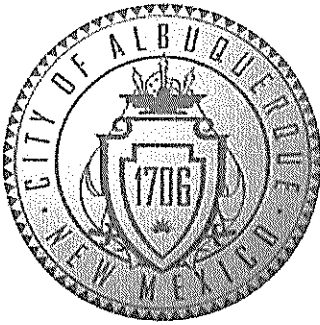


EC-21-263



Mayor Timothy M. Keller

CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

INTER-OFFICE MEMORANDUM

January 25, 2021

TO: Cynthia Borrego, President, City Council

FROM: Timothy M. Keller, Mayor

A handwritten signature in black ink, appearing to be 'TK' or a stylized 'K', is written over the name 'Timothy M. Keller'.

SUBJECT: By Request for CSD BioPark Boomalli Approval for the Professional Service Agreement

Attached for consideration and approval is the Professional Service Agreement with Boomalli Consulting Pty, Ltd. The purpose of this contract is to provide the design and creation of art and artifacts for the upcoming Australia exhibit at the Albuquerque BioPark Zoo for the Cultural Services Department (CSD).


The proposed Professional Service Agreement is for Five Hundred Fifty Five Thousand One Hundred Ninety Three dollars and 98/100 (\$555,193.98), and will be funded through the Albuquerque BioPark Projects Gross Receipts Tax Fund 336.

This request provides the approval pursuant to § 5-5-19, Approval of Contracts, ROA 1994 of the City's Public Purchasing Ordinance, which requires City Council approval on contracts exceeding the \$100,000 threshold. In addition, Section 5-5-20(O) of the Public Purchases Ordinance authorizes the City to purchase art, artifacts or other items for the purpose of exhibition in a public facility.

I am forwarding this Agreement for your consideration and action.

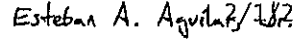
By Request for CSD – Albuquerque BioPark Approval for the Professional Service Agreement

Approved:

 2/4/21

Sarita Nair Date
Chief Administrative Officer

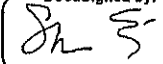
Approved as to Legal Form:

DocuSigned by:
 2/18/2021 | 9:52 AM MST

7961D99D046F4DB...
Esteban A. Aguilar, Jr. Date
City Attorney

DS
LB

Recommended:

DocuSigned by:
 1/28/2021 | 1:48 PM MST

897577D6B4E949F...
Dr. Shelle Sanchez Date
Director – Cultural Services Department

Cover Analysis

1. What is it?

Approval of the Professional Service Agreement to Commission Art on Exhibit for the Australia Exhibit at the Albuquerque BioPark, Cultural Service Department (CSD), City of Albuquerque.

2. What will this piece of legislation do?

This piece of legislation provides the approval pursuant to § 5-5-19, Approval of Contracts, ROA 1994 of the City's Public Purchasing Ordinance and allows the commission of art and artifacts for the Australia exhibit at the Albuquerque BioPark, a division of CSD.

3. Why is this project needed?

Boomalli Consulting will design, coordinate, build, create and install a series of art pieces and artifacts for the Australia Exhibit. Allan McKenzie, Boomalli's owner, is a proud Gamilaroi/Wiradjuri artist who is well known for his highly detailed and vibrant artwork, his knowledge, respect and capacity to teach and develop cultural connection and appreciation through his suite of workshops. Allan practices and lives culture and is passionate about educating the BioPark's visitors about Australia's Aboriginal culture and preserving heritage. Boomalli's work will provide authentic indigenous art, artifacts and educational materials for the BioPark.

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

The contract will in total be Five Hundred Fifty-Five Thousand One Hundred Ninety-Three and 98/100 (\$555,193.98). Funding for this Professional Service Agreement will come from the existing budget of the BioPark Projects Gross Receipts Tax Fund 336.

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

BioPark Projects GRT Fund 336, projected FY2021 appropriated revenue \$17,399,150.

FISCAL IMPACT ANALYSIS

TITLE:Approval of BioPark Professional Service Agreement - Boomalli Consulting Pty, Ltd.

R:O:BioPark Projects GRT
Fund 336

FUND:

DEPT:Cultural Services -
BioPark

- [X]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:

	2019	Fiscal Years 2020	2021	Total
Base Salary/Wages				-
Fringe Benefits at				-
Subtotal Personnel	-	-	-	-
Operating Expenses		-		-
Property		-	-	-
Indirect Costs	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
[X] Estimated revenues not affected				
[] Estimated revenue impact				
Revenue from program				
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: Appropriations for the BioPark Projects GRT Fund 336 include funding for this Agreement. This Agreement spans FY2021 and FY2022. No additional appropriation of funds will be required to support this request.

