

**THIRD AMENDMENT TO THE CONTRACT
FOR THE DALLAS MUSEUM OF ART**

This THIRD AMENDMENT TO THE CONTRACT FOR THE DALLAS MUSEUM OF ART (“Amendment”) is executed by and between the City of Dallas, a Texas municipal corporation (“City”) and the Dallas Museum of Art, Inc., a Texas nonprofit corporation (“DMA”).

WITNESSETH:

WHEREAS, the City and the DMA have entered into that certain Contract, dated October 30, 1972, as amended, (“Contract”) relating to the construction of improvements for and the operation of the Dallas Museum of Art located at 1717 North Harwood Street on land owned by the City; and

WHEREAS, the City and the DMA desire to further extend the term of the Contract for a period of twenty years.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the City and the DMA do hereby agree as follows:

1. Sections 2.0 and 8.0 of the Contract are amended to extend the Term of the Contract to **May 1, 2021**.
2. Section 3.0 of the Agreement is hereby amended to add Paragraph 3.2.1 as follows:
 - 3.2.1 DMA’s Responsibility for Business Personal Property. Except to the extent resulting from the sole negligence or fault of the City or its agents, neither the City nor its agents shall be liable or responsible for any damage that may occur due to fire, explosion, flood, power failure or any other cause, to DMA’s business personal property, including, but not limited to goods, merchandise, equipment, or inventory that is kept in the Dallas Museum of Art facility, nor to DMA’s employees, volunteers or invitees personal property or belongings that are brought to the facility.
3. Section 4.0 of the Agreement is hereby amended to add Paragraphs 4.1.1 and 4.1.2 as follows:
 - 4.1.1 Insurance. The DMA shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the term of this Agreement, the insurance described in **Exhibit A** of this Third Amendment, issued by an insurance company or companies licensed to do business in the State of Texas. All insurance policies required of the DMA by this Section shall provide for at least 60 days written notice to the City before cancellation and certificates or copies of policies of insurance shall be delivered to the City, and the form and substance thereof shall be subject to the reasonable approval of the City.
 - 4.1.2 Indemnification. DMA agrees to defend, indemnify and hold City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments,

costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by DMA's breach of any of the terms or provisions of this Contract, or by any negligent or strictly liable act or omission of DMA, its officers, agents, employees or separate contractors, in the performance of this Contract or the use, possession, management and maintenance of the Premises during the Term or any other occurrence on the Premises after the Effective Date of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of City, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of the DMA and City, responsibility and indemnity, if any, shall be apportioned in accordance with the law of the State of Texas, without waiving any governmental immunity available to City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

4. All other terms, provisions, conditions and obligations of the Contract between the City and the DMA, shall remain in full force and effect, and the Contract as previously amended and this Third Amendment shall be construed together as a single contractual agreement.

EXECUTED this the 24th day of May, 2011, by the City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 11-1117, adopted by the City Council on April 27, 2011, and by the DMA, acting through its duly authorized officials.

APPROVED AS TO FORM:
THOMAS P. PERKINS
City Attorney

CITY OF DALLAS
MARY K. SUHM
City Manager


BY: 
Assistant City Attorney

BY: 
Assistant City Manager

RECOMMENDED BY DIRECTOR:

DALLAS MUSEUM OF ART
A Texas nonprofit corporation


Maria Muñoz-Blanco
Office of Cultural Affairs

BY: 
Chair


BY: 
Director

Exhibit A Insurance Requirements

SECTION A. Prior to the approval of this contract by the CITY, DALLAS MUSEUM OF ART (DMA) shall procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to CITY. The insurance shall be evidenced by delivery to the CITY, at the address shown in **REQUIRED PROVISIONS** b.(i), certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, the CITY shall be entitled to receive without expense, copies of the policies and all endorsements. CITY HAS NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT OR AGREEMENT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY and no officer or employee shall have authority to waive this requirement.

