

**SHORT FORM SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF NATIONAL CITY
AND A REASON TO SURVIVE (ARTS)**

THIS AGREEMENT is entered into this 1st day of November, 2022, by and between the CITY OF NATIONAL CITY, a municipal corporation (the "CITY"), and A REASON TO SURVIVE, a non-profit organization (the "CONTRACTOR").

NOW, THEREFORE, CITY agrees to engage CONTRACTOR to perform the services set forth herein in accordance with the following terms and conditions:

1. **Description of Services.** CONTRACTOR shall provide the following services: provide artwork design for one (1) Basketball Court mural for approval to Public Art Committee (re-work design as needed) and City Council; repair and resurface Kimball Park basketball court and install artwork on Kimball Park basketball court according to Exhibit "A" Scope of Services, including all supplies, equipment, transportation, and labor needed for same, and utilizing design shown in "Exhibit B."

2. **Length of Agreement.** The schedule is set forth below:
Work to be started within 10 working days of notice to proceed and will be completed within 120 working days of start date.

3. **Compensation.** The total compensation to CONTRACTOR for providing the services set forth herein shall not exceed a one-time cost of \$20,000 and shall be included in ARTS' \$125,000 lease obligation to the City as stated in the Agreement between the City and Contractor dated December 7, 2021.

4. **Payment Schedule.** Based on the information set forth in #3 Compensation, there will be a credit towards the lease obligation and there will be no payment made for the satisfactorily completed services of CONTRACTOR.

5. **Termination.** CITY may terminate this Agreement at any time by providing one (1) day's written notice to CONTRACTOR.

6. **Independent Contractor.** It is agreed that CONTRACTOR is an independent Contractor, and all persons working for or under the direction of CONTRACTOR are CONTRACTOR'S agents, servants and employees, and said persons shall not be deemed agents, servants, or employees of CITY.

7. **Insurance.** CONTRACTOR shall obtain:
A. If checked, Professional Liability Insurance (errors and omissions) with minimum limits of \$1,000,000 per occurrence.

B. Automobile insurance covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include owned, non-owned, and hired vehicles. The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement shall be provided.

C. Commercial General Liability Insurance, with minimum limits of either \$2,000,000 per occurrence and \$4,000,000 aggregate, or \$1,000,000 per occurrence and \$2,000,000 aggregate with a \$2,000,000 umbrella policy, covering all bodily injury and property damage arising out of its operations, work, or performance under this Agreement. The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement shall be provided. The general aggregate limit must apply solely to this “project” or “location”. The “project” or “location” should be noted with specificity on an endorsement that shall be incorporated into the policy.

D. Workers’ compensation insurance in an amount sufficient to meet statutory requirements covering all of CONTRACTOR’S employees and employers’ liability insurance with limits of at least \$1,000,000 per accident. In addition, the policy shall be endorsed with a waiver of subrogation in favor of the CITY. Said endorsement shall be provided prior to commencement of work under this Agreement.

If CONSULTANT has no employees subject to the California Workers’ Compensation and Labor laws, CONSULTANT shall execute a Declaration to that effect. Said Declaration shall be provided to CONSULTANT by CITY.

E. The aforesaid policies shall constitute primary insurance as to the CITY, its officers, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY’s Risk Manager, at the address listed in subsection G below, of cancellation or material change.

F. Said policies, except for the professional liability and workers’ compensation policies, shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and separate additional insured endorsements shall be provided.

G. The Certificate Holder for all policies of insurance required by this Section shall be:

City of National City
c/o Risk Manager
1243 National City Boulevard
National City, CA 91950-4397

H. If required insurance coverage is provided on a “claims made” rather than “occurrence” form, the CONTRACTOR shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement. In addition, the “retro” date must be on or before the date of this Agreement.

