

**CONTRACT FOR DESIGN OF PUBLIC ART WORK  
BETWEEN THE CITY OF AUSTIN AND FIDENCIO DURAN**

This **Contract** is entered into as of the **Effective Date** by and between the **Parties**.

**Section 1. DEFINITIONS**

The following terms, as used in this **Contract**, have the meaning identified below. Terms not defined in this **Contract** will have their ordinary and customary meanings, as generally used in the field of public art.

- 1.1. **"Artist Cohort"** means the four additional artwork opportunities to commissioned artists who have a lived experience with the Montopolis neighborhood.
- 1.2. **"City"** means the City of Austin, a Texas home-rule municipal corporation acting by and through its duly authorized City Manager or designee.
- 1.3. **"Community Engagement Plan"** means a written plan documenting the manner in which the **Principal Artist** will engage in a two-way process by which identified community representatives and stakeholders are given the opportunity to provide input that enhances the **Principal Artist's** processes for creating the **Work** so that the **Work** may positively impact the community's well-being and interests; acting as the **Principal Artist** to help solicit the four additional artwork opportunities to artists who have a lived experience with the Recreation Center; act as curator for overall aesthetic of the artworks; and mentor to the **Artist Cohort**.
- 1.4. **"Contract"** means this Contract for Design of Public Art Work between the **City** and the **Principal Artist**, including any and all attachments and exhibits.
- 1.5. **"Contract Administrator"** means the Art in Public Places Administrator, the Director of the City's Economic Development Department, or their respective designee.
- 1.6. **"Contract Price"** means the total compensation to be paid to the **Principal Artist** pursuant to this **Contract**, to be paid on such terms as are set out in Section 5.
- 1.7. **"Default"** means the willful or negligent failure of one **Party** to timely and properly fulfill its obligations under this **Contract**, and further means the violation by one **Party** of any material covenants, Contracts, or stipulations set out in this **Contract**.
- 1.8. **"Effective Date"** means the date on which this **Contract** becomes fully effective as between the **Parties**, and is the date on which the last **Party** executes this **Contract**.
- 1.9. **"Facility"** means the Montopolis Recreation and Community Center owned, operated, or controlled by the **Sponsoring Department** and located at 1200 Montopolis Dr., Austin, TX 78741.
- 1.10. **"Final Design"** means the final design of the **Work** as approved by the **City** under Section 4.2.7.
- 1.11. **"Mid-Design"** means the partially developed design of the **Work** submitted by the **Principal Artist** to the **City** pursuant to Section 4.2.6.
- 1.12. **"Party"** means either the **City** or the **Principal Artist**, and **"Parties"** means the **City** and the **Principal Artist** collectively.

- 1.13. **"Principal Artist"** means Fidencio Duran a resident of the State of Texas located at 1211 E Applegate Drive, Austin, Texas 78753-4007.
- 1.14. **"Project"** means the City construction project at which the **Work** will be installed, known as the Montopolis Community Building and Recreation Center project.
- 1.15. **"Schedule"** means the full and complete schedule developed and prepared by the **Principal Artist**, 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 **Principal Artist**, and which schedule may be modified from time to time by the **Parties** as set out in this **Contract**.
- 1.16. **"Site"** means the portion of the **Facility** at which the **Work** will be installed, more particularly set out in Exhibit A.
- 1.17. **"Sponsoring Department"** means the Parks and Recreation Department of the City.
- 1.18. **"Work"** means an original piece of public art conceived and designed by the **Principal Artist** as set out in this **Contract**, and more particularly described as an interior public artwork.

## **Section 2. EXHIBITS**

- 2.1. The following documents are attached to this **Contract**, and are incorporated into this **Contract** 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

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

- 3.1. The City is implementing the Art in Public Places Program pursuant to City Code Chapter 7-2, 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 **Principal Artist** to conceive of and design the **Work**.
- 3.4. The **Parties** acknowledge that the **Principal 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 **Contract**.
- 3.5. The **Parties** acknowledge that this **Contract** contemplates that, upon acceptance by the City of the **Final Design**, the **Parties** may enter into a separate commission **Contract** under which the **Parties** will contract for all fabrication, delivery, and construction services

necessary to complete installation of the **Work** at the **Site**. The **Principal Artist** acknowledges, however, that nothing in this **Contract** obligates the **City** to enter into any such commission **Contract**, and that the **City** will retain sole discretion as to whether to enter into any further **Contracts** with the **Principal Artist** for the **Work** or for any other services.

#### **Section 4. SCOPE OF SERVICES**

##### **4.1. The Principal Artist agrees to provide the following services to the City under this Contract:**

- 4.1.1. The Principal Artist will perform research about the neighborhood and area history;**
- 4.1.2. The Principal Artist will engage with community representatives and stakeholders to develop the proposed artwork concept and approach. Community representatives may include residents, local youth, neighbors and people who use the Site. Stakeholders may include: advisory boards, neighborhood associations, and any other community constituency identified by the Principal Artist in the Community Engagement Plan.;**
- 4.1.3. The Principal Artist will determine the artistic expression, scope, design, color, size, material, and texture of the Work, subject to approval by the City.**
- 4.1.4. The exact location of the Site will be mutually agreed upon by the Parties.**
- 4.1.5. The Principal Artist may request at any time all information, materials, scaled drawings of the Site, if available, and any reasonable assistance required by the Principal Artist to allow the Principal Artist to perform the services required by this Contract. To the extent such materials are available to the City or to third parties under the City's control, the City will promptly provide such materials to the Principal Artist.**
- 4.1.6. The Principal Artist will support the City's commitment to sustainability throughout the entirety of this Contract. 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 Principal Artist will take all 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 Principal Artist to provide information on sustainability opportunities.**
- 4.1.7. In addition to creating the Work, the Principal Artist will work with the neighborhood advisory group to solicit community artists to apply for public art opportunities associated with the Site, particularly seeking artists who have a connection to the Montopolis neighborhood; provide aesthetic guidance in order to curate a cohesive art experience at the Site; and mentor and assist the Artist Cohort with the public art community engagement and design processes, and assist the Artist Cohort with their Mid-Design and Final Design approval processes, including, but not limited to, creating a meeting schedule and tracking group meeting attendance by Artist Cohort.**

##### **4.2. DESIGN AND SCHEDULING**

- 4.2.1. After the Effective Date and prior to beginning design of the Work, the Principal Artist will develop and provide the City a tentative Schedule.**

