initial press release about this commission will be initiated by the City in consultation with the Artist or the Studio. Subsequent press releases initiated by the Artist about this commission will be reviewed and approved by the City prior to release. The Artist must notify the City prior to granting an interview about this commission with a media outlet. The Artist will make best efforts to forward press regarding the completed installation to the City for the life of the installation. The City will make best efforts to forward press regarding the completed installation to the Artist or Studio for the life of the installation.

8.3.5. The Studio will require the Artist to be available during the Installation Phase, and will make best effort to additionally be available at such times and places as reasonably required by the City in order to attend any ceremonies relating to the transfer of the Work to the City.

8.3.6. The City, at its expense and in consultation with the Studio, will arrange for the preparation and installation at the Site of a plaque identifying the Artist, the title of the Work, and the year of completion.

8.4. The Artist will retain all reproduction rights afforded by the Copyright Act of 1976, as currently codified and amended, and any other reproduction rights in and to the Work except as limited in this Agreement.

8.4.1. The Studio will require the Artist not make any additional exact duplicate or three-dimensional scale reproductions of the Work, and may not grant permission to do so to any third parties except with the prior written permission of the City.

- 8.4.2. The **Studio** will require **Artist** to grant to the **City** and its assigns an irrevocable license to make two-dimensional photographic reproductions of the **Work** for any municipal or public purpose, including but not limited to any publicity the **City** deems appropriate or beneficial.
- 8.4.3. Any reproductions of the **Work** made by the **City** will credit the **Artist** and will contain a copyright notice substantially in the form "© **Artist's name**, 20__." Any reproductions of the **Work** made by the **Studio** will credit the **City** and will contain a notice in the form "An original work owned and commissioned by the City of Austin."
- 8.4.4. **Artist** grants only to the **City** a right to use the **Work** to create any photographic reproductions of the **Work** in any format or medium for sale by the **City**. No other individuals, agencies, entities, or others may so use the **Sculpture** or the **Work** without a separate agreement with the **Studio**, except that **City** may transfer the rights granted in this Section in the event the **City**, transfers, sells, or assigns the **Work**.

Section 9. INSURANCE AND RISK OF LOSS

- 9.1. The **Studio** will bear all risk of loss and damage to the **Work** until title transfers to the **City** as set out in Section 8.1.1
- 9.2. The **Studio** agrees to carry insurance in the types and amounts indicated in Exhibit E.
 - 9.2.1. Workers' Compensation and Employers' Liability insurance coverage must be in place before the **Studio** begins any work on the **Site**, including but not limited to installation of the **Work** and any predicate **Site** preparation.
 - 9.2.2. Commercial General Liability insurance coverage and Automobile Liability insurance coverage must be in place no later than 30 days after the **Effective Date**.
 - 9.2.3. Fine Arts Floater or other Property Insurance must be in place before fabrication of the **Work** begins.
 - 9.2.4. Approval by the **City** of any insurance obtained by the **Studio** will not diminish or decrease the liability of the **Studio** under this **Agreement**.
- 9.3. The **Studio** is not required to obtain any performance bond or other performance security.

Section 10. MAINTENANCE, REPAIRS, AND ALTERATIONS

- 10.1. The **City** recognizes that maintenance of the **Work** on a regular basis is essential to the integrity of the **Work**.
 - 10.1.1. The **City** will reasonably assure that the **Work** is properly maintained and protected, taking into account the maintenance plan prepared by the **Studio** under Section 4.6.1.2.
 - 10.1.2. The **City** agrees, within reason and always subject to the availability of revenue in any given fiscal year, to protect and maintain the **Work** against the ravages of time, vandalism, and the elements.
- 10.2. The **City** will have the sole right to determine whether, when, and to what extent any repairs or restorations of the **Work** will occur.
 - 10.2.1. To the extent practicable, the **City** will give the **Studio** the right to both approve of and make or supervise all major repairs and restorations. If the **Studio** withholds, conditions, or delays approval for any repair or restoration of the **Work**, or does not

agree to make or supervise the repairs or restorations, the **City** may make such repairs or restorations as it deems necessary for the preservation of the **Work**, and may solicit bids and award contracts for the services to other qualified professionals in order to do so.

