

CONTRACT FOR THE COMMISSION OF PUBLIC ARTWORK

**BETWEEN THE
CITY OF AUSTIN
AND
ALLISON ORR DANCE INC**

This Contract for the Commission of Temporary Public Artwork ("Contract") is entered into by and between the City of Austin ("City"), a home-rule municipality incorporated in the State of Texas, and Allison Orr Dance, Inc. ("Artist"), a Texas non-profit corporation located at 2023 E. Cesar Chavez, Austin, TX 78702-4511.

Article 1. Introduction

1.1. Background

Established by the City of Austin in 1985, the Art in Public Places (AIPP) program collaborates with local and nationally-known artists to include the history and values of the Austin community into cultural landmarks that have become cornerstones of Austin's identity. The City of Austin was the first municipality in Texas to make a commitment to include works of art in construction projects. By ordinance, two percent of eligible capital improvement project budgets are allocated to the commission or purchase of art for that site.

1.2. Purpose

The City, by and through the Austin Arts Commission and in accordance with the current AIPP Guidelines, selected the Artist speak with community to research and document Givens Park community members' histories; create audio/visual documentation of these histories; and create and install a temporary artwork, as described in this Contract.

1.3. Recitals

- (a) The City is implementing the AIPP 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.
- (b) A portion of the Public Art Fund for the Sponsoring Department and its Facility has been allocated to prepare for the selection, purchase, and

placement of a work of art at, in, or near the Facility. The City, by and through the Austin Arts Commission and in accordance with the current AIPP Program Guidelines, will use the deliverables created with this contract to inform the selection of an artist to design, execute, fabricate and install a permanent artwork at the Site.

- (c) The Parties acknowledge that the Prospectus, listed in Exhibit C, was reviewed, approved, and relied on by the AIPP Panel and the Austin Arts Commission prior to execution of this Contract.

1.4. Definitions

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

- (1) "Approval" means prior, written authorization from the City for the Artist to take an action under this Contract.
- (2) "Artist" means Allison Orr Dance Inc.
- (3) "Artwork" means the sum of the deliverables outlined in the Exhibit C, to be created and implemented by the Artist as set out in this Contract.
- (4) "City" means the City of Austin, acting by and through its duly authorized City Manager or designee.
- (5) "Contract" means this contractual document for Design and Commission of Public Artwork between the City and the Artist, including any and all attachments, exhibits, and amendments.
- (6) "Contract Administrator" means the AIPP Program Manager, the Director of the City's Economic Development Department, or their respective designees.
- (7) "Contract Price" means the total compensation, identified in Section 3.1, to be paid to the Artist pursuant to this Contract.
- (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.
- (9) "Facility" means the Givens District Park Pool, owned, operated, or controlled by the Sponsoring Department and located at 3811 East 12th Street.
- (10) "Final Design" means the final design of the Artwork, as approved by the Arts Commission.

- (11) "Mid-Design" means the partially developed design of the Artwork, submitted by the Artist to the City.
- (12) "Notice" means the prior, written announcement of a Party's intention to take an action, or readiness to take action, authorized or required by the Contract.
- (13) "Party" means either the City or the Artist, and "Parties" means the City and the Artist, collectively.
- (14) "Project" means the City construction project at which the Artwork will be installed.
- (15) "Schedule" means the full and complete schedule developed and prepared by the Artist, for input and Approval from the City, to address the design, fabrication, delivery, transportation, and installation of the Artwork, and which complies with the Project completion schedule that the City provides to the Artist.
- (16) "Site" means the portion of the Facility at which the Artwork will be installed.
- (17) "Sponsoring Departments" means the Parks and Recreation Department of the City.

1.5. Term of the Contract

The term of this Contract shall begin on the Effective Date and end on December 31, 2019, unless terminated earlier in accordance with the requirements of this Contract.

Article 2. Artist's Responsibilities and Commitments

2.1. General Services

- (a) The Artist shall not start any work under this Contract until the Artist receives the Notice to Proceed from the City.
- (b) The Artist shall complete an open and equitable selection process to hire local artist(s) as contracted employees who will work with the Artist to perform research about the people, the community, the neighborhood and area history, create imagery, photography, audio and/or video recordings to document the research.
- (c) The Artist shall engage with community representatives and stakeholders to develop the proposed Artwork. 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 Artist.