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

PREPARED BY:

DocuSigned by:
Denise Ortiz1/28/2021 | 11:34 AM MST

FISCAL MANAGER - CSD

APPROVED:

DocuSigned by:
S. S.1/28/2021 | 1:48 PM MST

DIRECTOR (date)

REVIEWED BY:

DocuSigned by:
Emma Romero1/28/2021 | 6:42 PM MST

BUDGET ANALYST (date)

DocuSigned by:
Lawrence L. Davis2/1/2021 | 9:23 AM MST

BUDGET OFFICER (date)

DocuSigned by:
Christine Baerner2/1/2021 | 9:25 AM MST

CITY ECONOMIST (date)

DocuSigned by:
Christine Ching1/29/2021 | 8:27 AM MST

FISCAL MANAGER - CIP/DMD

**CITY OF ALBUQUERQUE
ART IN MUNICIPAL PLACES**

**PROFESSIONAL SERVICE AGREEMENT
TO COMMISSION ART ON EXHIBIT**

THIS AGREEMENT, between the City of Albuquerque, a municipal corporation ("City"), P.O. Box 1293, Albuquerque, New Mexico 87103, and Boomalli Consulting Pty, Ltd and Boomalli Consulting Pty's heirs, successors and assignees [21 Bell Avenue, Dubbo New South Wales 2830 Australia] ("the Entity"), an Australian Private Company, located in Dubbo NSW Australia is made in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

WHEREAS, the City wishes to commission the creation of art and artifacts for its upcoming Australia exhibit at the Albuquerque BioPark Zoo; and

WHEREAS, the Entity is qualified, able and willing to design and create the work of art which is described in this Agreement;

WHEREAS, Section 5-5-20(O) of the Public Purchases Ordinance authorizes the City to purchase art, artifacts or other items for the purpose of exhibition in a public facility; and

WHEREAS, the Entity is part of the Australia Executive Team, which is the interpretive program for the BioPark Australia Exhibit, with other members named as Cultural Service Director (or designee), BioPark Administrator and/or designee, DMD/BioPark Project Manager and Project Coordinator, New Mexico BioPark Society (NMBPS) Director and/or designee, Studio Southwest Architects (BioPark Australia Exhibit architect under contract) and associated consultants.

THEREFORE, the City and the Entity agree:

I. Scope of Services. The Entity will perform the following Services, also referred to as the Project, which include all other obligations required of the Entity by this Agreement, in a satisfactory and proper manner as determined by the City, for the Albuquerque BioPark Australia Exhibit ("Exhibit") that will be located at Albuquerque BioPark Zoo, 903 10th St SW in Albuquerque's City Council District 2 (the "Site"). A photograph of the site is attached hereto as Exhibit A.

A. Design and Description of the Work of Art. The Entity will design, coordinate, build, create and install or assist with installation of the following: a series of murals on various exhibit buildings/areas within the Exhibit ("Murals") and a series of elements/artifacts, including Gunya, Six (6) Totem Poles, and Two (2) replicated Scar Trees fabricated out of locally sourced wood (see Exhibit B for complete list) ("Artifact(s)"). The Murals and the Artifacts shall collectively be referred to herein as the "Work". In addition, an education fact sheet for all items will be provided by the Entity in PDF form.

B. Work Site. The Work will be attached to and installed within the Albuquerque BioPark Zoo Australia Exhibit. A sample rendering of the locations where the Work will be installed

("Work Site") and a plan and description of the Work, prepared by the Entity in collaboration with the Australia Executive Team, are attached hereto as Exhibit C and incorporated herein by reference.

C. Fabrication of the Work. The Entity will fabricate the Work in accordance with the Project Plan prepared in partnership with and approved by the Australia Executive Team. The City agrees to reimburse the Entity for all costs of materials used for the creation and installation of the Murals at the Work Site. Entity shall be responsible for any costs of materials that exceed this amount.

D. Access to Property. The City hereby grants permission to the Entity, the Entity's authorized representatives and designees to enter the Site for the limited purpose of performing and exercising the rights and obligations set forth in this Agreement, including but not limited to the Services and the Work Site preparation described below in paragraph "D".