I. Insurance shall be written with only insurers authorized to conduct business in California which hold a current policy holder’s alphabetic and financial size category rating of not less than A:VII according to the current Best’s Key Rating Guide, or a company of equal financial stability that is approved by the City’s Risk Manager. In the event coverage is provided by non-admitted “surplus lines” carriers, they must be included on the most recent List of Approved Surplus Line Insurers (“LASLI”) and otherwise meet rating requirements.

J. This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with, and approved by the CITY’s Risk Manager. If the CONTRACTOR does not keep all insurance policies required by this Section 7 in full force and effect at all times during the term of this Agreement, the CITY may

treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.

K. All deductibles and self-insured retentions in excess of \$10,000 must be disclosed to and approved by the CITY. CITY reserves the right to modify the insurance requirements of this Section 7, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

L. If the CONTRACTOR maintains broader coverage or higher limits (or both) than the minimum limits shown above, the CITY shall be entitled to the broader coverage or higher limits (or both) maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

8. **Indemnification and Hold Harmless.** To the maximum extent provided by law, the CONTRACTOR agrees to defend, indemnify and hold harmless the City of National City, its officers, officials, agents, employees, and volunteers against and from any and all liability, loss, damages to property, injuries to, or death of any person or persons, and all claims, demands, suits, actions, proceedings, reasonable attorneys' fees, and defense costs, of any kind or nature, including workers' compensation claims, of or by anyone whomsoever, resulting from or arising out of the CONTRACTOR'S performance or other obligations under this Agreement; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the CITY, its agents, officers employees, or volunteers. CITY will cooperate reasonably in the defense of any action, and CONTRACTOR shall employ competent counsel, reasonably acceptable to the City Attorney.

The indemnity, defense, and hold harmless obligations contained herein shall survive the termination of this Agreement for any alleged or actual omission, act, or negligence under this Agreement that occurred during the term of this Agreement.

8. **EMPLOYEE PAYMENTS AND INDEMNIFICATION.**

9.1 **PERS Eligibility Indemnification.** If CONTRACTOR's employee(s) providing services under this Agreement claims, or is determined by a court of competent jurisdiction or the California Public Employees Retirement System ("PERS") to be eligible for enrollment in PERS of the CITY, CONTRACTOR shall indemnify, defend, and hold harmless CITY for the payment of any employer and employee contributions for PERS benefits on behalf of the employee as well as for payment of any penalties and interest on such contributions which would otherwise be the responsibility of the CITY.

CONTRACTOR'S employees providing service under this Agreement shall not: (1) qualify for any compensation and benefit under PERS; (2) be entitled to any benefits under PERS; (3) enroll in PERS as an employee of CITY; (4) receive any employer contributions paid by CITY for PERS benefits; or (5) be entitled to any other PERS-related benefit that would accrue to a CITY employee. CONTRACTOR's employees hereby waive any claims to benefits or compensation described in this Section 9. This Section 9 applies to CONTRACTOR notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary.

9.2 **Limitation of CITY Liability.** The payment made to CONTRACTOR under this Agreement shall be the full and complete compensation to which CONTRACTOR and CONTRACTOR's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither CONTRACTOR nor CONTRACTOR's officers,

employees, agents, and subcontractors are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to CITY employees. The CITY will not make any federal or state tax withholdings on behalf of CONTRACTOR. The CITY shall not be required to pay any workers' compensation insurance on behalf of CONTRACTOR.

9.3 Indemnification for Employee Payments. CONTRACTOR agrees to defend and indemnify the CITY for any obligation, claim, suit, or demand for tax, retirement contribution including any contribution to PERS, social security, salary or wages, overtime payment, or workers' compensation payment which the CITY may be required to make on behalf of (1) CONTRACTOR, (2) any employee of CONTRACTOR, or (3) any employee of CONTRACTOR construed to be an employee of the CITY, for work performed under this Agreement. This is a continuing obligation that survives the termination of this Agreement.

9. Acceptability of Work. The CITY shall, with reasonable diligence, determine the quality or acceptability of the work, the manner of performance, and/or the compensation payable to the CONTRACTOR.