- (d) The Artist shall determine the artistic expression, medium, scope, design, color, size, material, and texture of the Artwork, subject to Approval by the City.
- (e) The exact location of the Site will be mutually agreed upon by the Parties.
- (f) The Artist may request, at any time, all information, materials, and scaled drawings of the Site, if available, and any reasonable assistance required by the Artist to enable the Artist to perform the services required by this Contract. To the extent such information is available to the City or to third parties under the City's control, the City will promptly provide such information to the Artist.
- (g) The Artist shall 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 Artist shall take all steps appropriate to the Artwork 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 Artist to provide information on sustainability opportunities.

2.2. Schedule

- (a) Prior to beginning any other work under this Contract, the Artist shall develop and provide to the City a tentative Schedule.
- (b) The Artist shall coordinate with the City in order to ensure that all relevant dates and times are included and accounted for in the Schedule.
- (c) The City will either issue Approval of the Schedule, with or without modifications, or reject the draft Schedule. If the City rejects the draft Schedule, the Artist shall revise and resubmit the draft Schedule within the time period required by the City in its Notice of rejection.
- (d) When the City gives its Approval of the Schedule, either with or without modifications, it will issue Notice to the Artist to proceed with the execution of the work described in this contract.
- (e) Once approved by the City, the Schedule shall control all design, review, implementation, transportation, installation, and completion deadlines for the Artwork.

2.3. Changes to the Schedule

- (a) The Artist may only make modifications to the approved Schedule upon written request to, and Approval of, the City. The City may request from the Artist any information or documentation it deems necessary in order to evaluate any request to amend the approved Schedule.
- (b) The City may, on its own initiative and at any time, direct any changes to the approved Schedule it deems necessary or appropriate.

2.4. Design

- (a) The Artist shall perform all services as directed by the Contract Administrator, in order to prepare the required deliverables.
- (b) The Artist shall perform inspections of existing Site conditions as needed, prior to beginning design of the temporary artwork, and shall ensure that the temporary artwork appropriately accounts for all existing Site conditions. The Artist will call 8u two business days (excluding weekends and holidays) prior to doing any digging.
- (c) After conducting all necessary Site inspections and after any required consultation with the City, the Artist shall design the Artwork in accordance with this contract.
- (d) Within 45 days after the Effective Date, the Artist shall submit a Progress Update for review and feedback by AIPP staff on the Artwork. The time for the Progress Update may be extended, in the City's sole discretion. In conjunction with the Progress Update, the Artist shall submit to the City the following:
 - (1) The results of the Artwork community engagement and research work to date, and how these results are being incorporated into a temporary artwork to be exhibited during *Givens Swims* performance weekends.
 - (2) A description of the Artwork, which may include images, audio, video of the community engagement and research work; and drawings, sketches, or two-dimensional representations of temporary artwork.
 - (3) The proposed siting of the temporary artwork, with dimensions depicted.
 - (4) A written narrative describing the Artist's concept and imagery; and an explanation of how the Artwork will meet the deliverables defined in Exhibit C, including types and quantities of all materials to be incorporated into the Artwork.
 - (5) A preliminary budget for the Artwork.

(6) A current Schedule.

(e) Within 45 days after submitting the Progress Update set out in Subsection (d), above, the Artist shall prepare and present a Briefing to the AIPP Panel – at either the June or July 2019 AIPP Panel meeting to inform the AIPP Panel about the progress of the Artwork and for review and feedback by the AIPP Panel on the Artwork. In conjunction with the Briefing, the Artist shall submit to the City, at a minimum, the following:

- (1) The results of the Artwork community engagement and research work to date, and how these results are being incorporated into a temporary artwork to be exhibited during *Givens Swims* performance weekends.
- (2) A description of the Artwork, which may include images, audio, video of the community engagement and research work; and drawings, sketches, or two-dimensional representations of temporary artwork that show form, color, texture, size and placement in relation to the Site.
- (3) If applicable or requested by the City, the Artist will submit working drawings detailing all elements of the temporary artwork and the means of installing it at the Site, together with the any graphic material requested by the City in order to allow the City to carry out a structural design review to certify compliance of the temporary artwork with applicable statutes and ordinances.
 - i. If applicable or requested by the City, the drawings submitted by the Artist must bear an engineer's or architect's seal, unless the City grants the 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 Artwork as set out in Exhibit E.
- (4) An Artist statement or conceptual narrative describing the temporary artwork, including the concept, imagery, types and quantities of materials to be incorporated into the temporary artwork, and how the Artwork meets the requirements outlined in Exhibit C.
- (5) If applicable or requested by the City, a written report from a Registered Accessibility Specialist indicating that all components of the Artwork are compliant with accessibility standards and requirements imposed upon the City by federal, state, or other applicable law, including but not limited to the Americans with Disabilities Act of 1990, as amended.