E. Design and Construction of the Work Base; Site Preparation. The City will be responsible for installing the Artifacts (Gunya sculpture, Totem Poles, Scar Trees and Artifact elements) at the Work Site and for the costs of installation of the Artifacts. The Entity will be responsible for installing/creating the Murals at the Work Site. Entity agrees to be on-site during installation of the Work and shall be responsible for assisting the City with installation of the Artifacts. When installing the Murals or supervising with the installation of the Artifacts, the Entity will take every precaution to avoid impacting the present condition of the Work Site terrain as minimally as possible. Entity shall remove any excess materials used in the Mural installation such as concrete, plastic sheeting, fencing material and excess metal, from the Work Site in a timely and regular manner. The Entity shall provide a work schedule to the Australia Executive Team detailing the installation and amount of time to finish the Murals. The Australia Executive Team will work with the Entity to create a work schedule detailing the installation of the Artifacts. The City will prohibit access to the Work Site by the public and Biopark employees while the Entity is installing the Murals at the Work Site.

F. Change in Design. The parties recognize that the shift in scale from preliminary design to a full-scale work may require artistic and structural judgments. The Entity reserves the right to make minor adjustments to the Work as the Entity deems aesthetically and structurally necessary while working at the Work Site. Any substantial change in the scope, design or material of the Work must be discussed with the Australia Executive Team before the Entity may continue completing the Work and receive any additional Compensation.

G. Delivery of the Work and Supervision of Installation. As part of the Services, the Entity and or his/her authorized representative(s) will be responsible for delivery of the Work to the Work Site. Entity will adhere to all governmental regulations applicable to international shipments and will be responsible for final delivery of the Artifacts to the Work Site as needed. The Entity will ensure that the Artifacts are adequately and securely packed and shall include any needed instructions for unpacking the Artifacts upon receipt by the City. The Entity will choose the shipper.

The Entity will consult with the City regarding the dates of delivery in order to coordinate the delivery with the Work Site preparation and installation.

H. Documentation. Following installation of the Work and the issuance of the Notice of Acceptance by the City per recommendation of the Australia Executive Team, but prior to the Final Payment, the Entity will furnish the City with:

1. Clearly labeled, good quality digital images on disc, showing the Murals and Artifacts as installed in context to the Work Site and relevant details of the Murals and Artifacts.
2. Written maintenance *instructions* for the Work. During the Entity's lifetime and at no charge to the City, the Entity and or his/her designee agrees to provide advice concerning problems relating to any maintenance of the Work.

I. Additional Services. The Entity may be required to provide "Additional Services" under the terms and conditions of this Agreement, if the parties agree in writing to the scope of services and the amount and method of compensation before the Additional Services are performed. Submittal of a proposal and acceptance by the City in the form of a letter of written authorization from the City's project manager shall constitute an amendment to this Agreement and the Additional Services performed shall be subject to the terms and conditions of this Agreement as amended by those documents. The City shall execute an Additional Services supplement summarizing the changes to contract terms and provide a copy to the Entity. Additional Services may include:

1. Providing the services of a consultant for the purpose of providing professional services necessary to accomplish the Services described in Section 1.
2. Materials and/or shipping costs not accounted for in Scope of Services.
3. Other related and appropriate Additional Services as authorized by the City and required to accomplish the Services described in Section 1.

2. Compensation and Method of Payment.

A. Compensation. For performing the Services specified in Section 1 hereof, the City agrees to pay the Entity up to the amount of Five Hundred Fifty Five Thousand One Hundred Ninety Three Dollars and 98/00 (\$555,193.98), which amount includes any applicable gross receipts taxes and which amount shall constitute full and complete compensation for the Entity's Services under this Agreement, including shipping the Artifacts to the Work Site and costs of materials.

B. Method of Payment. The Compensation will be paid to the Entity in monthly installments, with said amounts varying dependent on the work completed and invoiced to the City. The Entity will be compensated after completion of the Services as described in the Scope of Services as described above:

1. The Entity may start invoicing (submit pay application) the City for payment on a monthly basis following execution of this Agreement and issuance of the Notice to Proceed by the City.

2. Monthly pay apps will vary in amount based on work completed by Entity. BioPark Project Manager will confirm work complete and/or ensure equipment/materials being invoiced is on-site prior to approving pay app for payment.
3. The Biopark Project Manager will submit approved pay apps to city fiscal for payment.

