



MEMORANDUM

TO: File

FROM: Diana McIntosh, Procurement Specialist II

DATE: October 12, 2020

SUBJECT: MA 5500 NG200000070

Amendment No. 1 received from EDD, extending contract by 12 months. MA 5500 NG200000070 its contents were created, administered, and maintained by the City of Austin, Economic Development Department. All original documents are located with the City of Austin, Economic Development Department. The Purchasing Office is not responsible for any procurement actions taken for this Master Agreement Contract other than the creation of the payment mechanism for accounting purposes. The Vendor is the Umlauf Sculpture Garden Museum.

**AMENDMENT NO. 1 TO THE
PRESERVATION AGREEMENT
FOR THE HERITAGE GRANT PROGRAM
BETWEEN THE
CITY OF AUSTIN
AND
UMLAUF SCULPTURE GARDEN & MUSEUM**

This Amendment ("Amendment") to the Heritage Grant Contract ("Contract") is entered by and between the City of Austin ("City") and the Umlauf Sculpture Garden + Museum ("Contractor"). The Contract is amended, as shown below, with new language underlined and removed language struck through.

Section 1.1 Term of the Contract, is amended as follows:

1.1. Term of the Contract

This Contract shall become effective on the date of the City signing and shall remain in effect for twelve months after that date.

All other terms and conditions as stated in the original Contract shall remain in effect.

The parties' duly authorized representatives execute this Amendment on the dates set forth, below.

CITY OF AUSTIN

UMLAUF Sculpture Garden + Museum

BY:  _____

BY:  _____

NAME: Synovia Holt-Rabb

NAME: Jessica W. Burford

TITLE: Acting Director

TITLE: Senior Development Manager

DATE: 10/03/2020

DATE: September 28, 2020

Approved as to form:



Assistant City Attorney



MEMORANDUM

TO: File

FROM: Diana McIntosh, Procurement Specialist II

DATE: August 20, 2020

SUBJECT: MA 5500 NG200000070

MA 5500 NG200000070 its contents were created, administered, and maintained by the City of Austin, Economic Development Department. All original documents are located with the City of Austin, Economic Development Department. The Purchasing Office is not responsible for any procurement actions taken for this Master Agreement Contract other than the creation of the payment mechanism for accounting purposes. The Vendor is the Umlauf Sculpture Garden Museum.

General Administration Contracts File Checklist

Project Name: FY20 Heritage Grant: Umlauf Sculpture Garden & Museum		Prepared By: Melissa Alvarado	Date Prepared: 5/4/2020
Vendor Name & Contact: Umlauf Sculpture Garden & Museum Vendor Code: V00000915344 Contractor Name: Sarah Story Contractor Title: Executive Director Contractor Address: 605 Azie Morton Rd Austin, Texas 78704 Contractor Phone: 512-445-5582		Preparer Contact #: 512-825-5243 cell	Department: Economic Development Department
PROJECT DESCRIPTION: <input type="checkbox"/> Check Added (enter description here):			
1.0	Terms of Contract	Dates	Amount
1.1	Initial Term Beginning Date	8/1/2019 - 9/30/2021	\$20,000
1.2	Extension 1		
1.3	Extension 2		
1.4	Extension 3		
1.5	Extension 4		
REQUIRED DOCUMENTS (click the box):			
2.0	Contract Signed	<input checked="" type="checkbox"/> Check Yes Included	
3.0	RCA Agenda No. #20 on 9/19/2019 https://www.austintexas.gov/edims/document.cfm?id=326731	<input checked="" type="checkbox"/> Check Yes Included	<input type="checkbox"/> Check if N/A Item #:
3.1	Approved Agenda Minutes https://www.austintexas.gov/edims/document.cfm?id=329073	<input checked="" type="checkbox"/> Check Yes Included	<input type="checkbox"/> Check if N/A
4.0	How Many Bids Issued	<input type="checkbox"/> Check Yes Included	#: 0
4.1	Number of Responses	<input type="checkbox"/> Check Yes Included	#: 0
5.0	Signed Non-Discrimination Affidavit – 0800 Required when the contract is expected to exceed \$2,000	<input checked="" type="checkbox"/> Check Yes Included	<input type="checkbox"/> Check if N/A
6.0	Signed Non-Suspension & Debarment – 0805 Required when the contract is expected to equal or exceed \$25,000	<input checked="" type="checkbox"/> Check Yes Included	<input type="checkbox"/> Check if N/A
7.0	Nonresident Bidder Provision – 0835 Required for all contracts expected to exceed \$5,000	<input type="checkbox"/> Check Yes Included	<input checked="" type="checkbox"/> Check if N/A
9.0	Certificate of Insurance (Current)	<input checked="" type="checkbox"/> Check Yes Included	<input type="checkbox"/> Check if N/A
8.0	Form 1295, Certificate of Interested Parties (if applicable)	<input checked="" type="checkbox"/> Check Yes Included	<input type="checkbox"/> Check if N/A

9.0	System for Award Management (SAM) Search Results)	<input type="checkbox"/> Check Yes Included	
10.0	AM Best Rating or Approval from Risk Management	<input type="checkbox"/> Check Yes Included	<input type="checkbox"/> Check if N/A
Date submitted to Purchasing Office:			

FY20 HERITAGE CONTRACT
Control Number FY20 HG HSB 002
Award: \$20,000
Vendor Name: National Society of the Colonial Dames in America in Texas
Vendor Code: V00000915344
FDU 1160 5500 2360 6825

Contract Contact Information
Contractor Name: Sarah Story
Contractor Title: Executive Director
Contractor Address: 605 Azie Morton Rd
Austin, Texas 78704
Contractor Phone: 512-445-5582
Contractor Fax: N/A
Contractor Email: sarah.story@umlaufsculpture.org

Contract Administrator
Administrator Name: Melissa Alvarado
Administrator Title: Heritage Tourism Division Manager
Administrator Phone: 512-974-7870



PRESERVATION AGREEMENT FOR THE HERITAGE GRANT PROGRAM
BETWEEN THE
CITY OF AUSTIN
AND
«UMLAUF SCULPTURE GARDEN & MUSEUM»

This Preservation Agreement ("Agreement") under the Heritage Grant Program is entered into by and between the City of Austin ("City"), a home-rule municipality incorporated in the State of Texas, and «Umlauf Sculpture Garden & Museum» ("Contractor"), located at «605 Azie Morton Rd Austin, Texas 78704» in Austin, Texas.

Article 1. Term and Key Personnel

- 1.1. Term of the Agreement.** This Agreement shall become effective on the date of the City signing and shall remain in effect for ten years after the Project is completed, unless extended in writing by both mutual agreement of both parties, or unless terminated earlier in accordance with the requirements of this Agreement.
- 1.2. Designation of Key Personnel.** The Contractor's Agreement Manager for this engagement shall be «Sarah Story», «512-445-5582», «sarah.story@umlaufsculpture.org». The City's Agreement Manager for the engagement shall be Melissa Alvarado, 512-974-7870, Melissa.alvarado@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. If it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent

experience and competence in executing projects such as the one described above. Additionally, the Contractor will promptly notify the Project Manager to obtain prior approval for the replacement.

Article 2. Recitals

Section 351.101(a)(5) of the Texas Tax Code authorizes the use of revenue from the City's hotel occupancy tax to promote tourism and the convention and hotel industry, and that use includes the following: preservation, restoration, or rehabilitation of historic buildings, structures, objects, monuments, sites, or districts; and programming and marketing to encourage tourists and convention delegates to visit historic sites or museums in Austin.

- 2.1. The City has adopted a budget for expenditure of a portion of funds to be received from the levy of Hotel Occupancy Taxes and included therein is an allocation of monies for the purposes set forth in Section 351.101(a)(5) of the Texas Tax Code;
- 2.2. Contractor applied to complete its [Umlauf Sculpture Garden & Museum](#) to an [Heritage-Site Based Marketing Video Project](#) ("Project"); and
- 2.3. After application and evaluation of the Project, Contractor was awarded up to [\\$20,000.00](#) to complete the Project; and,
- 2.4. The City wishes to engage the Contractor to carry out the Project as described in this Agreement.

Article 3. Program Requirements

- 3.1. **Limitations of State Law.** Contractor acknowledges the funds provided pursuant to this Agreement are funds made available through the City's Hotel Occupancy Tax, and that the Contractor is bound to comply with state law applicable to the levy and use of such tax money authorized in Chapter 351 of the Texas Tax Code. No Project funds provided herein shall be utilized for other than the encouragement, promotion, improvement and application of historic preservation and all expenditures shall be in full conformity to Section 351.101 of the Tax Code. The City shall have the right to recover all funds not expended in full conformity within Section 351.101 of the Tax Code, and assess any costs or fines incurred by the City due to Contractor's failure to comply with the law.
- 3.2. **Non-Automatic Renewal of Funding.** The City's obligation to pay shall not exceed [\\$20,000.00](#) and shall not extend beyond the term of this Agreement.
- 3.3. **Non-Obligation of General Fund.** It is expressly understood that this Agreement in no way obligates the general fund or any other monies or credits of the City. The City shall have the right to reduce funding in the event Hotel Occupancy Tax revenues fall short of the anticipated revenues.

- 3.4. **Maximum Compensation and Method of Payment.** Contractor agrees that the City is providing a reimbursement grant and that the total grant amount of \$20,000.00 shall constitute full and complete compensation for all services and expenses incurred under this Agreement. It is expressly understood that, in no event, except where this Agreement is subsequently amended in writing signed by both parties, shall the total compensation and money paid to Contractor hereunder exceed this maximum amount. Contractor agrees to limit its expenditure of monies to be received hereunder to those specific terms and amounts set out in the Project Budget, and to those activities with accompanying limitations described in the Work Statement and/or Certificate of Appropriateness.
- 3.5. **Fiscal Procedures.** The Contractor shall ensure that records, fiscal procedures and documentation of transaction costs and receipts shall be true and correct and shall be maintained in accordance with established procedures with respect to all matters covered by this Agreement. Failure to do so will result in termination of this Agreement.

Article 4. Contractor's Obligations

- 4.1. **Certificate of Appropriateness.** The Agreement is contingent upon receipt of an Exhibit B, Certificate of Appropriateness from the City of Austin Historic Landmark Commission unless Certificate of Appropriateness is waived by the Historic Landmark Grants Committee or the Historic Landmark Commission. If the Contractor does work that is outside the parameters of the Certificate of Appropriateness, or does not provide appropriate documentation in accordance with the Certificate of Appropriateness, the costs to bring the project into compliance shall be incurred by the Contractor separate and apart from the Agreement. Contingent upon the scope of the project, a preservation architect may be retained to represent the City of Austin to monitor the progress of the work. The need for representation will be decided on a case-by-case basis by Heritage Tourism Division staff.

The City may, from time to time, during the term of this Agreement, request changes in the Work Statement to be provided by the Contractor. Such changes, which may include an increase or decrease in the amount of the Contractor's compensation and scope of work, shall, after agreement between the parties hereto, be incorporated in a written amendment to this Agreement, pursuant to Section 4.4.

