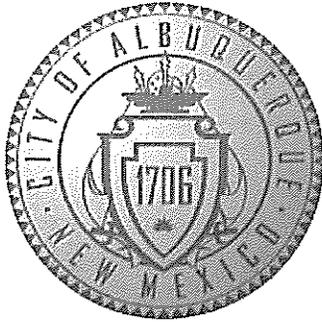


EC-25-482



Mayor Timothy M. Keller

CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

INTER-OFFICE MEMORANDUM

August 12, 2025

TO: Brook Bassan, President, City Council

FROM: Timothy M. Keller, Mayor



SUBJECT: Executive Communication for the 516 ARTS Operating and Facility Lease Agreement 2025 - 2031

The City has a permanent facility at 508 1st Street in NW Albuquerque, which it proposes to designate and operate as an Art Center. 516 ARTS and the City desire 516 ARTS to operate the Art Center at the facility in public-private partnership with the City in order to achieve an outstanding Center for the community. The Operating and Facility Lease Agreement for 516 ARTS is a public-private partnership for a five (5) year period, until January 1, 2031.

516 ARTS is a nonprofit, non-collecting contemporary art museum that serves artists, creatives, and the public—youth and adults in Albuquerque, New Mexico, and beyond—with a focus on accessibility and inclusion for historically underserved communities, and fulfills its mission through exhibitions, arts education, creative opportunities, and community resources that support artistic expression, cultural exchange, and public engagement.

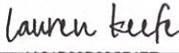
Thank you in advance for your consideration to this matter.

SUBJECT: Executive Communication for the 516 ARTS Operating and Facility Lease Agreement 2025 - 2031

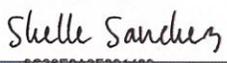
Approved:

Approved as to Legal Form:


Samantha Sengel, EDD Date
Chief Administrative Officer

DocuSigned by:
 8/15/2025 | 8:24 AM MDT
Lauren Keefe Date
City Attorney

Recommended:

DocuSigned by:
 8/12/2025 | 4:37 PM MDT
Dr. Shelle Sanchez Date
Director – Arts & Culture

Cover Analysis

1. What is it?

Executive Communication for the 516 ARTS Operating and Facility Lease Agreement 2025 - 2031

2. What will this piece of legislation do?

The City has a permanent facility at 508 1st Street in NW Albuquerque, which it proposes to designate and operate as an Art Center. 516 ARTS and the City desire 516 ARTS to operate the Art Center at the facility in public-private partnership with the City in order to achieve an outstanding Center for the community.

3. Why is this project needed?

The City desires to continue to promote contemporary art, culture, education, community engagement, and tourism by supporting 516 ARTS in its mission to present innovative exhibitions, public programs, and other initiatives that explore and foster artistic collaboration, and highlight the unique cultural heritage of Albuquerque and the broader region

4. How much will it cost and what is the funding source?

In consideration for 516 ARTS management and operation of the Center for the benefit of the public as described in this Agreement, the City shall provide partial funding (not to exceed fifty-five percent (55%)) of the budgeted amount required for the Center's operations during each fiscal year of this Agreement. Such annual amount may be adjusted during the fiscal year. Funding is appropriated annually in the Budget. The current FY2026 Budget for the 516 ARTS is \$60,000.

5. Is there a revenue source associated with this contract? If so, what level of income is projected?

No, there is not a revenue source associated with this item.

6. What will happen if the project is not approved?

The public-private partnership with 516 ARTS will not happen and the Arts Center at 508 1st Street NW will not open, leaving the property vacant.

7. Is this service already provided by another entity?

No.

FISCAL IMPACT ANALYSIS

TITLE: Executive Communication for the 516 ARTS Operating and Facility Lease Agreement 2025 - 2031 R: O:
 FUND: 110
 DEPT: Arts & Culture

- No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	2026	Fiscal Years 2027	2028	Total
Base Salary/Wages				-
Fringe Benefits at				-
Subtotal Personnel	-	-	-	-
Operating Expenses				-
Property				-
Indirect Costs	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
<input type="checkbox"/> Estimated revenues not affected				
<input type="checkbox"/> Estimated revenue impact				
Revenue from program				0
Amount of Grant		-	-	
City Cash Match				
City Inkind Match				
City IDOH	-	-	-	-
Total Revenue	\$ -	\$ -	\$ -	\$ -

These estimates do not include any adjustment for inflation.
 * Range if not easily quantifiable.

Number of Positions created

COMMENTS: FY 2026 Appropriation for 516 ARTS (Program 2300002, Dept ID 2318010) equals \$60,000 non-recurring funding. The Operating and Facility Lease Agreement will not exceed the funds appropriated annually. The City adjusts the appropriation every fiscal year through the Budget process.

COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

PREPARED BY:
 DocuSigned by:

Denise Ortiz 8/12/2025 | 4:36 PM MDT
 FISCAL ANALYST

APPROVED:
 DocuSigned by:

Shelle Sanchez 8/12/2025 | 4:37 PM MDT
 DIRECTOR

REVIEWED BY:
 Signed by:

Simon Miller 8/14/2025 | 4:25 PM MDT
 EXECUTIVE BUDGET ANALYST

Signed by:

Parvinder Sandhu 8/14/2025 | 5:00 PM MDT
 BUDGET OFFICER

Signed by:

Christine Boerner 8/14/2025 | 8:21 PM MDT
 CITY ECONOMIST

516 ARTS OPERATING AND FACILITY LEASE AGREEMENT

THIS AGREEMENT ("Agreement") is entered into on the date of last signature below, between the **CITY OF ALBUQUERQUE**, a New Mexico municipal corporation (the "City"), and **516 ARTS**, a New Mexico nonprofit corporation ("516 ARTS"), 516 Central Ave SW, Albuquerque, NM 87102.

