



STANDARD TERMS AND CONDITIONS CONCEPTUAL DESIGN SERVICES

1. These standard Terms and Conditions (“Standard Terms and Conditions”) which incorporate the terms and conditions, and other requirements included in San Antonio River Authority (“River Authority”) solicitation for conceptual design services for public art are incorporated by reference in Purchase Orders issued by the River Authority for conceptual design services. Respondent(s) to such solicitation are herein referred to as “Artist”. The River Authority and Artist are collectively referred to as the “Parties” to this Purchase Order. Any deviations from the Standard Terms and Conditions must be in writing and signed by a representative of the River Authority and Artist. No terms and conditions contained in the Artist’s proposal response, purchase order, invoice or statement shall serve to modify the Standard Terms and Conditions set forth herein. If there is a conflict between the Standard Terms and Conditions and the solicitation documentation, the Standard Terms and Conditions shall control.
2. Artist shall provide unique conceptual design for public art, “Conceptual Design”, to which a plan for fabrication and installation within the proposed budget can be derived at a later date to River Authority by the delivery date on the Purchase Order.
3. By submitting Conceptual Design to the River Authority for review and approval, Artist represents and warrants that the Conceptual Design as rendered is original, does not infringe on any third-party intellectual property rights, has not been previously sold, assigned, licensed, granted, encumbered or utilized in whole or part in any way that may affect or impair the rights granted to the River Authority under this Purchase Order.
4. The River Authority 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 River Authority contracts. Artist certifies Artist is not suspended or debarred from Federal, State, or River Authority contracts and further does is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Artist acknowledges this Purchase Order may be terminated and payment withheld if these certifications are inaccurate. Artist further certifies that Artist is not listed on the website of the Comptroller of the State of Texas concerning companies that are identified under Section 806.051, Section 807.051 or Section 2252.153 and that should Artist enter into business with a firm listed on the on the Comptrollers’ website which does business with Iran, Sudan, or any Foreign Terrorist Organization, Artist will immediately notify the River Authority.
5. Artist agrees to provide and prepare all necessary materials and renderings to develop the Conceptual Design and to be physically present for all meetings with public and stakeholders to present such Conceptual Design materials and renderings for discussion and potential approval.
6. Artist understands that through the approval process, changes to the Conception Design may be required by River Authority or other stakeholders and Artist agrees to incorporate said changes into the Conceptual Design in a timely manner. Artist will make every effort to communicate with pertinent River Authority staff regarding development of and any changes to the Conceptual Design.



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7. If Conceptual Design is selected by River Authority for final design, Artist will not replicate/duplicate the submitted conceptual design in any manner without the express written consent of the River Authority.
8. If the Conceptual Design is accepted by River Authority, River Authority agrees to pay to Artist the amount on the face of the Purchase Order at the intervals stated on the Purchase Order within thirty (30) days of Artist's submission of an invoice in the acceptable format to the River Authority. Invoices must be submitted to accountspayable@sariverauthority.org. Invoices received by River Authority from Artist more than 90 days after the completion of work rendered or good delivered will be deemed delinquent. The River Authority will have no obligation to pay such delinquent invoices and Artist shall be deemed to have waived its right to payment for the respective services rendered or goods received.
9. Artist understands that Conceptual Design for the artwork must be durable, taking into consideration that the site is an unsecured public space that may be exposed to elements such as weather, flooding, temperature variation, and considerable movement of people and equipment. Artist must ensure that all maintenance requirements will be reasonable in terms of time and expense.
10. Artist retains all copyrights and other intellectual property interests in the Conceptual Design and in any plans, drawings, renderings, schematics, design studies and models and the like prepared by Artist in connection with the Purchase Order. The Artist is responsible, at his/her option, for registering any copyrightable material in their name with the U.S. Register of Copyrights, at no additional cost to River Authority. It is specifically understood that given the Artist's retention of all intellectual property rights, in the event River Authority elects not to proceed with Artist in the further development of the Conceptual Design, River Authority does not have the right to take the Conceptual Design to a third party for further development, including but not limited to fabrication and/or installation.
11. Simultaneous with River Authority's final payment on the Purchase Order and River Authority selection of Conceptual Design of Artist for Final Design, Artist shall grant an exclusive, irrevocable, worldwide, assignable license to the Conceptual Design to the River Authority.
12. **ARTIST AGREES TO INDEMNIFY AND HOLD HARMLESS RIVER AUTHORITY, ITS EMPLOYEES, AGENTS, BOARD MEMBERS, SUCCESSORS AND ASSIGNS FROM ANY CLAIM, JUDGMENTS, COST, LIENS, LOSSES, EXPENSES, FEES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY OR LAWSUIT ARISING OUT OR IN ANY WAY RELATED TO THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, ARTIST'S WARRANTIES SET FORTH IN THIS AGREEMENT. ARTIST SHALL ADVISE RIVER AUTHORITY IN WRITING WITHIN 24 HOURS OF ANY CLAIM OR DEMAND AGAINST THE RIVER AUTHORITY OR THE ARTIST THAT IS KNOWN TO ARTIST RELATED TO OR ARISING OUT OF ARTIST'S ACTIVITIES UNDER**