- 4.2. **Schedule.** Projects must be completed within:

One year for Site-Specific Heritage Tourism Projects (Marketing, Educational, Planning): Eligible expenses for Site-Specific Heritage projects can be paid between August 1, 2019 through September 30, 2020. We cannot count/accept any payments made after September 30, 2020.

Two years for Heritage Capital Projects: Eligible expenses for Capital projects can be paid between August 1, 2019 through September 30, 2021. Heritage Capital Projects taking longer than 2 years must be granted a written extension from program staff.

The Contractor shall complete the Project within the agreed-upon timeframe outlined in Exhibit C, Work Statement. Projects that are not completed within the agreed-upon time frame risk loss of funding.

- 4.3. **Work Statement.** The Contractor shall provide, oversee, administer, and carry out all of the activities and requirements set out in the Work Statement attached and incorporated as Exhibit C and the Certificate of Appropriateness attached and incorporated as Exhibit B. This Agreement in no way obligates the City to provide material, equipment, transportation, or labor to assist in the

fulfillment of the Project, except insofar as such Project takes place at City facilities where the City agrees in advance and in writing to provide reasonable on-site arrangements.

- 4.4. **Amendments to Work Statement.** Contractor shall not commence any additional or revised work unless approved in writing by the City, and any work commenced by the Contractor not approved by the City shall be at the Contractor's sole cost and risk.
- 4.5. **Project Budget.** The City agrees to pay Contractor for expense incurred in accordance with the Project Budget, as shown on **Exhibit D**, attached and incorporated into this Agreement. The City's obligations under this Agreement shall not exceed \$20,000.00 from the Historic Preservation Fund.
- 4.6. **Budget Reallocation.** The Contractor may reallocate funds in the Project Budget among the various line activities and categories within the Statement of Work Phase Plan incorporated as Exhibit C to an extent not to exceed twenty percent (20%) of the City funding, provided the Contractor notifies the City in writing, and the maximum Agreement obligation stated in the Project Budget is not exceeded. Reallocation of City funds among the various line activities and categories in excess of twenty percent (20%) of the City funded Project Budget shall require submission of a revised Project Budget, written certification by the Contractor that such changes do not represent a substantial change in the Work Statement for the activities covered by this Agreement, and the prior, written approval of the City. This revised Project Budget will become an amendment to this Agreement.
- 4.7. **City not obligated to Third Parties.** The City shall not be obligated or liable to any party other than Contractor for the payment of any monies or for provisions of any goods or services.
- 4.8. **Subcontracting.**
 - 4.8.1. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Agreement or Certificate of Appropriateness, and shall contain provisions that:
 - a. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Agreement;
 - b. prohibit the Subcontractor from further subcontracting any portion of the Agreement without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - c. require Subcontractors to submit all invoices, receipts and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Agreement;
 - d. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - e. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City in this Agreement.
 - 4.8.2. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Agreement shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create

any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

- 4.8.3. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor no later than ten calendar days after receipt of payment from the City.
- 4.9. **Insurance Obligations.** The Contractor is obligated to comply with the requirements in Exhibit F, Insurance Requirements. The cost of this insurance is an allowable budgetary expense.
- 4.10. **Minority-Owned Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE).** Use of Minority-Owned and Women-Owned businesses certified by the City's SMBR is encouraged, but not required.
- 4.11. **Equal Opportunity.** For the duration of this Agreement, the Contractor and its agents and subcontractors shall:
- 4.11.1. 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.
- 4.11.2. 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.
- 4.12. **Compliance with Applicable Laws.** The Contractor shall comply at its own cost with all applicable federal, state and local laws and regulations, including permitting requirements of the Land Development Code.
- 4.13. **Publicity.** Throughout the term of this Agreement, Contractor shall comply with all requirements in Exhibit E, Publicity Requirements and Mandatory Acknowledgement of City of Austin Support.
- 4.14. **Public Access.**
- 4.14.1. Leased or owned historic properties must be visited by tourists, hotel guests, and convention attendees and must remain open to the public for at least ten years from the time the project is complete.
- 4.14.2. The grounds of the Project venue shall be accessible to the general public for the purposes of viewing and appreciating the historic value of the property, with reasonable hours to be set by the Contractor in coordination with the City. Contractor shall not place fencing in front of, or near, the property that would obscure or prevent visual observation of the building from the public right-of-way, or otherwise detract from visual appreciation of the historic character of the property.
- 4.14.3. Planning, education, and marketing materials must remain publicly available for at least five years from the time the project is complete.
- 4.15. **Maintenance of Title.** Contractor shall maintain and preserve the title to and possession of the Project site or building for 10 years after the Project is completed. During this time:
- 4.15.1. whenever legal action is pending which may result in foreclosure of the historic property, the Contractor must notify the City in writing, within three days of becoming aware of the legal action; and

- 4.15.2.** The owner or Contractor may not transfer or encumber the title without prior written approval from the City. The Contractor agrees that grants for \$100,000 or more are forgivable loans, with the forgiveness occurring at a monthly prorated amount beginning from the signed contract date until the 10-year maturity date. The loan will be totally forgiven and the lien released after 10-years.
- 4.16. Change in Use.** Throughout the term of this Agreement, the Contractor shall obtain written approval from the City prior to initiating any change in use of the Project property.
- 4.17. Historic Designation.** Contractor shall obtain or maintain the historic designation of the historic site or building.
- 4.18. Right of First Refusal.** Throughout the term of this agreement, or for ten years after the Project is completed, whichever is longer, the Contractor hereby grants the City the exclusive and irrevocable right of first refusal or first option to purchase, at market rate, without limitation, the property with all improvements.
- 4.19. Reporting Obligations.**
- 4.19.1. Final Report.** A Final Report and a Demographic Report shall be completed and submitted by the Contractor within 30 days of the completion of Project activities. The report must include:
- a.** Evidence of award and any match monies expended;
 - b.** Evidence of compliance with the Certificate of Appropriateness;
 - c.** Evidence of the use of the required Publicity Statement and logo as required in Exhibit E and section 4.14; and
 - d.** Evidence that the project was marketed to tourists and convention delegates.
- 4.19.2. Visitation Reports.** Contractor shall provide a Visitation Report, using the Visitation Report Form, Exhibit I, according to the following schedule:
- 4.19.2.1.** With every invoice; and
 - 4.19.2.2.** For four consecutive years, annually by September 30, beginning the first September which occurs after the first full calendar year after Project.
- 4.20. Monitoring and Evaluation.**
- 4.20.1.** Contingent upon the scope of the project, a preservation architect may be retained to represent the City of Austin to monitor the progress of the work. The need for representation will be decided on a case-by-case basis by Heritage Tourism Division staff. This cost would be incurred by the applicant separate and apart from the grant funds.
- 4.20.2.** The City and/or its representatives may conduct monitoring activities throughout the Project. These activities may include site visits to verify compliance with contract requirements.
- 4.20.3.** The Contractor shall maintain and provide to the City upon request, all sign-in sheets, invoices, receipts, communication records, and any other compliance documentation that supports the Project Completion Report and all Visitation Reports.
- 4.21. Non-Compliance.**

- 4.21.1. If an insurance policy is cancelled or expires, Contractor must immediately cease activities until all required insurance has been reinstated.
- 4.21.2. Noncompliance shall include, but is not limited to, not providing information as required or requested, past due reports, incomplete or false documentation, or unapproved changes in scope or budget.
- 4.21.3. If the City finds the Contractor to be out of compliance with the terms of the Agreement, the City shall provide written notice to Contractor informing Contractor of the failure or default, the action required to cure the failure or default, and the deadline for curing the failure or default.
- 4.21.4. Failure of the Contractor to correct the failure within the deadline may result in:
 - 4.21.4.1. Suspension and/or termination of this Agreement;
 - 4.21.4.2. Suspension and/or termination of funds for other contracts with the City;
 - 4.21.4.3. Reimbursement of funds received to date;
 - 4.21.4.4. Ineligibility for future EDD funding; and/or
 - 4.21.4.5. Suspension of processing and administrating of any future applications for funding until Contractor comes into compliance.
- 4.22. **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of federal, state, or local laws, rules or regulations, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred as a result of the issuance of such Stop Work Notice.
- 4.23. **Repayment.** Contractor shall promptly repay all grant funds paid by the City of Austin, and the City may file a lien against the property to secure the repayment of funds if any of the following circumstances occur within ten years of completion of the work set out within the Agreement:
 - 4.23.1. Contractor fails to provide proof of insurance within 15 calendar days of the termination or cancellation of any required insurance policy; or
 - 4.23.2. The restoration or rehabilitation is not completed in accordance with this Agreement; or
 - 4.23.3. Contractor fails to demonstrate that the historic property is open to the public and being visited by tourists, hotel guests, and convention delegates; or
 - 4.23.4. Contractor initiates any change in use of the Project property without prior written approval from the City; or
 - 4.23.5. Contractor fails to notify the City if, through the actions taken by another entity, the use of the historic property changes from that existing or proposed at the time of funding; or
 - 4.23.6. Contractor fails to maintain and preserve the title to and possession of the historic site or building; or
 - 4.23.7. Contractor fails to notify the City in writing whenever legal action is pending which may result in foreclosure of the historic property, and the owner; or
 - 4.23.8. Contractor fails to provide annual reporting as required in section 4.20 of this Agreement; or

- 4.23.9. Contractor fails to maintain the property in accordance with the City of Austin building codes.

Article 5. City Obligations

- 5.1 **Agreement Amount.** In consideration for Contractor's performance under the terms of this Agreement, the Contractor shall be paid an amount not to exceed \$20,000.00 over the term of the Agreement.

5.2 **Payments Schedule.**

- 5.2.1 The first reimbursement payment shall be made:

For Capital Projects:

- Payment One shall be made up to 40% upon executed contract with invoices, receipts, milestone report and expense documentation form;
- Payment Two shall be made up to 50% in January 2020 with invoices, receipts, milestone report and expense documentation form;
- Payment Three shall be made at 10% upon successful completion and close out of Final Reports and after the project is completed and after compliance with the Certificate of Appropriateness has been demonstrated, and the Certificate of Occupancy (if required) is issued. The first payment shall not exceed the lesser of 40% of the eligible Project expenses of \$20,000.00. In addition to other available remedies, payment will be withheld if the work fails to meet the requirements of this Agreement.

For Site-Specific Heritage Projects (Planning, Educational, Marketing):

- Payment One shall be made up to 90% upon executed contract with invoices, receipts, milestone report and expense documentation form;
- Payment Two shall be made at 10% upon successful completion and close out of Final Reports and after the project is completed and after compliance with the Certificate of Appropriateness has been demonstrated, and the Certificate of Occupancy (if required) is issued. The first payment shall not exceed the lesser of 90% of the eligible Project expenses of \$20,000.00. In addition to other available remedies, payment will be withheld if the work fails to meet the requirements of this Agreement.

- 5.2.2 The final payment will be paid after the Final Report, Demographics and Visitation Reports has been received and accepted by the City.

- 5.3 **Invoices and Receipts.** To request payment under this Agreement, the Contractor shall provide all reports due to the City, as stated in section 4.20, as well as a proper invoice and receipt. Invoices and receipts received without all of the required information shall be rejected by the City and returned to the Contractor. A proper invoice contains:

- 5.3.1 a non-duplicated invoice number,

- 5.3.2 the Contractor's Vendor ID number,
- 5.3.3 the Contractor's exact name and address as it is registered in the City's Vendor Connection portal,
- 5.3.4 the Agreement number,
- 5.3.5 Corresponding receipt, and
- 5.3.6 the name of the City's Agreement Manager.