- 10.2.2. All repairs and restorations, whether by the **City** or by the **Studio**, will be made in accordance with then-current, generally accepted principles of conservation.
- 10.2.3. The **City** may undertake emergency repairs to the **Work** without prior notice to the **Studio** whenever necessary to protect the integrity of, or to prevent the loss of or further damage to, the **Work**. Such emergency repairs will not be deemed to constitute artistic alteration of the **Work** or a breach of this Agreement. The **City** will provide notice to the **Studio** of such emergency repairs as soon as practical.
- 10.3. The **Studio** acknowledges that the **Work**, when installed, will be incorporated within and made a part of the **Facility** in such a way that removal of the **Work** from the **Facility**, or destruction, alteration, or modification of the **Facility**, may cause destruction, distortion, mutilation, obscuration, or other alterations to the **Work**.
 - 10.3.1. The **City** will attempt in good faith to notify **Studio** prior to undertaking any alterations to the **Work**. Such notice will be provided both by written document sent by Federal Express or other method which requires written confirmation of delivery, and by email and telephone (to the last known phone numbers and email addresses for the **Studio** and for the **Artist**), and will be provided as soon as is reasonably possible. If the **City** gets no response from the **Studio** or the **Artist** within 45 days, the **City** may proceed with any alteration(s) or actions for which the **City** provided such notice. Should the **Artist** and/or the **Studio** contact the **City** after the 45 days are concluded, the **City** will respond in good faith regarding the alterations or actions, and shall engage with the **Artist** and/or the **Studio** in a discussion about possible modifications to the **City's** intended alterations or other actions noted above.
 - 10.3.2. To the extent Section 10.3 is inconsistent with any rights, including moral rights, that would otherwise be provided to the **Artist** by applicable law, including the 1990 Visual Artists' Rights Act as codified and amended, the **Artist** acknowledges receiving notice of this provision, but the **Artist** and **Studio** do not hereby waive any rights related to the **Work** provided by those laws. The **Artist** will retain the right to disclaim authorship of the **Work** to the extent allowed by the 1990 Visual Artists' Rights Act as codified and amended in the event that the **Sculpture** or the **Work** is distorted, mutilated or otherwise modified by the **City** or a third party and remains on public display.
 - 10.3.3. If the **Work** is freestanding, or is incorporated into the **Facility** in a way that it could be removed without damaging or destroying either the **Work** or the **Facility**, the **City** will give notice to the **Studio** and the **Artist** of its intent to remove the **Work** as soon as the Art in Public Places program receives notice that the city is considering removal of the **Work**. The **Studio** has 30 calendar days to notify the **City** of the **Studio's** desire to remove the **Work**, in whole or in part. The **Studio** will be entitled to remove the **Work** from the **Facility** at the **Studio's** sole expense, and the **City** will strive to give the **Studio** 180 days from the date the **City** gives notice to remove the **Work**. If the **Studio** fails to remove the **Work** within 180 days of the **City's** notice to the **Studio**,

the **City** will be entitled to remove the **Work** and may dispose of the **Work** by any means, including destruction of the **Work**.

- 10.3.4. The **City** agrees not to willfully destroy, damage, or modify the **Work**, except as set out in this **Agreement**.
- 10.3.5. If the **Work** becomes substantially damaged or altered, the **City** will no longer represent the **Work** as that of the **Artist**, but only if the **Artist** gives notice to the **City** that it is the **Artist's** position to deny authorship on the grounds that the **Work** has become substantially damaged or altered.
- 10.3.6. The **City** will have the right at any time to either move the **Work** or remove it from public display. The **City** may return the **Work** to **Artist** at any time, and in its discretion and at any time, will have the right to sell, trade, or otherwise transfer ownership of the **Work**.
- 10.4. The obligations of the **City**, and the rights of the **Studio**, set out in Section 10 will not survive the death or legal incapacity of the **Artist**.
- 10.5. Nothing in Section 10 limits other rights or remedies that may be available to the **Studio** now or in the future.

