

PROFESSIONAL SERVICES AGREEMENT
for
Design, Creation, Fabrication, and Installation of Public Art

The City of Lewisville, Texas (the “City”), hereby engages Skyrim Studio, Inc., an Arizona corporation authorized to do business in Texas (the “Artist”) (collectively, the “Parties”) to perform professional services in connection with the design, fabrication, and installation of public art for the Tittle McFadden Public Safety Center, to be located at 1187 W. Main St, Lewisville, Texas (the “Project”).

I. **SCOPE OF WORK.** The scope of work for the Project is described as follows:

A. Phase 1 – Plan of Work:

1. The Artist shall, in cooperation with the architectural design team and appropriate representatives of the City, develop a plan of work for the Project (the “Plan of Work”) to complete design, fabrication, and installation of the art as shown in Exhibit C (the “Artwork”).
2. The Plan of Work shall provide a set of target dates for completion of all phases of the design, fabrication, and installation of the art pieces in accordance with the schedule for design and construction of the Tittle McFadden Public Safety Center. Project timeline will ensure the installation and dedication of the finished Artwork at the time the Tittle McFadden Public Safety Center opens to the public.
3. The Plan of Work shall also include a preliminary site for installation of the Artwork. This site may be adjusted by agreement between the Artist and the City’s Director of Community Relations and Tourism or his designee (the “Director”) as needed at the time of installation.
4. The Plan of Work shall be approved by the Director and, upon approval, shall become part of this Agreement and shall be attached hereto as Exhibit B.

B. Phase 2 – Community Input and Engagement:

The Artist will plan, with City staff, a time to travel to Lewisville to gather input from Lewisville residents and staff through various meetings or other events to inform the design of the Artwork. This engagement may also include online elements and the Artist will work with City staff to plan and execute this effort.

C. Phase 3 – Design Finalization:

1. The completed design of the Artwork (the “Final Design”) shall include:
 - a) drawings necessary to communicate the Artist’s intent,
 - b) materials specifications,
 - c) finish recommendations,
 - d) description of the proposed fabrication and installation methods,

- e) narrative description, budget,
 - f) materials samples,
 - g) description of appropriate permanent measures or devices to protect the Artwork from undue wear or damage, vandalism, or loss,
 - h) any other information or materials necessary to fully describe the Artwork as proposed, and
 - i) a preliminary written set of instructions for regular maintenance of the Artwork.
2. The Artist will fabricate a detailed, small-scale maquette of the Project to be reviewed by City staff and volunteers as part of the design review and approval process.
 3. The Final Design shall be approved by the Director.

D . Phase 4 – Material Fabrication of Artwork:

1. The Artist shall fabricate the Artwork as presented in the Final Design.
2. The City understands that the Artist may wish to adjust layout, and final finishes of the pieces to maximize the beauty of the finished Artwork. Any change, including design, color, size, material, and texture, to the Artwork which deviates from the Final Design must be approved in writing by the Director before the change is made. Written approval may be requested or provided via e-mail. If the Director does not respond to a request to change the Final Design within five (5) business days, such failure to respond shall be considered approval of such change.

E. Phase 5 – Final Completion and Installation of the Artwork:

1. The Artist shall install the Artwork at the site approved by the Parties in Phase 1 or at another site agreed to as set forth in Section I.A., above, at the time of installation in accordance with the Final Design, at which point title of the Artwork shall transfer to the City following inspection and acceptance, as outlined in Section II.C., below.
2. The City will work with the Tittle McFadden Public Safety Center construction team and Artist to prepare, at its own expense, the site for installation of the Artwork to the Artist's specifications. This will include foundation strength and size requirements and electrical conduit runs and outlet access points.
3. The date for installation shall be confirmed by the Parties in writing no later than thirty (30) days prior to installation. The installation date will correlate to the completion of construction of the Tittle McFadden Public Safety Center.
4. It is preferred that the Artist also be in attendance at the Tittle McFadden Public Safety Center opening/Artwork unveiling event. If the installation of the Artwork is scheduled to occur more than 48 hours before the Tittle McFadden Public Safety Center's opening/Artwork unveiling event, the Artist is encouraged to attend, but travel costs will not be covered by this Agreement. .