5.4 Payment Terms.

- 5.4.1 All proper invoices and receipts received by the City will be paid within 30 calendar days of the City's receipt of the invoice.
- 5.4.2 The City may withhold or set off the entire payment or part of any payment otherwise due to the Contractor to such extent as may be necessary on account of:
 - a. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - b. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - c. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - d. failure of the Contractor to comply with any material provision of the Agreement.
- 5.4.3 The Contractor acknowledges that the City has provided notice of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any person who is in arrears to the City for taxes, and of § 2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed to the City.
- 5.4.4 The Contractor acknowledges that the City has provided notice that the City's payment obligations to the Contractor are payable only from funds appropriated or available for the purpose of this Agreement. If the City does not appropriate funds for this Agreement, or if there are no other lawfully available funds for this Agreement, the Agreement is void. The City shall provide the Contractor notice of the failure of City to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Agreement.

5.5 Final Payment and Close-Out. The making and acceptance of final payment will constitute:

- 5.5.1 a waiver of all claims by the City against the Contractor, except claims (A) which have been previously asserted in writing and not yet settled, (B) arising from failure of the Contractor to comply with the Agreement, or (C) arising under the City's right to audit; and
- 5.5.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

5.6 Contract Hold-Over.

- 5.6.1 Upon expiration of the contract, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonable necessary for the City

to re-solicit and/or complete the deliverables due under this Contract (not to exceed 120 calendar days unless mutually agreed on in writing).

Article 6. General Terms and Conditions

6.1 Right to Audit.

6.1.1 At any time during normal business hours and as often as the City or any state agency may deem necessary, the Contractor agrees that the representatives of the Office of the City Auditor, or other authorized representatives of the City, shall have access to, and the right to audit, examine, or reproduce, any and all of the Contractor's records related to this Agreement. The Contractor shall retain all such records for a period of three years after final payment on this Agreement or until three years after all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

6.1.2 The Contractor shall include the requirements of Subsection 6.1.1, above, in all subcontractor agreements entered into in connection with this Agreement.

6.2 **Right to Assurance.** When one party, in good faith, has reason to question the other party's intent to perform its obligations under this Agreement, 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 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 Agreement and terminate the Agreement for cause.

6.3 **Warranties.** The Contractor warrants and represents that all services to be provided the City under the Agreement will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Agreement, and all applicable federal, state and local laws, rules or regulations.

6.4 **Liability.** Any liability for accident or injury which occurs during construction of the improvements as a result of, or related to, any construction activity shall be the responsibility of the Contractor. Upon completion, and approval of the improvements by the City of Austin, any damages or injuries occurring thereafter with respect to the same shall be the responsibility and liability of the Contractor.

6.5 Indemnification.

6.5.1 THE CONTRACTOR 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 AGREEMENT OR VIOLATION OF LAW BY THE CONTRACTOR AND THE CONTRACTOR'S EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS (THE "CONTRACTOR PARTIES"), (B) A FALSE REPRESENTATION OR WARRANTY MADE BY THE CONTRACTOR PARTIES IN THIS AGREEMENT, IN THE CONTRACTOR'S APPLICATION, OR THE FORMATION OF THIS AGREEMENT, (C) THE NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY THE CONTRACTOR PARTIES IN CONNECTION WITH THIS AGREEMENT. CLAIMS TO BE INDEMNIFIED INCLUDE CLAIMS FOR BODILY INJURY OR DEATH, PROPERTY DAMAGE, OCCUPATIONAL ILLNESS OR DISEASE, LOSS OF SERVICES, WAGES OR INCOME, DAMAGE, DESTRUCTION OR LOSS OF USE OF PROPERTY, AND WORKERS' COMPENSATION CLAIMS. **THE CONTRACTOR'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.

- 6.5.2 The City shall give the Contractor notice of any claim asserted against an Indemnified Party. The Contractor 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 Contractor of any obligations in this Agreement. In no event shall the Contractor admit liability on the part of an Indemnified Party without the prior, written consent of the City Attorney.
- 6.5.3 Maintenance of the insurance required under this Agreement shall not limit the Contractor's obligations under this Section. The Contractor shall require all subcontractors to indemnify the City in the same manner as provided in this Article.
- 6.6 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Agreement, or which could have a material adverse effect on the Contractor's ability to perform, the Contractor shall give written notice to the City within 10 calendar days after receipt of the claim by the Contractor. The notice to the City shall state the date of notification of the claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis for the claim; and the name of each person against whom the claim is being asserted. The notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
- 6.7 **Dispute Resolution.**
- 6.7.1 If a dispute arises out of or relates to the Agreement, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt, in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after the meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- 6.7.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Contractor will share the costs of mediation equally.

6.8 Termination for Cause.

6.8.1 Should the Contractor fail to fulfill in a timely and proper manner obligations under this Agreement, or if the Contractor should violate any of the covenants, agreements, or stipulations of this Agreement, the City shall have the right to terminate this Agreement in whole or in part by sending written notice to the Contractor of such termination, containing the reasons therefore, and specifying the effective date thereof, which date shall not be sooner than the end of twenty-one (21) calendar days following the day on which such notice is sent. Unless the City specifies a different time in the notice, the Agreement is terminated 30 calendar days after the date of the notice, unless, during this time period, the Contractor cures the default or provides evidence sufficient to prove to the City's reasonable satisfaction that the default does not exist or will be cured in a time satisfactory to the City. Upon termination of the Agreement under these circumstances, Contractor is obligated to repay to the City all funds received under this Agreement.

The City's rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

6.8.2 The Contractor is in default if the Contractor: (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, or (b) becomes insolvent or seeks relief under the bankruptcy laws of the United States.

6.8.3 Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by virtue of any breach of this Agreement.

6.8.4 The City may withhold any and all payments due the Contractor for the purpose of set-off until such time as the exact amount of damages due the City from the Contractor is determined. This provision does not waive the right of the City to take whatever action necessary to protect its rights under this Agreement, including state law.

6.9 Termination for Convenience.

6.9.1 **By the City.** The City may terminate this Agreement, in whole or in part, for convenience, with 30 calendar days' written notice to the Contractor, including for reasons related to actual or anticipated decreases in Hotel Occupancy Tax collections. If the City terminates this Agreement for convenience, the Contractor shall immediately stop performance under this Agreement (unless the Notice directs otherwise). The City will reimburse the Contractor for all goods delivered and services performed prior to the date of Notice. Contractor shall not incur unnecessary expenses after receipt of notice of termination and shall diligently endeavor to reduce expenses budgeted for payment under this Agreement.

6.9.2 **By the Contractor.** The Contractor may terminate this Agreement, by giving at least 30-days' notice in writing to the City; provided however, all sums paid by the City prior to the termination date provided by the Contractor will be returned by the Contractor in whole to the City within ten days of the termination notice.

6.10 **Fraud.** Fraudulent statements by the Contractor on any application or written communication to the City shall be grounds for the termination of the Agreement for cause by the City and may result in legal action.

6.11 Force Majeure.

6.11.1 Each party agrees to excuse the failure of the other party to perform its obligations under this Agreement 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 Agreement, 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.

6.11.2 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 Agreement 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 Contractor's performance continues for more than 90 days, the City shall have the right to terminate this Agreement upon Notice to the Contractor. The Agreement shall terminate immediately upon receipt of such Notice.

6.12 **Notices.** Unless explicitly stated elsewhere in this Agreement, all notices must be given in the manner set out in this Section in order to be effective. Any notice required or allowed to be given or to be served in connection with this Agreement will be deemed delivered and received on the earlier of the date actually received or a date that is:

- a. Three calendar days after being deposited in the United States mail, if sent via certified mail, properly addressed and with postage prepaid; or
- b. The date delivery is originally scheduled to occur, if sent via a reputable overnight courier service.

Notice to each party must be given as follows:

The City:
Melissa Alvarado
Heritage Tourism Division Manager
Economic Development Dept.
City of Austin
PO Box 1088
Austin TX 78767

The Contractor:
Sarah Story
Executive Director
Umlauf Sculpture Garden & Museum
605 Azie Morton Rd
Austin TX 78704

with copies to:

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

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.

6.13 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide

established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Agreement without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

- 6.14 **Gratuities.** The City may, by written notice to the Contractor, cancel the Agreement without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Agreement. In the event the Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 6.15 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation or application shall have a financial interest, direct or indirect, in the Agreement resulting from that solicitation or application. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty of the impropriety shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Agreement voidable by the City, at no cost to the City.
- 6.16 **Independent Contractor.** This Agreement 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 Contractor are independent contractors. The Contractor agrees and understands that this Agreement does not grant any rights or privileges established for employees of the City.
- 6.17 **Assignment Delegation.** The Agreement shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation, without prior written consent from the City, by the Contractor shall be void. The Agreement is not intended to confer rights or benefits on any person, firm or entity not a party to this Agreement.
- 6.18 **Competent, Orderly Workers.** The Contractor and any subcontractors of the Contractor shall only employ orderly and competent workers, skilled in the performance of the services that they will perform under the Agreement. The Contractor, the Contractor'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 property. The workers may not be intoxicated or under the influence of alcohol or drugs on the job. If the City notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated City rules, has illegally possessed any firearms, or has possesses or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove the worker and the worker may not be employed again for work on this Agreement.
- 6.19 **Survival of Obligations.** All provisions of this Agreement that impose continuing obligations on the Parties, including but not limited to Sections 4.14 and 4.15 and requirements on warranty, indemnification, limitation of liability, and keeping addresses for Notice current, shall survive the expiration or termination of this Agreement.

- 6.20 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 Agreement 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.
- 6.21 Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from federal, state, or City contracts. By accepting this Agreement, the Contractor certifies that it and its principals are not currently suspended or debarred from doing business with the federal government, as indicated by the General Services Administration List of Excluded Parties, the State of Texas, or the City of Austin.
- 6.22 Access for Persons with Disabilities.** The Contractor shall comply with the accessibility provisions of the (i) the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., (ii) the Texas Architectural Barriers Act, Ch. 469, Texas Govt. Code, (iii) Americans with Disabilities Act Accessibility Guidelines, and (iv) the Texas Accessibility Standards.
- 6.23 Change in Law.** Any alterations, additions, or deletions to the terms of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment, and shall become effective on the date designated by such law or regulation.
- 6.24 Electronic Signatures.** Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the Texas Uniform Electronic Transactions Act, Tex. Bus. & Com. Code §322.001 et seq.
- 6.25 Texas Public Information Act.** The Contractor acknowledges that the City is required to comply with Chapter 552 of the Texas Government Code (Public Information Act or Act). Under the Public Information Act, this Agreement, and documents related to this Agreement, which are in City's possession, or to which City has access, are presumed to be public and the City may release these records to the public, unless an exception described in the Act applies to a document.
- 6.26 Risk of Loss.** The Contractor shall bear all risk of loss in performing this Agreement. Breach of this Agreement by either party will have no effect on the provisions of this Agreement allocating risk of loss or damage to the Project property.
- 6.27 Jurisdiction and Venue.** This Agreement 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 Agreement, either administrative or judicial, and venue shall be proper and lie exclusively in Travis County Texas.
- 6.28 Amendment in Writing.** This Agreement may be modified only in writing and properly executed by each of the parties. Neither any representation or promise made after the execution of this Agreement, nor any modification or amendment of this Agreement, shall be binding on the parties unless made in writing and properly executed by each of the parties. No agent of the City has the authority to waive or amend this Agreement, either orally or in writing, except through a properly executed amendment.