- 4.2.1.1. The **Principal Artist** 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 **Principal Artist**. If the **City** rejects the draft **Schedule** submitted by the **Principal Artist**, the **Principal Artist** 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 design, review, fabrication, implementation, transportation, installation, and completion of the **Work**.
- 4.2.1.4. The **Principal Artist** may only make modifications to the approved **Schedule** upon written request to, and written approval of, the **City**. The **City** may request from the **Principal Artist** 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.
- 4.2.1.6. If the **Principal Artist** is prevented at any time from complying with the **Schedule** through no fault of the **Principal Artist**, the **City** may adjust the **Schedule** to accommodate the **Principal Artist**. 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 **Principal Artist**, will initiate any changes to the **Contract Price** under this Section by requesting documentation from the **Principal Artist** of any increased costs sustained by the **Principal Artist** 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. Each **Party** agrees to excuse the failure of the other **Party** to perform its obligations under this **Contract** to the extent, and for a period of time during which, the failure is caused by an event of Force Majeure. An event of Force Majeure is any event or circumstance which prevents or delays performance of any obligation arising under this **Contract**, but only if and to the extent the event or circumstance is not within the control of the **Party** seeking to have its performance obligation excused and which the **Party** was unable, by the exercise of due diligence, to avoid or prevent. Events of Force Majeure include acts of God, riots, sabotage, civil disturbances, epidemics, acts of domestic or foreign terrorism, lightning, earthquakes, fires, storms, floods, and landslides. Events of Force Majeure do not include economic or market conditions which affect a **Party's** cost but not its ability to perform. A **Party** invoking Section 4.2.1.7 must give notice to the other **Party** within 10 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 **Principal Artist** will perform all services, including but not limited to meeting with City staff and City-designated project advisors and stakeholders as directed by the **Contract Administrator**, in order to prepare the **Final Design**.
- 4.2.3. The **Principal Artist** will perform one or more investigations of existing **Site** conditions prior to beginning design of the **Work**, and will ensure that the **Final Design** appropriately provides for all existing **Site** conditions. If the **Principal Artist** believes any differences, discrepancies, errors, omissions, or inconsistencies exist between the **Principal Artist's** inspection and the materials provided by the **City** or the **Project** design professionals, the **Principal Artist** must notify the **City** prior to continuing with any design of the **Work**.
- 4.2.4. Within 30 days after the **Effective Date**, the **Principal Artist** will prepare and submit a **Community Engagement Plan** to the **City** for review, feedback, and commentary by the **City** on the **Principal Artist's** plan to incorporate community feedback. The **Principal Artist** will also work with the **Artist Cohort** to create their **Community Engagement Plan**.
- 4.2.5. After conducting all necessary **Site** inspections and investigations, after initiating the **Community Engagement Plan**, and after any required consultation with the **City** and its **Project** design professionals, the **Principal Artist** will design the **Work** in accordance with the guidelines set out in Exhibit B.
- 4.2.6. Within 120 days after the **Effective Date**, the **Principal Artist** will prepare and submit the **Mid Design** to the **City** for review, feedback, and commentary by the **Art in Public Places Panel** on the progress of the **Principal Artist's** designs for the **Work**. The **Principal Artist** is required to attend at the **Principal Artist's Mid-Design** review, as well as all the **Artist Cohort's Mid-Design** reviews, unless otherwise excused by the **Contract Administrator**. In conjunction with the **Mid-Design Review**, the **Principal Artist** must submit, at a minimum, the following:
  - 4.2.6.1. A description of the results of the **Community Engagement Plan** to date, and how this is incorporated into the **Mid-Design**.
  - 4.2.6.2. All design sketches, including but not limited to the schematics, drawings, sketches, and other two-dimensional representations of the **Work**.
  - 4.2.6.3. The proposed siting of the **Work**, with dimensions depicted.
  - 4.2.6.4. A written narrative describing the **Principal Artist's** concept and imagery, types and quantities of all materials to be incorporated into the **Work**, and an explanation of how the **Work** meets the project goals set out in Exhibit B.
  - 4.2.6.5. A preliminary budget for design, fabrication, and installation of the **Work**.
  - 4.2.6.6. A proposed schedule for fabrication and installation.
  - 4.2.6.7. Anything else requested by the **City** prior to the **Mid-Design** review, including but not limited to any requested information concerning the longevity and durability of the **Work**.
  - 4.2.6.8. The time for the **Mid-Design** review may be extended in the **City's** sole discretion.

4.2.7. Within 60 days after the **Mid-Design** review set out in Section 4.2.6, the **Principal Artist** will prepare and submit the **Final Design** to the City for a **Final Design** review and approval by the Art in Public Places Panel. The **Principal Artist** is required to attend the **Final Design** review unless otherwise excused by the **Contract Administrator**, as well as all the **Artist Cohort's Final Design** reviews. In conjunction with the **Final Design** review, the **Principal Artist** must submit the following:

- 4.2.7.1. A description of the results of the **Community Engagement Plan**, and how this is incorporated into the **Final Design**.
- 4.2.7.2. Renderings for all elements of the **Work** that show their form, color, texture, size and placement in relation to the **Site**.
- 4.2.7.3. Working drawings detailing all elements of the **Work** and the means of installing the **Work** at the **Site**, together with the **Design Sketches** and any other graphic material requested by the City in order to allow the City to carry out structural design review of the **Work** and to certify compliance of the **Work** with applicable statutes and ordinances. The drawings submitted by the **Principal Artist** must bear an engineer's or architect's seal, unless the City grants the **Principal Artist** permission to submit sealed drawings after the **Final Design Review** is complete. The engineer or architect of record must provide to the City proof of the required Professional Liability Insurance required for this **Work** as set out in Exhibit E.
- 4.2.7.4. A comprehensive written narrative description of the **Final Design**, including information about concept and imagery, types and quantities of all materials to be incorporated into the **Work**, and how the **Final Design** meets the goals outlined in Exhibit B.
- 4.2.7.5. A completed Conservation Review Form, in a format provided by the City, for review by the City's contracted arts conservator. The **Principal Artist** will consult with the City's contracted arts conservator to assess the materials and maintenance requirements of the proposed **Work**, resulting in a conservation report provided by the arts conservator to the **Principal Artist** that will be used by the **Principal Artist** to address potential conservation issues or concerns. The **Principal Artist** will submit any revisions to the **Final Design** resulting from the art conservator's report.
- 4.2.7.6. Samples of all materials proposed by the **Principal Artist** to be used in the **Work**. On request by the City, the **Principal Artist** will provide all proposed quantities, manufacturer specifications, warranties, materials safety data sheets, and other information requested by the City regarding the proposed materials.
- 4.2.7.7. A written maintenance plan that includes, but is not limited to, all technical information about the materials, the strength, durability, and maintenance requirements of the proposed **Work**, and any associated replacement and foreseeable maintenance costs for the life of the **Work**.
- 4.2.7.8. If applicable or requested by the City, a written report from a Registered Accessibility Standard Specialist indicating that all components of the **Work** are compliant with accessibility standards and requirements applicable to the City by federal, state, or other applicable law, including but not limited to the Americans with Disabilities Act of 1990, as amended.