- (6) If applicable or requested by the City, a list of permits, if any, that will be required for the completion of the Artwork.
 - (7) An itemized budget for completion of the Artwork, including written vendor quotes for all videography, photography, audio recording, materials, fabrication, engineering, installation, permitting, insurance, and any other costs.
 - (8) An updated Schedule for completion of the Artwork.
- (f) Within 15 days of its receipt of the Briefing, the City will notify the Artist of its approval or rejection, as well as any revisions to the Artwork required by the City, which revisions shall automatically become incorporated into the Artwork. The reasons the City may require the Artist to revise the Artwork, include but are not limited to:
- (1) To comply with any applicable statutes, ordinances, or regulations.
 - (2) To account for any life, health, safety, or security concerns.
 - (3) Any non-aesthetic reason that the City, in its sole judgment and discretion, deems necessary or appropriate.
- (g) If the City rejects the Artwork as presented in the Briefing, the Artist shall resubmit a revised the Artwork design within 15 days. The City will, within 15 days of its receipt of the revised Artwork design, notify the Artist of its approval or rejection. If the City approves the revised Artwork 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 Artwork design, the City may terminate this Contract for cause in the manner set out in Section 5.4, except that the opportunity to cure will not apply.
- (h) The Artist will continue the community engagement and research work, including the creation of photographs, text, audio recordings, and/or video recordings to capture stories and images of people and places important to the Givens community, after the *Givens Swims* performance in accordance with the Schedule. The Artist will capture all community engagement and research work into Final Documentation to serve as the archival record of this work.

2.5. Site Inspections

- (a) The Artist shall inspect the Site at least once and shall continue to conduct inspections, as needed, to ensure all information is known by the Artist about the Site that impacts or could affect the installation of the Artwork.

2.6. Fabrication, Transportation, Installation and Removal of the Temporary Artwork

- (a) The Artist shall be responsible for the fabrication, transportation, installation, and removal of the Artwork and Site restoration. The City shall have the right to inspect the Artwork at reasonable times during the fabrication, transportation, installation, removal, and Site restoration.
- (b) The Artist shall complete the fabrication of the Artwork in substantial conformity with the City's approval in 2.4(f) or (g) ("Approved Design"). However, Artist may present to the City, in writing, for further review and approval, any significant changes in the scope, design, color, size, material, or texture of the Artwork not in substantial conformity with the Approved Design. The AIPP Administrator shall determine whether a change is significant and must be approved in writing by the City.
- (c) If the City approves any significant changes submitted by the Artist, the approved changes shall become part of the Approved Design and part of this Contract. If the City does not approve the changes, Artist shall revert back to the original approved design of the Artwork or submit new proposed changes within 10 days of the City's disapproval. If the re-submitted changes are not accepted by the City, this Contract may be terminated pursuant to Section 5.4.
- (d) The Artist shall give Notice to the City when the Artist is ready to begin installation of the Artwork at the agreed upon location at the Site.
- (e) The Artist shall take all necessary precautions to protect and preserve the Site, as well as the integrity and finish of adjacent building surfaces, if applicable, while installing the Artwork.
- (f) The Artist shall be responsible for all reasonable expenses, labor and equipment to prepare the Site for installation and de-installation of the Artwork.
- (g) The Artist shall be responsible for preparation and installation of the Artwork, as well as removal of the Artwork and restoration of the Site to an acceptable condition in accordance with the Approved Design.

2.7. Final Acceptance

- (a) The Artist give the City Notice when the Artwork has been installed. The Artist shall also give the City Notice when the Artwork has been de-installed and the Site restored to an acceptable condition.
- (b) The City shall give Notice to the Artist of its acceptance of the temporary installation of the Artwork. The City shall also give Notice to the Artist of completion, after inspecting the Site to verify that it has been restored to an acceptable condition.