TERMINATION

10.6. TERMINATION FOR CAUSE

10.6.1. A **Party** may terminate this **Agreement** for cause due to the **Default** of the other **Party**.

10.6.1.1. Prior to terminating this **Agreement** for cause, the terminating **Party** must give notice to the other **Party** of its intent to terminate for cause, specifically citing each item of **Default** that forms the basis for termination.

10.6.1.2. A **Party** receiving notice of **Default** from the other **Party** will have 15 days from the date notice is received to cure all items of **Default** set out in the notice. If any item of **Default** identified in the notice of **Default** cannot reasonably be accomplished within 15 days of the notice, the notified **Party** may satisfy its initial obligations by providing a fully resource loaded recovery plan and schedule for timely addressing that particular item of **Default**, and failure of that **Party** to fully satisfy that recovery plan will constitute a failure of the party to cure that item of **Default**.

10.6.1.3. Any termination for cause will automatically become effective on the 16th day after receipt of notice of **Default** if the notified **Party** fails to cure all items of **Default** identified, without the need for any further action by the terminating **Party**.

10.6.1.4. Termination for cause will not relieve the terminated **Party** of any liability for damages resulting from a breach or a violation of the terms of this **Agreement**.

10.6.2. In addition to Section 10.6.1, the **City** may terminate this **Agreement** for cause if:

10.6.2.1. The **Studio**, including any agent or representative of the **Studio**, provides or offers to provide any gratuities in the form of entertainment, gifts, or otherwise to any

City official or employee with a view toward securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to the performance of this Agreement. Termination for cause under Section 10.6.2.1 will be in the manner set out in Sections 10.6.1.1 through 10.6.1.4, except that the Studio will not be entitled to any right to cure provided by Section 10.6.1.2. If the City terminates this Agreement under Section 10.6.2.1, the City will, in addition to all other rights and remedies, be entitled to recover from the Studio an amount equal to the cost incurred by the Studio or the agent or representative of the Studio in providing such gratuities.

10.6.2.2. The Artist dies or becomes physically or legally incapacitated during the term of this Agreement. Termination for cause under Section 10.6.2.2 will only require notice to the Studio, as applicable. The City will not seek reimbursement from the Studio for any payment made to the Studio but not expended prior to the Artist's incapacity or death. All finished and unfinished drawings, sketches, photographs, models, and work will become property of the City. If, prior to the Artist's death or incapacity, the Final Design is approved by the City or the Work has progressed to the point of fabrication, the City may complete the Work, giving due regard to the Artist's intended results and giving proper credit and acknowledgement to the Artist.

10.7. TERMINATION FOR CONVENIENCE

10.7.1. Either Party may terminate this Agreement for convenience.

Section 11. NOTICES

11.1. Unless explicitly stated elsewhere in this Agreement, all notices must be given in writing in the manner set out in Section 11 in order to be effective.

11.2. Any notice required or allowed to be given or to be served in connection with this Agreement must be in writing, and will be deemed delivered and received on the earlier of the date actually received or a date that is:

11.2.1. Three days after being deposited in the United States mail, if sent via certified mail, properly addressed and with postage prepaid; or

11.2.2. The date delivery is originally scheduled to occur, if sent via a reputable overnight courier service.

11.3. Notice to each Party must be given as follows:

[##REMAINDER OF PAGE INTENTIONALLY LEFT BLANK##]

The City:

Sylvia Holt-Rabb, Assistant Director
Economic Development Department
City of Austin
P. O. Box 1088

Austin, TX 78767

Phone: 512-974-7739

With copies to:

Susan Lambe
Art in Public Places Administrator
Economic Development Department
City of Austin
P. O. Box 1088
Austin, TX 78767
Phone: 512-974-7852

The Studio:
Janet Echelman, Inc.
64-R Coolidge Street
Brookline, Massachusetts 02446
Phone 617-566-0770

City of Austin Law Department
ATTN: City Attorney
P. O. Box 1088
Austin, TX 78767