F. Phase 6 – Project Documentation:

1. The Artist shall assist with creating a project identification plaque for the Artwork by providing, at least 60 days before the date of installation, the title of the Artwork, the Artist's name, and the year of completion. The City will design, purchase and install the plaque. The City has sole decision-making authority regarding the design, quantity and placement of identification plaque(s).
2. Within 30 days of the transfer of title of the Artwork to the City as outlined herein, the Artist shall provide to the City the following:
 - a) a publication-ready JPEG of the Artwork, with a minimum resolution of 350 dpi and a minimum size of 7 inches on the longest edge,
 - b) a JPEG of the Artwork in situ at the work site, meeting the same resolution and size parameters as outlined in Section I.E.2.a., above,
 - c) a complete written description of the Artwork,
 - d) final written instructions for appropriate maintenance and preservation of the Artwork, including a maintenance schedule, and
 - e) a comprehensive list of all materials and techniques used in the creation of the Artwork (e.g., gauge and type of metal, adhesive materials, clay body and firing, etc.)

II. SPECIAL TERMS OF THIS AGREEMENT

A. Warranties.

1. Warranties of Title: The Artist represents and warrants that the Artwork will be (a) solely the result of the artistic effort of the Artist, (b) unique and original, except as otherwise disclosed in writing to City, (c) not a duplicate, nor has a duplicate of the Artwork been accepted for sale elsewhere unless disclosed and approved by City in writing, (d) not infringing upon any copyright, and (e) free and clear of any liens or claims from any source whatsoever.
2. Warranties of Quality and Condition: The Artist represents and warrants that (a) the Artist will execute, fabricate, and install the Artwork in a professional manner, (b) the Artwork, as fabricated and installed, will be free of defects in material and workmanship, including, but not limited to any defects constituting "inherent vice" or qualities which cause or accelerate deterioration of the Artwork, and (c) reasonable maintenance of the Artwork will not substantially exceed what is described in the maintenance instructions submitted by the Artist in accordance with this Agreement.
3. The warranties described in sections II.A.1 and II.A.2 shall survive the transfer of the title to the Artwork to the City as outlined herein, subject to the required periodic maintenance by the City according to directions provided by the Artist. The City shall give written notice to the Artist of any breach of these warranties within 120 days of the breach. The Artist shall, at the request of City and at no cost to City, reasonably and promptly cure the breach of any such warranty that is repairable or replaceable by the

Artist. Such repair shall be consistent with accepted practices of professional conservation (including, for example, repair by means of restoration, refurbishing or re-creation of part or all of the Artwork). If the breach of any such warranty is not repairable by the Artist, the Artist shall replace the Artwork or component of the Artwork as needed to cure the breach of warranty.

B. Risk of Loss or Damage.

Risk of loss or damage to the Artwork shall be borne by the Artist until title to the Artwork transfers to the City as outlined in Section II.C., below. Until title transfers to the City, the Artist shall take such measures as are necessary to protect the Artwork from loss or damage, including carrying insurance to cover the risk of damage to the Artwork as more specifically outlined in Article IV, below.

C. Title to the Artwork.

1. Upon installation of the Artwork in accordance with Section I.D., above, the City shall inspect or cause to be inspected the Artwork, and determine if all work has been performed in accordance with this agreement and the installed Artwork is satisfactory.
 - a) If the City determines that the installed Artwork is satisfactory and has been completed and installed in accordance with this Agreement, the City shall issue a notice of acceptance to the Artist and title to the Artwork shall transfer to the City.
 - b) In the event that the City determines that the Artist has substantially failed to fulfill their obligations as outlined herein, the City will provide the Artist with written notice detailing the specific obligation which the City claims the Artist failed to fulfill and notifying the Artist that the City considers the Artist to be in breach of this Agreement. If the breach is not cured or the Parties cannot agree on a schedule for curing the breach, this Agreement will terminate on a date specified by the City which will be no sooner than ten (10) business days from the date of issuance of the notice contemplated in this Section. Upon receipt of notice under this section, the Artist will promptly discontinue all services affected (unless otherwise directed in writing in the notice) except to cure the applicable breach. The City will have the right, upon termination pursuant to this subsection, to all completed work and deliverables on the Project which the Artist has produced and for which payment has been made, and will have the right, as set forth in section II.C.3, below, to have the Artwork completed by another person or persons.
2. If the City fails, within 30 days of final completion and installation of the Artwork by the Artist, to execute a notice of acceptance or notify the Artist in writing of any outstanding issues, title and ownership of the Artwork shall automatically transfer from the Artist to the City.
3. Should the Artist fail to complete the Artwork for any reason, including due to termination caused by breach of this Agreement pursuant to Section II.C.1.b., above,