- 4.2.7.9. A list of permits that will be required for the completion of the **Work**.
- 4.2.7.10. An itemized final budget setting out all anticipated costs for fabrication, delivery, and installation of the **Work**, including written vendor quotes for all materials, fabrication, engineering, installation, permitting, insurance, and any other associated costs.
- 4.2.7.11. An updated, proposed schedule for fabrication and installation.
- 4.2.8. Within 30 days of its receipt of the **Final Design**, the **City** will notify the **Principal Artist** of its approval or rejection, as well as any revisions to the **Final Design** required by the **City**, which revisions will automatically become incorporated into the **Final Design**. The **City** may require the **Principal Artist** to revise the **Final Design** as necessary for the following non-exclusive reasons:
  - 4.2.8.1. To comply with any applicable statutes, ordinances, or regulations.
  - 4.2.8.2. To account for any life, health, safety, or security concerns.
  - 4.2.8.3. Any other non-aesthetic reason that the **City**, in its sole judgment and discretion, deems necessary or appropriate.
- 4.2.9. If the **City** rejects the **Final Design**, the **Principal Artist** must resubmit a revised **Final Design** within 15 days. Within 15 days of its receipt of the revised **Final Design**, the **City** will notify the **Principal Artist** of its approval or rejection. If the **City** approves of the revised **Final Design**, the **Parties** will execute a written amendment to document any change in scope and, if agreed to by the **City**, any change in price incurred because of the **City's** changes. If the **City** rejects the revised **Final Design**, the **City** may terminate this **Contract** for cause in the manner set out in Sections 10.6.1.1 through 10.6.1.4, except that the opportunity to cure provided in Section 10.6.1.2 will not apply.
- 4.3. **CHANGES TO THE WORK**
  - 4.3.1. At any time prior to approval of the **Final Design** as set out in Section 4.2, the **Principal Artist** may make changes to the **Final Design**, whether for aesthetic, safety, construction, or other reasons, and the **City** may likewise direct the **Principal Artist** 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 4.3.
  - 4.3.2. Minor changes to the **Final Design** or to the **Work** initiated by the **Principal Artist** 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.
  - 4.3.3. Major changes to the **Final Design** or to the **Work** initiated by the **Principal Artist** require prior, written approval by the **City**. Major changes include, but are not limited to, changes to the overall scope, layout, 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 **Principal Artist** 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, the **City** may terminate this **Contract** for convenience pursuant to Section 10.7.1.

- 4.3.4. All changes initiated and approved under Section 4.3 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 **Principal Artist**, 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 **Contract Price**, the **Principal Artist** will bear the sole risk and cost of any changes to the **Final Design** or to the **Work**.

#### 4.4. LECTURE

- 4.4.1. The **Principal Artist** will, if requested by the **City**, attend and present one lecture or other similar presentation to an audience designated by the **City**, in the format requested by the **City** and on a mutually agreeable date and time during the Design and Scheduling Phase set out in Section 4.2.
- 4.4.2. If the **City** requires the **Principal Artist** to prepare and give a lecture or presentation under Section 4.4.1, the **City** may, in its sole discretion, allow for any resulting increased costs to the **Principal Artist** in computation of the **Contract Price**.

### Section 5. PAYMENT

#### 5.1. The **Contract Price** for this **Contract** is **\$46,000.00**.

- 5.1.1. In exchange and consideration for the **Principal Artist's** **Contract** to undertake the obligations in this **Contract**, the **City** agrees to pay the **Principal Artist** 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 **Contract**.
- 5.1.3. The **Contract Price** is the full compensation owed to the **Principal Artist** under this **Contract**.
  - 5.1.3.1. Except as expressly provided for elsewhere in this **Contract**, the **Principal Artist** agrees to be solely responsible for all costs related to design, mailing, shipping, delivery, labor, insurance, permitting and licensing, and any other costs incurred by the **Principal Artist** in fulfilling his or her obligations under this **Contract**.
  - 5.1.3.2. The **Principal Artist** 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 **Principal Artist** acknowledges receipt of a Texas Sales and Use Tax Exemption Certificate Form for use by the **Principal Artist** in the design and completion of the **Work**.
  - 5.1.3.3. For any permits required by **City** ordinance or administrative rule, the **Principal Artist** will seek fee waivers as set out in Exhibit D.

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

- 5.2.1. Milestone 1 – 10% upon execution of the **Contract** and submission of the **Community Engagement Plan** as it informs commissioned artwork.
- 5.2.2. Milestone 2 – 10% within 30 days after completion of soliciting artists to apply to Phase II artwork opportunities, advise artist selection process as curator, devise **Artist Cohort** training schedule.
- 5.2.3. Milestone 3 – 15% within 30 days after completion of the **Principal Artist's Mid-Design** review required by Section 4.2.6.
- 5.2.4. Milestone 4 – 10% within 30 days after 100% completion of **Artist's Cohort's Community Engagement** and **Mid Design** preparation.
- 5.2.5. Milestone 5 – 10% within 30 days after completion of the **Artist's Cohort's Mid Design**.
- 5.2.6. Milestone 6 – 10% within 30 days after 50% completion of the **Principal Artist's Final Design** review required by Section 4.2.8.
- 5.2.7. Milestone 7 – 25% within 30 days after the **City** notifies the **Principal Artist** of its approval of the **Final Design** pursuant to Section 4.2.8 and continued work with **Artist Cohort's Final Design**.
- 5.2.8. Milestone 8 – 10% within 30 days after the **City** notifies the **Principal Artist** of the approval of the **Artist Cohort's Final Design** pursuant to Section 4.2.8

5.3. Pursuant to City Code Section 2-8-3, notice of which is acknowledged by the **Principal Artist**, the **City** may withhold payment otherwise due under this **Contract** in order to offset any debt owed by the **Principal Artist** to the **City**, including but not limited to any tax debt owed by the **Principal Artist** to the **City** pursuant to Article VIII, Section 1 of the Austin City Charter, notice of which is also acknowledged by the **Principal Artist**.

## **Section 6. SUBCONTRACTING**

6.1. The **Principal Artist** may not subcontract all or substantially all of the services to be provided under this **Contract**. The **Principal Artist** may subcontract portions of the services to be provided under this **Contract**, at the **Principal Artist's** sole expense, subject to the following limitations:

- 6.1.1. The **Principal Artist's** use of subcontractors may not affect the design, appearance, or visual quality of the **Work**.
- 6.1.2. The **Principal Artist** will at all times personally supervise the work performed by subcontractors.
- 6.1.3. The **Principal Artist** will remain fully responsible to the **City** and third parties for the actions of any subcontractors engaged by the **Principal Artist**.
- 6.1.4. No subcontractor may further subcontract or subdivide any portion of its subcontract.
- 6.1.5. Any subcontract must be in writing, must be attached to this **Contract** as an exhibit, and must acknowledge the supremacy of this **Contract** in the case of any conflict between the two. All subcontractors will remain subject to the terms of this **Contract** at all times.



- 6.1.6. Prior to the **Principal Artist** entering into any subcontracts, the **Principal Artist** will notify the **City** of the **Principal Artist**'s intent to do so, identifying the proposed subcontractor or subcontractors, the proposed scope or scopes of work, and the dollar amount of each subcontract. The **City** may reject any one or more subcontractor proposed by the **Principal Artist**.
- 6.1.7. The **Principal Artist** will require of each subcontractor, as a condition to entering into each subcontract, that the subcontractor will comply with the **City**'s insurance requirements as set out in Exhibit E. The **Principal Artist** 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 **Contract**.
- 6.2. In an effort to further stimulate and positively impact the local economy, the **Principal Artist** will make reasonable efforts, which the **Principal Artist** will document on 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 **Principal Artist** for the design and/or 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 **Principal Artist** warrants that the **Final Design** and the **Work** are and will be original creations of the **Principal Artist**.
- 7.1.2. The **Principal Artist** warrants and represents that the **Principal Artist** 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 **Principal Artist**. The **Principal Artist** agrees to defend, indemnify, 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 attorneys' fees, to which they may be subjected arising out of 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**

- 7.2.1. Except as otherwise disclosed to the **City** in writing, the **Principal Artist** represents and warrants that the **Final Design** is and will be free of any defects of design.
- 7.2.2. The **City** will give notice to the **Principal Artist** of any observed breach of this representation and warranty. Once notified by the **City**, the **Principal Artist** will, at no cost to the **City**, promptly cure the breach or breaches.