The Entity shall be required to provide adequate justification for partial payment requests. The payments which are described in this section include any applicable gross receipts taxes and will be made to the Entity after the City receives acceptable invoices for payment as required by the budgetary and fiscal guidelines of the City, and upon the condition that the Entity has performed the Services described and all other requirements of this Agreement to the satisfaction of the City.

3. **Time of Performance.** The Entity's Services will begin on the date of signing this Agreement and will be undertaken and completed in a sequence which will assure timely completion of the Services. In any event, the Entity will complete all Services and requirements of this Agreement by no later than June 30, 2022, unless Entity notifies the City of Albuquerque of problems that would prevent achieving this deadline. At this time the City of Albuquerque and Entity will confirm a new deadline and execute an Additional Services Agreement to extend the time.

4. **Guarantee of Workmanship and Material.** For a period of six months from the date of acceptance by the City, as established by the Notice of Acceptance issued by the City, the Entity warrants and guarantees all workmanship on, and material used in the Work, and, to the extent provided by the Entity or the Entity's agent, subcontractor or employee, the workmanship and material used in the Work Base. Neither the City nor the Entity is responsible for damage due to vandalism.

5. **Formal Acceptance and Ownership of the Work.** Within Twenty (20) days after the Entity has informed the City that the Murals and each Artifact have been installed, the City will inform the Entity in writing that either: (A) the Work has been completed and installed according to the terms of the Agreement and the City formally accepts the Work ("Notice of Acceptance"); or (B) issues remain which prevent the City from issuing a Notice of Acceptance, in which case the issues will be described. Upon issuance of the Notice of Acceptance, the City shall have the right to display the Work until such time as the Work is removed from the Albuquerque BioPark Zoo. Section 20 of this Agreement shall govern the terms and conditions of such removal. The Entity releases the City from any liability incurred due to loss or damage of the Work occurring while installed at the Work Site unless such loss or damage is caused solely by the gross negligence of the City.

6. **Establishment and Maintenance of Records.** Records shall be maintained by the Entity in accordance with applicable law 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 one (1) years after receipt of final payment under this Agreement.

7. **Assignment of the Work.** The Services described in this Agreement will be performed by the Entity and will not be assigned, subleased or transferred without the prior written consent of the

City. This section does not prohibit the Entity from employing or subcontracting with qualified personnel who will work under the Entity's supervision.

8. Independent Contractor. The Entity, which for purposes of this Section includes but is not limited to its officers, members, volunteers, employees, agents, contractors and subcontractors, if any, are not employees of the City for any purpose whatsoever. The Entity is an independent contractor at all times the Entity is performing the Services. The Entity will furnish all supervision, labor, materials, equipment, supplies and other incidentals, as well as provide related Services as required by this Agreement. The Entity agrees that the Entity is not entitled to any benefits from the City under the provisions of the Merit System Ordinance as now enacted or as hereafter amended.

9. Indemnity. The Entity agrees to defend, indemnify and hold harmless the City, its officials, agents and employees, in their official and individual capacities, from and against any and all claims, actions, suits or proceedings of any kind brought against said parties for or on account of any matter arising from or out of the obligations performed pursuant to this Agreement by the Entity and the Entity's volunteers, employees, agents and contractors.

10. Insurance. The Entity shall procure and maintain at the Entity's expense, during the term of this Agreement until the City issues the Notice of Acceptance for the Murals and Artifacts, 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 the Entity or Entity's volunteers, employees, agents or contractors. Following completion of the Entity's preparatory stage which includes work done prior to arriving at the BioPark and/or completing items/artefacts in Australia, the Entity shall furnish to the City a certificate or certificates of insurance in a form that is satisfactory to the City showing that the Entity has complied with this Section. All certificates of insurance shall provide that 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 canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. If the City wishes to review a binder or policy in addition to a certificate of insurance, the Entity will deliver a copy of the requested document to the City before anyone begins the work for which the coverage is required. The kinds and amounts of insurance required are:

A. Commercial General Liability Insurance. A commercial general liability insurance policy with combined limits of liability for bodily injury.

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

Said policy of insurance must include coverage for all operations performed for the City by the Entity and his/her sub-contractor, and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement. The City shall be named an additional insured and the Entity coverage

afforded shall be primary with respect to operations provided. If equivalent coverages are provided and the form is approved by the City, the Entity may provide a commercial general liability policy in a form different from that described above.