the Artist, the Artist's heirs, executors, administrators or assignees, as the case may be, will, within thirty (30) days of the Artist ceasing production of the Artwork, transfer title of the Artwork to the City for that portion of the Artwork completed prior to the Artist ceasing production of the Artwork (the "Artwork in Progress"). Upon obtaining a title for the Artwork in Progress, the Client will pay the Artist for all services satisfactorily performed by the Artist and may, at its sole option, complete the Artwork or cause the Work to be completed. If the Artwork is completed pursuant to this section, the Parties will be joint and equal owners of the copyright in the Artwork and the Artist acknowledges and agrees that such actions will not violate or infringe any moral rights that the Artist may have in relation to the Artwork in Progress or the Artwork. Notwithstanding the foregoing, the Artist will not be relieved of liability to the City for damages sustained by the City by virtue of their failure to complete the Artwork, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due to the City from the Artist are determined. The City may offset any such damages determined against any amounts owing to the Artist under this Agreement.

D. Reproduction Rights

1. General

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. 101 et seq., and all other rights in and to the Artwork, except ownership and possession and except as such rights are otherwise limited by this Agreement. The Artist agrees not to create a substantially identical replica of the Artwork, either in full or reduced scale, without prior written approval from the City. The Artist grants to the City and its successors a perpetual, irrevocable license to reproduce, depict, or display the Final Work for promotional purposes, including but not limited to reproductions used in advertising, memorabilia-type merchandise, brochures, media publicity, educational materials, and catalogues or other similar publications.

2. Artist Credit

All reproductions by the City shall credit the Artist and include a copyright notice substantially in the following form: "© (Artist's name), installation date", and credit to the City as follows: "Funded through the Public Art Program of the City of Lewisville, Texas".

3. Artist Reproduction Credit

The Artist shall include on or in any image or other form of reproduction of the Artwork initiated or authorized by the Artist, a credit to the City in the following form: "Collection of the Public Art Program of the City of Lewisville, Texas."

E. Artist's Rights

1. General

In all matters pertaining to the Artwork and its maintenance, including but not limited to the articles in this Agreement, the provisions of the Visual Artists' Rights Act (VARA) shall apply, except that the Artist hereby waives all rights under VARA regarding movement, removal, or destruction of the Artwork, and grants the City the right to move, remove, or destroy the Artwork at the City's sole discretion.

2. Maintenance.

The City recognizes that maintenance of the Artwork on a regular basis is essential to the integrity of the Artwork. The City shall reasonably ensure that the Artwork is properly maintained and protected maintenance schedule and instructions required herein.

3. Repairs and Restoration.

- a. The City shall have the right to determine, after consultation with a professional fine art conservator, when and if repairs and restorations to the Artwork will be made. To the extent practicable, the Artist, during the Artist's lifetime, shall be given the opportunity to make or personally supervise significant repairs and restorations recommended by a professional fine art conservator.
- b. If the repair or restoration is needed five years or more after transfer of title of the Artwork under this Agreement, the City and the Artist shall agree in writing, prior to the commencement of any significant repairs or restoration, upon the Artist's fee for such services, provided such funds to pay the fee are available, and provided that Texas laws, including but not limited to procurement laws, allow the City to contract with the Artist for the Artist's services.
- c. All repairs and restorations shall be made in accordance with accepted practices of professional fine art conservation.

F. Artist as Independent Contractor.

The Artist and her agents and employees are independent contractors performing services for the City and are not employees of the City. Neither the Artist nor the Artist's agents and employees shall accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

G. Subcontracting.

The Artist may subcontract portions of the services to be provided hereunder at the Artist's expense provided that said subcontracting shall not affect the design, appearance, intent or visual quality of the Artwork as approved by the City and provided that such services shall be carried out under the personal supervision and expense of the Artist.

III. COMPENSATION

- A. Compensation for the work performed under this Agreement shall be \$320,000.00 paid to the Artist as work is completed on the Project, on the following schedule:
1. Sixty thousand dollars (\$60,000.00) upon execution of this Agreement.
 2. Twenty thousand dollars (\$20,000.00) upon completion of Phases I and II.
 3. Seventy thousand dollars (\$70,000.00) upon completion of Phase III.
 4. Fifty thousand dollars (\$50,000.00) once 50% of the fabrication of the Artwork is complete and documented to the satisfaction of the City.
 5. Eighty thousand dollars (\$80,000.00) once 100% of the fabrication of the Artwork is complete and documented to the satisfaction of the City.
 6. Forty thousand dollars (\$40,000.00) following completion of all Phases of the Agreement as outlined in Section I, above, including but not limited to installation of the Artwork and upon the passing of the title of the Artwork to the City and completion of the duties of the Artist as outlined herein, including delivery of all deliverables to the City.