RECITALS

WHEREAS, 516 ARTS is a nonprofit, non-collecting contemporary art museum that serves artists, creatives, and the public—youth and adults in Albuquerque, New Mexico, and beyond—with a focus on accessibility and inclusion for historically underserved communities; and

WHEREAS, 516 ARTS fulfills its mission through exhibitions, arts education, creative opportunities, and community resources that support artistic expression, cultural exchange, and public engagement; and

WHEREAS, the revitalization of Downtown Albuquerque and the development of a vibrant Arts District are key priorities for the City, with the creative economy recognized as an essential driver of economic development, tourism, and community vitality; and

WHEREAS, 516 ARTS serves as a vital cultural institution in Albuquerque, being the only museum in the city exclusively devoted to contemporary art, and prioritizing creative experimentation and artistic expression as a catalyst for positive social change; and

WHEREAS, 516 ARTS has spearheaded important initiatives which emphasize inclusivity and intersectionality, while fostering connections with local, national, and international artists and communities; and

WHEREAS, 516 ARTS contributes to the education and empowerment of young creatives through accessible Youth Education programs, and supports New Mexico artists through the Fulcrum Fund grant program, which has provided substantial financial support to hundreds of artists and art spaces; and

WHEREAS, 516 ARTS remains committed to actively seeking to reflect diverse perspectives in its exhibitions, public programs, board, staff, and community engagement, ensuring its space is welcoming and accessible to individuals of all backgrounds and fostering a vibrant and meaningful fabric of unity through the arts; and

WHEREAS, the City has a permanent facility at 508 1st Street in NW Albuquerque, (the "Facility"), which it proposes to designate and operate as an Art Center (the "Center"), and which is situated adjacent to the City's ongoing Rail Trail project; and

WHEREAS, the City desires to continue to promote contemporary art, culture, education, community engagement, and tourism by supporting 516 ARTS in its mission to present innovative

exhibitions, public programs, and other initiatives that explore and foster artistic collaboration, and highlight the unique cultural heritage of Albuquerque and the broader region; and

WHEREAS, 516 ARTS and the City desire 516 ARTS to operate the Art Center at the facility in “public-private partnership” with the City in order to achieve an outstanding Center; and

WHEREAS, 516 ARTS raises funds from Federal, State, local, private, and corporate donors and foundations for exhibits, staff, programming, and operations of the Center at the Facility; and

WHEREAS, 516 ARTS staff and board members actively advocated for New Mexico state capital outlay funding to establish an Arts Center in Albuquerque for contemporary art which resulted in more than \$5 million in public funding that has been dedicated to the recent renovation of the Facility.

WHEREAS, the City wishes to continue to provide a portion of the operating funds for the Center at the Facility; and

WHEREAS, the parties wish to set out the obligations and duties, rights and responsibilities of each with respect to operations of the Center in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the parties agree as follows:

ARTICLE 1 - ORGANIZATION AND OPERATIONS

1.1 Missions and Goals. The Arts Center shall be operated for the general benefit and enjoyment of the citizens of Albuquerque and the State of New Mexico, as well as visitors to the community. The emphasis of 516 ARTS shall continue to be on thought-provoking exhibitions and public programs that highlight contemporary art, culture, and community engagement. 516 ARTS 'Mission Statement may be amended from time to time only with the prior written approval of the City, provided it remains consistent with its original commitment to fostering creative experimentation, inclusivity, and dialogue between artists and diverse audiences. 516 ARTS agrees to uphold this Mission Statement, including the following goals:

- To provide accessible opportunities for the community to engage with contemporary art that reflects timely issues and diverse perspectives;
- To promote the intersection of art, culture, and social impact and underserved communities;
- To foster lifelong learning and creative development through educational programs for youth, families, and the broader public;
- To collaborate with local, national, and international artists and organizations in order to build a network of creative exchange;
- To contribute to Albuquerque's cultural vitality and economic development by supporting and showcasing innovative artistic practices; and
- To provide creative opportunities and build community resources that

support artistic expression, cultural exchange, and public engagement.

1.2 Operation and Management. 516 ARTS shall be responsible for and shall have full powers of operation and management of the Center and the Facility. 516 ARTS shall have full power and authority to do all acts that are necessary or desirable for the proper management of the Center, including the authority to sign contracts and other business agreements, in its own name and in the name of the Center, unless such acts are specifically restricted or prohibited by this Agreement or by applicable law.

1.2.1 Exhibits and Programming. 516 ARTS shall develop, design, produce, and acquire appropriate exhibits and programs for the Center.

1.2.2 Personnel. 516 ARTS shall employ and supervise all staff reasonably necessary for operation of the Center at staffing levels approved by 516 ARTS's Board of Directors (the "Board"). In addition, 516 ARTS shall have in place a human resources policy and manual covering, among other subjects, the multilingual ability and cultural diversity of the Center staff.

1.2.3 Purchasing/Acquisitions/Local Buy. 516 ARTS shall conduct all purchasing required for operation and management of the Center, including but not limited to, acquisition of exhibits and capital equipment as provided herein.

1.2.4 Accounting. 516 ARTS shall conduct all accounting, record-keeping, budgeting and other fiscal and administrative functions required for operation of the Center in accordance with industry standards and generally accepted accounting practices in the United States. Except as otherwise authorized by the City, such records shall be maintained for a period of five (5) years following creation of such records.

1.2.5 Expenses. 516 ARTS shall be responsible for payment of all expenses and fees incurred in the operation and management of the Center, except as set forth herein, and shall indemnify the City from any claim, charge, assessment, debt, or default relating to such expenses at all times during the continuance of this Agreement.

1.2.6 Planning. 516 ARTS shall develop short and long-term plans for the Center and its use of the Facility, including but not limited to exhibits, programming, fundraising, marketing and capital improvements. 516 ARTS shall provide its strategic plan to the CAO, and any substantive updates to the strategic plan. 516 ARTS shall market and promote the Center in accordance with such plans. In addition, 516 ARTS shall develop methods for periodically receiving input and feedback from the New Mexico community to assist with planning in the future.

1.2.7 Discrimination Prohibited, Civil Rights Compliance. In performing the services hereunder, the parties hereto shall not discriminate against any person on the basis of race, color, religion, sex, gender, gender identity, sexual orientation, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, national origin, ancestry, age, physical or mental handicap or serious medical condition, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended, and as defined in the New Mexico Human Rights Act. 516 ARTS agrees to comply and act in accordance with all provisions of the

Albuquerque Human Rights Ordinance, the New Mexico Human Rights Act, the New Mexico Equal Pay for Women Act, Titles VI and VII of the U.S. Civil Rights Act of 1964, as amended, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, the Pregnant Workers Fairness Act, and all federal, New Mexico and City laws and rules related to the enforcement of civil rights. Questions regarding civil rights or affirmative action compliance requirements should be directed to the City's Office of Civil Rights.