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THIS AGREEMENT. ACCEPTANCE OF THE CONCEPTUAL DESIGN BY RIVER AUTHORITY SHALL NOT CONSTITUTE NOR BE DEEMED A RELEASE OF THE RESPONSIBILITY AND LIABILITY OF THE ARTIST, ITS EMPLOYEES, ASSOCIATES, AGENTS OR SUBCONTRACTORS FOR THE ACCURACY AND COMPETENCY OF THEIR DESIGNS, WORK DRAWINGS, PLANS AND SPECIFICATIONS MAINTENANCE OBLIGATIONS OR OTHER DOCUMENTS; NOR SHALL SUCH ACCEPTANCE BE DEEMED AN ASSUMPTION OF RESPONSIBILITY OR LIABILITY BY RIVER AUTHORITY FOR ANY DEFECT THEREIN. THIS INDEMNIFICATION PROVISION SHALL SURVIVE TERMINATION OF THIS PURCHASE ORDER.

- 13. ARTIST SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS RIVER AUTHORITY FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF ANY CLAIM OF INFRINGEMENT OR IMPROPER USE OF ANY PATENT, TRADE SECRET, PROPRIETARY RIGHT, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH THE WORK. IF ANY CLAIM MATERIALLY IMPAIRS PERFORMANCE OF THE WORK, THEN ARTIST, AT ITS SOLE EXPENSE, SHALL TIMELY PROCURE THE RIGHT TO CONTINUE ITS PERFORMANCE OF THE WORK IN ACCORDANCE WITH THE APPROVED SCHEDULE. FURTHER IF RIVER AUTHORITY SHOULD BE ENJOINED FROM THE USE OF ANY MATERIALS, COMBINATION OR PROCESS, OR INTELLECTUAL PROPERTY COVERED BY THIS AGREEMENT, THEN ARTIST SHALL PROMPTLY EITHER: (1) SECURE TERMINATION OF THE INJUNCTION AND PROCURE FOR THE RIVER AUTHORITY THE RIGHT TO USE SUCH MATERIAL, COMBINATION OR PROCESS, OR INTELLECTUAL PROPERTY WITHOUT OBLIGATION OR LIABILITY OR (2) REPLACE SUCH MATERIALS, COMBINATION OR PROCESS, OR INTELLECTUAL PROPERTY OR MODIFY THE SAME TO BECOME NON-INFRINGEMENT, ALL AT ARTIST'S SOLE EXPENSE, BUT SUBJECT TO THE REQUIREMENTS OF THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, ARTIST SHALL HAVE NO OBLIGATION OR LIABILITY UNDER THIS PROVISION WITH RESPECT TO THE WORK MANUFACTURED IN ACCORDANCE WITH DESIGNS, PROCESSES, OR METHODS SPECIFICALLY REQUIRED BY RIVER AUTHORITY.**
- 14. Artist is an independent contractor and not an officer, agent, servant or employee of RIVER AUTHORITY and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners, or joint ventures between the Parties. Artist has no authority to bind the River Authority. Artist has exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same and is responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all subcontract and other authorized expenses at actual cost without markup. Federal excise taxes, State taxes, or City sales taxes must**



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not be included in the invoiced amount. The River Authority will furnish a tax exemption certificate upon request. River Authority shall report payments made to the Artist annually to the Internal Revenue Department in a 1099 statement.

