

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF DENTON AND THE GREATER DENTON ARTS COUNCIL, INC., FOR THE PAYMENT AND USE OF HOTEL TAX REVENUE IN SUPPORT OF ART EXHIBITIONS AND PROGRAMMING; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, TEX. TAX CODE §351.101(a) authorizes the CITY to use revenue from its municipal hotel occupancy tax to promote tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes the CITY to contract with independent entities, for programs and activities of the type funded with revenue from the municipal hotel occupancy tax; and

WHEREAS, the agreements and amounts have been reviewed and approved by the Community Partnership Committee and the City Council deems use of the funds are in the public interest; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The above recitals are true and correct and are incorporated herein as if fully set forth herein

SECTION 2. The City Manager, or designee, is hereby authorized to execute an agreement between the City of Denton and the Greater Denton Arts Council, Inc. for the payment and use of hotel tax revenue, under the terms and conditions contained in the agreement, a copy of which is attached hereto and made a part hereof.

SECTION 3. This Ordinance shall become effective immediately upon its passage and approval.

The motion to approve this Ordinance was made by _____ and seconded by _____; the Ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____

Brandon Chase McGee, At Large Place 5: _____

Jill Jester, At Large Place 6: _____

PASSED AND APPROVED this the _____ day of _____, 2024.

GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Susan Keller

**AGREEMENT BETWEEN THE CITY OF DENTON AND THE GREATER DENTON
ARTS COUNCIL, INC. (PROGRAM YEAR 2025) PROVIDING FOR THE PAYMENT
AND USE OF HOTEL TAX REVENUE**

THIS AGREEMENT made between the City of Denton, Texas, a municipal corporation (the “CITY”), and the Greater Denton Arts Council, Inc., a non-profit corporation incorporated under the laws of the State of Texas (the “GDAC”).

WHEREAS, TEX. TAX CODE §351.002 authorizes CITY to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, CITY has provided for the assessment and collection of a municipal hotel occupancy tax in the city of Denton of seven percent (7%); and

WHEREAS, TEX. TAX CODE §351.101(a) authorizes CITY to use revenue from its municipal hotel occupancy tax only to promote tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, GDAC is well equipped to perform those activities; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes CITY to delegate by contract with GDAC; as an independent entity, the management and supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax;

NOW, THEREFORE, in consideration of the performance of the mutual covenants and promises contained herein, CITY and GDAC agree, and contract as follows:

I. HOTEL TAX REVENUE PAYMENT

1.1 Consideration. For and in consideration of the activities to be performed by GDAC under this Agreement, CITY agrees to pay to GDAC a portion of the hotel tax revenue collected by CITY at the rates and in the manner specified herein (such payments by CITY to GDAC sometimes herein referred to as the “agreed payments” or “hotel tax funds”).

1.2 Definitions.

(a) As used in this Agreement, the following terms shall have the following specific meanings:

(i) The term “hotel tax revenue” shall mean the gross monies collected and received by CITY as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Texas Tax Code §351.002 and City Ordinance. Hotel tax revenue will include penalty and interest related to the late payments of the tax revenue by the taxpayer.

(ii) The term “Collection period” will mean the collection period for CITY’s fiscal year. It will include hotel tax revenue due to CITY for the relevant fiscal year and collected through the 22nd day of the month following the close of the relevant fiscal year.

(iii) The term “base payment amount” shall mean a net amount of money equal to the total hotel tax revenue collected by CITY during any relevant period of time (*i.e.*, fiscal year or fiscal quarter), less: (1) attorney and auditing costs incurred during such relevant period of time for costs of collection or auditing of hotel taxpayers (attorney and auditing costs include fees paid to attorneys or agents not in the regular employ of CITY for which attorneys or agents effect compliance or collection of the hotel tax from taxpayers); and (2) court costs and other expenses incurred in litigation against, or auditing of, such taxpayers.

(iv) The term “contract quarter” shall refer to any quarter of the calendar year in which this Agreement is in force. Contract quarters will end on March 31st, June 30th, September 30th, and December 31st of each contract year.

(v) The term “Public Art” has the meaning provided in the City of Denton Public Art Policy established in Resolution 2013-021, and attached hereto as Exhibit B.