10. Business License. CONTRACTOR must possess or shall obtain business license from National City Finance Department before beginning work.

11. Prevailing Wages. State prevailing wage rates may apply to work performed under this Agreement. State prevailing wages rates apply to all public works contracts as set forth in California Labor Code, including but not limited to, Sections 1720, 1720.2, 1720.3, 1720.4, and 1771. CONTRACTOR is solely responsible to determine if State prevailing wage rates apply and, if applicable, pay such rates in accordance with all laws, ordinances, rules, and regulations.

12. Administrative Provisions.

A. *Computation of Time Periods.* If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state, or legal holiday.

B. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

C. *Captions.* Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

D. *No Obligations to Third Parties.* Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

E. *Exhibits and Schedules.* The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes. To the extent any exhibits, schedules, or provisions thereof conflict or are inconsistent with the terms and conditions contained in this Agreement, the terms and conditions of this Agreement will control.

F. *Amendment to this Agreement.* The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

G. *Assignment & Assumption of Rights.* CONTRACTOR shall not assign this Agreement, in whole or in part, to any other party without first obtaining the written consent of CITY.

H. *Waiver.* The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

I. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California. The venue for any legal action arising under this Agreement shall be in either state or federal court in the County of San Diego, State of California. The CONTRACTOR shall comply with all laws, including federal, state, and local laws, whether now in force or subsequently enacted.

J. *Audit.* If this Agreement exceeds ten-thousand dollars (\$10,000), the parties shall be subject to the examination and audit of the State Auditor for a period of three (3) years after final payment under the Agreement, per Government Code Section 8546.7.

K. *Entire Agreement.* This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent, or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

L. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

M. *Subcontractors or Subconsultants.* The CITY is engaging the services of the CONTRACTOR identified in this Agreement. The CONTRACTOR shall not subcontract any portion of the work, unless such subcontracting was part of the original proposal or is allowed by the CITY. In the event any portion of the work under this Agreement is subcontracted, the subcontractor(s) shall be required to comply with and agree to, for the benefit of and in favor of the CITY, both the insurance provisions in Section 7 and the indemnification and hold harmless provision of Section 8 of this Agreement.

N. *Construction.* The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

IN WITNESS WHEREOF, this Agreement is executed by CITY and by CONTRACTOR on the date and year first above written.

CITY OF NATIONAL CITY

By: _____
Brad Raulston, City Manager

APPROVED AS TO FORM:

By: _____
Barry J. Schultz
Interim City Attorney

-- OR --

By: _____
Jennifer K. Gilman
Deputy City Attorney

A REASON TO SURVIVE (ARTS)
(Corporation – signatures of two corporate officers required)
(Partnership or Sole proprietorship – one signature)

By: _____
(Name)

JAMES HALLIDAY

(Print)

EXECUTIVE DIRECTOR

(Title)

By: _____
(Name)

Lauren Lockhart

(Print)

Board Chair

(Title)

CONTACT INFORMATION

CITY OF NATIONAL CITY

1243 National City Boulevard
National City, CA 91950-4397

Phone: (619) 470-5882

Contact: Joyce Ryan

Title: Library & Community Services
Director

Dep.: Library & Community Services

Email: jrryan@nationalcityca.gov

A REASON TO SURVIVE (ARTS)

200 East 12th Street
National City, CA 91950

Phone:

Fax:

Contact:

Title:

Email:

Taxpayer I.D. No.:

Exhibit "A"

SCOPE OF SERVICES

This is an exhibit attached to, and made part of, the AGREEMENT entered into this 1st day of November, 2022 by and between the CITY OF NATIONAL CITY, a municipal corporation (the "CITY"), and A REASON TO SURVIVE, a non-profit organization (the "CONTRACTOR").

