

ATTACHMENT B: PROPOSED PROFESSIONAL SERVICES AGREEMENT

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF TOLLESON
AND
VENDOR**

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is between the City of Tolleson, an Arizona municipal corporation (the “City”) and **VENDOR NAME**, a **TYPE OF BUSINESS** (the “Vendor”) and shall become effective **DATE 2022** (the “Effective Date”).

RECITALS

A. The City desires to engage the Vendor to provide **type of services** (the “Type of Services”).

B. The Vendor responded to a request for proposals (RFP) by submitting a proposal (the “Proposal”), attached hereto as Exhibit A and incorporated herein by reference, and the City desires to enter into an Agreement with the Vendor for **TYPE OF SERVICES** (the “Materials and Services”).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Vendor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above. The installed murals are expected to be completed by **XXXX 2022**.

2. Scope of Work. Vendor shall provide the original mural artwork as described in the Scope of Work attached hereto as Exhibit A.

3. Compensation and Payments. In consideration for the Vendor’s satisfactory performance, City shall pay Vendor an amount not to exceed **\$XXX.XX**. Any price adjustments must be approved by mutual written consent of the parties. The payment schedule is as follows:

<u>Initial payment:</u>	\$ (10%) Contract Initiation shall be paid upon Contract signing.
<u>Progress payment:</u>	\$ (40%) – Shall be paid upon initiation of fabrication, estimated to be completed by XXXX 2022 .
<u>Progress payment:</u>	\$ (40%) – Shall be paid upon initiation of installation, estimated to be completed by XXXX 2022 .
<u>Final payment:</u>	\$ (10%) – Shall be paid upon City’s final acceptance of 100% of the installed artwork, estimated to be completed by XXXX 2022 . The invoice shall be labeled as “final”. The final invoice submitted shall include photographs of the completed artwork, the Artistic, Technical and Maintenance Record set forth in <u>Exhibit B</u> , Title and ownership of artwork transfer to the City upon Contractor’s receipt of this final payment.

4. Acceptance. All Pars and Services shall be subject to inspection and acceptance by the City at reasonable times during Vendor's performance. The Vendor shall provide and maintain a self-inspection system that is acceptable to the City.

5. Licenses; Materials. Vendor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Vendor. The City has no obligation to provide Vendor, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The City has no obligation to provide tools, equipment or material to Vendor.

6. Performance Warranty. Vendor warrants that the Part and Services provided will conform to the requirements of this Agreement and with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.

7. Indemnification. To the fullest extent permitted by law, the Vendor shall indemnify, defend and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, breach of contract, in connection with the work or services of the Vendor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

8. Insurance.

8.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Vendor, Vendor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Vendor. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Vendor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers,

directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

E. Primary Insurance. Vendor's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

F. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Vendor. Vendor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Vendor shall be solely responsible for any such deductible or self-insured retention amount.

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Vendor shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting the City and Vendor. Vendor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Vendor will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Vendor's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage, but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this

Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Vendor's responsibility to forward renewal certificates and declaration page(s) to the City 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFP number and title or this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate RFP number and title or a reference to this Agreement, as applicable. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFP number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

(1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability – Follow Form to underlying insurance.

(2) Vendor's insurance shall be primary insurance with respect to performance of this Agreement.

(3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Vendor under this Agreement.

(4) ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

8.2 Required Insurance Coverage.

A. Commercial General Liability. Vendor shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers,

officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Vendor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Vendor’s owned, hired and non-owned vehicles assigned to or used in the performance of the Vendor’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

C. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Vendor engages in any professional services or work in any way related to performing the work under this Agreement, the Vendor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Vendor, or anyone employed by the Vendor, or anyone for whose negligent acts, mistakes, errors and omissions the Vendor is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

D. Workers’ Compensation Insurance. Vendor shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Vendor’s employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

8.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 30 days’ prior written notice to the City.