## **Section 8. OWNERSHIP, PUBLICITY, AND INTELLECTUAL PROPERTY RIGHTS**

- 8.1. The **Principal Artist** will remain the owner 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 **Principal Artist** a Transfer of Title for Public Artwork in a form provided by the **City**.
- 8.1.2. On issuance of the Transfer of Title for Public Artwork, the **City** will also take title in and to any and all drawings, sketches, models, and any other documents and materials created by the **Principal Artist** in furtherance of the **Final Design** or the **Work**. The **Principal Artist** will promptly deliver to the **City** all such materials that are still in the **Principal Artist's** possession.
- 8.2. The **Parties** will proactively collaborate to identify and pursue any appropriate and beneficial publicity for the **Work**.
  - 8.2.1. For purposes of this **Contract**, 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.
  - 8.2.2. The **Parties** will each use their best efforts to arrange for publicity for the **Work**.
  - 8.2.3. 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.
  - 8.2.4. All publicity initiated or otherwise undertaken by the **Principal Artist** must be approved by the **City** prior to its publication. If the **Principal Artist** intends to use any third party for any such publication, or intends to submit to any interview with a third party, the **Principal Artist** must confer with the **City** and obtain the **City's** approval prior to any such action.
  - 8.2.5. The **Principal Artist** agrees to 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**, and to participate in a minimum of one educational event related to the **Work**, as set out in Section 4.4.
  - 8.2.6. The **City**, at its expense and in consultation with the **Principal Artist**, will arrange for the preparation and installation at the **Site** of a plaque identifying the **Principal Artist**, the title of the **Work**, and the year of completion.
- 8.3. The **Principal 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 **Contract**.
  - 8.3.1. The **Principal Artist** may 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**.
  - 8.3.2. The **Principal Artist** grants to the **City** and its assigns an irrevocable license to make two-dimensional reproductions of the **Work** for any municipal or public purpose, including but not limited to any publicity the **City** deems appropriate or beneficial.

- 8.3.3. Any reproductions of the **Work** made by the **City** will credit the **Principal Artist** and will contain a copyright notice substantially in the form “©**Principal Artist’s name**, 20\_\_.” Any reproductions of the **Work** made by the **Principal Artist** will credit the **City** and will contain a notice in the form “An original work owned and commissioned by the City of Austin.”

## **Section 9. INSURANCE AND RISK OF LOSS**

- 9.1. The **Principal Artist** 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 **Principal Artist** 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 **Principal Artist** begins any work on the **Site**.
- 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. Professional Liability insurance coverage for any design professional must be in place at the time the design professional places his or her seal on design drawings as required in Section 4.2.7.3.
- 9.2.4. Approval by the **City** of any insurance obtained by the **Principal Artist** will not diminish or decrease the liability of the **Principal Artist** under this **Contract**.
- 9.3. The **Principal Artist** 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 **Principal Artist** under Section 4.2.7.7.
- 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. During the **Principal Artist’s** lifetime, and to the extent practicable, the **City** will give the **Principal Artist** the right to both approve of and make or supervise all major repairs and restorations. If the **Principal Artist** 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 **Principal Artist**, 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 **Principal Artist** 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 **Contract**. The **City** will provide notice to the **Principal Artist** of such emergency repairs as soon as practical.
- 10.3. The **Principal Artist** 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 the **Principal Artist** prior to undertaking any alterations to the **Work**.
- 10.3.2. To the extent Section 10.3 is inconsistent with any rights, including moral rights, that would otherwise be provided to the **Principal Artist** by applicable law, including the 1990 Visual Artists' Rights Act as codified and amended, the **Principal Artist** acknowledges receiving notice of this provision and waives any right to preservation of the **Work** provided by those laws. The **Principal 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.
- 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 **Principal Artist** of its intent to remove the **Work**. The **Principal Artist** will be entitled to remove the **Work** from the **Facility** at the **Principal Artist's** sole expense, and will have 90 days from the date the **City** gives notice to remove the **Work**. If the **Principal Artist** fails to remove the **Work** within 90 days of the **City's** notice to the **Principal Artist**, the **City** will be entitled to remove and 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 **Contract**.
- 10.3.5. If the **Work** becomes substantially damaged or altered, the **City** will no longer represent the **Work** as that of the **Principal Artist**, but only if the **Principal Artist** gives notice to the **City** that it is the **Principal 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** will also have the right, in its discretion and at any time, to sell, trade, or otherwise transfer ownership of the **Work**.
- 10.4. The obligations of the **City**, and the rights of the **Principal Artist**, set out in Section 10 will not survive the death or legal incapacity of the **Principal Artist**.
- 10.5. Nothing in Section 10 limits other rights or remedies that may be available to the **Principal Artist** now or in the future.

## **TERMINATION**

## 10.6. TERMINATION FOR CAUSE

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

10.6.1.1. Prior to terminating this **Contract** 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.

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 **Contract**.

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

10.6.2.1. The **Principal Artist**, including any agent or representative of the **Principal Artist**, 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 **Contract**. 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 **Principal Artist** will not be entitled to any right to cure provided by Section 10.6.1.2. If the **City** terminates this **Contract** under Section 10.6.2.1, the **City** will, in addition to all other rights and remedies, be entitled to recover from the **Principal Artist** an amount equal to the cost incurred by the **Principal Artist** or the agent or representative of the **Principal Artist** in providing such gratuities.

10.6.2.2. The **Principal Artist** dies or becomes physically or legally incapacitated during the term of this **Contract**. Termination for cause under Section 10.6.2.2 will only require notice to the **Principal Artist** or the **Principal Artist's** legal successor or guardian, as applicable. The **City** will not seek reimbursement from the **Principal Artist's** estate for any payment made to the **Principal Artist** but not expended prior to the **Principal 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 **Principal 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 **Principal Artist's** intended results and giving proper credit and acknowledgement to the **Principal Artist**.

## 10.7. TERMINATION FOR CONVENIENCE

10.7.1. Either **Party** may terminate this **Contract** for convenience.

10.7.2. If the **City** approves reimbursements for purchases of materials used for the development of the design in excess of the payments **Principal Artist** received prior to the **City's** termination for cause pursuant to Section 4.2.9, the **City** will reimburse the **Principal Artist** for amounts expended under this **Contract** within 30 days of the **Principal Artist's** submission of receipts documenting such material purchase.