(vi) The term “tourism” as used in this Agreement means attracting individuals to travel from a residence outside the City of Denton to Denton for business, pleasure, recreation, education, or culture that promotes the convention and hotel industry.

(b) In return for satisfactory performance of the activities set forth in this Agreement and all attachments hereto, CITY shall pay to GDAC an amount of money in each contract year equal to the lesser amount of: seven and fifty-two hundredths percent (7.52%) of the annual base payment amount, or the fixed contract amount of Two Hundred Sixty Thousand Dollars (\$260,400). One hundred thousand dollars (\$100,000) (Initial Payment) will be paid on December 1, 2024, or after the 25th day following the date this Agreement is executed by both Parties, whichever is later. The remaining one hundred and sixty thousand and four hundred dollars \$160,400 of the annual fixed contract amount (Remaining Contract Amount) will be divided into quarterly payments equal to 25% of the Remaining Contract Amount, unless CITY can show with reasonable certainty that the annual base payment amount will be less than originally estimated for the fiscal year. The fourth quarterly payment will represent 25% of the Remaining Contract Amount or the unpaid remainder of 7.52% of the base payment amount, whichever is less.

(c) If CITY’s Chief Financial Officer determines that hotel tax receipts by the CITY are not meeting the anticipated budget projection, CITY may reduce the GDAC’s current budget at any time during the contract period. Each quarterly payment is subject to refund of any unused or improperly expended funds from the prior contract period, and CITY’s timely receipt of the required quarterly reports.

1.3 Dates of Payments.

(a) The term “quarterly payments” shall mean payments by CITY to GDAC of those amounts specified in Section 1.2, above, as determined by the hotel tax revenue collected.

(b) Each quarterly payment shall be paid upon receipt of the required reports, and after the 25th day following the last day of the contract quarter. If any quarterly financial report is not received within thirty (30) days of the end of the applicable contract quarter, the recipient may be held in breach of this Agreement. CITY may withhold the quarterly payment(s) until the appropriate reports are received and approved, which approval shall not be unreasonably withheld.

(c) Initial Payment will be paid on December 1, 2024, or after the 25th day following the date this Agreement is executed by both Parties, whichever is later.

1.4 Other limitations regarding consideration.

(a) The funding of this project in no way commits CITY to future funding of this program beyond the current contract period. Any future funding is solely the responsibility of GDAC.

(b) It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of CITY.

(c) CITY may withhold further allocations if CITY determines that GDAC's expenditures deviate materially from their approved budget.

II. USE OF HOTEL TAX REVENUE

2.1 Use of Funds.

(a) For and in consideration of the payment by CITY to GDAC of the agreed payments of hotel tax funds specified above, GDAC agrees to use such hotel tax funds only for (1) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity, as well as the promotion of tourism through the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major arts forms, as authorized by TEX. TAX CODE §351.101(a)(4). Funds for any calendar year which are unused by midnight December 31st of that year shall be refunded to CITY within thirty (30) days.

(b) GDAC further agrees that art and art related programs that do not promote the convention and hotel industry do not promote tourism and are not eligible to use the Funds provided for in this Agreement.

(c) Advertising materials purchased with the hotel occupancy tax funds must be targeted to reach audiences outside the Denton city limits. These materials include, but are not limited to, signs, posters, postcards, newsletters, print advertising, digital marketing, billboards, radio and television.

(d) Use of at least one hundred thousand dollars (\$100,000) of the Funds paid to GDAC shall be exclusively for Public Art that promotes tourism.

(e) Use of the Funds for Public Art must comply with the City of Denton's Public Art Policy.

(f) GDAC must provide an annual work plan for Public Art and related programs.

2.2 Administrative Costs. The hotel tax funds received from CITY by GDAC may be spent for day-to-day operations, office supplies, salaries, travel expenses and other administrative costs allowed by TEX. TAX CODE §351.101(e), but only if: (i) specified in GDAC's budget attached hereto as Exhibit "A" and incorporated herein for all purposes; and (ii) each such expenditure is directly attributable to work on programs which promote tourism and the hotel and convention industry; and (iii) promotes at least one of the six statutory purposes enumerated within TEX. TAX CODE §351.101(a).