- (c) The Artist will create and submit a Final Document to serve as the archival record of the community engagement and research work, as accepted by the AIPP Panel and the Arts Commission.
- (d) Final completion shall be effective as of the earlier to occur of: (1) the date of the City's Notice of completion; or, (2) the 35th day after the Artist has sent Notice to the City that de-installation and Site restoration is complete, unless the City, upon receipt of this Notice and before the expiration of the 35-day period, gives the Artist Notice specifying and describing the services the Artist did not complete. In such case, the Artist shall have 30 days to complete the identified services and send new Notice to the City of completion. The City's 35-day period then starts anew.
- (e) The Artist shall be available at such times as may be agreed upon between the City and the Artist to attend any events relating to the public opening of the Artwork. The Artist shall also participate in educational events and programming, as mutually agreed upon by Artist and the City. The City shall use commercially reasonable efforts to arrange for publicity for the completed Artwork in such art publications and otherwise as may be determined between the City and the Artist as soon as practicable following installation. Any Artist-generated publicity materials or communications related to the Artwork must be reviewed by the City before release.
- (f) The Artist shall submit, after final de-installation, to the City an *Affidavit of Bills Paid*, attached to this Contract as *Exhibit "H"*, certifying that all bills relating to services or supplies used in the performance of this Contract have been paid by the Artist and that no outstanding lien(s) or attachment(s) apply in any way to the Artwork.

2.8. Closeout

Within 30 days after the Artist completes the services set out in this Article, the City will evaluate the Artist's compliance with the terms of this Contract.

Article 3. Payment to Artist

3.1. Contract Amount

The Contract Price for this Contract is \$ 20,000.00.

3.2. Full Consideration

In exchange and consideration for the Artist undertaking the obligations in this Contract, the City agrees to pay the Artist the Contract Price. The Artist agrees that the Contract Price is the only compensation owed to the Artist

under this Contract, and agrees to be solely responsible for all costs related to design, execution, fabrication, transportation, travel, delivery, mailing, shipping, delivery, installation, labor, insurance, permitting and licensing, and any other costs incurred by the Artist in fulfilling all obligations under this Contract.

3.3. Payment Schedule

(a) Payment of the Contract Price will be in the following percentages and at the following payment milestones:

- Milestone 1 – 20% upon the City's approval of the Schedule.
- Milestone 2 – 40% within 30 days after completion of the Update and presentation.
- Milestone 3 – 30% within 30 days after the completion of the *Givens Swims* performances and de-installation of Artwork.
- Milestone 4 – 10% within 30 days after submittal of Final Documentation and Affidavit of Bills Paid.

(b) Pursuant to City Code §2-8-3, the City may withhold payment otherwise due under this Contract in order to offset any debt owed by the Artist to the City, including but not limited to any tax debt owed by the Artist to the City pursuant to Article VIII, Section 1 of the Austin City Charter. The Artist acknowledges notice of this City ordinance and Charter provision.

3.4. Tax-Exempt Status

The 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 Artwork or the materials and supplies used in the design and fabrication of the Artwork. The Artist acknowledges receipt of a Texas Sales Tax and Local Sales Tax Exemption Certificate for Contractors, attached as Exhibit G. The Artist shall only use this certificate in accordance with law. The City shall not reimburse the Artist for state sales tax, local sales tax, or federal excise tax.

Article 4. The Artwork

4.1. Warranties and Representations

(a) The Artist warrants and represents that:

- (1) The Artwork is and shall be original creations of the Artist.
- (2) The Artist has obtained, or shall 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 Approved Design or the Artwork that is not the original work of the Artist.

- (3) Except as otherwise disclosed to the City in writing, when submitting the design, the Approved Design is and shall be free of any defects of design.
- (4) From the Effective Date through de-installation that:
 - (A) The execution and fabrication of the Artwork shall be performed in a good and workmanlike manner.
 - (B) The Artwork, as fabricated and delivered, shall 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 Artwork.
 - (C) Reasonable maintenance of the Artwork shall not require procedures substantially in excess of those described in the Approved Design.
- (b) The City will give Notice to the Artist of any observed breach of these warranties and representations. Once notified by the City, the Artist shall, at no cost to the City, promptly cure the breach or breaches consistent with professional conservation standards, including but not limited to cure by repairing or refabricating the Artwork or any necessary portion of the Artwork.