## 10.8. FUNDING

- 10.8.1. The **Principal Artist** acknowledges that the **City** has provided notice that the **City's** payment obligations to the **Principal Artist** are payable only from funds appropriated or available for the purpose of this **Contract**, which are set out in Section 3. If the **City** does not appropriate funds for this **Contract**, or if there are no other lawfully available funds for this **Contract**, this **Contract** is void, and will terminate immediately on notice to the **Principal Artist**.
- 10.8.2. The **City** will provide the **Principal Artist** notice of the failure of the **City** to make an adequate appropriation for any fiscal year to pay the amounts due under this **Contract**, or of the reduction of any appropriation to an amount insufficient to permit the **City** to pay its obligations under this **Contract**.
- 10.8.3. If this **Contract** is voided according to Section 10.8.1, the **Principal Artist** will be entitled to retain any payments made prior to termination for which funds were properly appropriated.

## Section 11. NOTICES

- 11.1. Unless explicitly stated elsewhere in this **Contract**, 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 **Contract** 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;
  - 11.2.2. The date delivery is originally scheduled to occur, if sent via a reputable overnight courier service; or
  - 11.2.3. The date sent via facsimile transmission, provided the receiving **Party** has designated a fax number below and the sending party has a fax-generated verification of the date and time of transmission and the fax number to which the notice was sent.
- 11.3. Notice to each **Party** must be given as follows:

### The City:

Sylvonia Holt-Rabb, Assistant Director  
Economic Development Department  
City of Austin  
P. O. Box 1088  
Austin, TX 78767  
Phone: 512-974-7739  
Facsimile: 512-974-7825

### With copies to:

Art in Public Places Administrator  
Economic Development Department  
City of Austin  
P. O. Box 1088  
Austin, TX 78767  
Phone: 512-974-9314  
Facsimile: 512-974-6379

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

**The Principal Artist:**  
Fidencio Duran  
1211 E Applegate Dr.  
Austin, TX 78753

- 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 **Principal Artist** will give notice to the **City** of any changes to the **Principal Artist's** address. If the **City** gives notice to the **Principal Artist** 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 **Principal Artist** in order to give notice to the **Principal Artist** of issues affecting or relating to the **Principal Artist's** rights. If the **Principal Artist** fails to update the **Principal Artist's** address on file with the **City** and the **City** is unable to locate the **Principal Artist** for purposes of giving the notices required in this **Contract**, the **Principal Artist** will be deemed to have waived any rights afforded to the **Principal Artist** under Section 10. If the **Principal Artist** subsequently reestablishes contact with the **City** after a waiver of the rights set out in Section 10, the **Principal Artist** 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 **Principal Artist's** reestablishment of contact with the **City** are prospectively ratified by this **Contract** and may not form the basis for any claims for damages or injunctive relief by the **Principal Artist** against the **City**.

## **Section 12. EQUAL OPPORTUNITY**

- 12.1. For the duration of this **Contract**, including any maintenance or repair provided by the **Principal Artist** under Section 10, the **Principal Artist** 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 **Principal Artist**, 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 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 **Principal Artist** fails to comply with Sections 12.1, the **City** may terminate this **Contract** for cause, or may suspend this **Contract** in whole or in part, and the **Principal Artist** may be debarred from further **Contracts** with the **City**.

### **Section 13. MISCELLANEOUS PROVISIONS**

#### **13.1. The **Principal Artist** 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 **Contract**.
- 13.1.2. The recitals set out in Section 3 are each a material inducement to the **City** to enter into this **Contract**.
- 13.1.3. The **City** would not have entered into this **Contract** but for the truth of each recital set out in Section 3.
- 13.2. The **Principal Artist** will comply with all Federal, State, and **City** statutes, ordinances, and regulations applicable to the **Principal Artist's** services under this **Contract**.
- 13.3. The **City** will maintain on permanent file a record of this **Contract** 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 **Principal Artist** agrees and acknowledges that the **Principal Artist** is an independent contractor of the **City** for all purposes during the existence of this **Contract**, 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 **Principal Artist** 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 **Principal Artist**, nor will the **Principal Artist** supervise any **City** employee or official.
  - 13.4.3. The **Principal Artist** acknowledges that this **Contract** 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 **Contract** constitutes the entire **Contract** between the **Parties**, and supersedes any prior oral or written **Contracts** and understandings regarding the **Work**. This **Contract** 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 **Contract** or applicable law does not prevent either **Party** from pursuing any other right or remedy set out in this **Contract** 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 **Contract** that 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 **Principal Artist** may not assign this **Contract**, or any rights under this **Contract**, without express written permission from the **City**, which permission will be in the sole discretion of the **City**.
- 13.9. The **Principal Artist** acknowledges that neither the execution of this **Contract** 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 **Contract** 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 **Contract**.
- 13.11. This **Contract** will be interpreted in accordance with the laws of the State of Texas, without regard to any conflict of laws provisions.
- 13.12. The **Parties** agree that exclusive jurisdiction and venue for any suit arising out of this **Contract** will be in the District Court for Travis County, Texas.
- 13.13. The provisions of this **Contract** 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 **Contract** that is subsequently deemed contrary to applicable law is struck from this **Contract**, and the remainder of this **Contract** will continue in full force and effect.
- 13.15. Any principal of contract construction that requires interpretation of any ambiguities in this **Contract** against one **Party** or the other is inapplicable to this **Contract**.
- 13.16. Each **Party** warrants that it has the right and authority to make and enter into this **Contract**, and to grant the rights set out in this **Contract**.
- 13.17. Section titles set out in this **Contract** are for convenience only, and impose no limitations on the provisions of this **Contract**.
- 13.18. Unless otherwise set out in a specific section of this **Contract**, all time frames set out in days in this **Contract** are in calendar days.
- 13.19 Pursuant to Texas Government Code §2270.002, the **City** is prohibited from contracting with any “company” for goods or services unless the following verification is included in this **Contract**.
- 13.19.1. For the purposes of this Section only, the terms “company” and “boycott Israel” have the meaning assigned by Texas Government Code §2270.001.
- 13.19.2 If the **Principal Artist** qualifies as a “company”, then the **Principal Artist** verifies that he:
- (a) does not “boycott Israel”; and

(b) will not "boycott Israel" during the term of this **Contract**.

13.19.3 The **Principal Artist's** 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 **Contract**.

CITY OF AUSTIN

Date: 12.21.18

By: Sylvia Holt-Rabb

Sylvia Holt-Rabb  
Assistant Director  
Economic Development Department

**Principal ARTIST**

Date: December, 18, 2018

By: Fidencio Duran

Fidencio Duran

Approved as to form:

\_\_\_\_\_  
[ASSISTANT CITY ATTORNEY]

Assistant City Attorney



## Exhibit B - Request for Qualifications

Art in Public Places | Cultural Arts Division  
Economic Development Department | City of Austin  
201 East 2nd Street, Austin, TX 78701  
512.974.7700 | [aipp@austintexas.gov](mailto:aipp@austintexas.gov)



### Request for Qualifications

**Project:** Montopolis Recreation and Community Center  
**Opportunity:** Principal Artist  
**Artwork Budget:** \$140,000 (divided)  
**Selection Process:** Open to the 2018-2020 Local Pre-Qualified Artist Pool

#### Project Summary

The City of Austin Art in Public Places (AIPP) program of the Cultural Arts Division, Economic Development Department, seeks Letters of Interest from professional visual artists or artist teams from the Art in Public Places 2018-2020 Local Pre-Qualified Artist Pool to commission a Principal Artist for the new Montopolis Recreation and Community Center at 1200 Montopolis Drive, Austin, TX 78741, a joint-use facility between the Parks and Recreation Department (PARD) and the Austin Public Health Department (APH). It is the intent of this project to create professional public artwork opportunities while featuring Austin artists with lived experience in the Montopolis neighborhood.