SECTION B. The CITY reserves the right to review the insurance requirements of this section during the effective period of the contract and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Management Division of the Human Resources Department based upon economic conditions, recommendation of professional insurance advisors, changes in statutory law, court decisions or other relevant factors. The DMA agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either party to the contract). Upon request by CITY, DMA shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.

INSURANCE COVERAGE REQUIRED

SECTION C. Subject to DMA'S right to maintain reasonable deductibles, DMA shall obtain and maintain in full force and effect for the duration of this contract and any extension hereof, at DMA'S sole expense, insurance coverage in the following type(s) and amounts:

1. **Workers' Compensation** with statutory limits; **Employers Liability** with minimum limits for bodily injury: a) by accident, \$100,000 per each accident b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.
2. **Business Automobile Liability Insurance** covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$500,000 per occurrence.
3. **Commercial General Liability Insurance** including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate. Additional coverage shall include: Fire Legal Liability limit of \$1,000,000; Liquor Liability limit of \$1,000,000 if alcoholic beverages provided. If this insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty-six (36) months following completion of the contract and acceptance by the City. Coverage, including any renewals, shall contain the same retroactive date as the original policy applicable to this contract.

REQUIRED PROVISIONS

DMA agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

- a. Name the City of Dallas and its officers, employees and elected representatives as additional insureds to all applicable coverages.
- b. State that coverage shall not be canceled, nonrenewed or materially changed except after sixty (60) days written notice by certified mail to:
 - (i) Office of Cultural Affairs, Attention: Maria Munoz-Blanco, Director, 1925 Elm Street, Ste. 500, Dallas, Texas 75201 and
 - (ii) Assistant Director, Risk Management Division, Human Resources Department, 1500 Marilla, 6A-South, Dallas, Texas 75201.
- c. Waive subrogation against the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- d. Provide that the DMA'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.
- e. Provide that all provisions of this contract concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- f. Ensure that all certificates of insurance identify the service or product being provided and name the City department shown in **REQUIRED PROVISIONS** b.(i) as the Certificate Holder.

SECTION D. (1) Without limiting any of the other obligations or liabilities of the DMA, the DMA shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the term of the contract, levels of insurance that are necessary and appropriate for the services being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name the DMA as an additional insured. (2) The DMA shall obtain and monitor the certificates of insurance from each Subcontractor. The DMA must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

SECTION E. Approval, disapproval or failure to act by the CITY regarding any insurance supplied by the DMA or its subcontractors shall not relieve the DMA of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate the DMA from liability.

April 27, 2011

WHEREAS, on October 30, 1921, the City and the Dallas Museum of Art ("DMA") entered into a contract relating to the operation of the Dallas Museum of Art ("Art Museum"), formerly located in Fair Park and presently located at 1717 North Harwood Street in the Dallas Arts District;

WHEREAS, on September 12, 1984, by Resolution No. 84-2917, City Council authorized the First Amendment to the contract in connection with the relocation of the Art Museum to its present location, pursuant to which the parties agreed that the City held and would continue to hold title to the Art Museum land and buildings;

WHEREAS, on October 10, 1990, by Resolution No. 90-3227, City Council authorized the Second Amendment to the contract to provide for the development of an expansion to the Art Museum in the form of the Hamon Building, for which the DMA privately raised over \$30.2 million;

WHEREAS, the DMA has since 1990 secured an additional \$12.8 million for improvements to the Art Museum;

WHEREAS, the DMA provides valuable services on behalf of the City for the management and operation of the Art Museum;

WHEREAS, it is now desirable to authorize a third amendment to extend the contract with the Dallas Museum of Art and to update the terms of insurance and liability;

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the City Manager is hereby authorized to execute, upon approval as to form by the City Attorney, an amendment to the contract to (1) extend the term of the contract for the period May 1, 2011 through April 30, 2021; and (2) update the terms of insurance and liability for the term of the contract.

SECTION 2. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

Distribution: Office of Cultural Affairs
Human Resources / Risk Management

APPROVED BY
CITY COUNCIL

APR 27 2011


City Secretary