The compensation outlined under this section is compensation for all expenses incurred by the Artist under this Agreement, and no additional compensation nor reimbursement shall be provided except as otherwise provided for herein.

B. Invoicing Procedures

1. Invoices shall be submitted by cover letter from the Artist. The letter shall certify that the invoice properly represents work actually done. The City reserves the right to request additional justification prior to payment of any invoice. If satisfactory justification is not received, the City reserves the right to amend the invoice or to refuse to make payment without incurring penalty or interest.
2. The invoice shall be based on the work completed as set out in Section III.A., above. Each phase payment shall constitute full and final payment for the services and materials required to complete that portion of the Project.
3. The City agrees to make prompt payments for all approved invoices and agrees to pay interest at the rate approved by law for approved invoices not paid within 30 days from the date of receipt of invoice, in accordance with the Texas Prompt Payment Act (Tex. Gov't Code Chapter 2251).

IV. INSURANCE. Until such time that title to the Artwork transfers to the City, the Artist shall maintain insurance coverage in accordance with Exhibit A and ensure that all subcontractors, including sub-artists, also maintain such coverage. Coverage shall remain in effect through final installation of the Project. All Certificates of Insurance shall be kept current and shall be forwarded to the Purchasing Division of the City by cover letter from the Artist. Insurance certificate must be received and approved prior to commencement of work. The Artist shall also review and forward certificates covering subcontractors, including sub-artists.

V. REUSE OF DOCUMENTS. All documents, including drawings and specifications prepared by the Artist pursuant to this Agreement, are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse except as specified herein without written verification or adaptation by the Artist for the specific purpose intended will be at City's sole risk and without liability or legal exposure to the Artist from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle the Artist to further compensation at rates to be agreed upon in writing by the City and the Artist.

VI. OWNERSHIP OF DOCUMENTS. Original documents, plans, designs, reports and survey notes developed in connection with services performed hereunder belong to, and remain the property of the City, in consideration of which it is mutually agreed that the City will use them solely in connection with the Project, save with the express consent of the Artist or as outlined herein. The Artist shall retain reproducible copies or electronic files of such documents for at least five (5) years and shall furnish copies to the City for reimbursable costs, if so requested.

VII. INDEMNIFICATION. THE ARTIST AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ARTIST'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY ARTIST, ARTIST'S OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT, EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE ARTIST AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE ARTIST'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND

NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

VIII. TIME OF COMPLETION. A general project schedule is included in the Plan of Work attached hereto as Exhibit B hereby included in this Agreement by reference. The Artist agrees to perform the services in accordance with the general project schedule provided in Exhibit B, to the extent over which the Artist has control, but the City and the Artist agree that the construction schedule of the Tittle McFadden Public Safety Center may require adjustments to any project schedule, which shall be agreed to by the Artist and the Director in writing.

IX. TERMINATION. This Agreement may be terminated by the City with or without cause at any time prior to completion of the Artist's services or as otherwise provided for herein, or by the Artist upon the City's material breach of the terms of this Agreement, upon seven days written notice to the City at the address of record. Termination shall release each party from all obligations of this Agreement, except those outlined in Section II or Paragraphs V, VI and VII above. Upon termination, the Parties shall comply with Section II.C., above.

X. CONFIDENTIAL INFORMATION. To the extent allowed by law, the City will safeguard and keep from release any documents marked "proprietary" or information not generally available to the public. However, the City will, if required, comply with all requirements of the Texas Public Information Act with regard to any documents in its possession at the time of a request made under that Act.

XI. INDEPENDENT CONTRACTOR. Consultant shall be considered an independent contractor and not an agent, servant, employee, or representative of the City in the performance of the work and Services. No term or provision herein or act of the City shall be construed as changing that status.

XII. ADVERTISING. Consultant shall not advertise or publish, without the City's prior written consent, the fact that the Consultant has entered into this Agreement, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

XIII. NOTICE. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same, to the address thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to Artist, to: Blessing Hancock
 Skyrim Studios

PO Box 36593
Tuscom, AZ 85740

If to City, to: City of Lewisville
Attn: Denise Helbing, Art Center Manager
151 W. Church Street
Lewisville, Texas 75057

XIV. GOVERNING LAW AND VENUE. This Agreement is governed by the laws of the State of Texas. Exclusive venue for any dispute arising out of this Agreement is in Denton County, Texas.