2.3 Specific Restrictions on Use of Funds.

(a) GDAC agrees to demonstrate strict compliance with the record keeping and apportionment limitations imposed by TEX. TAX CODE §351.101(f) and §351.108 (c) and (d). GDAC shall not utilize hotel tax funds for any expenditure, which has not been specifically documented to satisfy the purposes set forth in Sections 2.1 and 2.2 above.

(b) Hotel tax funds may not be spent for travel for a person to attend an event or conduct an activity except where such travel is directly related to the performance of the person's job in an efficient and professional manner and the primary purpose of which is directly related to the promotion of local tourism and the convention and hotel industry.

(c) City's standard HOT Funding contract terms, including use of the funds only for events, festivals and shows that attract overnight tourists to the city, and not for use of direct funding of operations that do not serve the tourism purpose of HOT funds, and including reporting requirements.

(d) Adhere to the City's Public Art Policy, Resolution 2013-021

(e) GDAC to review rental rates, sponsorships, and memberships for additional revenue

(f) GDAC to provide an annual work plan for the public art program

III. RECORDKEEPING AND REPORTING &

ADDITIONAL REQUIREMENTS

3.1 Budget.

(a) GDAC shall adhere to the budget (Exhibit “A”) as approved by the City Council for each calendar year, for all operations of GDAC in which the hotel tax funds shall be used by GDAC. In other words, CITY may audit specifically the purpose of each individual expenditure of hotel tax funds from the separate account relating to hotel tax funds. CITY shall not pay to GDAC any hotel tax revenues as set forth in Section I of this contract during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the Denton City Council, authorizing the expenditure of funds.

(b) GDAC acknowledges that approval of the budget (Exhibit “A”) by the Denton City Council creates a fiduciary duty in GDAC with respect to the hotel tax funds paid by CITY to GDAC under this Agreement. GDAC shall expend hotel tax funds only in the manner and for the purposes specified in this Agreement, TEX. TAX CODE §351.101(a) and in the budget as approved by CITY.

(c) Upon the application or consent of GDAC, the City Manager or their designee may authorize minor amendments to the approved budget as necessary to carry out the intent of this Agreement, in a manner consistent with efficient use of public funds, and in accordance with State law. Such minor amendments may not increase the overall funding set forth in Section 1.2(b), extend the term, or otherwise alter the performance obligations of GDAC, without approval of the City Council by ordinance.

3.2 Separate Accounts. GDAC shall maintain any hotel tax funds paid to GDAC by CITY in a separate account or with segregated fund accounting, such that any reasonable person can ascertain the revenue source of any given expenditure.

3.3 Financial Records. GDAC shall maintain complete and accurate financial records of each expenditure of the hotel tax funds made by GDAC. These funds are required to be classified as restricted funds for audited financial purposes, and may not be used for contracted services, including, but not limited to, auditing fees or attorney fees. Upon reasonable advance written request of the Denton City Council, the City Manager or their designee, or any other person, GDAC shall make such financial records available for inspection and review by the party making the request. GDAC understands and accepts that all such financial records, and any other records relating to this Agreement shall be subject to the Texas Public Information Act, TEX. GOV’T CODE, Ch. 552, as hereafter amended.

3.4 Quarterly Reports. After initial receipt of hotel tax funds, and within thirty (30) days after the end of every contract quarter, GDAC shall furnish to CITY: (1) a completed financial report, (2) a list of the expenditures or copies of the invoices or receipts made with regard to hotel tax funds pursuant to TEX. TAX CODE §351.101(c), social media and/or digital marketing expenditures require invoices to be provided and shall include performance measures, and (3) a copy of all financial records (e.g., copies of front and back cleared checks or bank statements, and other relevant documentation).

GDAC shall prepare and deliver all reports in a form and manner approved by the City Manager or their designee. GDAC shall respond promptly to any request from the City Manager of CITY, or their designee, for additional information relating to the activities performed under this Agreement.

3.5 Notice of Meetings. GDAC shall give the City Manager of CITY, or their designee, reasonable advance written notice of the time and place of all meetings of GDAC's Board of Directors, as well as any other meeting of any constituency of GDAC, at which this Agreement or any matter subject to this Agreement shall be considered.