1.2.8 ADA Compliance. In performing the services hereunder, 516 ARTS agrees to meet all the requirements of the Americans With Disabilities Act of 1990, the Pregnant Workers Fairness Act, the New Mexico Human Rights Act, and all applicable rules and regulations (the "ADA") that are imposed directly on 516 ARTS or that would be imposed on the City as a public entity and agrees to adopt the same ADA policies and procedures as have been adopted by the City, in particular with regard to access to public facilities. 516 ARTS agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify, and hold harmless the City, its officials, agents, and employees from and against any and all claims, actions, suits, or proceedings of any kind brought against any of those parties as a result of any act or omission of 516 ARTS or its agents in violation of the ADA. The City represents that it will maintain the Facility as ADA compliant for the Term of this Agreement.

1.2.9 Cooperation. Both parties agree that they will use their best efforts to further a favorable City/516 ARTS "partnership." 516 ARTS agrees to seek help and advice from the City concerning its obligations, operations, fundraising efforts, and the like, and the City agrees to assist 516 ARTS to further the City/516 ARTS "partnership." For example, the City agrees to work with 516 ARTS to allow 516 ARTS to purchase goods and services through the City or City vendors, including for utilities, when required by law, or when cost savings can be achieved.

1.3 Organization of 516 ARTS. 516 ARTS has organized itself as and shall remain a New Mexico nonprofit corporation in good standing as well as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code or any similar successor statute.

1.3.1 Board of Directors. 516 ARTS is governed pursuant to the laws of New Mexico applicable to non-profit corporations. In that regard, 516 ARTS is under the control of a Board of Directors, which is the policymaking body for the organization. The Board shall be broadly representative of the Albuquerque and New Mexico community, including its various geographic areas, gender and ethnic diversity, and appropriate professional backgrounds, and to achieve its goals and mission statement, the goals of this Agreement. 516 ARTS agrees to structure its Board and to take the necessary actions so that the Board is run efficiently and effectively at all times and for the long-term. These actions may include, but are not limited to, increasing or decreasing the number of Board members, providing for termination of non-attending Board members, staggering Board terms, defining membership positions, amending its bylaws, hiring outside consultants, and the like.

1.3.2 City Board Members. So long as this Agreement is in effect, the following City representatives shall be members of the Board: (i) one member appointed by the Mayor; (ii) Director (or designee) of the Department of Arts and Culture, and (iii) two members appointed by a majority of the City Council.

1.3.3 Bylaws. 516 ARTS shall provide the City with up-to-date copies of its bylaws as they are amended from time to time. The City appointed board members shall be entitled to all Board reports and minutes available to all other 516 ARTS board members.

1.3.4 Open Meetings Requirements. 516 ARTS acknowledges that any nonprofit organization in the City which receives funds appropriated by the City, or which has as a member of its governing body an elected official, or appointed administrative official, as a representative of the City, is subject to the requirements of ROA 1994, §§ 2-5-1 *et seq.*, Public Interest Organizations, as enacted or subsequently amended. 516 ARTS agrees to comply with all such requirements.

1.4 Executive Director. 516 ARTS shall employ an Executive Director responsible for daily operation of the Center, including but not limited to, hiring and direction of all staff, development of educational programs and exhibits of the Center, and direction of all fund-raising and promotional activities. The Executive Director shall report to the Board. In addition, the Executive Director shall inform not less than annually the City’s Chief Administrative Officer (CAO) and the City Council concerning the activities of the Center, which shall include attendance information.

1.5 Additional Operational Requirements

1.5.1 Reports. 516 ARTS agrees to provide the following reports to the CAO annually on or before the dates indicated below:

Report:	Described in:	Due to the City:
Annual Inventory	Section 3.8.1	June 15
Annual Financial Report	Section 1.5.3	June 15
IRS Form 990	N/A	June 15
Annual Report	Section 1.5.3	June 15
City Operating Funding Request and Projected Summary Budget	Section 2.1.1	January 31
Budget Adopted by the Board at end of Fiscal Year		January 31
Bylaws or statement of no amendment	Section 1.3.3	January 31

516 ARTS has provided to the City: a human resources policy and manual; and a code of ethics, in a form acceptable to the City. When amendments to such policies are approved by the Board, 516 ARTS shall furnish them to the CAO.

1.5.2 Audits and Inspections. At any time during normal office hours, as often as the City may deem necessary, and with reasonable notice, there shall be made available to the City for examination all of 516 ARTS's records with respect to all matters covered by this Agreement. 516 ARTS shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. 516 ARTS understands and will comply with the City's Accountability in Government Ordinance, ROA 994, §§ 2-10-1 *et seq.*, and Inspector General Ordinance, ROA 1994, §§ 2-17-1 *et seq.*, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

1.5.3 Annual Financial Reporting. Following the end of each fiscal year of 516 ARTS, 516 ARTS shall have a financial report conducted in accordance with generally accepted auditing standards in the United States by an independent professional certified public accountant. Said audit shall be utilized in preparation of an annual report of the Center's activities, including but not limited to descriptions of ancillary, off-site, educational, outreach, and special programs and other information which reflects the impact of the Center and its programs on the local community and the State of New Mexico.

1.5.4 City and City Council Meetings. 516 ARTS agrees to attend City and City Council meetings, as requested upon at least seven calendar days' notice.

1.5.5 Notice of Events. 516 ARTS shall provide the City, by mailing (or email) to the CAO, to the Director of the Department of Arts and Culture, and to the Director of Council Services, notice of all major exhibit changes, grand openings, and special events at the Center.

1.5.6 City of Albuquerque Recognition. In consultation with the City, 516 ARTS shall use the City's logo and branding on promotional and educational materials distributed by 516 ARTS.

ARTICLE 2 - FUNDING

2.1 Additional Sources of Funding

2.1 City Funding and Payments

2.1.1 City Funding for Operations. In consideration for 516 ARTS's management and operation of the Center for the benefit of the public as described in this Agreement, and subject to applicable requirements of the City of Albuquerque Public Purchases Ordinance, R.O.A. 1994, Sections 5-5-1 *et seq.*, the City may provide partial funding (not to exceed fifty-five

percent (55%) of the budgeted amount required for the Center's operations during each fiscal year of this Agreement. The City may adjust its contribution to the budgeted amount during the fiscal year. Notwithstanding, this Agreement does not constitute a commitment by the City to provide funds or a specific level of funding each fiscal year. 516 ARTS shall use reasonable efforts to: a) earn additional funds through its operations; and b) raise additional funding through private, corporate, foundation, and other public sources, in accordance with Section 2.2.1.