CONTRACTOR shall perform services as detailed in the following sections

SECTION 1. GENERAL

- A. General Description:** CONTRACTOR shall artwork design for one (1) Basketball Court mural for approval to Public Art Committee (re-work design as needed) and City Council; repair and resurface Kimball Park basketball court; install artwork on Kimball Park basketball court; and maintain art on the basketball court by touching up paint, at minimum, twice per term. (Hereafter referred to as "Project")
- B. General Performance Requirement:**
- a. The performance of all services by CONTRACTOR shall be in the satisfaction of the CITY, in accordance with the express terms hereof, including but not limited to the terms set out in detail in this scope of services and the standard care provisions obtained in this AGREEMENT.
 - b. CONTRACTOR shall coordinate this scope of services with the CITY as well as with other CITY contractors, as needed or directed by the CITY.
 - c. CONTRACTOR's services shall be performed as expeditiously as is consistent with professional skill and care in the orderly process of the work. The schedule for the PROJECT may be adjusted by mutual agreement.

SECTION 2. TASKS

- A.** CONTRACTOR will market to local students the opportunity to collaborate with the artist to participate in the design of and application of a painted mural on the Kimball Park Basketball Court.
- i. Participating students will be between the ages of 13 to 18 and attend Sweetwater High School, National Middle School, Granger Jr. High, and other schools in the Sweetwater Union High School District; additionally, students from Integrity Charter School.
 - ii. Students will meet weekly to draft designs to present to the National City Public Arts Committee for recommendation and approval.
- B.** CONTRACTOR shall be responsible for pulling all CITY permits associated with PROJECT.
- C.** CONTRACTOR will work with Ferandell Tennis Court Inc. (SUBCONTRACTOR) for the repair and resurfacing of the basketball court, creating a clean canvas for CONTRACTOR to incorporate design.

- D.** SUBCONTRACTOR shall furnish the following submitted specifications and costs, all material, labor, equipment, transpiration, and perform all work necessary for the following at Kimball Park, E 15th St/National City CA 91950.
- i.** SUBCONTRACTOR to waterblast, using a 2500 to 5000 PSI hydroblast, or diamond grind existing surface. This will expose all surface spall and pop-outs, clean out existing cracks, and remove any bubbling or peeling of the existing surface.
 - ii.** SUBCONTRACTOR to break out lifting/heaving areas, patch with *RapidSet CementAll*, and grind flush with slab.
 - iii.** SUBCONTRACTOR to remove 60' of existing caulking, clean joints, and re-caulk with elastomeric caulking material. *Acrylic color/paint may crack as it does not flex at the same rate as caulking material*
 - iv.** SUBCONTRACTOR to patch all cracks, visible pop-outs, and spalls, using court patch binder and grind or sand flush with slab. *Cracks will re-appear due to contraction, expansion, and other existing conditions.*
 - v.** SUBCONTRACTOR to clean and prepare the existing surface, then apply acrylic concrete primer to all exposed concrete.
 - vi.** SUBCONTRACTOR to apply two (2) coats of sand-filled acrylic resurfacer, giving a smooth, even, uniform finish.
 - vii.** To apply sand-filled acrylic color. SUBCONTRACTOR recommends two (2) coats.
- E.** CONTRACTOR will apply court design, approved by the Public Art Committee. Please see Exhibit "B" for the approved design.
- i.** After CONTRACTOR applies court color, SUBCONTRACTOR to stripe court, utilizing line primer for sharper edges, as per current game specifications, in the color white
- F.** CONTRACTOR will take responsibility for all costs associated with the project. Costs include, but not limited to, sub-contractor fees, labor fees, materials, student resources, marketing, and potential CITY Requirements.
- G.** CONTRACTOR will maintain art on the basketball court by touching up paint, at minimum twice per term.
- i.** Term will be equivalent to five (5) years following the notice to proceed.

The provisions set forth upon this exhibit and any other attached exhibits hereto are hereby incorporated in and made a part of this AGREEMENT.

Exhibit B

**Kimball Park Basketball Court Mural Design
"Convergence"**