15. This Purchase Order may be terminated by either Party upon fifteen (15) days written notice to the other Party. Termination of this Purchase Order for any cause shall be without prejudice to any obligations or liabilities of either Party accrued prior to or because of such termination. If this Purchase Order is terminated, River Authority shall be liable only for payment for services rendered before the effective date of termination.
16. Should Artist become ill, disabled, injured, or otherwise incapacitated at any time between the issuance of this Purchase Order and the River Authority's approval of the Conceptual Design to move forward to Final Design, the Artist or one of his representatives will notify River Authority promptly. In the event of Artist's physical incapacity or death prior to the notification by the River Authority of its selection to move forward to Final Design, all payments made up to the point of incapacity or death will be retained by Artist or Artist's estate and all work performed to date of incapacity or death will be compensated in accordance with the Purchase Order. If the Conceptual Design is substantially completed and it is feasible for the work to be fully completed without undue delay, River Authority may elect to proceed under the terms of this Purchase Order with the written consent of Artist's estate. If River Authority elects to proceed with the completion of the Conceptual Design, all remaining work to be completed in accordance with this Purchase Order will be delegated to Artist's designee.
17. The Parties will be excused from performing under the Purchase Order if performance is prevented by a condition beyond the control of the Parties such as acts of God, war, civil insurrection, government action or public emergency (but only for as long as such unforeseen occurrences exist). The Party delayed by such an event shall inform the other Party as soon as possible, use reasonable efforts to overcome such delay, and proceed to complete the work under this Purchase Order. If the Artist is unable to complete the work or the Conceptual Design is delayed by more than thirty (30) days, each Party has the option to terminate immediately upon written notice to the other Party.
18. Artist will not assign, transfer or subcontract the creative and artistic portions of the Conceptual Design to another party without the prior written consent of River Authority. River Authority may assign its rights to the Conceptual Design to another government entity or non-profit upon written notice.
19. This Purchase Order including all incorporated terms and all the rights, remedies and obligations of the Parties shall be construed, interpreted, and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflict of law provisions. Any dispute arising out of or relating to this Purchase Order or the breach thereof, which cannot be settled through negotiation, shall be subject to mediation and litigation in Bexar County, Texas which shall be the sole place of venue for any legal action arising from or related to this Purchase Order or the Project in which the River Authority is a party.
20. Artist agrees to make any information created or exchanged with the River Authority pursuant to this Purchase Order and not otherwise subject to exception from disclosure



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under the Texas Public information Act, available in a format that is accessible by the public at no additional charge to the River Authority.

21. This Purchase Order and all terms incorporated by reference shall be binding upon the River Authority and its successors and assigns and upon the Artist, its successors and assigns.
22. Should any term or provision of this Purchase Order be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected, and this Purchase Order shall be construed as if the invalid or unenforceable term or provision had never been included and the remaining portion of this Purchase Order shall remain in full force and effect.
23. **NO WAIVER OF SOVEREIGN IMMUNITY.** The Parties expressly agree that no provision of the contract is in any way intended to constitute a waiver by the River Authority of any immunities from suit or from liability that the River Authority may have by operation of law.
24. **COMPLIANCE WITH LAW.** The delivery of the Conceptual Design and the performance of any work pursuant to this Purchase Order is and shall be subject in all respects to and in compliance with all applicable laws, rules, regulations, and ordinance, proclamations, demands, directives, or other requirements of the local, state, and federal governments.
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