#### Project Background

Approved by Austin voters as part of 2012 Bond Election, the City of Austin began the Design Phase of the project in December 2015, which included preliminary, schematic, and design development and construction document phases. During this phase, the City hosted several public meetings to gather community feedback on the design of the new facility.



Designed by McKinney York Architects, the new recreation and community building will house current and proposed recreational services including after-school activities, youth sport and specialized classes, education programs, exercise and fitness classes, health, wellness and nutrition programs, senior activities, neighborhood center services, seasonal services, and other health services for preventative care. The City of Austin's Parks and Recreation Department (PARD) Austin Public Health Department (APH) currently manage many activities and programs collaboratively. There will be a gymnasium, meeting rooms, a commercial kitchen and community event spaces. The facility is estimated to be

## Exhibit B - Request for Qualifications

approximately 33,000 square feet. The total area of the site is 7.6 acres. 5.05 acres of that area has a parkland use restrictions and the remaining 2.55 acres can be used for any City of Austin programs.

The construction Bidding and Contract Award Phase will be completed by June 2018. Construction of the new facility is scheduled to begin in summer 2018 and to be complete in spring 2020.

### Facility History

The current Montopolis Recreation Center was originally owned by Dolores Catholic Church. In 1971, the City of Austin entered into an agreement to operate the building as an extension of PARD services. In 1973, PARD purchased the building and the surrounding land. In 1974, a deed was executed by the City to dedicate



2.55 acres of land for community use. The Montopolis Recreation Center has served the community for over four decades. The existing facility is in poor condition and can no longer meet the needs of a growing and vibrant community.

The Montopolis community is a multi-cultural and bi-lingual community in East Austin. The buildings have been an integral part of the community for more than 40 years, therefore, it is important to the City and the Montopolis community that the new facility reflects of the community and history of the area and historical and cultural values are incorporated into the new building's final design.

More information can be found at: [www.austintexas.gov/department/montopolis-recreation-center](http://www.austintexas.gov/department/montopolis-recreation-center)

More information about the history of Montopolis can be found in Austin's Montopolis Neighborhood (Images of America Series) by Dr. Fred McGhee, published in 2014 by Arcadia Publishing.

### Public Art Goals & Priorities

The Art in Public Places program seeks to commission works of art of redeeming quality that advance public understanding of visual art and enhance the aesthetic quality of public places through the selection of a Principal Artist who can innovatively and thoughtfully respond to the design within the context of this project.

The goals of each opportunity are to select artists, in collaboration with project stakeholders and City staff, who will design artwork that:



## Exhibit B - Request for Qualifications

- » Incorporates colors, imagery and themes that reflect the aesthetic qualities of the community;
- » Through community engagement, suggests the future aspirations of the people of the Montopolis neighborhood;
- » Responds to the story of the facility from 1971 to present and the activism of the surrounding community;
- » Integrates seamlessly into the design of the facility and grounds;
- » Is made from durable and low maintenance materials;
- » Enriches or adds to the depth/breadth of the City of Austin's public art collection.

The proposed artworks should be integrated into the available scope of construction, to the greatest extent possible, without impeding operation, safety and access. Artwork should be sited in areas accessible to the public within the building envelope. A range of materials and conceptual approaches are welcome for these commissions as long as the parameters and goals of the project are met.

### Budget

The funds for this project are derived from the 2% for public art portion of the City of Austin's contribution to the estimated construction budget. Each opportunity is inclusive of design team collaboration, design, fabrication, and installation of artwork (including shipping expenses and insurance), travel, and other project related costs.

The total artwork budget for the Principal Artist opportunity is \$140,000, divided into two deliverables:

1. \$110,000 for the commission for a work of art for the interior gym wall (site #3)
2. \$ 30,000 for professional artist services including all tasks listed under Principal Artist responsibilities, below.

An additional \$240,000 will be divided between the four community artist artwork opportunities. A separate prospectus, which specifies the method of selection (open calls to local artists), budget, timeline and scope of work for each community artist opportunity, will come to the AIPP Panel and the Arts Commission prior to solicitation for the remaining artwork opportunities.

### Principal Artist Responsibilities

The selected Principal Artist will create an original artwork for the Montopolis Recreation and Community Center project for the interior gym wall. In addition to creating an artwork for the site, the Principal Artist will be responsible to:

## Exhibit B - Request for Qualifications

- work with the neighborhood advisory group to solicit community artists for the remaining four opportunities, focusing on artists who have a connection to, and/or lived experience with, the Montopolis neighborhood;
- as one member of the 5 or 7 member selection panel, help select the community artists or artist teams for the remaining four opportunities;
- guide the overall aesthetic of the combined artists' work, in order to present a curated art experience at the facility;
- create a positive team environment for the community artist cohort;
- recognizing that a portion of the community artists may be emerging into their public art careers, provide training to support the community artists in their work. In partnership with AIPP staff, the Principal Artist may provide training on community engagement best practices; budget development; installation techniques; managing time/resources/fabricators/sub-contractors, etc.; skills for preparing approval documents and how to make the most of presentations;
- and provide supplementary project management services for the community artist cohort, if/as needed.

AIPP staff will assist the Principal Artist in coordinating and creating a schedule of workshops for professional development, including support in presentation skills, budgeting, scheduling, time management, fabrication and installation management.