4.2. Ownership

- (a) The Artist retains all reproduction rights under the Copyright Act of 1976, 17 U.S.C. §§ 101, *et seq.*, and all other rights in and to the Artwork, except as such rights are limited by this Contract. In view of the intention that the Artwork in its final dimension shall be unique, the Artist shall not make any additional exact duplicate, three-dimensional reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the prior written permission of the City. The Artist grants to the City and it assigns an irrevocable license to make two-dimensional reproductions of the Artwork for any municipal purpose, including, but not limited to, reproductions used in advertising, brochures, stationery, media publicity, and catalogues or other similar publications.
- (b) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: "© Artist's name, year of exhibition."
- (c) The Artist shall use commercially reasonable efforts to give credit to the City, reading substantially as follows: "An original work of art commissioned by the City of Austin and the AIPP Program." This credit shall appear in any public showing of reproductions of the Artwork

which are under the Artist's control for any future publications or exhibitions.

- (d) Prior to initiating or responding to a request from the media regarding the Artwork, including an interview, social media post or written response, the Artist shall advise the City's Contract Administrator of the request and proposed answer. The Contract Administrator may approve the response or refer the request to the City's public information office for response.
- (e) Title to the Artwork shall remain with the Artist, at all times before, during and after exhibition of the Artwork. If the Artist fails to de-install the Artwork, as required under this Contract, the City will provide 30 days' notice to the Artist, and then shall take title to the Artwork and may dispose of it as the City sees fit. The Artist will have no claim against the City for such disposal.

4.3. Insurance and Risk of Loss

The Artist shall be responsible for any risk of loss or damage to the Artwork and shall take all measures necessary to protect the Artwork from loss or damage, prior to and during its display. The Artist shall carry insurance in the types and amounts as indicated in Exhibit E, attached to this Contract. Workers' Compensation and Employers' Liability Insurance shall commence before the installation on City Property. Commercial General Liability Insurance and Auto Liability must commence no later than 30 days after the signing of the Contract and prior to final acceptance by the City. Professional Liability Insurance coverage for any design professional must be in place at the time the design professional places her/his seal on design drawings, as required. Approval of insurance by the City shall not relieve or decrease the liability under this Contract of the Artist or any design professional placing his or her seal on design drawings.

4.4. Maintenance, Repairs and Alteration to the Artwork

- (a) The City recognizes that maintenance of the Artwork on a regular basis is essential to the integrity of the Artwork. The Artist shall reasonably assure that the Artwork is properly maintained during the exhibition.
- (b) The Artist agrees that the City shall not be responsible for any repairs and restoration of the Artwork, while installed. The Artist will be notified when and if the City becomes aware of the need for repair or restoration. The Artist shall notify the City if any repairs or restoration of the Artwork is needed, while installed.
- (c) The Artist agrees to remove any graffiti or damage to the Artwork within five business days of Notice from the City or Notice by the Artist.
- (d) When emergency repairs are necessary, in order to ensure safety and prevent the loss of or further damage to the Artwork, the City may

remove the Artwork from the Sites, if the Artist is unable or unwilling to make any necessary repairs or restoration.

- (e) In the event the Artwork is substantially damaged or altered, the City shall no longer represent the Artwork as that of the Artist, if the Artist gives Notice to the City that it is the Artist's position to deny authorship.

Article 5. Contract Management

5.1. Amendment in Writing

This Contract may be modified only by a writing properly executed by each of the Parties. Neither any representation or promise made after the execution of this Contract, nor any modification or amendment of this Contract, shall be binding on the Parties unless made in writing and properly executed by each of the Parties.

5.2. Contracting by the Artist

- (a) The Artist may contract services to be provided under this Contract, at the Artist's sole expense, subject to the following limitations:
 - (1) The Artist's use of contracted employees may not affect the design, appearance, fabrication methodology, or visual quality of the Artwork.
 - (2) The Artist is responsible for all work performed by contracted employees.
 - (3) The Artist shall remain fully responsible to the City for the actions of any contracted employees engaged by the Artist.
 - (4) Any contract must be in writing, must attach this Contract as an exhibit, and must acknowledge the supremacy of this Contract in the case of any conflict between the two. All contractors shall remain subject to the terms of this Contract at all times.
 - (5) Prior to the Artist entering into a contract, the Artist shall give Notice to the City, identifying the proposed contractor, the proposed scope(s) of work, and the dollar amount of the contract. The City may reject a contractor proposed by the Artist. If the City rejects a proposed contractor, the Artist may not use that contractor on this Contract.
 - (6) The Artist will provide insurance coverage to each contractor, following the insurance requirements set out by the City in Exhibit E.