3.6 Other Sources of Support Funds. GDAC shall perform its best efforts to review rental rates, GDAC sponsorships and memberships to raise additional revenue to support the existing GDAC programs and the Public Art program.

IV. TERM AND TERMINATION

4.1 Term. The term of this Agreement shall commence on January 1, 2024 and terminate at midnight on January 31, 2025. However, the program period shall commence on January 1, 2024, and terminate at midnight on December 31, 2024. Only those expenditures authorized by Chapter 351 of the Texas Tax Code and the program guidelines, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures or unspent funds shall be forfeited to CITY upon termination of this Agreement.

4.2 Termination Without Cause.

(a) This Agreement may be terminated by either party, with or without cause, by giving the other party sixty (60) days advance written notice.

(b) In the event this contract is terminated by either party pursuant to Section 4.2(a), CITY agrees to reimburse GDAC for any contractual obligations undertaken by GDAC in satisfactory performance of those activities specified in Sections 2.1 and 2.2 above, and that were approved by the Council through the budget, as noted in Section 3.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement. Notwithstanding any provision hereof to the contrary, the obligation of CITY to reimburse GDAC, or to assume the performance of any contractual obligations of GDAC, for or under any contract entered into by GDAC as contemplated herein, shall not exceed 66 2/3% of the current quarterly payment.

(c) Further, upon termination pursuant to Section 4.2(a), GDAC will provide CITY: 1) within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60) day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by CITY. If formal approval is not given within ten (10) business days, the budget does not contain any expenditures that would be prohibited by the Texas Tax Code, and is within the current contractual period approved budget, the budget will be considered approved; 2) within

thirty (30) days, a full accounting of all expenditures not previously audited by CITY; 3) within five (5) business days of a request from CITY, a listing of expenditures that have occurred since the last required reporting period; 4) a final accounting of all expenditures and tax funds on the day of termination. GDAC will be obligated to return any unused funds, or funds determined to be used improperly. Any use of remaining funds by GDAC after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

4.3 Automatic Termination. This Agreement shall automatically terminate upon the occurrence of any of the following events:

(a) The termination of the legal existence of GDAC;

(b) The insolvency of GDAC, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by GDAC for the benefit of creditors;

(c) The continuation of a breach of any of the terms or conditions of this Agreement by either CITY or GDAC for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party; or

(d) The failure of GDAC to submit a financial quarterly report which complies with the reporting procedures required herein and generally accepted accounting principles prior to the beginning of the next contract term, or quarterly as required by Section 1.3 hereof.

4.4 Right to Immediate Termination Upon Litigation. Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

4.5 In the event that this Agreement is terminated pursuant to Sections 4.3 or 4.4, GDAC agrees to refund any and all unused funds, or funds determined by CITY to have been used improperly, within thirty (30) days after termination of this Agreement.

V. GENERAL PROVISIONS

5.1 Subcontract for Performance of Services. Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by GDAC with another private entity, person, or organization for the performance of those services described in Section 2.1 above. In the event that GDAC enters into any arrangement, contractual or otherwise, with such other entity, person or organization, GDAC shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement and to TEX. TAX CODE Ch. 351, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the agreed payments and hotel tax funds.

5.2 Independent Contractor. GDAC shall operate as an independent contractor as to all services to be performed under this Agreement and not as an officer, agent, servant, or employee of CITY. GDAC shall have exclusive control of its operations and performance of services hereunder, and such persons, entities, or organizations performing the same, and GDAC shall be solely responsible for the acts and omissions of its directors, officers, employees, agents, and subcontractors. GDAC shall not be considered a partner or joint ventures with CITY, nor shall GDAC be considered, nor in any manner hold itself out as, an agent or official representative of CITY.