9. Termination; Cancellation.

9.1 Notice and Correction of Deficiencies. If at any time the City determines that the artwork design, fabrication, or installation does not conform to the approved final design or this Agreement, the City reserves the right to notify the Contractor in writing of the deficiencies and that the City intends to withhold the next payment within 30 days of the determination, and the City may issue a stop work order. Contractor will have 30 days to cure the City’s objections and will notify the City in writing of completion of the cure. If Contractor disputes the City’s determination, within 15 days of Contractor’s receipt of City’s notice, Contractor shall notify the City in writing. In such event, the City shall make reasonable efforts to resolve the dispute however, final determination as to whether Contractor has complied with the terms of this Agreement will remain with the City.

9.2 For City's Convenience. This Agreement is for the convenience of the City and, as such, may be terminated without cause after receipt by Vendor of written notice by the City. Upon termination for convenience, Vendor shall be paid for all undisputed services performed to the termination date.

9.3 For Cause. If either party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. In the event of such termination for cause, payment shall be made by the City to the Vendor for the undisputed portion of its fee due as of the termination date.

9.4 Due to Work Stoppage. This Agreement may be terminated by the City upon 30 days' written notice to Vendor in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the City to the Vendor for the undisputed portion of its fee due as of the termination date.

9.5 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The City may cancel this Agreement without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a Vendor to any other party of this Agreement with respect to the subject matter of this Agreement.

9.6 Gratuities. The City may, by written notice to the Vendor, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Vendor or any agent or representative of the Vendor to any officer, agent or employee of the City for the purpose of securing this Agreement. In the event this 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 and withhold from the Vendor an amount equal to 150% of the gratuity.

9.7 Agreement Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Agreement for payment of funds by the City shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The City shall be the sole judge and authority in determining the availability of funds under this Agreement and the City shall keep the Vendor fully informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is a current expense of the City, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the City. If the City Council fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate

at the end of then-current fiscal year and the City and the Vendor shall be relieved of any subsequent obligation under this Agreement.

10. Miscellaneous.

10.1 Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Vendor acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. Vendor, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Vendor, its employees or subcontractors. The Vendor, and not the City, shall determine the time of its performance of the services provided under this Agreement so long as Vendor meets the requirements as agreed in Section 2 above. Vendor is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Vendor do not intend to nor will they combine business operations under this Agreement.

10.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

10.3 Laws and Regulations. Vendor shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Vendor is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future City and County ordinances and regulations; (B) existing and future State and Federal laws; and (C) existing and future Occupational Safety and Health Administration standards.

10.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Vendor.

10.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction.

10.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

10.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the

party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

10.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Vendor. Vendor was selected for unique artistic skills and this Agreement is not assignable.

10.9 Subcontracts. No subcontract shall be entered into by the Vendor with any other party to furnish any of the material or services specified herein without the prior written approval of the City. The Vendor is responsible for performance under this Agreement whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Vendor.

10.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Vendor from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

10.11 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

10.12 Liens. All materials or services shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

10.13 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Vendor any amounts Vendor owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Vendor any amounts Vendor owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

10.14 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City: City of Tolleson
9555 West Van Buren Street
Tolleson, Arizona 85353
Attn: Crystal Zamora, City Clerk

With copy to: Pierce Coleman PLLC
7730 East Greenway Road, Suite 105
Scottsdale, Arizona 85260
Attn: Justin Pierce, City Attorney

If to Vendor: **VENDOR**
ADDRESS
Attn:

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

10.15 Confidentiality of Records. The Vendor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Vendor's duties under this Agreement. Persons requesting such information should be referred to the City. Vendor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Vendor as needed for the performance of duties under this Agreement.

10.16 Records and Audit Rights. To ensure that the Vendor and its subcontractors are complying with the warranty under subsection 13.17 below, Vendor's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Vendor and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Vendor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Vendor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 13.17 below. To the extent necessary for the City to audit Records as set forth in this subsection, Vendor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Vendor pursuant to this Agreement. Vendor

and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this subsection. The City shall give Vendor or its subcontractors reasonable advance notice of intended audits. Vendor shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

10.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Vendor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Vendor's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

10.18 Israel. Vendor certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott" of goods and services from Israel, as that term is defined in Ariz. Rev. Stat. § 35-393.