- 6.29 Severability.** If a court of competent jurisdiction determines that a term or provision of this Agreement is void or unenforceable, the remainder of this Agreement remains effective to the extent permitted by law.
- 6.30 Execution in Counterparts.** This Agreement 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 Agreement.
- 6.31 Mutual Drafting.** This Agreement 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 Agreement.
- 6.32 Complete Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all previous agreements, understandings, discussions, and representations concerning its subject matter. This Agreement includes the following exhibits, which are incorporated into this Agreement by reference:
- Exhibit A. Heritage Grant Program Guidelines
 - Exhibit B. Certificate of Appropriateness
 - Exhibit C. Work Statement
 - Exhibit D. Project Budget
 - Exhibit E. Mandatory Acknowledgement of City of Austin Support
 - Exhibit F. Insurance Requirements
 - Exhibit G. Non-Discrimination and Non-Retaliation Certification
 - Exhibit H. Non-Suspension or Debarment Certification
 - Exhibit I. Visitation Report Form

Executed by the authorized representatives of the Parties on the dates indicated below.

CITY OF AUSTIN

BY: 

NAME: Synnovia Holt-Rabb

TITLE: Acting Director

DATE: 5/15/2020

CONTRACTOR

BY: UMLAUF Sculpture Garden and Museum

NAME: 

TITLE: Executive Director

DATE: 3/26/20

APPROVED AS TO FORM:

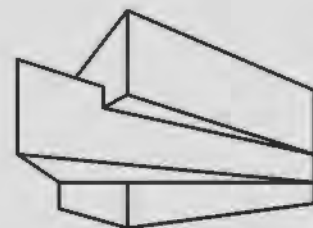


ASSISTANT CITY ATTORNEY

Exhibit A

HERITAGE GRANT

APPLICATION GUIDE



Heritage Tourism

CITY OF AUSTIN
ECONOMIC
DEVELOPMENT

CITY COUNCIL

Mayor Steve Adler

District 1: Natasha Harper-Madison

District 2: Mayor Pro Tem Delia Garza

District 3: Council Member Sabino “Pio” Renteria

District 4: Council Member Gregorio “Greg” Casar

District 5: Council Member Ann Kitchen

District 6: Council Member Jimmy Flannigan

District 7: Council Member Leslie Pool

District 8: Council Member Paige Ellis

District 9: Council Member Kathie Tovo

District 10: Council Member Alison Alter

CITY ADMINISTRATION

Spencer Cronk, City Manager

Elaine Hart, Deputy City Manager

Rey Arellano, Assistant City Manager

Rodney Gonzales, Assistant City Manager

Christopher J. Shorter, Assistant City Manager

Gina Fiandaca, Assistant City Manager



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HERITAGE GRANT TIMELINE

July 22

- Heritage Grant Application Launch

July 22

- Historic Landmark Commission
Briefing on Heritage Grant Application

July 25

- Heritage Grant Information Session, 10:30a-12p
*Location: City Hall Board and Commission, 301 W 2nd St;
Session recording will be posted to www.austintexas.gov/heritage-grants*

Aug 1

- Heritage Grant Information Session, 6-7:30p
Location: 5202 E Ben White Blvd, Ste. 400, Bluebonnet Training Room

Aug 12

- Tourism Commission
Briefing on Heritage Grant Application

Aug 16

- Deadline for applications.
Completed grant applications must be received no later than 11:59 pm

Aug 23

- Heritage Grant Review Panel

Aug 26

- Historic Landmark Commission
Review Recommendations for grant awards

Sept 9

- Tourism Commission
Review Recommendations for grant awards

Sept 19

- Austin City Council
Request Budget Approval of Historic Preservation Grants / Projects

Sept 25

- Audit and Finance Committee
Briefing on Heritage Grant Application

Oct 30

- FY 2020 Heritage Grant Project Applicants Notified
of Final Grant Awards



Introduction

Welcome to the City of Austin's Heritage Grant Application Guide. These grants are funded with Hotel Occupancy Taxes. The grants must therefore comply with the requirements of Texas Tax Code 351.101. The state law requires the funding to be used to promote tourism and the convention and hotel industry (sometimes called the "heads in beds" test). It also requires the grants to be awarded to projects that are either in the vicinity of the convention center, or in a location within the city reasonably likely to be visited by tourists and convention delegates.

Historic preservation is a successful economic development tool that creates jobs, spurs new business opportunities, and strengthens local economies. The City of Austin's Heritage Tourism Division, within the Economic Development Department (EDD), manages heritage tourism programs aimed to derive economic, business and community benefits associated with honoring and preserving Austin as a place of personal heritage. We aim to support historic community assets that promote tourism and Austin's hospitality industry by helping create authentic, memorable visitor experiences.

The City of Austin offers Heritage Grants through a competitive online application process. Please read the guidelines prior to beginning the application.

All applicants are encouraged to attend a Heritage Grant Information Session to learn more about the application process. The first Information Session will be recorded and added to www.austintexas.gov/heritage-grants.

For general inquiries or assistance please contact:

Melissa Alvarado, MPA

Heritage Tourism Division Manager

City of Austin Economic Development Department

www.austintexas.gov/heritage-tourism

melissa.alvarado@austintexas.gov | 5202 E. Ben White, Suite 400 | 512-974-7870



Section 1. What is the Historic Preservation Fund?

Per the current city code (Section 11-2-7), 15% of the City's 7% of the hotel occupancy tax collected by the City of Austin, is allocated to the Historic Preservation Fund to support historic preservation and restoration projects and activities that attract tourists and convention delegates to the city. This may include the preservation, restoration, or rehabilitation of historic buildings, structures, objects, monuments, sites, or districts; and programming and marketing to encourage tourists and convention delegates to visit historic sites or museums in Austin.

In accordance with state statute, any expenditure of hotel occupancy taxes must meet two criteria.

1. The expenditure must directly enhance and promote tourism and the convention and hotel industry; and.
2. It must fit into one of the state statutorily approved functions. For historic preservation and restoration projects, the project must be:
 - a. At, or in the immediate vicinity of, convention center facilities or visitor information centers; or
 - b. Located in the areas that are reasonably likely to be frequented by tourists and convention delegates.

If the project does not meet both requirements, it is not an allowable expenditure of hotel occupancy tax funds under the Historic Preservation Fund.



Section 2. Who Can Get a Heritage Grant?

Heritage Grants are available to government, nonprofit, and commercial entities that own or lease historic properties in the authorized locations; or that develop planning, educational, and marketing projects focused on historic properties and districts that meet the requirements of state law.

2.1 Historic properties eligible for grants

- City of Austin historic landmarks;
- Properties individually listed in the National Register of Historic Places;
- Recorded Texas Historic Landmarks;
- State Antiquities Landmarks;
- Properties listed as contributing to a historic district (local or National Register); and
- Properties determined to be eligible for historic designation. If the property is not designated at the time of the application, the applicant must provide a determination of eligibility from the Texas Historical Commission or National Park Service with the application. The property must be historically designated by the time the proposed project is completed and final grant funds are disbursed.

The grounds must be accessible to the general public for the purposes of viewing and appreciating the historic value of the property, with reasonable visitation hours to be set by the applicant in coordination with the City. The applicant shall not place fencing in front of, or near, the property that would obscure or prevent visual observation of the building from the public right-of-way.

Leased or owned historic properties must be visited by tourists, hotel guests, and convention attendees and must remain open to the public for at least ten years from the time the project is completed. If the property is not owned by the applicant, the applicant must obtain a formal letter of support from the owner and document the authority to make the requested improvements that would be funded by the grant.

2.2 Projects eligible for grants

Two types of projects are eligible for Heritage Grants: 1) Heritage Capital Projects and 2) Site-Specific Heritage Tourism Projects. Grant awards for planning, education, and marketing projects are expected to comprise of no more than 15% of total available allocation.

Heritage Capital Projects

Heritage Capital Projects may include:

- Rehabilitation or restoration of the primary building envelope, accessory structures, and grounds (e.g., historic cupolas, carriage houses, pavilions, or other outbuildings, historic gates and fencing, pools and walkways).



Heritage Capital Projects must:

- Meet the Secretary of the Interior's Standards for the Treatment of Historic Properties. For more in-depth information on the Standards, visit [NPS Treatment Guidelines 2017](#).

Site-Specific Heritage Tourism Projects

Planning, education, and marketing projects may include development and production of:

- Marketing material;
- Educational material;
- Historic designation applications;
- Interpretive kiosks;
- Signage.

Site-Specific Heritage Tourism Projects - Planning, education, and marketing projects must:

- Increase tourism and/or benefit tourists, hotel guests, and convention attendees;
- Include the significance of the historic place, including but not limited to designation status;
- Follow best practices for the applicable project type; and
- Be publicly available for 5 years.

2.3 Minimum requirements

The applicant must identify and provide documentation on current levels of tourism (this documentation provides the "tourism justification" and demonstrates how the project will promote tourism in Austin), plus the following:

- a. How the project will increase tourism and/or benefit tourists, hotel guests, and convention attendees and be tied to historic preservation;
- b. How the project has the potential to be relevant to tourists or increase tourism, including strategies for publicity and marketing efforts. Include heritage tourism marketing plans, promotional materials used to advertise the historic property, and distribution locations (e.g., hotels, motels, Convention Center, Airport, out of town locations); and
- c. Measurable evaluation criteria to determine the effectiveness of the tourism marketing strategy.

Applicants who provide matching resources (in the form of cash or donated services and items), to match at least 50% of the Heritage Grant, may be given preference in grant application evaluations. Cost of work that does not meet Heritage Grant guidelines cannot be used as cash match. Other HOT-funded grants cannot apply to cash match.

Prior to the commencement of work or project, applicants and the City of Austin must execute a Preservation Agreement setting out terms and conditions of the grant. The City will not execute a Preservation Agreement without an approved Certificate of Appropriateness, if required. For more information, visit the Historic Preservation Office website: www.austintexas.gov/departments/historic-preservation.



All applicants must register with City of Austin Vendor Registration. Please visit ([AustinTexas.gov/financeonline/vendor_connection](https://austintexas.gov/financeonline/vendor_connection)) to register or for more information. If you have questions about registration, contact the Vendor Registration Office at (512) 974-2018.

Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) program participation is encouraged, but not required.

Modifications to the above criteria may be made on a case-by-case basis, but only in accordance with state law and city ordinance.



Section 3. How Do Heritage Grants Work?

3.1 Amount

The maximum amount of a grant award shall not exceed \$250,000.