XV. GOVERNMENTAL IMMUNITY. Unless otherwise required under the law, the Parties agree that the City has not waived its governmental immunity by entering into and performing their obligations under this Agreement.

XVI. ARBITRATION. In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration.

XVII. COMPLIANCE WITH LAWS. The Consultant shall comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws.

XVIII. PROTECTION OF RESIDENT WORKERS. The City actively supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Artist shall establish appropriate procedures and controls so no services under this Agreement will be performed by any worker who is not legally eligible to perform such services or employment. The City reserves the right to audit the Artist's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services under this Agreement. The audit will be at the City's expense.

XIX. IMMIGRATION REFORM AND CONTROL ACT (8 U.S.C. §1324a). The City supports the Immigration Reform and Control Act (IRCA) which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Artist shall submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that it has not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Artist shall ensure that its subcontractors submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that they have

not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Artist and its subcontractors shall at all times during the term of this Agreement comply with the requirements of IRCA and shall notify the City within fifteen (15) working days of receiving notice of a violation of IRCA. The City may terminate this Agreement if the City determines that (a) the Artist or its subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if the Artist fails to ensure that its subcontractors submit the aforementioned declaration; or (c) the Artist or its subcontractors fail to timely notify the City of an IRCA violation.

XX. ADA COMPLIANCE. All goods and services provided to the City must be compliant with the Americans with Disabilities Act (“ADA”) and all regulations promulgated pursuant to the ADA. The Artist will be required to certify compliance, if applicable.

XXI. SUCCESSORS AND ASSIGNS. The City and the Artist each binds itself and its partners, successors, executors, administrators and assigns in respect to all covenants of this Agreement. Neither the City nor the Artist shall assign, sublet or transfer its interest in this Agreement without the written consent of the other. Assignment without such written consent shall be void. Nothing herein shall be construed as giving any right or benefits hereunder to anyone other than the City and the Artist.

XXII. REPRESENTATIONS. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

XXIII. MISCELLANEOUS DRAFTING PROVISIONS. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

XXIV. FORCE MAJEURE. If by reason of Force Majeure, the Consultant shall be rendered unable wholly or in part to carry out its obligations under this Agreement then the Consultant shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the Consultant, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean any contingency or cause beyond the reasonable control of the Consultant created by acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, governmental or de facto governmental action including, but not limited to, government actions pertaining to the determination of flood zones or FEMA actions (unless caused by acts or omissions of the Consultant), fire, explosion or flood, strikes; provided, however, that

(a) the event giving rise to Force Majeure was not caused by the act or omission of the Consultant and makes the performance of any obligation created under this Agreement illegal or impossible; and (b) the Consultant gives reasonable notice of the event giving rise to Force Majeure and exercises all reasonable diligence to remove the cause of Force Majeure.

XXV. DISCLOSURE. Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the City must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the City. The conflict of interest questionnaire, which is available online at ethics.state.tx.us, must be filed with the City Secretary of the City of Lewisville no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City or submits to the City an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City. An updated conflict of interest questionnaire must be filed in with Chapter 176 of the Local Government Code.

Said person should consult with legal counsel if they have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the City to comply with the filing requirements of Chapter 176.

XXVI. TEXAS GOVERNMENT CODE CHAPTER 2252. Pursuant to Texas Government Code Chapter 2252, Subchapter F, Contractor affirms, by entering into this Agreement, that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.

XXVII. TEXAS GOVERNMENT CODE CHAPTER 2271. Pursuant to Texas Government Code Chapter 2271, Consultant affirms that execution of this Agreement serves as written verification that Consultant: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the Agreement. This section shall not apply if Consultant employs fewer than ten (10) full-time employees, or if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00.

XXVIII. TEXAS GOVERNMENT CODE CHAPTER 2274. Pursuant to Texas Government Code Chapter 2274, Consultant affirms that execution of this Agreement serves as written verification that Consultant (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as those terms are defined in that chapter; and (2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

This section shall not apply if Consultant employs fewer than ten (10) full-time employees, if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than

\$100,000.00, or if this Agreement is otherwise exempted from the requirements of Texas Government Code Chapter 2274. Any terms used in this section which are defined in Texas Government Code Chapter 2274 shall have the meaning given therein.

XXIX. TEXAS GOVERNMENT CODE CHAPTER 2276. Pursuant to Texas Government Code Chapter 2276, Consultant affirms that execution of this Agreement serves as written verification that Consultant: (1) does not boycott energy companies, as defined by Texas Government Code Section 809.001; and (2) will not boycott energy companies during the term of this Agreement.