5.3 Indemnification. **GDAC AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR INJURIES, DAMAGE, LOSS, OR LIABILITY, OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE BY GDAC OF THOSE SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL OR STATUTORY LAW, OR BASED, IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF GDAC, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES AND INVITEES, OR ANY FEES, FINES OR PENALTIES ASSESSED AGAINST CITY DUE TO MISUSE OF FUNDS BY ORGANIZATION.**

5.4 Assignment. GDAC shall not assign this Agreement without first obtaining the written consent of CITY.

5.5 Notice. Any notice required to be given under this Agreement or any statute, ordinance, or regulation, shall be effective when given in writing and deposited in the United States mail, certified mail, return receipt requested, or by hand-delivery, addressed to the respective parties as follows:

CITY
Sara Hensley
City Manager
CITY OF DENTON
215 E. McKinney
Denton, TX 76201

GDAC
Krissi Oden
President
GREATER DENTON ARTS COUNCIL,
INC.
400 E. Hickory
Denton, TX 76201

5.6 Inurement. This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of CITY and GDAC and their respective successors and assigns.

5.7 Application of Laws. All terms, conditions, and provisions of this Agreement are subject to all applicable federal laws, state laws, the Charter of the City of Denton, all ordinances passed pursuant thereto, and all judicial determinations relative thereto.

5.8 Exclusive Agreement. This Agreement contains the entire understanding and constitutes the entire agreement between the parties hereto concerning the subject matter contained herein. There

are no representations, agreements, arrangements, or understandings, oral or written, express or implied, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. The terms and conditions of this Agreement shall prevail, notwithstanding any variance in this Agreement from the terms and conditions of any other document relating to this transaction or these transactions.

5.9 Duplicate Originals. This Agreement may be executed in duplicate originals.

5.10 Headings. The headings and subheadings of the various sections and paragraphs of this Agreement are inserted merely for the purpose of convenience and do not express or imply any limitation, definition, or extension of the specific terms of the section and paragraph so designated.

5.11 Severability. If any section, subsection, paragraph, sentence, clause, phrase or word in this Agreement, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement, and the parties hereby declare they would have enacted such remaining portions despite any such invalidity.

5.12 Insurance. GDAC shall, at a minimum, provide insurance for the term of this Agreement as follows:

1. \$1,000,000 Commercial General Liability, or \$1,000,000 Event Insurance, covering all events taking place on City-owned property,
2. \$500,000 Liquor/Dram Shop Liability for any event occurring on City-owned property where alcohol will be provided or served, and
3. \$500,000 Business Automobile Liability on any owned, non-owned or hired vehicles.

CITY must be named as an additional insured on all policies (except Workers' Compensation) and proof of coverage shall be submitted prior to any payment made to ORGANIZATION by CITY.

5.13 Incorporation. The recitals in the preamble of this Agreement are incorporated herein as if fully set forth herein.

EXECUTED this _____ day of _____, 2024.

THE CITY OF DENTON, TEXAS

By: _____
SARA HENSLEY,
CITY MANAGER

GREATER DENTON ARTS COUNCIL, INC.

By: _____
PRESIDENT

ATTEST:
LAUREN THODEN, CITY SECRETARY

By: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

By: Susan Keller

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations
and business terms.

SIGNATURE Jessica Williams
PRINTED NAME

Chief Financial Officer
TITLE

Finance
DEPARTMENT

Exhibit A
Greater Denton Arts Council

Various Events

Budget 2025

Advertising

Direct promotion of GDAC & GDAC-sponsored events (magazines & other print advertising, social media, signs, posters, postcards, newsletter)

\$ 8,900

subtotal \$ 8,900

Art

Exhibitions & Programs direct expenses
Exhibition Halls Refresh & Painting
Exhibitions & program staff salary support-partial
Executive Director salary support-partial

\$ 20,000
1,500
90,000
20,000

subtotal \$ 131,500

Convention Center

Facilities staff salary support (manager & building attendants)- partial

\$ 20,000

subtotal \$ 20,000

Public Art

Public Art Programming

\$ 100,000

Total Budget \$ 260,400

City of Denton Public Art Policy

I. Intent and Purpose

The City of Denton's Public Art Policy confirms the commitment that the Denton community has for sustaining and promoting its unique, creative identity. Art enhances the cultural, physical, and psychological environment by enlivening and humanizing public spaces. As stated in The Denton Plan:¹ "Public art provides a number of benefits to the city. It can create interest, create local distinctiveness, provide a memorable image associated with the city or certain districts within the city, lend character to urban spaces, and make the urban environment more attractive."