3.2 Reimbursement

Grants are reimbursed after the project is completed. Payment of the grant will be made after the Certificate of Occupancy (if required) is issued by the City of Austin. Payment will be withheld if the work fails to meet the Preservation Agreement or mutually agreed alternate requirements. Before applying, make sure you have sufficient financial resources to complete the project prior to reimbursement.

Installment payments may be approved on a case-by-case basis to increase equity for smaller organizations and/or larger projects, dependent upon project size and phasing. Installment payments will be made at mutually agreed upon points and must be associated with clear deliverables. A final percentage will be provided upon satisfactory project completion, with proof all project-related obligations have been paid.

3.3 Repayment

Applicants must repay all grant funds received if any of the following circumstances occur within three years of completion of the work set out in the Preservation Agreement:

- a. Applicant fails to maintain the property in accordance with the City of Austin Building Codes and tax exemption criteria (including hours available for public viewing, and documentation that the facilities are being visited by tourists and convention delegates);
- b. Historic designation is removed;
- c. The restoration or rehabilitation is not completed in accordance with the Preservation Agreement (in case of installment payments or phased projects); or
- d. Applicant fails to provide proof of required insurance on an annual basis.

If any of these circumstances occur, the City of Austin may file a lien against the property to secure the repayment of funds as set out in Section 5.3 to the extent allowed by the law.

3.4 Tax Liability

The receipt of grant funds by a commercial entity may result in a tax liability in the year of benefit. It is the responsibility of the recipient to consult with a tax advisor to understand how the grant may impact taxes.



Section 4. Who Decides What Projects Get Funded?

1. After the application deadline, interdepartmental staff will evaluate applications to ensure that each proposed project meets grant eligibility and criteria.
2. Applications that meet the criteria will be evaluated and scored by a Heritage Grant Review Panel. A majority vote of a quorum of the Heritage Grant Review Panel is required to recommend a Heritage Grant award.
3. The Historic Landmark Commission and Tourism Commission will review recommended grant awards and make a recommendation to City Council – the City Council will approve funding in excess of the City Manager’s authority under the City Charter; the City Manager will approve funding within the Manager’s authority.
4. A summary report of approved grants, within the City Manager’s signature authority (at or below \$61,500 for Fiscal Year 2019-2020), will be submitted to the City Manager’s Office for final review and the information will be made available to Council and to the public on the City’s website.

The City of Austin Law Department will review to confirm documentation that the use fits within the approved uses in the statute.

Prior to commencement of work, applicants and the City of Austin shall execute a Preservation Agreement setting out terms and conditions of the grant. The Historic Landmark Commission must approve a Certificate of Appropriateness for the project prior to execution of the Preservation Agreement.

Program fund availability is subject to Council approving and appropriating funding on an annual basis. The Economic Development Department reserves the right to fund projects at a lower amount than requested, and the right to deny applications that do not meet the Texas Tax Code or Austin City Code.

This document outlines the framework of guidelines informed by Austin Strategic Direction 2023, Imagine Austin Comprehensive Plan, and policies established by the Austin City Council, within which the Heritage Grant Program operations are carried out. Heritage Grant Program guidelines undergo an annual review, with any necessary revisions made prior to the next application deadline. Guideline changes required as a result of federal, state, or local requirements may be implemented immediately by the Heritage Tourism Manager.



Section 5. How Do I Apply?

Please ensure that all required portions are completed and required attachments included. Incomplete applications will not be considered. The online application serves to create a streamlined and user-friendly experience. For questions or technical assistance, please contact Melissa Alvarado at Melissa.alvarado@austintexas.gov.

5.1 Scoring Criteria, Fall 2019

Minimum requirements:

- Must promote tourism and be located at or near the convention center or in an area reasonably likely to be visited by tourists and convention delegates;
- Must be a qualifying historic preservation or restoration project; and
- Applicant must be in good standing with all City contracts and past Heritage Grant Program.

SCORING CRITERIA	EXPLANATION	MAX SCORE
Tourism Impact	The applicant should explain: 1) Current levels of tourism and how the project creates a heritage impact in the community or region; 2) How the project will enhance heritage tourism experience and increase community participation/accessibility to a larger number of users, tourists, hotel guests or convention attendees; 3) Describe the marketing plan. Who is the target audience and how will you reach them? How does the proposed project or activity promote tourism and the hotel and convention industry?; and 4) Describe how data will be collected regarding tourist attendance/participation. Give details on how the applicant will measure the success of the project.	30
Preservation Impact: Heritage Capital Projects	The applicant should: 1) Describe the historic, cultural, community, and/or architectural significance of the property. Include any threats to property or if the building is in an underrepresented area or serves an underrepresented population; 2) Describe the project to be undertaken, including an overview and the specific work proposed for funding; 3) Explain how the project meets the Secretary of the Interior's Standards for Treatment of Historic Properties, if applicable, or best practices for the proposed project type; 4) Describe the current and anticipated future use of the property, if applicable; -OR-	30
Preservation Impact: Site-Specific Heritage Tourism Project	The applicant should: 1) Describe the historic, cultural, community, and/or architectural significance of the property. Include any threats to property or if the building is in an underrepresented area or serves an underrepresented	



	<p>population;</p> <p>2) Describe how the project develops site-based heritage tourism;</p> <p>3) Describe how the project promotes or develops planning, educational programs or materials for tourists;</p> <p>4) Describe how the project demonstrates educational or cultural value.</p>	
Project Budget	<p>The applicant should:</p> <p>1) Provide project cost breakdown and priorities;</p> <p>2) Specify the major and prioritized components of the project with associated costs;</p> <p>3) Provide proof of other sources of funding, if applicable.</p>	15
Capacity and Qualifications	<p>The applicant should:</p> <p>Describe the qualifications, track record and ability of the applicant and professionals (including sub-contractors, if applicable) composing the project team to successfully complete the project. Provide project team experience in preservation, planning, educational, tourism, marketing and/or grants management. Full resumes are not required. Additional bids may be requested.</p>	10
Project Schedule	<p>The applicant should:</p> <p>1) Demonstrate how the project schedule and timeline. (Anticipated completion: Site-Specific Heritage Tourism Projects = 12 months; Capital Project no more than 2 years),</p> <p>2) If the capital project is phased, provide a phasing schedule and funding required for each phase. Applicants will be scored on clarity and whether the timeline is reasonable for the proposed work.</p>	5
Equity / New Applicant: Heritage Capital Projects	<p>The applicant has not received previous Heritage Tourism Grant funding in the past 3 years. This is intended to facilitate broader distribution of grant funds; -OR-</p>	5
Equity: Site-Specific Heritage Tourism Project	<p>Applicant demonstrates a commitment to equity, inclusion and diversity through programming, collaboration, materials, or other means. This is intended to facilitate broader, diverse distribution of grant funds.</p>	
Coordination with Essential Partners	<p>If the project requires government, organizational, or community involvement, explain how those partners have been engaged. Include information regarding how nearby hotels or relevant conventions have been included in the analysis of the project. Detail efforts to engage diverse communities. Upload documentation of existing or planned coordination. If no external partners are required, please indicate N/A. Please connect with Parks and Recreation Staff prior to submitting an application for projects on parkland.</p>	5
		100



Section 6. What Happens After I Get a Grant?

1. Leased or owned historic properties must be visited by tourists, hotel guests, and convention attendees and must remain open to the public for at least ten years from the time the project is complete.
2. Planning, education, and marketing materials must remain publicly available for at least five years from the time the project is complete.
3. Applicant shall comply with all permitting requirements of the Land Development Code, if applicable.
4. Projects must be completed within one year (for Site-Specific Heritage Tourism Project) or two years (for Heritage Capital Projects). Heritage Capital Projects taking longer than 2 years must be granted a written extension from program staff.
5. The applicant must submit a complete application with all supporting documentation and comply with the [City of Austin Equal Employment Opportunity Guidelines](#).
6. Notification requirements within ten years of project completion: In all cases of transfer of title, the applicant must notify the City of Austin Economic Development Department Heritage Tourism Division. The applicant must notify the City of Austin Economic Development Department Heritage Tourism Division whenever legal action is pending which may result in foreclosure on the historic property.
7. Changes in Use: If use of the historic property changes from that existing or proposed at the time of funding within ten years of project completion, the applicant must notify the City of Austin Economic Development Department Heritage Tourism Division.
8. Visitation Records: Applicant must provide visitation records (number of guests, including numbers of guests from outside of the Austin Metropolitan Statistical Area) to the Heritage Tourism Division for three years after completion of the project.
9. Work on approved projects must commence within the agreed-upon time frame outlined in the Preservation Agreement. Projects that are not completed within the agreed-upon time frame risk loss of grant funding.
10. Contingent upon the scope of the project, a preservation architect may be retained to represent the City of Austin to monitor the progress of the work. The need for representation will be decided on a case-by-case basis by Heritage Tourism Division staff. This cost would be incurred by the applicant separate and apart from the grant funds.
11. The City will conduct monitoring activities throughout the project and compliance terms as required. These activities may include a site visit to verify compliance with contract requirements.



6.1 Marketing

Awardees are required to acknowledge the City's support in all appropriate materials and media by placing the Heritage Tourism Division logo and Publicity Statement on all marketing materials. Awardees are required to provide information about the project to Visit Austin and the Economic Development Department to aid in marketing the projects to tourists and convention delegates.

6.2 Reports

A final report will be required annually within thirty days of the project or programming cessation which shall be no later than October 30 of any given fiscal year.

The report will require proof of award and match monies expended, a variety of demographics data, proof that the project was marketed to tourists and convention delegates, proof of visits by tourists and convention delegates, Heritage Grant was executed as well as the use of the required Publicity Statement and logo. Final reports for the current fiscal year must be completed online in the Final Report tab of ZoomGrants™.

6.3 Insurance

Depending on the funded activities, Heritage Grant applicants are required to carry insurance as outlined below and must provide the Heritage Tourism Division with a current Certificate of Insurance prior to entering into a contract. Insurance costs should be included in the applicant budget, and as such, should be researched prior to submitting the application. Those costs are an allowable budgetary expense if awarded funding. More specific insurance requirements will be included in the pre-contract materials if you are awarded funding.

The contractor shall carry insurance in one or all of the following types and amounts if designated as a requirement by the Risk Management Department of the City of Austin for the duration of the contract and furnish certificates of insurance along with copies of all policy endorsements as evidence thereof:

The cost of insurance should be researched prior to the submission of the application and included in the budgetary monetary figures.

Section 1 Contractor, during the term of the Agreement, shall carry insurance in the following types and amounts:

- 1.1 Commercial General Liability Insurance with a minimum combined single limit of \$500,000 per occurrence for Coverage's A (bodily injury and property damage) & B (personal and advertising injury). The policy shall contain the following provisions and endorsements in favor of the City:
 - 1.1.1 Blanket contractual and coverage for liability assumed under this contract;
 - 1.1.2 Products and completed operations coverage;
 - 1.1.3 Independent contractors coverage;
 - 1.1.4 Additional Insured endorsement (Form CG 2010), or equivalent coverage;



- 1.1.5 Waiver of Subrogation endorsement (Form CG 2404), or equivalent coverage;
and
- 1.1.6 30-Day Notice of Cancellation endorsement (Form CG 0205), or equivalent coverage.