B. Transportation/Cartage Insurance. All-risk transportation/cartage insurance coverage in a form acceptable to the City that covers physical damage to or destruction of the Work up to the total value of the Work. Coverage must include loading, transportation and unloading the Work at the Work Site. The City shall be named an additional insured. The certificate of insurance must be delivered to and approved by the City before the Work is loaded. If the Work is to be loaded, transported or unloaded by a person or entity other than the Entity, that person or entity must provide the City with an acceptable certificate of insurance, binder or policy evidencing both (1) transportation/cartage coverage which meets the requirements of this Section 10.B; and (2) commercial general liability and comprehensive automobile coverage which meets the requirements of Sections 10.A. Ten (10) days written notice to the City is required before a policy providing transportation/cartage coverage is canceled, materially changed or not renewed.

C. All Risk Installation Insurance. Not Applicable

D. Workers' Compensation Insurance. Workers' compensation insurance policy for the Entity's employees in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico (the "Act"). If the Entity employs fewer than three employees and has determined that the Entity is not subject to the Act, the Entity will certify, in a signed statement, that the Entity is not subject to the Act. The Entity will notify the City and comply with the Act if the Entity employs three or more persons during the term of this Agreement.

E. Increased Limits. If, during the term of this Agreement, the City requires the Entity to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Entity's compensation will be made.

F. Risk to Entity. Not Applicable

G. Automobile Liability Insurance. Not Applicable

11. Taxes. The State of New Mexico imposes a gross receipts tax on anyone or any entity engaging in business in New Mexico. The tax may be imposed by the State of New Mexico on the Compensation received for the Services under this Agreement, unless exempted by the New Mexico Taxation and Revenue Department. The Entity shall insert its Australian Company Number (CAN) below the Entity's signature block on this Agreement before signing and returning copies of this Agreement to the City. The Entity shall be responsible for costs of customs formalities.

12. Personnel. The Entity has, or will secure at Entity's expense, all personnel required to perform Entity's Services. If any of the individuals performing the Services are City employees or have any contractual relationship with the City, the Entity will provide written details to the City before the Agreement is signed by the parties.

13. Supervision. The City is under no obligation to supervise the Entity's performance of Services that are described in this Agreement, except as expressly provided in this Agreement. The Entity's duty to defend and indemnify the City applies to any claim alleging that the City failed to supervise the Entity's actions.

14. Termination for Cause. If the Entity fails to fulfill any of the Entity's obligations under this Agreement in a timely or proper manner, or if the Entity violates any other term of this Agreement, the City thereupon will have the right to terminate this Agreement by giving the Entity written notice of termination at least ten (10) days before the effective date of termination. The termination date will be stated in the notice.

The City shall be entitled to full reimbursement of any amount paid to the Artist that is in excess of just and equitable compensation for the Work completed to the satisfaction of the City by the Artist as of the date of termination.

The City shall have the option of either keeping the Work as it exists on the date of termination for cause, or requiring the Entity to remove the Work, at the Entity's expense, by the deadline stated in a written notice to the Entity given by the City.

Notwithstanding the above, the Entity will not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Entity, and the City may withhold any payments to the Entity for the purposes of set-off until such time as the exact amount of any damages due the City from the Entity is determined.

15. Termination by the City Not for Cause. The City or Entity may terminate this Agreement at any time by giving at least thirty (30) days notice in writing to the City/Entity. If the Agreement is terminated by the City as provided herein, the Entity will be paid an amount which bears the same ratio to the total Compensation as the Services actually performed to the satisfaction of the City bear to the total Services of the Entity which are required by this Agreement, less Compensation payments previously made. If this Agreement is terminated due to the fault of the Entity, the prior section, regarding termination for cause, will apply.

16. Force Majeure. Neither Entity nor City shall be liable for failure to perform or a delay in performance of its obligations under the Agreement if such performance is rendered impossible due to causes beyond the control and without the fault or negligence of either party. Such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or federal government, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather ("Force Majeure Event"). Provided, however that the non-performing party agrees to make reasonable efforts to avoid or remove the cause of non-performance and agrees to continue performance under this agreement promptly when the causes are removed. If this Agreement is terminated early, Entity and City agreement work with each other in good faith to agree on a just settlement of any costs incurred or refunds due for payments made prior to the date of cancellation. Where reasonable and appropriate, such settlement will take into account any benefits Entity or City has received. The party seeking to rely upon a Force Majeure Event(s) for any such failure or suspension shall promptly inform the other in writing of such event, indicating the expected duration thereof and the period for which suspension in performance is requested and 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 either of them 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 the Agreement.