- (b) In an effort to further stimulate and positively impact the local economy, the Artist shall make reasonable efforts, which the Artist shall document on request by the City, to:
 - (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 Artist for this Contract.
 - (2) Recruit residents of the Austin metropolitan area for available contracting opportunities.

5.3. Permits

For any permits required by City ordinance or administrative rule, the Artist shall seek fee waivers as set out in Exhibit D.

5.4. Termination for Cause

- (a) In the event of default by a Party, the other Party shall have the right to terminate this Contract for cause, by Notice delivered by certified mail to the Party in default. Unless the Party giving notice specifies a different time in the Notice, the Contract is terminated 30 calendar days after the date of the Notice. During this time period, the Party alleged to be in default may cure the default or provide evidence sufficient to prove to the other Party's reasonable satisfaction that the default does not exist or will be cured in a time satisfactory to the Party alleging the default. Each Party's rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
- (b) The City may also terminate this Contract for cause if:
 - (1) The Artist, including any agent or representative of the Artist, provides or offers to provide any gratuities in the form of entertainment, gifts, or similar benefits to any City official or employee in order to secure 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 this paragraph will be in the manner set out in Subsection (a), above, except that the Artist shall not be entitled to any right to cure. If the City terminates this Contract under this paragraph, the City shall, in addition to all other rights and remedies, be entitled to recover from the Artist an amount equal to the cost incurred by the Artist or the agent or representative of the Artist in providing such gratuities.
 - (2) The Artist dies or becomes physically or legally incapacitated during the term of this Contract. Termination under this paragraph will only require notice to the Artist or the Artist's legal successor or guardian, as applicable. 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 Artwork has progressed to the point of fabrication, the City may complete the Artwork, giving due regard to the Artist's intended results and giving proper credit and acknowledgement to the Artist.

5.5. Termination for Convenience

Either Party may terminate this Contract for convenience, with 30 calendar days' Notice to the other Party. If the City terminates this Contract for convenience, the Artist shall immediately stop performance under this Contract (unless the Notice directs otherwise) and deliver all drawings, renderings, maquettes, sketches, models, and any other documentation and materials created by the Artist for the Final Design or creation of the Artwork to the City within 10 business days. If the City approves reimbursements for purchases of materials used for the development of the design in excess of the payments the Artist received prior to the City's termination for convenience, the City will reimburse the Artist for amounts expended under this Contract within 30 calendar days of the Artist's submission of receipts documenting such material purchases.

5.6. Funding Out and Offset for Taxes Owed

- (a) The Artist acknowledges awareness of Article VIII, Section 1 of the Austin City Charter, which prohibits the payment of any money to any person who is in arrears to the City for taxes, and of City Code §2-8-3, concerning the right of the City to offset indebtedness owed the City.
- (b) The Artist acknowledges that the City's payment obligations to the Artist are payable only from funds appropriated or available for the purpose of this Contract. 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. The City shall provide the Artist with 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.

5.7. Force Majeure

- (a) 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.

- (b) The Party invoking Force Majeure shall give timely and adequate Notice to the other Party, by e-mail or orally but confirmed promptly in writing, and shall use due diligence to remedy the effects of an event of Force Majeure, as soon as reasonably possible. In the event a Party's performance of an obligation under this Contract is delayed due to a Force Majeure event, then the time for completion of the Party's obligation will be extended day-for-day, provided that an event of Force Majeure shall not last more than 90 days. If an event of Force Majeure affecting the Artist's performance continues for more than 90 days, the City shall have the right to terminate this Contract upon Notice to the Artist. The Contract shall terminate immediately upon receipt of such Notice.

5.8. Notices

- (a) Unless explicitly stated elsewhere in this Contract, all Notices must be given in the manner set out in this Section in order to be effective.
- (b) Any Notice required or allowed to be given or to be served in connection with this Contract will be deemed delivered and received on the earlier of the date actually received or a date that is:
 - (1) Three calendar days after being deposited in the United States mail, if sent via certified mail, properly addressed and with postage prepaid; or
 - (2) The date delivery is originally scheduled to occur, if sent via a reputable overnight courier service.
- (c) Notice to each Party must be given as follows:

The City
Sylvia Holt-Rabb
Assistant Director
Economic Development Dept.
City of Austin
PO Box 1088
Austin TX