Section 2 Contractor shall cause any contractor or subcontractor, constructing improvements to the Premises, from the Date until issuance of the Completion Notice by the City of Austin with respect to the Premises, to carry insurance in the following types and amounts:

- 2.1 Employers Liability and Workers' Compensation Insurance. Minimum policy limits for Employers' Liability shall be \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. Workers' Compensation coverage shall be consistent with statutory benefits described in the Texas Workers' Compensation Act, section 401. Coverage shall apply to the State of Texas. The policy shall contain the following endorsements in favor of the City:
 - 2.1.1 Waiver of Subrogation (Form WC 420304), or equivalent coverage, and;
 - 2.1.2 30-Day Notice of Cancellation endorsement (Form WC 420601), or equivalent coverage.
- 2.2 Commercial General Liability Coverage with a minimum bodily injury and property damage per occurrence limit of \$500,000 for coverages A & B. The policy shall contain the following provisions and endorsements in favor of the City:
 - 2.2.1 Blanket Contractual liability coverage for liability assumed under this contract;
 - 2.2.2 Products and completed operations coverage;
 - 2.2.3 Independent contractors coverage;
 - 2.2.4 Personal and Advertising injury coverage;
 - 2.2.5 Additional Insured endorsement (Form CG 2010), or equivalent coverage;
 - 2.2.6 Waiver of Subrogation endorsement (Form CG 2404), or equivalent coverage;
and
 - 2.2.7 30-Day Notice of Cancellation endorsement (Form CG 0205), or equivalent coverage.
- 2.3 Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a limit of \$500,000 per occurrence for bodily injury and property damage liability. The policy shall contain the following endorsements in favor of the City:
 - 2.3.1 Additional Insured endorsement (Form CA 2048), or equivalent coverage;
 - 2.3.2 Waiver of Subrogation endorsement (Form CA 0444), or equivalent coverage;
and
 - 2.3.3 30-Day Notice of Cancellation endorsement (Form CA 0244), or equivalent coverage.
- 2.4 Builders' Risk Insurance on an all risk physical loss form in the amount of the maximum contractor amount for any improvements made to the Premises. Coverage shall commence upon the date any work with respect to such improvements begins and shall continue until the work is complete and a Completion Notice is issued with respect to the improvements. The City shall be a mortgagee/loss payee on the policy. If off-site



storage is permitted with respect to the work, coverage shall include transit and storage in an amount sufficient to protect any property being transported or stored.

- 2.5 In the event the contractor will serve liquor to individuals for entertainment purposes, the Contractor shall carry **Host Liquor Liability Coverage** of \$500,000 per claim. In the event the Contractor will sell liquor, the Contractor shall carry **Liquor Liability or Dram Shop Act Liability Coverage** of \$500,000 per claim.

NOTE: More specific insurance requirements will be included in the pre-contract materials if you are awarded funding.



Section 7. Required Attachments Checklist

☐ **Tourism Justification**

Include substantiation of contribution to the tourism industry in Austin (i.e., annual summary of out of town visitation, publicity and marketing strategy and efforts, copies of promotional material, list of promotional activities, hours of operations, tours provided, etc.), and an explanation of how the project will enhance heritage tourism and includes a clear strategy for measurable evaluation criteria to determine the effectiveness of the tourism marketing strategy.

☐ **Historic Documentation**

Historic photograph(s), if available, or other documentation as appropriate to clearly explain the project (especially where restoration, alterations, changes, and/or improvements are planned

☐ **Historic Designation Determination of Eligibility, if Applicable**

If the property is not designated at the time of application, provide a Determination of Eligibility from the Texas Historical Commission or National Park Service.

☐ **Business Plan**

☐ **Capacity and Qualifications**

Describe the qualifications, track record and ability of the applicant and professionals composing the project team (including sub-contractors, if applicable) composing the project team to successfully complete the project. Provide project team experience in preservation, planning, educational, tourism, marketing and/or grants management, if applicable. Full resumes are not required.

☐ **Contractor Bids [Heritage Capital Projects Only]**

Contractor and/or architectural bids for the proposed project.

☐ **IRS Designation Letter, if applicable**

Confirms tax-exempt status

☐ **Marketing Plan [Site-Specific Heritage Tourism Projects Only]**

Describe the significance of the property and how the project develops site-based heritage tourism and demonstrates educational or cultural value. Explain how the marketing plan supports the project for which funding is being requested. The marketing plan should include the prioritized tasks and estimated expense to each to support the total project.

☐ **Plans and Specifications of Proposed Work [Heritage Capital Projects Only]**

Plans and specifications for project describing the work proposed in detail.

☐ **Project Schedule**

Capital project phasing schedule and amount of funding required for each phase, if applicable. Demonstrates how the project will be completed within a 2-year time period.

☐ **Proof of Ownership / Lease Authorization [Heritage Capital Projects Only]**

Copy of the Deed or Will (if applicant is the owner) or documentation showing authorization from owner and any existing lease between owner and applicant.



☐ **Signed Assurances Document**

☐ **Zoning Verification Letter, if applicable**

Letter issued by the City of Austin Development Services Department



Appendix I. Background

Until late 2018, Visit Austin contracted with the City of Austin to market the historical assets of the City through administering the Heritage Grants Program. Effective FY 2020, the City of Austin Economic Development Department Heritage Tourism Division now administers the Heritage Grant Program.

On June 30, 2017, the Visitor Impact Task Force Final Report to Austin City Council provided recommendations relevant to Resolution No. 20160118-075 to study the impact of tourism, review of State and National Best Practices for tourism, and Review of Texas Tax Code Chapter 351 and allowable uses of Hotel Occupancy Taxes under the Tax Code.

On August 31, 2017, Council approved Resolution 20170831-060 directing the City Manager to take necessary actions to allocate hotel occupancy taxes and other revenues to projects that promote tourism and the convention industry, in accordance with council directives.

On September 13, 2017, Council approved Ordinance 20170913-001, including an allocation of Hotel Occupancy Tax revenue from the Hotel Occupancy Tax Fund, to the newly established Historic Preservation Fund.

On December 14, 2017, Council approved Ordinance 20171214-005 amending Section 11-2-7 of the City Code to establish the allocation of Hotel Occupancy Tax for historic preservation as directed by Council during the City's budget adoption process.

On June 6, 2018, the Heritage Grant Working Group developed a report with recommendations to Austin City Council for the Heritage Grant Program and the newly established Historical Preservation Fund. In addition to the parameters outlined in Chapter 351, the group considered relevant priorities from Austin Strategic Direction 2023, Imagine Austin Comprehensive Plan and the Visit Austin Marketing Plan.

On October 4, 2018, Council adopted Resolution 20181004-033 to allocate 15% of the hotel occupancy taxes to fund operations / maintenance of City of Austin historic facilities and sites in accordance with Texas Tax Code Section 351 and fund other allowable capital and acquisition costs for historical restoration and preservation projects and activities. Council also directed the City Manager to initiate the following recommendations of the Visitor Impact Task Force and the Heritage Grant Working Group related to the HPF: 1) Expand the eligible applicants for heritage grants per the recommendations of the Visitor Impact Task Force and the Heritage Grant Working Group; 2) Expand eligible projects for heritage grants to include capital projects and planning, educational, and marketing projects; 3) Increase the \$59,000 cap on individual heritage grants awards to \$250,000, with staff discretion to recommend to City Council grant requests above this threshold.

In FY 2019, the Economic Development Department was authorized to create a Heritage Tourism Division that would administer the Heritage Grant Fund promoting tourism and the convention industry through preservation, restoration, and rehabilitation of historic properties, buildings, structures, objects, monuments, sites or districts.



Appendix II. Definitions

Heritage tourism: The National Trust for Historic Preservation defines heritage tourists as those who travel to experience the places, artifacts and activities that authentically represent the stories and people of the past and present.

Marketing: All costs for marketing, publicity, and/or promotion specifically identified with the activity. Include costs directly related to promotion, publicity, or advertising.

Match: Revenue that is donated, such as grants and donor contributions.

MBE/WBE: Minority Owned Business Enterprise & Women-Owned Business Enterprise

New applicant: An organization or entity that has not received funding through the Heritage Grant program within the last 3 years. This is intended to encourage broader distribution of grant funds. It will not prevent an applicant from receiving another grant within 3 years.

Non-profit organization: An organization with tax-exempt status that is certified by the Internal Revenue Service (IRS) as a 501(c)(3) which ensures no part of net earnings benefits a private individual.

Preservation: Focuses on the maintenance and repair of existing historic materials and retention of a property's form as it has evolved over time.

Rehabilitation: Acknowledges the need to alter or add to a historic property to meet continuing or changing uses while retaining the property's historic character.

Reconstruction: Re-creates vanished or non-surviving portions of a property for interpretive purposes.

Restoration: Depicts a property at a particular period of time in its history, while removing evidence of other periods.

Sponsored project: The individual or group that is under the umbrella of the 501(c)(3).

The Secretary of the Interior's Standards for the Treatment of Historic Properties: Guidelines for preserving, rehabilitating, restoring and reconstructing historic buildings. For more information visit <https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf>

Tourist: An individual who travels from the individual's residence to a different municipality, country, state, or country for pleasure, recreation, education or culture (Texas State Tax Code Chapter 352, p. 1).

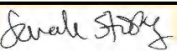
Visitor: An individual traveler that stays overnight away from home in paid or unpaid accommodations, or a day visitor that travels at least fifty miles one-way from home on a non-routine trip.



Exhibit B

Certificate of Appropriateness not required
for Umlauf Sculpture Garden & Museum
FY20 Heritage Grant

Exhibit C Work Statement Preservation Project Phase Plan

Organization Name	
Umlauf Sculpture Garden & Museum	
Control Number:	FY20 Award Amount:
FY20 HG HSB 002	\$20,000
DECLARATION:	
I do solemnly declare that, to the best of my knowledge, all information contained in this report is complete and true in	
	Sarah Story, Executive Director
AUTHORIZED OFFICIAL SIGNATURE	AUTHORIZED OFFICIAL NAME AND TITLE

FY20 Preservation Project Phase Plan (October 2019 - September 2021)

Item Description (Oct 2019 - Sept. 2020)	Oct. 2019	Nov. 2019	Dec. 2019	Jan. 2020	Feb. 2020	Mar. 2020	Apr. 2020	May. 2020	Jun. 2020	Jul. 2020	Aug. 2020	Sep. 2020	Total Expenses
UMLAUF consults historical preservations advisors	x	x	x	x	x	x	x	x	x	x	x	x	
National Register Historic Places Designation - NRHP - meet McKnight, Esparza, Hutson Gallagher re. needs					x								
NRHP- agreement with Tracy Hutson to edit/improve NRHP						x							3800
NRHP- Hutson sends application to THC							x						
NRHP- THC sets hearing date									x				
NRHP- THC approves NRHP Designation											x		
Marketing Video (MV) - UMLAUF meets Wunderman PR to plan project				x	x								
MV - Wunderman PR, UMLAUF works with filmmaker Ian van Alan and Beast Productions							x	x	x	x			16200
MV - Wunderman PR provides video script								x	x				
MV - Kim McKnight reviews script									x				
MV - Filmmaker and Production company collaborate on approved script - create mktg video/s										x	x	x	
MV - UMLAUF reviews videos, provides feedback										x			
edits									x		x		

Exhibit C Work Statement Preservation Project Phase Plan

MV - Final film													x	
MV - Filmmaker and Production Co submit invoices													x	
MV - UMLAUF invoices CoA/Heritage grant													x	
NRHP - Hutson Gallagher submits invoice									x					
NRHP - UMLAUF invoices CoA/Heritage grant									x					
TOTAL FOR FY20:														20000
Item Description (Oct 2020 - Sept. 2021)														Total
YEAR 2 Capital Projects ONLY	Oct. 2020	Nov. 2020	Dec. 2020	Jan. 2021	Feb. 2021	Mar. 2021	Apr. 2021	May. 2021	Jun. 2021	Jul. 2021	Aug. 2021	Sep. 2021		Expenses
TOTAL FOR FY21:														

Please fill out the FY20 Preservation Project Phase Plan. Include project phase description under the Item Description column. Highlight and label cells with preservation activities related to the project phase. You may insert additional rows. This Preservation Project Phase Plan is required documentation for your FY20 Heritage Grant.