2.1.2 Method of Payment. In each full fiscal year of this Agreement, the amount appropriated in the annual City budget shall be paid to 516 ARTS in twelve (12) equal monthly installments via ACH transfer. In each partial fiscal year of this Agreement, said installments shall be paid for the number of full months of said fiscal year contained within the Term of the Agreement. Any adjustments to the appropriated amount shall be made in equal amounts added to or deducted from, as appropriate, the payments remaining after the date of approval of the adjustment by the City Council. All such payments shall include any applicable gross receipts taxes and shall be made on or about the 15th day of each month for the preceding month, commencing on the 15th of the month following execution of this Agreement. Such payments shall be made to 516 ARTS for the services described herein upon receipt by the City of properly detailed invoices for payment, as determined by the budgetary and fiscal guidelines of the City. Invoices from the City for overhead charges or reimbursements of expenses incurred by the City on behalf of 516 ARTS shall be paid promptly by 516 ARTS after receipt of an invoice from the City.

2.1.3 Admissions and Other Revenues. Revenues earned by 516 Arts from operations, including but not limited to, admissions, gift shop sales, program fees, projects, rental receipts, events, artist studio rentals and other charges, shall remain the property of 516 ARTS and shall be used solely for operating and capital expenses of the Center and as otherwise approved by the Board.

2.2 Use of Funding

2.2.1 Funds to Benefit Center. 516 ARTS agrees that all funds raised through grants, donations, and rentals by 516 ARTS for the Center and all funds made available by the City pursuant to this Agreement shall be used solely for the benefit of the Center. All such funds shall be deposited to accounts designated for the appropriate purpose and shall be administered in accordance with standard accounting practices.

2.2.2 Investments. 516 ARTS shall apply the investment standard set forth in NMSA 1978, § 46-9A-1 *et seq.* to govern any investments it makes with funds made available by the City.

ARTICLE 3 - FACILITY

3.1 Facility.

3.1.1 Description. For purposes of this Agreement, the term "Facility" shall refer to the building, parking lot, grounds and any permanent improvements thereto on City property located at the Facility.

3.1.2 City Property. The Facility, shall remain at all times the property of the City and shall be insured under the City's master property policy.

3.2 Grant of Rights. The City grants to 516 ARTS the right to use the Facility subject to the terms, conditions and limitations set forth in this Agreement and the City's responsibilities to the State of New Mexico. These rights are subject and subordinate to the right of the City and other owners of public utilities to operate, maintain, repair, modify, realign, replace and reconstruct public utilities in, under, across and upon the Facility.

3.2.1 Occupancy. 516 ARTS shall be entitled to continue occupancy upon execution of this Agreement, or as otherwise agreed to by the parties.

3.2.2 Quiet Enjoyment. Upon the performance of all terms, conditions and covenants of this Agreement which 516 ARTS is required to perform, 516 ARTS shall at all times during the Term and any extension of the Term, peaceably and quietly enjoy the Facility without any disturbance from the City.

3.3 Purpose and General Use.

3.3.1 Authorized Use. 516 ARTS shall use the Facility as and only to house the Center and to further the mission and goals set forth above in Section 1.1. 516 ARTS shall comply with all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations, now or hereafter enacted or amended, affecting the Facility or required by any activity or condition on or in the Facility.

3.3.2 Unauthorized Use. 516 ARTS shall not use or occupy or permit the Facility to be used or occupied for any unlawful purpose or purpose which would in any way make void or voidable any insurance then in force with respect to the Facility, cause or be likely to cause structural damage to the Facility or any part thereof, or constitute waste or a public or private nuisance.

3.3.3 Utility Services. 516 ARTS shall be responsible for paying all utility charges and services, including, but not limited to, water, gas, electricity, sewage, refuse, janitorial, telephone and security services.

3.3.4 Signage. 516 ARTS shall not place, locate or erect any permanent signs or billboards on the exterior of the Facility without the prior written consent of the City in each instance. Likewise, the City shall not construct, erect or place any signage on the Facility without the prior written consent of 516 ARTS, such consent not to be unreasonably withheld. 516 ARTS shall be entitled to place, locate and erect temporary signage, including banners, subject to the provisions of local ordinances, to promote and provide information about the Center, certain exhibits, openings, events, hours, and the like. All signage shall comply with applicable laws and regulations.

3.3.5 Artworks. 516 ARTS shall not place, locate, erect or construct, or allow to be placed, located, erected, or constructed, any murals or permanent artworks on the exterior of the Facility without the prior written consent of the City in each instance. Likewise, the City shall not

place, locate, erect or construct any artworks at the Facility without the prior written consent of 516 ARTS, except artworks approved through the City's Public Art Program for placement at the Facility prior to the execution of this Agreement, shall be excluded from this requirement, unless otherwise agreed to in writing by the parties.

3.3.6 City's Right of Entry. The City, its authorized employees and representatives, shall have the right to enter the Facility at reasonable times and upon written notice for the purpose of inspecting the Facility.

3.3.7 Fire or Other Casualty Loss. In the event of damage to or destruction of the Facility or any portion thereof, the City shall have no obligation to rebuild, replace or restore the damaged areas. If the City or 516 ARTS determines that the damage has rendered the Facility untenable and the City will not rebuild, replace, or restore the Facility, the terms of this Agreement, as to the Facility, shall terminate effective as of the date of the damage. The City shall not be liable, except in the case of the negligence of the City, its agents, or employees, for any damage to or loss of 516 ARTS's property or 516 ARTS's improvements to the Facility from any cause, including but not limited to, bursting or leaking of water pipes, fire, theft, flooding, wind and negligence of subtenants or sublessees. All property and improvements of 516 ARTS shall be placed in or upon the Facility at the sole risk of 516 ARTS.

3.4 Maintenance, Repairs and Replacements. 516 ARTS agrees that the Facility shall be under the full control of 516 ARTS and its agents, or employees and that all maintenance or repairs to the Facility, its systems, and equipment, and replacements of equipment and system parts for the Facility shall be the responsibility of 516 ARTS, to be done by and at the sole expense of 516 ARTS, except as provided in Section 3.4.2 below. To the extent of the responsibilities of each described herein, the parties agree to keep and maintain the Facility in a safe and sanitary condition for the use of visitors and staff and to ensure that the value of the Facility is maintained at all times. The parties agree that the Facility shall be maintained in first rate condition at all times.

3.4.1 Maintenance. 516 ARTS shall provide preventative maintenance for the Facility, its systems and equipment, and as needed shall enter into maintenance contracts following the expiration of applicable warranties. The City shall have the right to request a written plan for maintenance for the Facility and its systems and equipment if the level of maintenance does not meet the standards established herein. 516 ARTS shall be responsible for arranging for the removal of graffiti.