17. The ADR Office of City Legal as Nonbinding Mediator. During the Entity's performance of the Services, if a major disagreement arises between the Entity and the City, the ADR (Alternative Dispute Resolution) Offices of the City of Albuquerque Legal Department may mediate the disagreement and endeavor to resolve the disagreement to the satisfaction of both parties. Agreeing to mediate will not legally bind either party to accept the outcome. The Entity agrees to notify the ADR Offices before the Entity terminates this Agreement or pursues any legal remedy regarding this Agreement.

18. Review of Progress and Reports. At reasonable times and with advance notice to the Entity, the City has the right to review the Work in progress on-site.

19. Copyright and Reproduction Rights. The Entity warrants that it is the sole author of the Work and that it has the authority to grant the reproduction rights conveyed in this Paragraph. The parties agree the City and the Entity shall have the right to make or disseminate images of the Work for non-commercial use pertaining to advertising or promotions of City business.

20. Alterations to the Work or Site of the Work After Acceptance.

A. VARA. To the extent required by the Visual Entity's Rights Act of 1990, Title 17, United States Code ("VARA") or other applicable laws and regulations, during the Entity's lifetime the City will not intentionally distort, mutilate or otherwise modify the Murals in a manner which is prejudicial to the Entity's honor or reputation ("Modification"), nor will the City intentionally destroy the Murals during the Entity's lifetime. As provided in VARA, Modifications shall not include modifications caused by the passage of time, the inherent nature of the materials or the result of conservation, lighting or placement in connection with public presentation unless caused by the gross negligence of the City. Notwithstanding the above, the Entity acknowledges and agrees that installation of the Murals may subject the Murals or parts of the Murals to destruction, distortion, mutilation, or other modification by reason of their removal and the artist has agreed to execute a VARA waiver covering moving or removal of the Murals from the Work Site.

B. Repairs. After issuance of the Notice of Acceptance, the City may elect to repair the Work if it is determined that it is in critical need of repair. If the City decides to repair the Work, the City will make a reasonable effort to consult with the Entity concerning substantial repairs to, and restoration of the Work. To the extent the City determines it is appropriate, the Entity will be given the opportunity to perform substantial repairs to and restoration of the Work for a reasonable fee. If the City and the Entity cannot agree whether the Work should be repaired, or in what manner, the City will make the final decision regarding whether and in what manner the Work will be repaired.

C. Change in the Site of the Artifacts. The parties understand that any substantial change in the immediate vicinity of the Artifacts or moving the Artifacts to a new Site could change the intended appearance and character of the Work. If for any reason the Artifacts must be removed or

moved from the Work Site and BioPark premises to a new location, the City will notify the Entity by registered mail pursuant to Section 19(D) of this Agreement at least ninety (90) days prior to removal. If the Entity removes or assigns a third party to remove and take custody of the Artifacts within ninety (90) days of receiving the notice, then the Entity shall assume custody of and title to the Artifacts and the City shall have no further right to possess or display the Artifacts. If the Entity fails to remove and take custody of the Artifacts or assign a third party to remove and take custody of the Artifacts within ninety (90) days after receiving notice from the City, then the City may move the Artifacts and assume ownership and custody of the Artifacts and may display, store or dispose of the Artifacts as it sees fit. Notwithstanding the above, the City may move or remove the Artifacts without prior notice to the Entity if the Artifacts become hazardous and immediate removal is necessary to protect the public. The City agrees to make reasonable efforts to obtain the Entity's advice regarding any such removal or moving of the Artifacts. For purposes of this Section 20C, "Artifacts" include the Artifacts or portion of the Artifacts.

D. Notice to the Entity. It shall solely be the Entity's responsibility to provide prompt notice to the City of any changes in the Entity's current mailing address and any additional contact information pursuant to Section 34. If the Entity fails to do so, the City is not responsible for any failures to give the Entity notice as required by this Agreement.

21. Ownership of Documents and Models. Drawings, specifications and models of the Work, or which relate to the Work, including all preliminary studies, will be the property of the Entity both following the City's formal acceptance of the Work and following termination of the Agreement by the City not for cause, and will not be used by the City in other projects, unless the Entity otherwise agrees in writing.