10.19 Relationship of the Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Vendor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and Vendor agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Agreement.

10.20 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Proposal, any City-approved invoices, and the RFP, the documents shall govern in the order listed herein.

10.21 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

“City”

CITY OF TOLLESON,
an Arizona municipal corporation

Reyes Medrano, Jr., City Manager

ATTEST:

Crystal Zamora, City Clerk

APPROVED AS TO FORM:

Justin S. Pierce, City Attorney

“Vendor”

_____,
a _____ corporation

By: _____

Name: _____

Title: _____

EXHIBIT A
SCOPE OF WORK
BETWEEN
THE CITY OF TOLLESON
AND
VENDOR

See following pages.

EXHIBIT B
ARTISTIC, TECHNICAL AND MAINTENANCE RECORD
BETWEEN
THE CITY OF TOLLESON
AND
VENDOR

(To be submitted with final invoice)

1. General Information
Artist Title of artwork
Location
General description of artwork
2. Artist's Statement about artwork – to be used for publicity of the artwork.
3. Artwork Information – in depth information for overall artwork and for each individual element.

Medium and Description of Materials (include materials thickness, welding rod alloy or joint material, casting alloy, wax body, glass or fiber type)

Special Methods Utilized in Execution of artwork (welding or joint method, technique or construction method – attach fabrication drawings)

Material Finish (glaze, paint color and type, sanding grit, tool pattern, patina, surface sealer)

Installation Method(s) (foundation installation structure, bolt/pin size, grout)

Placement of artwork (cautions regarding sunlight, heat, etc)
4. Vendors/Parts/Storage – include supplier's name, address and phone number, description for all components of artwork; attach copies of manufacturer specifications whenever possible.
5. Regular Maintenance Schedule – include cleaning agents and recommended cleaning procedure, yearly maintenance schedule for the entire artwork and recommended procedure to check any electrical or mechanical parts that are integrated in this work.
6. Special Considerations and/or Additional Pertinent Information
7. Plaque Text

Artist's Name

Title of artwork, Year Completed

EXHIBIT C
VARA Waiver for Works of Visual Art
(MURAL)

I, _____(print name), “Artist,” hereby acknowledge the rights of attribution and integrity generally conferred by Section 106A(a) of Title 17 of the U.S. Code (The Visual Artists Rights Act of 1990, “VARA”), and any other rights of the same nature granted by other federal, state or foreign laws. Artist acknowledges that his/her work of art is a mural, which by its nature will be on the façade of a building subject to the rigors of Tolleson weather. Artist further acknowledges that any mural created may be destroyed, either by weather or a necessity otherwise occasioned, which requires its removal from the building. Therefore, of his/her own free act, Artist hereby waives his/her VARA rights with respect to the uses specified below, and acknowledges that The City of Tolleson, or anyone duly authorized by The City of Tolleson City may have cause to remove said mural when to do so is determined to be in the best interest of The City.

MURAL ENTITLED: _____

MATERIALS: _____

SPECIFIED USES: Artistic enhancement of a structure at:

Address

Artist hereby acknowledges that an Art Easement conferred by the property owner for affixing a mural on a particular property may specify a fixed period of time during which every effort will be made by the property owner to allow such mural to remain. However, as Artist hereby further acknowledges, despite the specific term provisions of the Art Easement, a requirement for removal of the mural to accomplish the best interests of The City may occur, and the removal requirement on the part of The City may occur without opportunity for prior notice to Artist.

Date: _____ Signature of Artist: _____

I, _____(printed name) do hereby acknowledge the VARA rights of attribution and integrity of Artist, including a copyright interest, as set forth above, and hereby grant permission for Artist to create a mural for enhancement of the property at the address set forth above.

Date: _____ Printed name of Purchaser: _____

Signature of Purchaser