The Artist
Allison Orr Dance Inc.
2023 E. Cesar Chavez
Austin, TX 78702-4511

with copies to:

Susan Lambe
AIPP Program Manager
Economic Development Dept.
City of Austin
PO Box 1088

Austin TX 78767

City of Austin Law Dept.
ATTN: City Attorney
PO Box 1088
Austin TX 78767

- (d) 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.
- (e) The Artist is responsible for giving prompt Notice to the City of any changes to the Artist's address(es). If the City gives Notice to the Artist in the manner set out in this Section and the Notice is returned to the City as undeliverable, the City will make reasonable effort to locate the Artist in order to give notice to the Artist of issues affecting or relating to the Artist's rights. If the Artist fails to update the Artist's address(es) on file with the City and the City is unable to locate the Artist for purposes of giving the notices required in this Contract, the Artist shall be deemed to have waived any rights afforded to the Artist under Section 4.4. If the Artist subsequently reestablishes contact with the City after a waiver of the rights set out in Section 4.4, the 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 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 Artist against the City.

5.9. Right to Assurance

When one Party, in good faith, has reason to question the other Party's intent to perform its obligations under this Contract, that Party may make demand on the other Party for written assurance of the intent to perform. The Party who is asked for assurance has 10 business days to provide Notice of its written assurance of intent to perform. If the Party fails to provide the assurance, the demanding Party may treat this failure as an anticipatory repudiation of the Contract and terminate the Contract for cause.

Article 6. Terms and Conditions

6.1. Equal Opportunity

- (a) For the duration of this Contract, including any maintenance or repair provided by the Artist under Section 4.4, the Artist shall:

- (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.
 - (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.
 - (3) Post in conspicuous places, available to all employees and applicants for employment, any notices provided by the City regarding equal opportunity.
 - (4) State, in all solicitations or advertisements for employment placed by or on behalf of the 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.
 - (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 this Section and any applicable rules and regulations.
- (b) If the Artist fails to comply with this Section, the City may terminate this Contract for cause, or may suspend this Contract in whole or in part, and the Artist may be debarred from further contracts with the City.

6.2. Right to Audit

- (a) The Artist agrees that the representatives of the Office of the City Auditor, or other authorized representatives of the City, shall have access to, and the right to audit, examine, or reproduce, any and all of the Artist's records related to this Contract. The Artist shall retain all such records for a period of three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Artist are resolved, whichever is longer. The Artist agrees to refund to the City any overpayments disclosed by any such audit.
- (b) The Artist shall include the requirements of Subsection (a), above, in all subcontractor agreements entered into in connection with this Contract.

6.3. Indemnification

- (a) THE ARTIST SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (THE "INDEMNIFIED PARTIES") AGAINST ALL COSTS, LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS ("CLAIMS"), TO THE EXTENT ARISING DIRECTLY OR

INDIRECTLY OUT OF (A) A BREACH OF THIS CONTRACT OR VIOLATION OF LAW BY THE ARTIST AND THE ARTIST'S EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS (THE "ARTIST PARTIES"), (B) A FALSE REPRESENTATION OR WARRANTY MADE BY THE ARTIST PARTIES IN THIS CONTRACT, IN THE ARTIST'S PROPOSAL, OR THE FORMATION OF THIS CONTRACT, (C) THE DESIGN OR INSTALLATION OF THE ARTWORK, (D) THE INTELLECTUAL PROPERTY INVOLVED IN THE DESIGN AND CREATION OF THE ARTWORK, (D) THE NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY THE ARTIST PARTIES IN CONNECTION WITH THIS CONTRACT. CLAIMS TO BE INDEMNIFIED INCLUDE CLAIMS FOR BODILY INJURY OR DEATH, OCCUPATIONAL ILLNESS OR DISEASE, LOSS OF SERVICES WAGES OR INCOME, DAMAGE, DESTRUCTION OR LOSS OF USE OF PROPERTY, AND WORKERS' COMPENSATION CLAIMS. *THE ARTIST'S OBLIGATIONS UNDER THIS SECTION ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED, IN PART, BY THE ALLEGED NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES.*

- (b) The City shall give the Artist Notice of any Claim asserted against an Indemnified Party. The Artist shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against the Indemnified Parties. The Indemnified Parties shall have the right (but not the obligation) to participate in the defense of any claim or litigation with attorneys of their own selection without relieving the Artist of any obligations in this Contract. In no event shall the Artist admit liability on the part of an Indemnified Party without the prior, written consent of the City Attorney.
- (c) Maintenance of the insurance required under this Contract shall not limit the Artist's obligations under this Section. The Artist shall require all subcontractors to indemnify the City in the same manner as provided in this Article.