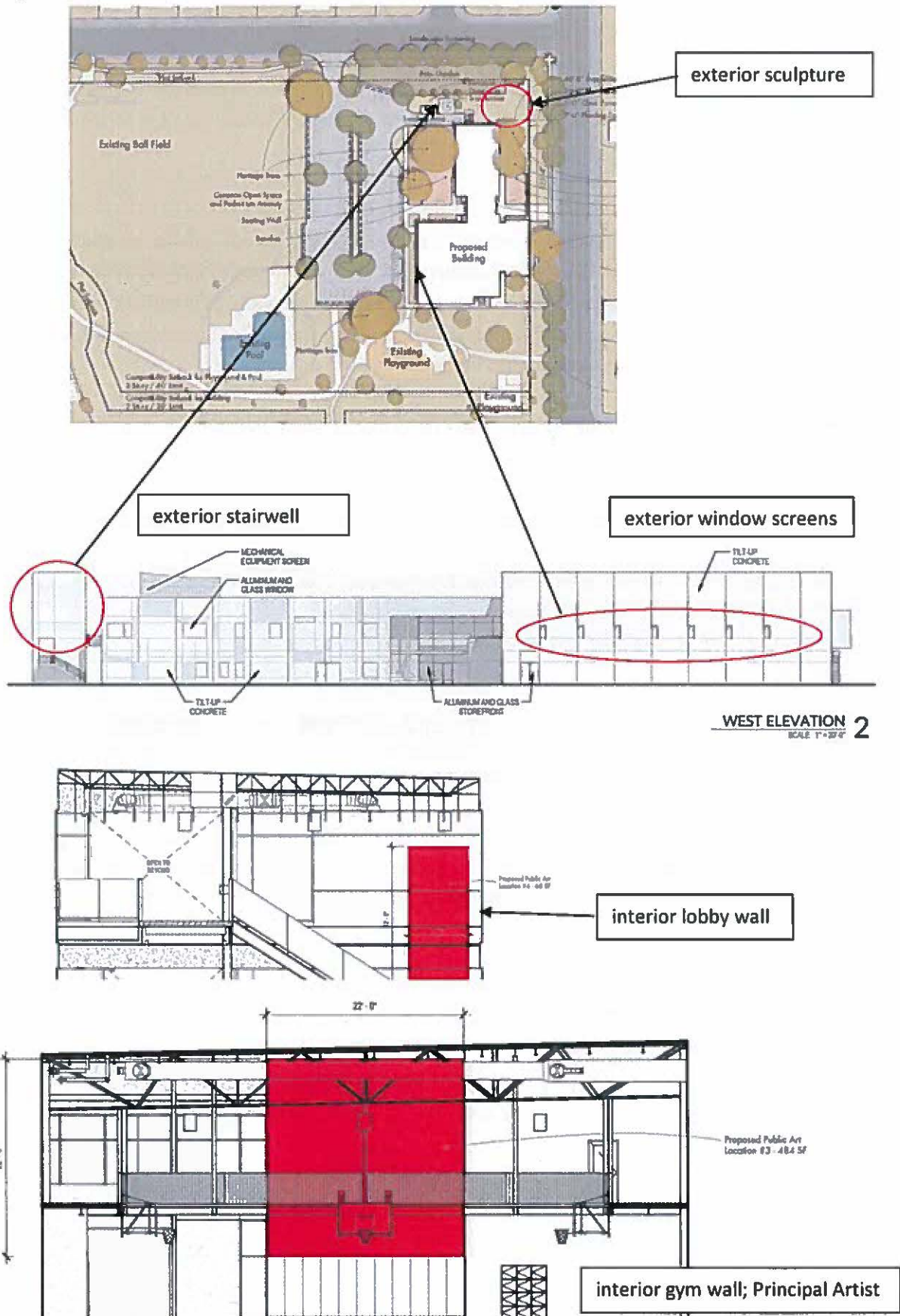
### Artwork Opportunity

This public art opportunity is open to a wide range of ideas to be proposed by the Principal Artists, or artist team, in consultation with the project's design team. The Principal Artist artwork opportunity is the interior gym wall. The four remaining artwork opportunities that will be curated by the Principal Artist are:

- An exterior stairwell wall;
- An exterior sculpture located in the plaza near the front entrance;
- An interior lobby wall; and
- Exterior window shade screens

## Exhibit B - Request for Qualifications

See images below:





## Exhibit B - Request for Qualifications

### Artist Information Meeting

An artist information meeting will be held remotely for the interested artists from the 2018-2020 Pre-Qualified Local Artist Pool on June 28, 2018 from 2:00 to 3:00 pm. They will be invited to log into [www.uberconference.com/susanlambe](http://www.uberconference.com/susanlambe) for a presentation and Question and Answer session. The presented materials, along with Q&A, will be posted via OneDrive after the meeting for artists' use as they prepare their Letter of Interest.

### Artist Eligibility

Artists from the 2018-2020 Local Pre Qualified Artist Pool will be invited to submit a Letter of Interest explaining their connection to the Montopolis community and experience working with other artists in a leadership role. City staff and a community art-advisor working group will review Letters of Interests and may recommend up to five finalists to interview. The selection panel will recommend a Principal Artist or Principal Artist Team, and one alternate.

All artists on the 2018-2020 Local Pre-Qualified Artist Pool are eligible to apply.

### Evaluation Criteria

The selection of an artist or artist-led team from the 2018-2020 Pre-Qualified Local Artist Pool shall be based on the artist's qualifications and the Letter of Interest. The Selection Panel for the 2018-2020 Pre-Qualified Local Artist Pool followed the standard AIPP project selection process found on the City of Austin's Art in Public Places website under **Guidelines & Policies**:

[http://www.austintexas.gov/sites/default/files/files/aipp\\_guidelines.pdf](http://www.austintexas.gov/sites/default/files/files/aipp_guidelines.pdf).

### About the 2018-2020 Pre-Qualified Local Artist Pool Selection Process

Through a rigorous selection process, the AIPP program developed a Pre-Qualified Local Artist Pool of exceptional emerging and established public artists working in a variety of visual media and artistic approaches. The Selection Panel for the 2018-2020 Pre-Qualified Artist Pool followed the standard AIPP project selection criteria found on the City of Austin's Art in Public Places website under **Guidelines & Policies**, [www.austintexas.gov/department/aipp-policies](http://www.austintexas.gov/department/aipp-policies). The Selection Panel for the 2018-2020 Pre-Qualified Local Artist Pool consisted of:

- » Leslie Moody Castro, Independent Curator, Austin, TX
- » Fernando Andrade, Artist, San Antonio, TX
- » Alex Rubio, Artist, San Antonio, TX
- » Julia Hendrickson, Associate Curator, The Contemporary, Austin, TX
- » Phillip Townsend, Fellow in African American Art at The Blanton, Austin, TX

### Selection Process

## Exhibit B - Request for Qualifications

The selection of an artist, or artist team, shall be based on whose qualifications best meet the requirements contained in this Prospectus. Artists from the 2018-2020 Local Pre-Qualified Artist Pool will receive an email requesting they submit a Letter of Interest by mid-July if they are interested in being considered for this opportunity. Through the Letter of Interest, artist(s) are asked to:

1. explain their interest in this specific project and its goals;
2. explain their connection to the Montopolis community; and
3. share their experience working with other artists in a leadership role.

The selection panel will review the Letters of Interest received and will recommend up to five finalists to interview for the Principal Artist role. The selection panel will be made up of a working group of community stakeholders and advised by city staff and subject matter experts. No gallery owner, dealer, or art agent may serve as a juror due to the potential for conflict of interest. No juror may serve more than once in any two-year period in an attempt to bring a diversity of interests to the selection process and to more precisely match the expertise of the jury members to each project.

The selection panel recommendations will be presented to the Art in Public Places Panel and Arts Commission for approval. Some of the opportunities will require City Council authority to contract with the selected artists. The selection panel will remain in an advisory role with the AIPP project throughout the commission.

The selected artist(s) will be put under a design contract to coordinate with the City and the project's design team to develop a comprehensive design for artwork. The final design is subject to approval by the Art in Public Places Panel and the Austin Arts Commission and may be subject to review by other relevant City Boards and Commissions and stakeholder groups.