3.4.2 Repairs and Replacements. Subject to Section 2.1.4, the City shall be responsible with reasonable dispatch, at its sole cost and expense, for major Facility repairs and replacements which constitute capital improvements or expenditures. "Capital" refers to goods with a lifespan of a minimum of 10 years. 516 ARTS shall be responsible, at its sole cost and expense, for repairs and replacements which are not capital improvements or expenditures. In the event 516 ARTS fails to make any of the repairs or replacements which it is responsible to make within fifteen (15) business days following written notice of such failure, the City shall be entitled to enter the Facility and make or cause the same to be made at 516 ARTS's expense. Each party shall be responsible, at its sole cost and expense, for repairs and replacements resulting from the negligence of said party, its agents, and employees. The City shall provide reasonable notice to 516 ARTS before commencing any work required pursuant to this Section.

3.4.3 Quality of Work. Subject to Section 2.1.4, all repairs and replacements shall be made promptly as and when necessary. All repairs and replacements shall be at least equal in quality of materials and workmanship to the original work and shall be made in compliance with all applicable statutes, ordinances or building codes.

3.4.4 Security. 516 ARTS shall pay for operation, installation, maintenance and repair of a security system or security services for the Facility. The City shall not be liable to 516 ARTS or other party for any loss or damage to personal property, including artwork, placed at the Facility.

3.5 Additional Uses

3.5.1 Subleases and Rentals. 516 ARTS shall not sublet the whole or any part of the Facility to individuals or organizations, including 501(c)(3) nonprofits, unless the intended use aligns with the mission and public benefit purposes of 516 ARTS as outlined in this Agreement. 516 ARTS must receive the City's prior written approval of the terms and conditions of all subleases and rental agreements. However, the City's approval shall not be required for 516 ARTS's sublease or rental of space to third parties in the ordinary course of its operations for a period of less than thirty (30) days (hereinafter, "short-term rental(s)"). An approval of a rental or sublease shall not release 516 ARTS from, or otherwise affect in any manner, any of 516 ARTS's obligations under this Agreement. Each rental and sublease shall be subject and subordinate to the rights of the City under this Agreement and to any amendment or modification of this Agreement. Except for short-term rentals, any rental or sublease without the prior written approval of the City shall be void, and shall, at the option of the City, be terminated.

3.5.2 City's Use of Facility. If the City desires the use of the Facility or any portion of the Facility for a public purpose and the Facility or the required portion of the Facility is available during the desired time, 516 ARTS agrees to allow the City's use of the Facility or portion of the Facility as follows: two (2) daytime events and four (4) evening events each fiscal year at no charge, provided that the City shall provide all necessary cleaning and security for such evening events. The City shall provide one month's advance written notice to 516 ARTS of the desired use and 516 ARTS shall respond to the notice within ten (10) calendar days. The City shall likewise have the right to use the Facility's community room, if available, during the Center's regular business hours at no charge. The City shall provide at least seven (7) calendar days notice to 516 ARTS of any such desired use.

3.6 Additional Requirements

3.6.1 Taxes and Assessments. 516 ARTS shall pay promptly as they become due and payable all taxes and assessments and fees that may now or during the Term or any extension of the Term of this Agreement be imposed on the Facility, except for property taxes (if any). However, personal property taxes, if any, are and shall remain the sole obligation of 516 ARTS.

3.6.2 Insurance. 516 ARTS shall procure and maintain at its expense insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. All policies of insurance shall provide that thirty (30) days written notice be given

to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico 87103, before a policy is cancelled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than workers' compensation, the policies shall be endorsed to name the City as an additional insured for all ongoing and completed operations. All coverages afforded shall be primary and noncontributory with respect to operations provided. Kinds and amounts of insurance required are as follows:

a) Commercial General Liability Insurance. A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$1,000,000.00 Per Occurrence
\$2,000,000.00 Policy Aggregate
\$1,000,000.00 Products Liability/Completed Operations
\$1,000,000.00 Personal and Advertising Injury
\$ 50,000.00 Fire/Legal
\$ 5,000.00 Medical Payments

Said policy of insurance must include coverage for all operations performed at the Facility by 516 ARTS, and Sexual Abuse and Molestation coverage, including contractual liability coverage which specifically insures the hold harmless provisions of this Agreement. Officers and directors' liability coverage shall be included or provided separately.

b) Property Insurance. Special Form Property insurance to cover any loss or damage to 516 ARTS's business personal property, and any Tenant improvements and betterments by 516 ARTS, including City property at the Facility in an amount sufficient to cover the full replacement cost for such property.

c) Automobile Liability Insurance. An automobile liability policy with liability limits in amounts not less than \$1,000,000.00 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policy of insurance must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work.

d) Workers' Compensation Insurance. Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City.

The City may require 516 ARTS to reasonably increase the maximum limits of any insurance required herein to be consistent with changes in the City's statutory liability under the New Mexico Tort Claims Act.

3.6.3 Permits. 516 ARTS shall obtain and maintain all licenses and permits and pay all appropriate fees required for management and operation of the Center. The City shall cooperate with 516 ARTS as needed.

3.6.4. Use of City Vehicles by 516 ARTS. 516 ARTS and its employees will follow applicable City regulations governing use and operation of City vehicles. Any additional terms and conditions governing 516 ARTS's use of vehicles owned by the City or purchased with City funds will be governed by separate agreement.

3.7 Alterations, Modifications and Improvements to the Facility. 516 ARTS shall not modify, change or alter the Facility without the prior written consent of the City, such consent not to be unreasonably withheld; provided however 516 ARTS shall be entitled, without the consent of the City, to make non-structural modifications, changes, and alterations to the Facility. For purposes of this Agreement, "structural modifications, changes and alterations" ("Structural Improvements") shall refer to work at the Facility resulting in structural changes to load-bearing walls of the Facility and the fundamental facility infrastructure (the core electrical, mechanical and communications systems and the like).

3.7.1 Alterations, Modifications and Improvement to the Facility by the City. The City shall work closely with 516 ARTS in the development and implementation of any proposed modifications, changes or alterations to the Facility by the City.