This section shall not apply if Consultant employs fewer than ten (10) full-time employees, if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00, or if this Agreement is otherwise exempted from the requirements of Texas Government Code Chapter 2276.

XXX. ENTIRE AGREEMENT. This Agreement and its exhibits contain the entire agreement of the parties with respect to the matter contained herein. All provisions of this Agreement shall be strictly complied with and conformed to by the Consultant, and no amendment to the Agreement shall be made except upon the written agreement of the parties, which shall not be construed to release either party from any obligation of the Agreement except as specifically provided for in such amendment.

XXXI. CLOSURE. By signature below, the parties to this Agreement hereby bind themselves to the terms stated herein, including all attachments referred to herein.

CITY OF LEWISVILLE, TEXAS

SKYRIM STUDIO, INC.

Approved by the Lewisville City Council on _____

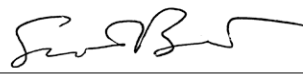
By: _____
Claire Powell, City Manager

By:  _____
Blessing Hancock, Artist/Owner

Date: _____

Date: 4/4/24

Attest: _____
Thomas Harris III, City Secretary

Attest:  _____
Scott Bolton, President

CITY OF LEWISVILLE

151 West Church Street
Lewisville, Texas 75057

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney

EXHIBIT A

INSURANCE REQUIREMENTS PROFESSIONAL SERVICES PROJECTS/ARTISTS

Services for non-construction projects. Consultants or other professionals including: Accountants, Attorneys, Veterinarians, and Medical Doctors.

Vendor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representative, employees or subcontractors. The cost of such insurance shall be included in the Vendor's bid.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage "occurrence" form CG 00 01 (10 01). **"Claims Made" form is unacceptable except for professional liability.**
2. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
3. Automobile Liability - as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract. Coverage not required for delivery services.

B. MINIMUM LIMITS OF INSURANCE

Vendor shall maintain throughout contract limits not less than:

1. Commercial General Liability: \$500,000 per occurrence for bodily injury, personal injury and property damage. \$1,000,000 Aggregate Policy will include coverage for:
 - a. Premises - Operations
 - b. Products and Completed Operations
 - c. Personal Injury

NOTE: The aggregate loss limit applies to each project.

2. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability minimum limits of \$500,000 per injury, \$500,000 per occupational disease.
3. Automobile Liability - \$500,000 Combined Single Limit. Limits can only be reduced if approved by the Risk Manager or designee.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retentions must be declared to and approved by the City.

D. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages

- a. The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as “Additional Insured” as respects liability arising out of activities performed by or on behalf of the vendor, products and completed operations of the vendor, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under “Who is an Insured” automatically provides liability coverage in favor of the City.
- b. The vendor’s insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the vendor’s insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, Boards and Commissions or volunteers.
- d. The vendor’s insurance shall apply separately to each insured against whose claim is made or suit is brought, except to the limits of the insured’s liability.

2. Worker’s Compensation and Employer’s Liability Coverage.

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the vendor for the City.

3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the City.

E. ACCEPTABILITY OF INSURERS

The City prefers that Insurance be placed with insurers with an A.M. Best’s rating of no less than **A-:VI, or, A or better** by Standard and Poors. Professional Liability carriers will need to be approved by the Risk Manager.

F. VERIFICATION OF COVERAGE

Contractor shall furnish the City with certificates of insurance affecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance similar to the ACCORD form are acceptable. City will not accept Memorandums of Insurance or Binders as proof of insurance. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

G. HOLD HARMLESS AND INDEMNIFICATION

THE CONSULTANT/CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONSULTANT'S/CONTRACTOR'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OR INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY, CONSULTANT/CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONSULTANT/CONTRACTOR AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CONSULTANT'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

H. PROOF OF INSURANCE

Contractor is required to submit proof of insurance on a form acceptable to the City of Lewisville. Certificates of Insurance similar to the ACCORD form are acceptable. City will not accept Memorandums of Insurance or Binders as proof of insurance. City, at its own discretion, may require a copy of any policy presented to the City.

EXHIBIT B

Blessing Hancock, Skyrim Studio Inc

Lewisville Public Safety Center Proposed Schedule:

April 2024 - Contract Start Date

May - Sept 2024 - Design Development/Community Engagement

Oct 2024 - April 2025 - Fabrication

April 2025 - Installation

Blessing Hancock
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520-275-9174

EXHIBIT C

ARTIST'S PROPOSAL