22. Open Meetings Requirements. Any nonprofit organization in the City which receives funds appropriated by the City, or which has a member of its governing body an elected official, or appointed administrative official, as a representative of the City, is subject to requirements of Sections 2-5-1 et seq., R.O.A. 1994, Public Interest Organizations. The Entity agrees to comply with all such requirements, if applicable.

23. Establishment and Maintenance of Records. Records shall be maintained by the Entity in accordance with applicable law 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 one (1) year after receipt of final payment under this Agreement.

24. Audits and Inspections. Within 7 days and with written notice from the City, the Entity shall make available to the City for examination all of the Entity's records with respect to all matters covered by this Agreement. The Entity 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. The Entity understands and will comply with the City's Accountability in Government Ordinance, §§2-10-1 et seq. and the Inspector General Ordinance, §§2-17-1 et seq. R.O.A. 1994, 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.

25. No Collusion. The Entity represents that this Agreement is entered into by the Entity without collusion on the part of the Entity with any person or firm, without fraud and in good faith. The Entity also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, will be offered or given by the Entity or any agent or representative of the Entity to any officer or employee of the City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

26. Debarment, Suspension, Ineligibility and Exclusion Compliance. The Entity 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 Entity agrees that should any notice of debarment, suspension, ineligibility or exclusion be received by the Entity, the Entity will notify the City immediately.

27. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

28. Changes to the Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

29. Captions. The captions to the sections or paragraphs of this Agreement are not part of this Agreement and will not affect the meaning or construction of any of its provisions.

30. Binding Effect. This Agreement is binding upon and inures to the benefit of the successors and/or assigns of the parties.

31. Discrimination Prohibited. In performing any services required hereunder, the Entity shall not discriminate against any person on the basis of race, color, religion, gender, sexual orientation, sexual preference, national origin or ancestry, age, physical handicap or disability.

32. ADA Compliance. In performing any services required hereunder, the Entity shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (the "ADA"). The Entity's responsibility to defend and indemnify the City, as provided in this Agreement, includes, but is not limited to, claims arising from the Entity's, its agents' or employees' acts or omissions in violation of the ADA.

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

34. 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 as long as the remainder of the Agreement is reasonably capable of completion.

35. 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.

36. Interest of Entity. The Entity agrees that the Entity presently has, and shall acquire no direct or indirect interest which conflicts in any manner or degree with the performance of the terms of this Agreement. The Entity will not employ any person who has any such conflict of interest to assist the Entity in performing the Services.

37. Notice. For purposes of giving formal written notice to the Entity, Entity's address is as stated in the first paragraph of this Agreement.

For purposes of giving formal, written notice to the City, the City's address is:

Mayor
City of Albuquerque
P.O. Box 1293
Albuquerque, New Mexico 87103

Copies of all notices to the City also must be given to:

Department of Cultural Services/CIP/BioPark
City of Albuquerque
P.O. Box 1293
Albuquerque, New Mexico 87103

Written notice must be made either personally or by regular United States Mail. If the notice is mailed, the notice will be complete 3 days after deposited in the United States Mail, postage paid, and addressed as required in this Section. Notice of change of address of the Entity or the City will be given pursuant to this Section. Until the City gives its Notice of Acceptance, the Entity will provide the City with notice of any change in the Entity's address within ten (10) days following that change. After the Final Payment, the Entity will notify the City of any change in the Entity's address within thirty (30) days following that change.

38. Counsel Obtained; Signature Authority. The parties to this Agreement 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, hereby execute this Agreement. Each individual signing this Agreement warrants he or she has full authority to sign.

39. Required Signatures. This Agreement will not be binding upon the City until all signatures required below have been obtained. The parties agree that this Agreement may be electronically signed and that the electronic signatures appearing on the agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

CITY OF ALBUQUERQUE

ENTITY: Boomalli Consulting Pty, LTD

By: _____
Dr. Shelle Sanchez, Director
Department of Cultural Services

By: _____
Shannon Barnes

Date: _____

Date: _____
Australian ACN Number

By: _____
Mark Motsko, CIP Official
Department of Municipal Development

Date: _____

By: _____
Jennifer Bradley
Chief Purchasing Officer

Date: _____

By: _____
Esteban Aguilar
City Attorney

Date: _____

By: _____
Sarita Nair
Chief Administrative Officer

Date: _____

Exhibit B

Artifacts:

- 1 entry smoking dish
- 6 styles of didgeridoo
- 8 coolamon
- 1 water tight coolamon for water station
- 2 light style coolamon at café
- 24 mini coolamons for garden (children)
- 24 mini gunnays for garden (children)
- 4 spear
- 2 Traditional headpiece
- 2 x Collection of seven boomerangs
- 30 sets of clapsticks (27 for overnight camp)
- 2 Battle shield
- 5 woomera
- 5 kangaroo skins
- 5 emu callers
- 5 nulla
- 5 bull roarer
- 3 message sticks
- 4 gunnay

Exhibit C

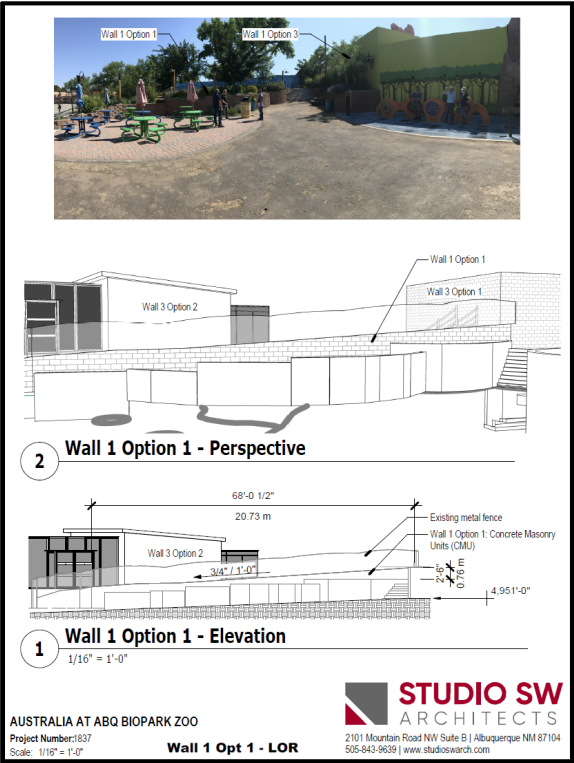
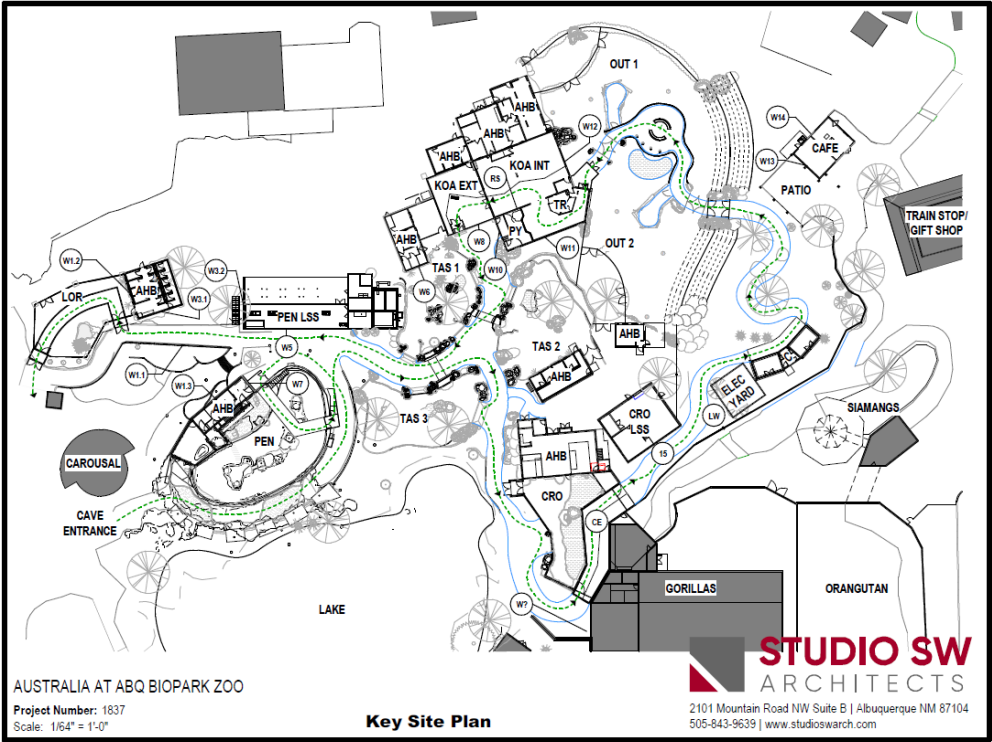


Exhibit C