Site-Specific Heritage Projects (Contract must be completed within One Year): Heritage Site-Based projects include marketing, education and marketing related projects. See Payment Schedules tab for more details. Eligible expenses can be paid through September 30, 2020. We cannot count/accept any invoices and receipts submitted after September 30, 2020.

Capital Exterior Improvement Projects (Contract must be completed within Two Years): Eligible expenses can be paid through September 30, 2021. See Payment Schedules tab

FY20 Heritage Grant Program Revised Budget Form

Instructions Revised Budget

1. Please insert your organization name.
2. Please insert your Contract Control Number. It can be found on the first page of your contract.
3. Name the source(s) for each revenue amount. Describe the use for each expense amount.
4. The detail of all payments should identify organization/entity who will be paid by name if known or title, and the fee for each.
5. Insert rows as needed. You may delete rows if necessary.
6. Please note that formulas are already entered for the totals. Be careful not to inadvertently erase them.

*NOTE - If you see hashtags (#####) in your budget it means that your columns are too narrow and need to be widened.

Contractor Org Name:	Umlauf Sculpture Garden & Museum			
Control Number:	FY20 HG HSB 002			
Income	Memo/ Description	CASH MATCH	TOTAL	
Earned Income				
	Museum Admission \$7/person; 3 months	\$ 10,000		
1. Earned Income Total		\$ 10,000	\$ 10,000	
2. Other				
		\$ -	\$ -	
2. Other Total		\$ -	\$ -	
3. Total Earned Income		\$ 10,000	#####	
Unearned Income				
4. Total Private Support (Corp., Foundation, Individual)		\$ 9,000		
Sculpture Sponsorships - Individual		\$ 1,000		
Sculpture Sponsorships - Corporate				
4. Total Private Support		\$ 10,000	\$ 10,000	
5. Total Public Support (Gov. Grants)				
		\$ -	\$ -	
		\$ -	\$ -	
5. Total Public Support		\$ -	\$ -	
6. Other Unearned Income				
		\$ -	\$ -	
6. Other Unearned Income		\$ -	\$ -	
7. Applicant Cash		\$ -	\$ -	

8. Total Unearned Income			\$ 10,000		####	
Income		HG Award	CASH MATCH	IN-KIND MATCH	TOTAL	
9.a Your FY19 Heritage Grant Award Amount		\$ 20,000			#####	
10. Total Cash Match Income (sum of lines 3, & 8)			\$ 20,000		#####	
11. Total In-Kind Support (must equal In-Kind Line 24 of the Expenses)					\$ -	
12. TOTAL INCOME		\$ 20,000	\$ 20,000	\$ -	####	
Expenses		Memo/ Description	HG Award	CASH MATCH	IN-KIND MATCH	TOTAL
12. Historic Landmark Commission Certificate of Appropriateness Fees			\$ -		\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -
12. TOTAL			\$ 20,000	\$ -	\$ -	\$ 20,000
13. Heritage Grant Project Expenses						
Marketing Video			\$ 15,000	\$ 15,000	\$ -	\$ 30,000
National Register of Historic Places Designation - finalizing			\$ 5,000	\$ 5,000	\$ -	\$ 10,000
			\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -
13. TOTAL			\$ 20,000	\$ 20,000	\$ -	\$ 40,000
14. Required and / or Approved Marketing and Promotion (Please include the description in the Payee line for Line 21)						
14. TOTAL			\$ -	\$ -	\$ -	\$ -
15. Other Expenses						
Insurance			\$ -		\$ -	\$ -

Expenses	Memo/ Description	HG Award	CASH MATCH	IN-KIND MATCH	TOTAL
		\$ -	\$ -	\$ -	
		\$ -	\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -	\$ -
15. Other Expenses TOTAL		\$ -	\$ -	\$ -	\$ -
		HG Award**	CASH MATCH***	IN-KIND MATCH + TOTAL++	
24. TOTAL EXPENSES		\$ 20,000	\$ 20,000	#REF!	#REF!
** The total in the <i>HG Award column</i> should match the total Heritage Grant Award amount in line 9.a in the income section of the budget. *** The total in the <i>CASH Match column</i> should match the total CASH Match income in line 10 in the income section of the budget. + The total in the <i>In-Kind Match column</i> should match the total In-kind Support in line 11 in the income section of the budget ++ The total in the <i>TOTAL column</i> should match the Total Income in line 12 in the income section of the budget.					

Exhibit E

Exhibit E

City of Austin, Texas PUBLICITY REQUIREMENTS AND MANDATORY ACKNOWLEDGEMENT OF CITY OF AUSTIN SUPPORT

Acknowledgment of the City of Austin must be displayed in all materials and announcements for your funded project distributed to the public, and included in any press release about the project. Pre-approval from the city is needed if any shortened version of this acknowledgement text is to be used.

For print materials, the Heritage Tourism Division logo is required.

In addition, a phrase acknowledging support from the City of Austin is required:

"This historic preservation project is supported in part by the Heritage Tourism Division of the City of Austin Economic Development Department."

In addition, a phrase acknowledging support from the City of Austin is required:

"This historic preservation project is supported in part by the Heritage Tourism Division of the City of Austin Economic Development Department."

Project Sign

When a rehabilitation/restoration project is undertaken using Heritage Grant funds, a sign at the project site acknowledging local assistance must be erected when the work begins and be maintained until work is complete. The sign must be viewable from a public right of way.

The sign shall be obtained and installed by the grant recipient. The cost of the sign is an allowable grant project expense. The sign should read:

Rehabilitation/Restoration of {property name} has been made possible in part by a grant from the Heritage Tourism Division of the City of Austin Economic Development Department.

Two color photographs of the sign in place must be submitted to the City of Austin with the final report.

For radio or television broadcast, we require the following language:

"This project is supported in part by the Heritage Tourism Division of the City of Austin Economic Development Department."

For television broadcast, display of the Heritage Tourism Division logo is required.

We reserve the right to change the language of the required acknowledgement of City of Austin support, as well as the right to disallow the use of our logo and acknowledgment of our support.

Logo files are available to download the Library Tab in your approved ZoomGrants application

Contractor shall acknowledge the City's support in all electronic and printed materials and advertisements pertinent to the Project.

For purposes of this Agreement, publicity means the manner, method, timing and content of all efforts to generate public knowledge of, understanding of, and interest in the Project, 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, radio interviews or advertisements, and any other publications of any other kind and in any medium.

The Parties will proactively collaborate to identify and pursue any appropriate and beneficial publicity for the Project. The Parties will identify various media for prospective publication of the Project throughout the course of the Agreement, so that publicity for the Project may begin prior to or immediately upon completion.

All publicity initiated or otherwise undertaken by the Contractor must be approved by the City prior to its publication. The Contractor shall inform the City as soon as the Contractor is contacted by the media regarding the Project. If the Contractor intends to submit to any interview with a third party, or intends to use any third party for any publicity, the Contractor must confer with the City and obtain the City's approval.

For further information or clarification or if you require a logo file in a different format, please contact your contract administrator.

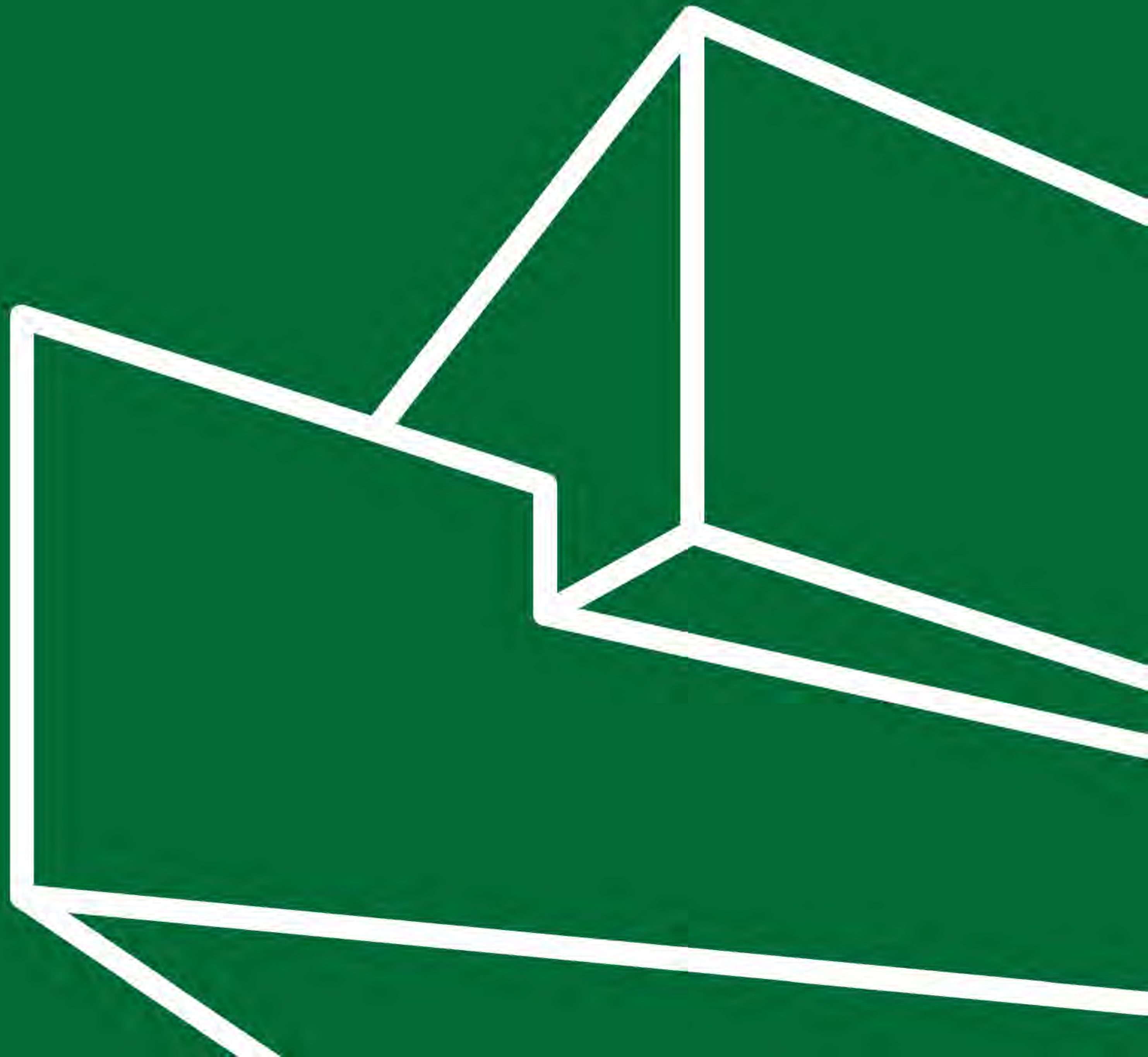
Melissa Alvarado, Heritage Tourism Division Manager

melissa.alvarado@austintexas.gov

512-974-7870



Heritage Tourism Logo Guide



To maintain the City of Austin Heritage Tourism Division’s identity and its impact, it is vital to use the logo with clarity and consistency.