3.7.2 Prior to Construction of Improvements. 516 ARTS shall not commence construction of any Structural Improvements or other capital improvements, whether for maintenance, repair, replacement or new construction, without the prior written consent of the City, as provided above, and the prior written approval by the City of the plans and specifications for the Structural Improvements and/or the capital improvement in each instance. The City and 516 ARTS will enter into a separate agreement covering the terms and conditions of any Expansion using City funds on land that is not owned by the City. The City shall appoint a City project manager to be involved in any construction if appropriate. In the event of an emergency where property or personal safety are at immediate risk, these requirements may be waived and oral consent may be obtained. In addition, 516 ARTS shall procure or cause to be procured appropriate insurance in the kinds and amounts required by the City's Risk Manager prior to commencing work on any Structural Improvements or Expansion on City land.

3.7.3 Architects. The City shall have the right to request that before 516 ARTS undertakes any Structural Improvements to the Facility or Expansion on City land, that 516 ARTS consult, at 516 ARTS's expense, with City architects as the City shall designate, in order to ensure consistency or compatibility of the Structural Improvements and Expansions with the Facility.

3.7.4 Construction of Improvements. 516 ARTS acknowledges that it is subject to City ordinances and applicable State laws for maintenance, repair or construction at the Facility and may be subject to City ordinances and applicable State laws for any Expansion, and any such project might be considered a public works project subject to all City requirements applicable to public works projects. All Expansions and improvements, whether structural or non-structural, shall be constructed in compliance with any minimum standards and specifications that are prescribed by applicable statutes, ordinances or building codes, and shall be constructed in a workmanlike and safe manner. Each party shall give the other party written notice not less than ten (10) days prior to the commencement of construction of any approved Structural Improvement or Expansion.

3.7.5 Ownership of Improvements. Any capital improvements which are made or placed upon the Facility or other City-owned land by 516 ARTS after first having obtained the written consent of the City, shall immediately merge and become a permanent part of the Facility unless otherwise agreed to by the parties in writing. Exhibits and artwork shall not be considered improvements to the Facility.

3.7.6 Liens. 516 ARTS shall defend, indemnify and hold harmless the City against any mechanic's, materialmen's or other lien arising out of the making of any improvements by 516 ARTS. 516 ARTS shall not permit any mechanic's, materialmen's or other lien to stand against the Facility for work or material furnished to 516 ARTS or to its contractors. 516 ARTS shall have the right to contest the validity of any lien or claim, and, if required, 516 ARTS shall post a bond or other security to insure that upon final determination of the validity of the lien or claim, 516 ARTS shall immediately pay any judgment rendered against 516 ARTS with all proper costs and charges and shall have the lien released without cost to the City.

3.7.7 Removal of Improvements. At the end of 516 ARTS's occupancy of the Facility, at 516 ARTS's discretion, 516 ARTS may remove all or any portion of non-permanent improvements constructed by 516 ARTS at the Facility. At the end of 516 ARTS's occupancy, all non-permanent improvements not removed by 516 ARTS shall become the property of the City.

3.8 Exhibits and Personal Property.

3.8.1 City or Joint Ownership of Fixed Assets. The City loans to 516 ARTS for the term of this Agreement, the exhibits, equipment, furnishings and other personal property of the City with a cost in excess of \$5,000 ("Fixed Assets") listed in the most recent inventory delivered to the City and in future annual inventories delivered to the City in accordance with this Agreement. The Fixed Assets shall at all times remain the property of the City. In addition, any Fixed Assets developed or purchased during the term of this Agreement solely with City funds or state capital grant funds appropriated to the City shall be the property of the City. Fixed Assets developed or purchased with City or state capital grant funds appropriated to the City for 516 ARTS together with other funds raised by 516 ARTS shall be jointly owned by the City and 516 ARTS in proportion to each party's funding contribution. 516 ARTS shall maintain an inventory of the Fixed Assets and provide an up-to-date inventory to the City annually by the date indicated in Section 1.5.1 above. 516 ARTS shall commit no act nor permit any act to be done inconsistent with the City's sole or joint ownership of Fixed Assets.

3.8.2 516 ARTS Ownership of Fixed Assets and Other Personal Property. The parties agree that Fixed Assets of any kind donated to or purchased by 516 ARTS entirely with funds other than City funds or state capital grant funds appropriated to the City shall be the property of 516 ARTS. In addition, consumable supplies, inventory for resale, and other items of personal property purchased with City operating funds shall also be the property of 516 ARTS.

3.8.3 Intellectual Property. Intellectual property developed or purchased during or prior to the Term by 516 ARTS or 516 ARTS's contractors with City funds shall be the property of the City. Intellectual property developed or purchased during or prior to the Term by 516 ARTS or 516 ARTS's contractors with 516 ARTS funds shall be the property of 516 ARTS. If joint funds

(City and 516 ARTS funds) are used, then there shall be joint ownership of intellectual property between the City and 516 ARTS in proportion to each party's contribution of funds.

3.8.4 License of Rights. For any City-owned intellectual property, the City hereby grants to 516 ARTS a non-exclusive, royalty-free, paid-up license to all intellectual property rights, including the rights to make, use, import, repair, reproduce, modify, and make derivative works of products and services, and to sublicense those rights; it being the intention that 516 ARTS be able to generate additional revenues for the Center through traveling exhibits, programming, curriculum, and the like. The parties agree to cooperate in the protection of intellectual property.

3.8.5 Registration, Patent Protection and Infringement. 516 ARTS agrees to register copyrighted works developed for the Center, at its discretion and using counsel of its selection, in the name of the owner of the copyrighted work. If 516 ARTS does not register the City-authored copyrighted works, the City may do so, at its expense and using counsel of its own choice. If there are inventions for which the parties desire to seek patent protection, the parties agree to mutually agree upon who will pay or how fees and costs will be shared for such patent filing(s). If the parties cannot agree, either party may file for patents, at its own expense, using counsel of its choice. For all City-owned works and inventions that are registered or filed by 516 ARTS, 516 ARTS agrees to inform the City at each step of the filing, prosecution and issuance and to seek and consider input from the City at each step. Neither party shall be obligated to register copyrights or file for patents. In the event of a lawsuit or action relating to validity, enforceability or infringement of the intellectual property, the parties agree to cooperate regarding such action. Neither party shall be obligated to bring any action against infringers.

3.8.6 City Insurance. The City shall self-insure or provide property damage insurance for all City-owned Fixed Assets and, to the extent of its interest therein, jointly-owned Fixed Assets.