Denton has experienced a rich tradition of promoting the arts for over a century. The first art course was taught at the University of North Texas (Texas Normal College and Teacher Training Institute) in 1894 and at Texas Woman's University (Girls Industrial College) in 1901. Both art programs have had a significant impact on Denton, which continues today, making it a home for hundreds of professional artists and influencing Denton's visual heritage.

In recognition of the role that public art already plays in Denton, by interpreting its history, character, and aspirations, and of the importance of integrating public art into the daily lives of its citizens, the City of Denton's Public Art Policy is established to achieve the following goals:

- Create distinct, attractive, and inviting public space by including public art as an integral part of the design of spaces and around development.
- Celebrate Denton's cultural heritage and diversity by encouraging collaboration between artists and the community.
- Distinguish Denton's image in the metroplex by providing for the creation of quality public art in locations of prominent stature.
- Foster community education and enjoyment of public art.
- Promote a community environment that attracts artists to live and work, businesses to invest and locate, and residents to thrive.
- Encourage participation in the provision of public art through public and private investment.
- Advance collaboration between the City of Denton and the Greater Denton Arts Council (GDAC) in achieving the goals of this policy.

II. Definition of Public Art

Public art, as defined by this policy, encompasses the broadest definition of visual art including all artistic disciplines. Public art governed by this policy shall be art that is visually or physically accessible to the public and that is acquired by, donated to, and approved by the City of Denton. Public art that is neither paid for with public funds, nor

¹ Denton Plan 1999-2020 Comprehensive Plan of the City of Denton, Texas Policies, Goals, Strategies & Implementation.

created through special conditions by approval of the City of Denton, is not governed by this policy.

III. Policy Administration

The City Council shall establish and appoint a Public Art Committee that will serve in an advisory capacity to the City Council. This Public Art Committee, established by separate ordinance, will make recommendations on the:

- Commissioning, placing, and installing of public art
- Implementation of funding mechanism(s) for public art
- Effective and efficient management of public art
- Ongoing maintenance of public art
- Accessioning, deaccessioning and resiting of public art

The Public Art Committee will provide as appropriate an annual report detailing its goals and accomplishments related to the implementation of this policy.

The Director of Parks and Recreation will serve as the staff liaison to the Public Art Committee for the City of Denton. The Denton City Council will appoint two members representing the GDAC to the Public Arts Committee. The GDAC Board of Directors will nominate these members. The GDAC Executive Director and the Parks and Recreation Director will serve as ex-officio members on the Public Art Committee. The Public Art Committee will develop detailed guidelines outlining all aspects involved with the implementation of this policy.

IV. Community Involvement

The City Council seeks to ensure citizen involvement through the establishment of the Public Art Committee and the review and approval of each public art project. In addition, the Public Art Committee will work with the GDAC and local educational institutions to educate and inform citizens about projects and the process for involvement.

V. Funding

Funding for public art should be realized from both public and private sources to insure a broad and balanced program.

Public Funding

- The City Council will consider placing a standalone bond proposition on future general purpose capital improvement bond authorization elections that, if approved by the voters, will fund public art projects. The amount of each public art bond proposition will be determined by the City Council within a range, if existing priorities so permit, of between 2% and 4% of those portions of the capital improvement bond program authorization election that do not apply to streets, drainage, traffic control, and other related infrastructure. The bond funding to be dedicated to public art is solely contingent upon voter approval of the public art proposition submitted to the voters. This provision only applies to voter approved General Obligation bond issuances.

- The City will establish a separate fund for public art projects. The City will strive to develop resources, and/or contribute funding, for public art projects, approved annually by the City Council, including, but not limited to, projects identified in the public art master plan as amended from time to time. The source of these funds may include proceeds from any funding source deemed appropriate by the City Council including, but not limited to, voter approved Capital Improvement Bond Program Authorization Elections, Certificates of Obligation, or allocations from the City of Denton's operating budget.
- Annually, commencing with program year 2007, at least 2.4% of the total Hotel Occupancy Tax (HOT) revenues will be allocated for public arts projects as allowed under Texas Tax Code 351.103 (c). This represents 16.01% of the 15% maximum that is allowed for the arts category, and allows for sustained funding of existing agencies in the arts category and provides a balance for potentially new agencies. Funding eligibility will be contingent on fulfillment of financial, reporting, and use requirements as outlined by the Hotel Occupancy Tax Program Guidelines.
- Tax abatements to developers that include publicly accessible art as a significant component of the development are outlined in the Denton Policy for Tax Abatement. Under this policy, the City may consider granting an additional 5% tax abatement for projects provided that at least 50% of the additional tax abatement is committed to public art by the applicant.