Filenames & types

Color logos to be placed on white
CityOfAustin_HeritageTourismLogo
.ai, .eps, .jpg, .pdf, .png

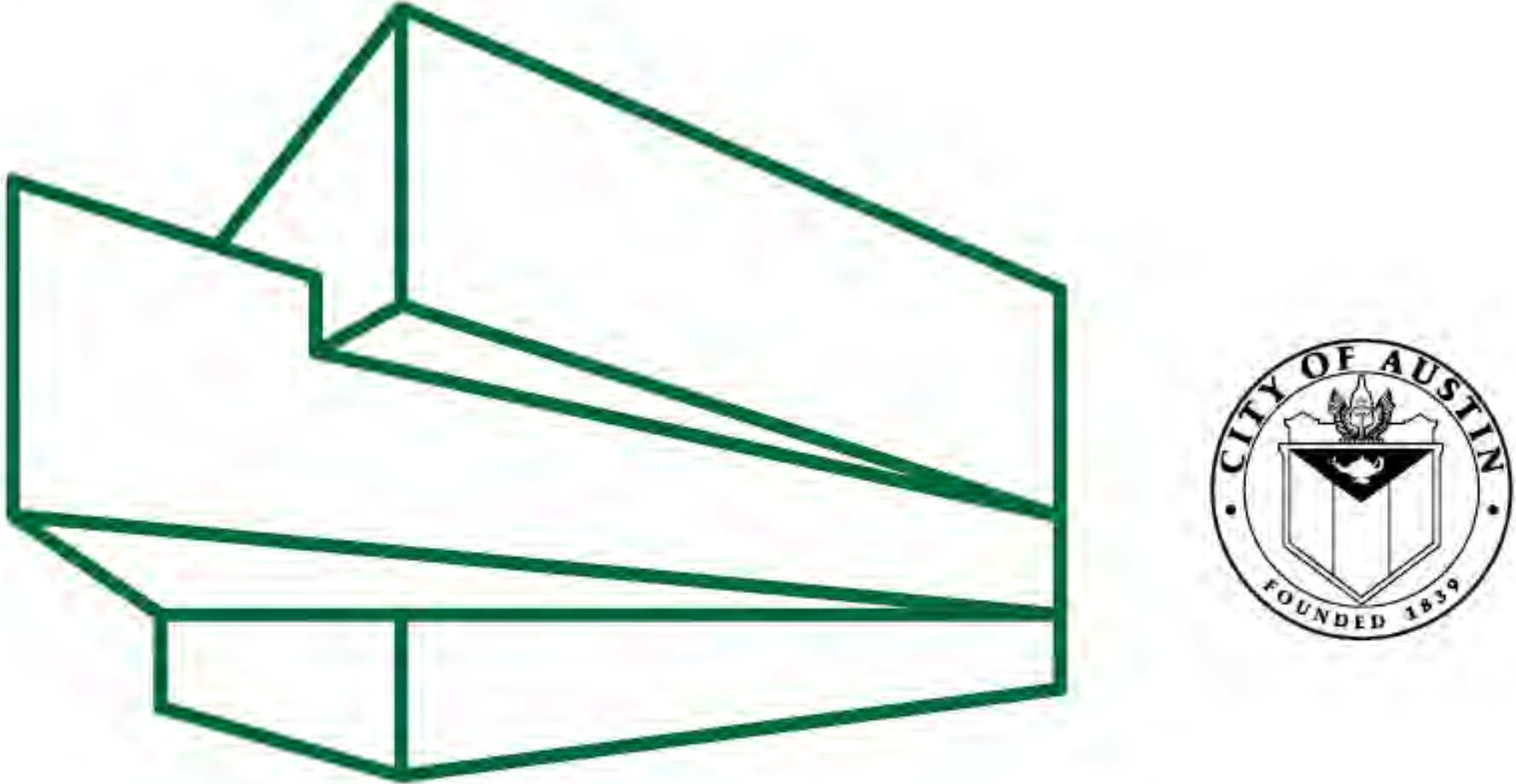
Knockout (white) logos to be placed on
solid colored backgrounds
CityOfAustin_HeritageTourismLogo_Ko
.ai, .eps, .pdf, .png

Brand Color

Heritage Green

Pantone: 349C
CMYK: 85 3 91 44

RGB: 4 106 5
HEX/HTML: 046A38



Heritage Tourism
CITY OF AUSTIN
ECONOMIC
DEVELOPMENT



The logo needs to be clear, to scale and intact. To make sure it's visible, place the logo with enough white space for clarity.

Digital: Minimum width 300 px. Print: Minimum width 1 inch

Project Signage

When a rehabilitation/restoration project project is undertaken using Heritage Grant funds, a sign at the project site acknowledging local assistance must be erected when the work begins and be maintained until work is complete. The sign must be viewable from a public right of way.

The sign should have the City of Austin Heritage Tourism Logo and include the following statement:
Rehabilitation/Restoration of {property name} has been made possible in part by a grant from the Heritage Tourism Division of the City of Austin Economic Development Department.

Example of acceptable project signage for your reference



Sign is visible from right of way & present for duration of the project.

Questions?

Melissa Alvarado, MPA

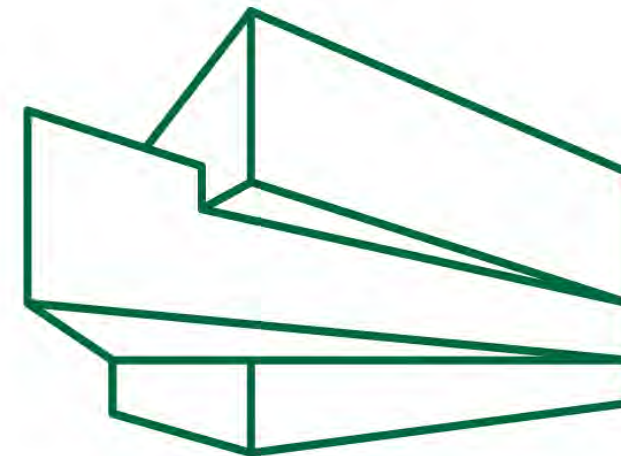
Heritage Tourism Manager

City of Austin Economic Development Department

Melissa.Alvarado@austintexas.gov

www.austintexas.gov/heritage-tourism

512-974-7870



Heritage Tourism

CITY OF AUSTIN
ECONOMIC
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Exhibit G

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.

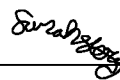
Dated this _____ day of _____, _____

CONTRACTOR

Authorized Signature

Title

Umlauf Sculpture Garden & Museum



Executive Director

Exhibit H

City of Austin, Texas

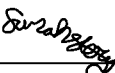
Section 0805

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: Umlauf Sculpture Garden & Museum_____

Signature of Officer or Authorized Representative: _____


Date: 3/26/20_____

Printed Name: Sarah Story_____

Title: Executive Director _____

Exhibit I



Exhibit I

Visitation Report Form

Please submit a Visitation Report with each invoice and associated receipts to receive a reimbursement payment. Payment requests must be submitted no frequently than once a month.

The Visitation Report **must be submitted for four consecutive years for capital projects and for one year for site-based heritage projects**, annually by September 30, beginning the first September which occurs after the first full calendar year after Project, before final payment is released.

Quantitative Information

Provide the total number of visitors and tourists who visited the historic site or participated in the heritage project.

	Grant Year 1 ¹	Grant Year 2 ²	Grant Year 3 ²	Grant Year 4 ²
State tourists				
National tourists (from outside Texas)				
International tourists				
Total number of tourists (state, national, international)				
Visitors from the Austin area				
Total number of visitors and tourists				

¹ For capital and site-based projects.

² For capital projects only.

RESOLUTION NO. 20190919-020

WHEREAS, City Council Resolution 20170831-060 directed the City Manager to allocate 15% of the seven-cent portion of the City's Hotel Occupancy Tax (HOT) to support operations and maintenance of City of Austin historic facilities and sites in accordance with Texas Tax Code Section 351.101(a)(5); and

WHEREAS, City Council Resolution 20181004-033 directed the City Manager to allocate the Historic Preservation Fund Fiscal Year 2019 budget in the following manner:

- 70% for City of Austin historic facilities and sites in accordance with Texas Tax Code Section 351.101(a)(5)
- 15% reserved for potential future historic acquisitions or major preservation projects that would be frequented by tourists and convention delegates
- 15% for the Heritage Grant Program

The Resolution also directed the City Manager to: (1) expand the eligible applicants for heritage grants per the recommendations of the Visitor Impact Task Force and the Heritage Grant Working Group; (2) expand eligible projects for Heritage Grants to include capital projects and planning, educational, and marketing projects; and (3) increase the \$59,000 cap on individual Heritage Grant awards to \$250,000 with staff discretion to recommend to Council grant requests above this threshold.

WHEREAS, Texas Tax Code Section 351.101(a)(5) authorizes hotel occupancy tax to be used for historic restoration and preservation projects or activities or advertising

and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums: (A) at or in the immediate vicinity of the convention center facilities or visitor information centers; or (B) located elsewhere in the municipality or its vicinity that would be frequented by tourists and convention delegates; and

WHEREAS, funding in the amount of \$11,880,629 is available in FY 2019 to the Economic Development Department for eligible historic restoration and preservation projects and activities; and

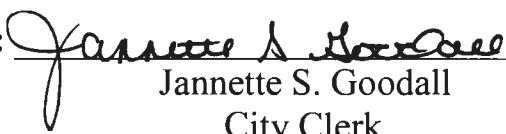
WHEREAS, for nearly two decades, a portion of the Austin Convention and Visitor's Bureau (now Visit Austin) budget has been allocated to fund and administer the Heritage Grant Program, and Visit Austin will cease administration of the program by the end of 2018; and

WHEREAS, an interdepartmental working group, including representatives from the Economic Development, Parks and Recreation, Planning and Zoning, Library, Law and Convention Center Departments evaluated proposals for project funding for City of Austin facilities and sites and prioritized investments, using the guidance of City Council Resolution 20181004-033; **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the City Manager is authorized to award, negotiate, and execute historic preservation fund service contracts for Fiscal Year 2019-2020, in an amount not to exceed \$11,880,629 for historic preservation and restoration projects, as recommended by staff.

ADOPTED: September 19, 2019

ATTEST: 
Jannette S. Goodall
City Clerk