ARTICLE 4 - TERM AND TERMINATION

4.1 Term. This Agreement shall commence upon the date of signature below, and shall continue until January 1, 2031, unless sooner terminated as provided herein ("Term"). Upon written agreement of the parties, the Agreement may be extended for additional periods of up to five (5) years each, or such other period of time to which the parties mutually agree, following a determination by the City that the mission and goals of the Center are being met. All payment obligations of the City and all of its interest in this Agreement shall cease upon the date of termination, except for any obligation that has occurred prior to termination. The City and 516 ARTS agree to commence negotiations for an extension to the Term during the first quarter of the fourth year of the Term, and to use their best efforts to reach an agreement within six (6) months.

4.2 Termination for Cause. In the event of: (1) the appointment of a receiver on account of the insolvency of a party, adjudication of a party as bankrupt, or a general assignment by a party for the benefit of creditors, or (2) a material breach of this Agreement by a party which shall continue for thirty (30) days or more after written notice of such breach (including a reasonably detailed statement of the nature of such breach) shall have been given to the defaulting party by the other party and if the defaulting party has not taken or commenced reasonable and appropriate

efforts or is not continuing in diligence to remedy the breach, the notifying party shall be entitled to avail itself cumulatively of any and all remedies available at law or in equity (provided such remedies are not otherwise limited under the terms of this Agreement) and may suspend performance of its obligations under this Agreement for as long as the breach continues uncorrected and terminate this Agreement upon written notice (effective upon receipt) to the defaulting party. Notwithstanding the foregoing, the City may terminate this Agreement and/or any subleases rental agreements entered into pursuant to Section 3.5.1, immediately in the event of illegal or hazardous use of the Facility or if the City finds in its discretion that a short-term rental agreement does not align with the mission of 516 Arts or the public benefit purposes as outlined in this Agreement.

4.3 Damages. Notwithstanding termination, neither party shall be relieved of liability to the other party for damages sustained by the non-breaching party by virtue of any breach of this Agreement.

4.4 Termination for Convenience. Either party may terminate the Facility portion of this Agreement (Article III) at any time by giving at least one (1) year's notice in writing to the other party. If terminated for convenience by the City as provided herein, 516 ARTS shall be entitled to the unamortized cost of any permanent improvements to the Facility paid for by 516 ARTS which have become City property and any additional costs agreed to by the parties or determined through arbitration, except that 516 ARTS shall not be entitled to recover the costs of improvements if funded by state grants.

4.5 Facility. Upon the expiration or sooner termination of this Agreement, 516 ARTS shall have no further right or interest in the Facility.

4.6 Subleases. The surrender of this Agreement by 516 ARTS, mutual cancellation of this Agreement, or termination or expiration of this Agreement shall, at the option of the City, terminate all or any existing subleases or may, at the option of the City, operate as an assignment to the City of any and all subleases.

4.7 Surrender. At the expiration or sooner termination of this Agreement, 516 ARTS shall within three (3) months, or such shorter period of time that the City deems necessary under the circumstances, remove 516 ARTS's property from the Facility and surrender the Facility to the City in as good condition as it was in at the beginning of the term, reasonable use, wear and tear excepted.

4.8 Obligations. Termination or expiration shall not relieve any party of any obligations it has to the other party at the time of termination or expiration.

ARTICLE 5 - MISCELLANEOUS

5.1 Indemnity. 516 ARTS agrees to defend, indemnify and save harmless the City, its officers, agents and employees, in their official and individual capacities, from and against all suits, actions or claims of any character, including copyright infringement, brought because of any injury, including death, or damage received or sustained by any person, persons or property arising out of 516 ARTS's or 516 ARTS's invitees', agents', employees', contractors, volunteers', and

sublessees' use of or activities at the Facility, or arising out of any condition of the premises or improvements to the Facility, or by reason of any act or omission, neglect or misconduct of 516 ARTS or of its agents, contractors, employees, -volunteers, invitees or sublessees. This indemnity provision shall equally apply to injuries to each party's employees occurring at the Facility. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

5.2 Limitation of Indemnification. To the extent, if at all, NMSA 1978, § 56-7-1, is applicable to the indemnity agreements contained in this Agreement, 516 ARTS is not required to indemnify the City for the negligence or intentional acts, errors, or omissions of the City or of its employees or agents.

5.3 Independent Contractor. 516 ARTS is an independent contractor at all times in the performance of this Agreement or any other agreements between the parties, and 516 ARTS's employees are not employees of the City of Albuquerque for any purpose whatsoever. 516 ARTS agrees that neither it nor its employees or agents are entitled to any benefits from the City under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

5.4 Compliance With Laws. The parties shall comply with all applicable laws, ordinances, and codes of the federal, State and local governments. All licenses, permissions and authority required for use of copyrighted works shall be the responsibility of the 516 ARTS, unless used in connection with the City's use of the Facility pursuant to Section 3.5.2 of this Agreement.

5.5 Modifications to Agreement. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if placed in writing and signed by each party.

5.6 Assignability. 516 ARTS shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the City thereto.

5.7 Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

5.8 Rights and Non-Waiver of Rights. All rights and remedies of the City or 516 ARTS created by this Agreement or otherwise existing at law are cumulative, and the exercise of one or more rights or remedies shall not exclude or waive the right to the exercise of any other. All rights and remedies may be exercised and enforced concurrently and as often as deemed advisable. No waiver of default by either party of any of the terms, covenants and conditions of this Agreement required to be performed, kept and observed by the other party shall be construed as, or shall operate as a waiver of any subsequent default of any of the terms, covenants or conditions of this Agreement required to be performed, kept or observed by the other party.

5.9 Notice. All notices required to be given hereunder shall be given personally in writing or be sent, postage prepaid, by registered or certified mail to either party at the following addresses (utilizing either the post office box or street address):

CITY OF ALBUQUERQUE:

Chief Administrative Officer
City of Albuquerque
One Civic Plaza, 11th Floor - 87102
P.O. Box 1293
Albuquerque, NM 87103

For Notice to the City a copy must also be given to:

Director, Department of Arts & Culture
City of Albuquerque
One Civic Plaza, 6th Floor - 87102
P.O. Box 1293
Albuquerque, NM 87103

516 ARTS:

Executive Director
516 ARTS
Albuquerque, NM 87104

5.10 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated herein, will survive termination or completion of the Agreement.

5.11 Entire Agreement. This Agreement, including any explicitly stated and attached exhibits, constitutes the full, final, and entire agreement of the parties and incorporates all of the conditions, agreements, understandings and negotiations between the parties concerning the subject matter of this contract, and all such agreements, conditions, understandings and negotiations have been merged into this written Agreement. No prior condition, agreement, understanding, or negotiation, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in writing in this Agreement.