- 11.4. The Parties will each have the right to change their respective addresses for notice purposes, and will have the right to specify as its address any other address within the United States of America by giving the other Party at least five days' notice.
- 11.5. The Studio will give notice to the City of any changes to the Studio's address. If the City gives notice to the Studio in the manner set out in Section 11 and such notice is returned to the City as undeliverable, the City will make every reasonable effort to locate the Studio in order to give notice to the Studio of issues affecting or relating to the Studio's rights. If the Studio fails to update the Studio's address on file with the City and the City is unable to locate the Artist for purposes of giving the notices required in this Agreement, the Studio will be deemed to have waived any rights afforded to the Studio under Section 10. If the Studio subsequently reestablishes contact with the City after a waiver of the rights set out in Section 10, the Studio will regain those rights to the extent they are still susceptible of being exercised, in light of the remediation, repair, or removal already undertaken by the City. Any actions taken by the City prior to the Studio's reestablishment of contact with the City are prospectively ratified by this Agreement and may not form the basis for any claims for damages or injunctive relief by the Studio against the City.

Section 12. EQUAL OPPORTUNITY

- 12.1. For the duration of this Agreement, including any maintenance or repair provided by the Studio under Section 10, the Studio will:
- 12.1.1. Take no action to discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability, including but not limited to actions taken to employ, promote, demote, transfer, recruit, or pay or otherwise compensate, or select for training.
 - 12.1.2. Take affirmative action to ensure that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.
 - 12.1.3. Post in conspicuous places, available to all employees and applicants for employment, notices to be provided by the City setting out the provisions of Section 12.

- 12.1.4. State, in all solicitations or advertisements for employment placed by or on behalf of the **Studio**, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.
- 12.1.5. Furnish any information and reports reasonably requested by the **City**, and allow the **City** access to its books, records, and accounts for purposes of investigation to ascertain compliance with Section 12 and any applicable rules and regulations.
- 12.2. If the **Studio** fails to comply with Sections 12.1, the **City** may terminate this **Agreement** for cause, or may suspend this **Agreement** in whole or in part, and the **Studio** may be debarred from further agreements with the **City**.

Section 13. MISCELLANEOUS PROVISIONS

13.1. The **Studio acknowledges that:**

- 13.1.1. The recitals set out in Section 3 form the basis upon which the **City** has agreed to enter into this **Agreement**.
- 13.1.2. The recitals set out in Section 3 are each a material inducement to the **City** to enter into this **Agreement**.

The **City** would not have entered into this **Agreement** but for the truth of each recital set out in Section 3.

- 13.2. The **Studio** will comply with all Federal, State, and **City** statutes, ordinances, and regulations applicable to the **Studio's** services under this **Agreement**.
- 13.3. The **City** will maintain on permanent file a record of this **Agreement** and of the location and disposition of the **Work** while it is in the **City's** possession or control, in accordance with applicable record retention laws.
- 13.4. The **Studio** agrees and acknowledges that the **Studio** is an independent contractor of the **City** for all purposes during the existence of this **Agreement**, and is neither an agent, nor a partner, nor an employee of the **City**.
 - 13.4.1. The **City** will not be responsible for withholding, reporting, or paying employment taxes or other similar levies for the **Studio** that may be required by the United States Internal Revenue Service or other State or Federal agencies.
 - 13.4.2. No **City** employee or official will supervise the **Studio**, nor will the **Studio** supervise any **City** employee or official.
 - 13.4.3. The **Studio** acknowledges that this **Agreement** creates no obligation of the **City** to enter into any joint venture, joint enterprise, partnership, or other legal business relationship regarding the **Work**.
- 13.5. This **Agreement** constitutes the entire agreement between the **Parties**, and supersedes any prior oral or written agreements and understandings regarding the **Work**. This **Agreement** may only be modified or amended by written amendment signed by both **Parties** and approved by appropriate action of the **City**.
- 13.6. The election of one remedy under this **Agreement** or applicable law does not prevent either **Party** from pursuing any other right or remedy set out in this **Agreement** or under

applicable law. No waiver of performance by either **Party** will act as a continuing waiver of any subsequent **Default**. The payment of any part of the **Contract Price** after a **Default** will not act as a waiver of any right, or as acceptance of defective performance.