6.4. Independent Contractor

This Contract shall not be construed as creating an employer/employee relationship, a partnership, joint enterprise, or a joint venture between the Parties. The City and the Artist are independent contractors. The Artist agrees and understands that this Contract does not grant any rights or privileges established for employees of the City.

6.5. Competent, Orderly Workers

The Artist and any subcontractors of the Artist shall only employ orderly and competent workers, skilled in the performance of the services that they will perform under the Contract. The Artist, the Artist's employees and subcontractors, and subcontractors' employees may not: (1) illegally use or possess any firearms, or (2) use or possess alcoholic or other intoxicating beverages, illegal drugs, or controlled substances, while on the job or on City's property. The workers may not be intoxicated or under the influence of alcohol or drugs on the job. If the City notifies the Artist that any worker is

incompetent, disorderly or disobedient, has knowingly or repeatedly violated City rules, has illegally possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Artist shall immediately remove the worker and the worker may not be employed again for work on this Contract without the City's written consent.

6.6. Survival of Obligations

All provisions of this Contract that impose continuing obligations on the Parties, including but not limited to warranty, indemnification, limitation of liability, and keeping addresses for Notice current, shall survive the expiration or termination of this Contract.

6.7. Election of Remedies; No Waiver

Neither the exercise of nor the failure to exercise a right or to give notice of a claim under this Contract shall constitute an election or waiver of remedies or limit a Party in any manner in the enforcement of any other remedies that may be available to the Party, whether at law or in equity.

6.8. Jurisdiction and Venue

This Contract is made under and shall be governed by the laws of the State of Texas, without regard to conflicts of laws principles which would apply the law of any other jurisdiction. The courts of Texas shall have jurisdiction of any dispute arising out of or concerning this Contract, either administrative or judicial, and venue shall be proper and lie exclusively in Travis County Texas.

6.9. Severability

If a court of competent jurisdiction determines that a term or provision of this Contract is void or unenforceable, the remainder of this Contract remains effective to the extent permitted by law.

6.10. Mandatory Anti-Israel Boycott

- (a) Pursuant to §2270.002, Texas Government Code, the City is prohibited from entering a contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract.
 - (1) "Boycotting Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business with Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
 - (2) A "company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly-owned subsidiary, majority-owned

subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

- (b) Pursuant to this statutory requirement, the Artist provides this written verification that, if the Artist is a company as defined above, it does not boycott Israel and will not boycott Israel for the term of this Contract.
- (c) The 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.

6.11. Execution in Counterparts

This Contract may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which, taken together, shall constitute one and the same Contract.

6.12. Mutual Drafting

This Contract shall be deemed to be the joint work product of the Parties and any rule of construction that a document shall be interpreted or construed against the drafter shall not be applicable to this Contract.

6.13. Complete Agreement

This Contract constitutes the entire agreement and understanding between the Parties and supersedes all previous agreements, understandings, discussions, and representations concerning its subject matter. This Contract includes the following exhibits, which are incorporated into this Contract by reference:

Exhibit A.	Facility/Site Plan
Exhibit B.	<i>My Park, My Pool, My City</i> Information
Exhibit C.	Prospectus
Exhibit D.	Permit Fee Waiver Memo
Exhibit E.	Insurance Requirements
Exhibit F.	Conservation Review Form
Exhibit G.	State Sales Tax and Local Sales Tax Exemption Certificate for Contractors
Exhibit H.	Affidavit of Bills Paid

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CITY OF AUSTIN

ARTIST

BY: Sabrina Holt

BY: Allison Orr

NAME: Sabrina Holt

NAME: Allison Orr

TITLE: Interim Deputy Director

TITLE: Artistic Director

DATE: 5.9.19

DATE: April 29, 2019

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 2nd day of May, 2019

CONTRACTOR
Authorized
Signature

Title

Allison OrrDance Inc.
Jake Stuparsky
Operations Manager

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:

Allison Orr Dance Inc. dba Forklift Danceworks

Signature of Officer or
Authorized
Representative:

Jake Stepansky

Date: 5 / 2 / 19

Printed Name:

Jake Stepansky

Title

Operations Manager