Private Funding

The City Council, Public Art Committee, and GDAC will actively pursue public and private sources to fund public art initiatives.

- Individuals, businesses and organizations will also be encouraged to make contributions.

With the exception of HOT funds, all other public art funding will be deposited into a separate Public Art Fund established by the City of Denton. These funds will be used to support public art projects as approved by the City Council.

The Public Art Committee will have responsibility for making recommendations for allowable uses of these funds with final approval by the City Council.

VI. Site Selection

As established in The Denton Plan:

- The provision of public art will normally be expected as part of any large development scheme.
- Public art should be considered as an integral part of the design of space in and around development.

- The Public Art Committee should adopt standards to guide the placement of art in public places such as landmarks, view corridors, pockets, traffic circles, and other locations of prominent stature.

Site locations for public art will be identified and recommended by the Public Art Committee to the City Council. As requested by the City Council, the Public Art Committee will make its recommendations to:

- Complement and supplement other planning documents and adopted masterplans.
- Insure visual and physical access by the public.
- Insure suitability and appropriateness of art to the site.
- Provide a balanced and equitable distribution of art in the city.
- Allow for efficient management and maintenance of the art at the site location.

VII. Eligible Projects

The Public Art Committee will be responsible for the development of specific guidelines in making recommendations for eligible projects. In general, eligible projects will include:

- The commissioning of permanent works designed for specific public sites in Denton
- The loan, purchase, or donation of art works
- The installation of short-term projects that result in the creation of temporary or permanent public art

VIII. Art and Artist Selection

The Public Art Committee will develop and adopt specific criteria for the selection of artists and artwork with final approval from the City Council. Methods used for artist selection may include open competition, invitational competition, or direct selection and must comply with all laws, regulations, and city policies governing purchasing.

IX. Ownership and Copyright

Permanent pieces of public art shall be the property of the City of Denton. The City shall own the physical work, with unlimited reproduction rights allowed the City for appropriate promotional and educational purposes. Legal title and copyrights in any work of public art will be spelled out contractually between the City and the artist/owner.

X. Maintenance

Prior to acceptance of any piece of artwork by the Public Art Committee, a recommendation should be developed for its short and long-term maintenance, including a budget for each project. All permanent public art projects must have a maintenance plan that projects both staff time and funding required to properly maintain the work. The City of Denton shall be responsible for the maintenance and management of public art projects approved by the City Council.

XI. Accessioning, Deaccessioning, and Resiting of Public Art

Gift acceptance and placement of public art should be in accordance with historic use and in keeping with the City of Denton general public art goals. The quality, scale, and

character of the gift should be appropriate to the particular setting. Donations of works that require the City of Denton to pay installation, framing, restoration, or repair are not encouraged. The City of Denton will evaluate such expenditures at the time the gift is considered. Works of art requiring high or excessive maintenance may be declined. All donations of art must be approved by the City Council with due consideration given to any Public Art Committee recommendations.

In accordance with the guidelines established by Public Art Committee, the City of Denton shall deaccession and dispose of works of art in its collection only when it finds such action to be in the public interest or as a means of improving the quality of the collection or public safety. Works of public art may be relocated or removed if a gift or commissioned piece becomes a hazard or liability or if the approved terms of acceptance are not fulfilled. Works of art that meet the definition for public art covered by this policy but which came into existence prior to the adoption of the policy will be subject to this same deaccessioning procedure.

XII. Temporary Exhibits

Public art projects may include installations, artist-in-residence programs, and other short-term projects that result in the creation of temporary public art.

XIII. Lending Policy

Artwork may be loaned to other agencies or entities if deemed appropriate by the City Council with due consideration given to any Public Art Committee recommendations. The Public Art Committee will be responsible for recommending criteria for establishing a lending policy.