- 13.7. If a dispute arises between the **Parties** regarding performance under this **Agreement** representatives of the **Parties** shall meet in person within 30 days of a written request for a meeting to try to negotiate a resolution of the dispute. If the **Parties** are unable to resolve through negotiation, the **Parties** agree that the dispute will be submitted for mediation with the Travis County Dispute Resolution Center before any suit is filed. If the mediation does not successfully resolve the dispute, each **Party** is free to pursue other remedies available to them.
- 13.8. The **Studio** may not assign this **Agreement**, or any rights under this **Agreement**, without express written permission from the **City**, which permission will be in the sole discretion of the **City**.
- 13.9. The **Studio** acknowledges that neither the execution of this **Agreement** by the **City** nor any conduct of any representative of the **City** will be deemed to waive any applicable immunity or defense that would otherwise be available to the **City** against claims arising in the exercise of its governmental function.
- 13.10. This **Agreement** may be executed in one or more copies and in one or more counterparts, each of which will be considered an original but all of which are a singular **Agreement**.
- 13.11. This **Agreement** will be interpreted in accordance with the laws of the State of Texas, without regard for any conflict of laws provisions.
- 13.12. The **Parties** agree that exclusive jurisdiction and venue for any suit arising out of this **Agreement** will be in the District Court for Travis County, Texas.
- 13.13. The provisions of this **Agreement** are drafted with the intention of giving full effect to each provision and to the intent of the **Parties**.
- 13.14. Any section, subsection, provision, or portion of this **Agreement** that is subsequently deemed contrary to applicable law is struck from this **Agreement**, and the remainder of this **Agreement** will continue in full force and effect.
- 13.15. Any principal of contract construction that requires interpretation of any ambiguities in this **Agreement** against one **Party** or the other is inapplicable to this **Agreement**.
- 13.16. Each **Party** warrants that it has the right and authority to make and enter into this **Agreement**, and to grant the rights set out in this **Agreement**.
- 13.17. Section titles set out in this **Agreement** are for convenience only, and impose no limitations on the provisions of this **Agreement**.
- 13.18. Unless otherwise set out in a specific section of this **Agreement**, all time frames set out in days in this **Agreement** are in calendar days.
- 13.19. The **Studio** acknowledges that the **City** is subject at all times to the Texas Public Information Act, currently codified at Chapter 552 of the Texas Government Code. If the **Studio** wishes to designate any particular information submitted to the **City** as confidential, the **Studio** must clearly mark each such document, and each page of such documents, as "CONFIDENTIAL". To the extent permitted by the Texas Public

Information Act, the City will not voluntarily disclose such information to any third party. If the City receives a request under the Texas Public Information Act for any information or documentation designated by the Studio as confidential, the City will take no position on the Studio's claim of confidentiality, and the Studio alone will bear sole responsibility for asserting the confidential nature of such information to the Office of the Texas Attorney General. The Studio acknowledges that the City is subject to any final determination made by the Office of the Texas Attorney General regarding the confidential nature of any particular document or piece of information.

13.20. Pursuant to Texas Government Code section 2270.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this Agreement.

13.20.1. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code section 2270.001.

13.20.2. If the Studio qualifies as a "company", then the Studio verifies that it:

- (a) does not "boycott Israel"; and
- (b) will not "boycott Israel" during the term of this Agreement.

13.20.3. The Studio warrants to the City that it is a "company", and therefore is subject to the verification requirements of Texas Government Code chapter 2270.

13.20.4. The Studio obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code chapter 2270 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Agreement.

CITY OF AUSTIN

Date: 11.31.19

By: Sylvia Holt-Rabb

Sylvia Holt-Rabb
Assistant Director
Economic Development Department

Approved as to form:

RRg

Office of the City Attorney

JANET ECHELMAN, INC.

Date: January 31, 2019

By: Janet Echelman

Janet Echelman
President

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:

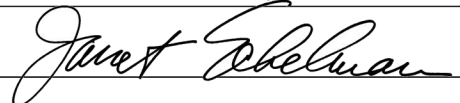
The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees 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 1 day of February, 2019

CONTRACTOR
Authorized
Signature

Title

Janet Echelman, Inc



President, Owner

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: Janet Echelman, Inc.

Signature of Officer or
Authorized
Representative:



Date: February 1, 2019

Printed Name: Janet Echelman

Title: President, Owner