### Selection Committee (Selection Panel + Project Advisors)

Possible Selection Panelists and Project Advisors may include:

- » Susana Almanza – Montopolis Neighborhood Association
- » Anita Villalobos – Montopolis Recreation Center Advisory Board
- » Alberto Meija – Creative Action
- » Amanda Jasso – Mexican American Community Archivist
- » Paloma Mayorga – artist
- » Candace Briceño – artist
- » Claudia Aparecia Quimundi – graphic designer and artist
- » Noelle Shelly – Friends of Riverside
- » Franklin Taylor – Montopolis Community and Business Leaders (MCBL)
- » Jill Ramirez – Executive Director, Serie Project

AIPP and AAC Project Advisors may include:

- » Jacob Villanueva – liaison, Art in Public Places Panel

## Exhibit B - Request for Qualifications

- » Felipe Garza – liaison, Austin Arts Commission, District 3

City of Austin Project Advisors may include:

- » David Smythe-Macaulay – Project Manager, Public Works Department
- » Kevin Johnson – Project Manager, Parks and Recreation Department
- » Filip Gecic – Project Manager, Austin Public Health Department
- » Michelle Rojas – Program Supervisor, Montopolis Recreation Center
- » Gina Saenz - Recreation Programs Manager, Parks and Recreation Department
- » Javier Ramirez – Project Manager, Austin Water Department
- » Brian Carlson – Project Manager, McKinney York Architects

### Submission Process

The Letter of Interest must be received via [www.PublicArtist.org](http://www.PublicArtist.org) no later than 5:00 pm, Tuesday, July 17, 2018. For technical assistance with applications, artists will be asked to contact [info@publicartist.org](mailto:info@publicartist.org) or 210-701-0775 (9:00 am – 5:00 pm).

### Schedule (subject to change)

#### 2018

Thursday, June 21	Request for Letters of Interest released (four weeks)
Thursday, June 28	Artist Information Meeting – online via Uber Conference
July 2018	Facility construction begins
Tuesday, July 17	Deadline to submit Letter of Interest
Thursday, July 19	Selection panel review of applications
August 1	Artist Interviews
August 6 & 20	Approval of artist and alternate by AIPP Panel and Arts Commission
October 18	Approval of Principal Artist contract by Austin City Council; Principal Artist under contract
November	Project kick-off, Principal Artist solicitation for local artists (4 weeks)
December	Approval of community artists and alternates by AIPP Panel and Arts Commission

#### 2019

## Exhibit B - Request for Qualifications

February	Approval of artist(s) contract by Austin City Council; Local Artist under contract; Cohort kick-off meeting & design development start
April	Principal Artist Mid Design Review  Cohort artist Mid Design Review
June	Principal Artist Final Design approval by AIPP Panel and Austin Arts Commission; Cohort artists artist Final Design approval by AIPP Panel and Austin Arts Commission
November	Artwork installation complete
<u>2020</u>	
January-February	Anticipated project completion

### Contact/Questions

Anna Bradley, Art in Public Places Project Manager, (512) 974-7841 or [anna.bradley@austintexas.gov](mailto:anna.bradley@austintexas.gov)



## Fidencio Duran

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Saturday, July 14, 2018

### Montopolis

#### Recreation and Community Center: Principal Artist Opportunity

"Storytellers are leaders"- Amado Pena, Jr., one of my favorite quotes inspires my paintings and murals. I transform personal and community memories into celebrations of culture, history, and the beauty in our everyday lives. My work espouses the importance of strong communities, the value of living in close relation to the earth, and the strength of family. With this narrative approach I have produced public murals that portray the cultural, economic, and political history of communities, neighborhoods, regions, and sites for more than thirty years. I have installed murals at University of Houston, Dell Seton Medical Center, Biblioteca las Americas, and Dublin Dr. Pepper, among others. My most prominent mural The Visit, acrylic/canvas, 9' x 90', 1999 graces the main terminal of Austin Bergstrom International Airport.

I am excited about this exemplary opportunity as Principal Artist. If selected I will install a durable low maintenance mural for the interior gym wall that responds to the history of the facility from 1971, incorporates aesthetic qualities of the community, and works to compliment the goals of the community experience. It will be a valuable experience to help curate, advise, and coach the artists for a cohesive integration into the design of the facility and grounds. This project is an opportunity to continue my investigation of the history and culture of East Austin. It began with my murals Quincenera, latex/masonry, 8' x 52, 1992 on the wall surrounding the Holly Street Power Plant and three interior murals Comité Patriota, acrylic/gypsum board, 8' x 24, Diez y Seis, acrylic/gypsum board, 25' x 15', and Cinco de Mayo, acrylic/gypsum board, 25' x 15, 1996 at Zaragoza Recreation Center. My work with East Austin resulted in three other public murals. Reaching for the Sky to Reach the Sun, Dye Bond panels/masonry, 24'x 24', 2017 at Southwest Key Programs was initiated by discussing themes with representatives of the neighborhood and organization. I listened to their experiences with Southwest Key Programs, the nature of their neighborhood, and their aspirations for the mural's impact. My conceptual drawing portrayed the educational and multicultural nature of Southwest Key Programs. After approval of the conceptual drawing by the neighborhood representatives and school I painted a 30" x 30" canvas that was digitally scanned and printed by Austin Images on 4'x 8' panels. These panels were installed 12 feet above ground on a 30' x 30' masonry wall by Blue Genie Art Productions. The Role and History of Education in the East Austin neighborhoods of Montopolis, Riverside, Govalle, and Del Valle, acrylic/canvas, 8' x 30', 2010 is installed at Riverside Campus of Austin Community College. My initiative was supported by Dr. Mariano Miranda Diaz and the Office of the President. I researched the subject matter at the Austin History Center. It portrays educational institutions for Mexican American students from the late 1880's to the present. The mural and accompanying historical text were printed as a booklet by the Student Engagement & Success Office. In 2003 I was commissioned by Tokyo Electron,



Exhibit C - Artist Qualifications

Inc. USA to paint a mural for Montopolis Neighborhood Center. Montopolis, U.S.A., acrylic/board, 7' x 21' was designed with advice and participation from staff, volunteers, and members of the Montopolis community. The mural contains references to the history of the area by depicting early Anglo settlers, Freedmen towns, and the historical African American school. I encountered the stories about Father Fred Underwood and the large tree with reflectors that once stood in the middle of Montopolis Drive.

I received a Bachelor of Fine Arts degree in Studio from the University of Texas in Austin in 1984. During my residencies as Artist in Education facilitated by the Texas Commission on the Arts I worked with public school students designing and installing murals. I have served as Project Advisor, curator, and coach in various capacities. In 2008 I served as Advisor to the University of Texas student led initiative that commissioned a sculpture of Barbara Jordan by Bruce Wolfe for the Battle Oaks at 24th Street site. I curated on the jury panel that selected the Solar Panel sculpture by Harris/Heder for the Mueller development by Catellus Properties and other Art in Public Places projects. During my residencies I coached many young artists with technical advice and encouragement to bring out their best work. I am familiar with fabricators in durable materials suitable for interior and exterior work. As a bilingual speaker I can confidently make presentations about all aspects of public art to the Montopolis community.

It is my honor and privilege to apply for Principal Artist of the Montopolis Recreation and Community Center. I am excited about the opportunity to compliment its educational, recreational, health, and cultural services into the future. Thank you for reviewing my application.

Fidencio Duran

**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 2 day of April, 19

CONTRACTOR  
Authorized  
Signature

Fidencio Duran  


Title

\_\_\_\_\_

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:

Fidencio Duran

Signature of Officer or  
Authorized  
Representative:

FD

Date:

4/2/19

Printed Name:

Fidencio Duran

Title

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