5.12 Authority and Advice of Counsel. The individuals executing this Agreement represent that they have full authority to execute this Agreement on behalf of the entity for whom they are acting. The parties hereto acknowledge that they have thoroughly read this Agreement, have sought and received whatever competent advice or counsel was necessary for them to form a full and complete understanding of all rights and obligations herein, and, having done so, do hereby execute this Agreement.

5.13 Debarment, Suspension, Ineligibility and Exclusion Compliance. 516 Arts certifies that it has not been debarred, suspended, or otherwise found ineligible to receive funds by any agency of the executive branch of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States. The Contractor agrees that should any notice of debarment, suspension, ineligibility, or exclusion be received by the Contractor, the Contractor will notify the City immediately. The Contractor further acknowledges and agrees that failure to so notify the City in a timely manner shall constitute a material breach of this Agreement and the City shall, in addition to all remedies available to it, be entitled to claw back and recoup amounts paid under this Agreement, less reasonable costs for performance of Services already rendered.

5.14 Enforcement. 516 Arts shall pay to the City all costs and expenses, including reasonable attorneys' fees, incurred by the City in exercising any of its rights or remedies in connection with the enforcement of this Agreement. All remedies to which the City is entitled, whether in law, at equity, or as otherwise provided for herein, shall be cumulative and not exclusive of one another.

5.15 Appropriations. Notwithstanding any other provision in this Agreement, the terms of this Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, or if the City Council un-appropriates or deauthorizes funds during a fiscal year, this Agreement may be terminated upon thirty (30) days' written notice given by the City to all other parties to this Agreement. Such event shall not constitute an event of default. All payment obligations of the City and all of its interest in this Agreement will cease upon the date of termination. The City's determination as to whether sufficient appropriations are available or have been made shall be accepted by all parties and shall be final.

5.16 Personnel.

A. 516 Arts represents that it has, or will secure at its own expense, all personnel required in performing all of the responsibilities required under this Agreement. Such personnel shall not be employees of or have any contractual relationships with the City.

B. All the Services required hereunder will be performed by 516 Arts or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such responsibilities.

C. None of the work or the responsibilities covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or responsibilities subcontracted hereunder shall be specified by written contract or Agreement and shall be subject to each provision of this Agreement.

5.17 Conflict of Interest. No officer, agent or employee of the City will participate in any decision relating to this Agreement which affects that person's financial interest, the financial interest of his or her spouse or minor child or the financial interest of any business in which he or she has a direct or indirect financial interest.

5.18 Interest of 516 Arts. 516 Arts agrees that it presently does not have, and shall acquire no

direct or indirect interest which conflicts in any manner or degree with the performance of the terms of this Agreement. 516 Arts will not employ any person who has any such conflict of interest to assist 516 Arts in performing the terms of this Agreement.

5.19 No Collusion. 516 Arts represents that this Agreement is entered into by 516 Arts without collusion on the part of 516 Arts with any person or firm, without fraud, and in good faith. 516 Arts also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or will be, offered or given by 516 Arts or any agent or representative of 516 Arts, to any officer or employee of the City for the purpose or with the intention of securing: this Agreement; a subsequent Agreement; more favorable treatment with respect to this Agreement; or more favorable treatment with respect to making any determinations regarding performance under this Agreement.

5.20 Reports and Information. At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered by this Agreement.

5.21 Establishment and Maintenance of Records. Records shall be maintained by 516 Arts in accordance with applicable laws and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by the City, such records shall be maintained for a period of four (4) years after receipt of final payment under this Agreement.

5.22 Changes. The City may, from time to time, request changes in the responsibilities to be performed hereunder.

5.23 Applicable Law and Venue. This Agreement is governed by and construed and enforced in accordance with the laws of the State of New Mexico and the City of Albuquerque. The venue for actions arising in connection with this Agreement is Bernalillo County, New Mexico.

5.23 Force Majeure. The City shall not be liable for failure to perform its obligations under this Agreement, for any loss or damage of any kind, or for any consequences resulting from delay or inability to perform, due to causes beyond the reasonable control and without the fault or negligence of the City. Such causes ("Force Majeure Events") include, but are not restricted to: acts of God or the public enemy; acts of State, Federal or local governments; shortage or inability to obtain materials; breakdowns or delays of carriers, manufacturers, or suppliers; freight embargoes; theft; fire; flood; epidemics or pandemics; quarantine restrictions; strikes; lockouts; unusually severe weather; and defaults of subcontractors due to any of the above. If a Force Majeure Event causes any failure to perform, the City shall promptly inform 516 Arts in writing of such event, indicating the expected duration thereof and the period for which suspension in performance is requested. The parties shall consult with each other in good faith with respect to modification of this Agreement to reflect such suspension or other changes (if any) desired by the City as a result thereof. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

5.24 Third Party Beneficiaries. This Agreement may be signed in multiple counterparts or with detachable signature pages, but either or both circumstances shall constitute one instrument, binding upon all parties to the Agreement as if all parties signed the same document. If so

executed, each counterpart of this Agreement is deemed an original for all purposes and all such counterparts will collectively constitute one Agreement, but in making proof of this Agreement, it will not be necessary to produce or account for more than one such counterpart.

5.25 Intellectual Property. To the extent Contractor uses or incorporates intellectual property (“IP”) in providing goods or services to the City, Contractor represents and warrants that the IP used shall not infringe upon the intellectual property rights of any third party and that the City shall have and enjoy, except as otherwise provided in this Agreement, an irrevocable, non-exclusive, worldwide license to the IP.

5.26 Counterparts; Electronic Signatures. This Agreement may be signed in multiple counterparts or with detachable signature pages, but either or both circumstances shall constitute one instrument, binding upon all parties to the Agreement as if all parties signed the same document. If so executed, each counterpart of this Agreement is deemed an original for all purposes and all such counterparts will collectively constitute one Agreement, but in making proof of this Agreement, it will not be necessary to produce or account for more than one such counterpart. Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The parties agree that this Agreement may be electronically signed and that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

5.27 Approval Required. This Agreement shall not become effective or binding until signed by the City’s Chief Administrative Officer following approval by the City Council.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF ALBUQUERQUE

516 ARTS

Approved by:

Samantha Sengel, Ed.D
Chief Administrative Officer

Date: _____

Date: _____

Dr. Shelle Sanchez
Director of Arts & Culture
Date: _____

Date: _____

Date: _____