LB
05/15/14
Item No. 19

AN ORDINANCE 2014-05-15-0339

APPROVING A PRE-QUALIFIED LIST OF PUBLIC ARTISTS WHOSE SERVICES MAY BE USED TO IMPLEMENT PROJECTS INCLUDED IN THE PUBLIC ART PLAN; AUTHORIZING CONTRACTS FOR SUCH PROJECTS IN AN AMOUNTS NOT-TO-EXCEED THE ELIGIBLE ALLOCATIONS; AND AUTHORIZING PAYMENTS SUBJECT TO THE AVAILABILITY OF FUNDS.

* * * * *

WHEREAS, the Department for Culture and Creative Development advertised a Call for Artists as part of an annual process to update the City's pre-qualified artist list, which contains artist whose services may be used to implement projects included in the City's public art plan ("Projects"), and 156 artist submittals were reviewed and scored by a selection panel; and

WHEREAS, the panel recommended 36 artists for inclusion in the list and the Public Art Board approved this recommendation at is February 19, 2014 meeting; and

WHEREAS, inclusion in this proposed pre-qualified roster does not guarantee a contracting opportunity; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. City Council approves the pre-qualified list of artists and authorizes contracts for services in amounts not to exceed the eligible allocations with artists from the list who are selected to implement the Projects. A copy of the list is attached to this Ordinance as Exhibit I.

SECTION 2. The City Manager, or her designee, is authorized to execute agreements with artists from the list selected to implement the Projects in amounts not-to-exceed the eligible funding. The template agreements attached to this Ordinance as Exhibits II, III and IV shall be utilized to contract with artists for such services, as appropriate.

SECTION 3. This Ordinance shall take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.

PASSED AND APPROVED this 15th day of May, 2014.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Robert F. Greenblum, City Attorney

Agenda Item:	**19 (in consent vote: 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 28A, 28B, 29, 29A, 29B)**
Date:	05/15/2014
Time:	09:40:29 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving a pre-qualified list of public artists whose services may be used to implement public art projects established by the public art plan in an amount not-to-exceed the eligible allocation; authorizing contracts for such projects, and authorizing payments subject to the availability of funds. [Ed Belmares, Assistant City Manager; Felix Padron, Director, Culture and Creative Development]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4	x					
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Exhibit
I

FY 2014

Capital Projects Artist Pool Additions

(L) – denotes San Antonio-based Artist

(TX) – denotes Texas-based Artist outside San Antonio

Artists were ranked according to qualifications and past work, scoring:

a) Artistic merit & conceptual ability
b) Level of public art experience & design/construction proficiency

1. Janet Echelman
2. Megan Geckler
3. Norie Sato
4. Larry Kirkland
5. Cliff Garten
6. Erik Carlson
7. Peter Erskine
8. Catherine Widgery
9. Team: Peter Erskin & Bruce Odland
10. Blessing Hancock
11. Volkan Alkanoglu
12. Paul Sorey
13. Rosario Marquardt
14. Beliz Brother
15. Thomas Sayre
16. Erin Palmer
17. Gail simpson
18. Craig David
19. Paul Henry Ramirez (TX)
20. Suikang Zhao
21. Stu Schechter
22. Pete Beeman
23. Wayne Chabre
24. Osman Akan
25. Bruce Odland
26. George Schroeder (L)
27. Mario Madayag
28. Murray Legge (TX)
29. Sharon Engelstein (TX)
30. Ellen Sollod
31. Rob Ley
32. Tim Prentice
33. Roger Berry
34. Adam Kuby
35. Steve Feren
36. Oscar Alvarado (L)

Exhibit
II

STATE OF TEXAS	§	PUBLIC ART
	§	
COUNTY OF BEXAR	§	FABRICATION & INSTALLATION
	§	
CITY OF SAN ANTONIO	§	AGREEMENT

This Agreement ("Agreement") is made and entered into in San Antonio, Bexar County, Texas, between the CITY of San Antonio ("CITY"), pursuant to Ordinance No. 2012-10-11-0796 passed by City Council on October 11, 2012, and _____ ("ARTIST"), for the fabrication and installation services for CITY's _____.

WHEREAS, City held a Bond Election on May 12, 2012 and received approval from the voters to fund a variety of _____ Improvements including allocation of funds for construction, acquisition and development of public art and design enhancements related to the _____(Project from Proposition __ on the ballot); and

WHEREAS, the City and voters approved allocating 1% of the fund from Proposition ___ to public art which was communicated to voters in official materials that the City is bound by; and

WHEREAS, the City issued an RFQ on July 9, 2012 to create a Capital Projects Artist Pool from which ARTIST was chosen to complete Public Improvement related to the approved _____ (Bond project(s)) in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and

WHEREAS, ARTIST has completed and the Public Art Board of San Antonio has approved a design for the ARTWORK which is ready for fabrication and installation; and

WHEREAS, the CITY finds that it is in the best interest of the CITY, its citizens and visitors to enhance and enliven the CITY's public spaces through the fabrication and installation of this ARTWORK on the terms and conditions in this Agreement;

NOW THEREFORE, in consideration of the mutual benefits, covenants and obligations herein, and for other good, fair and valuable considerations, the Parties agree as follows:

TABLE OF CONTENTS

INDEX

SECTION	TITLE	PAGE
1.	DEFINITIONS	3
2.	ARTISTS GENERAL RESPONSIBLITIES	4-8
3.	CITY'S RESPONSIBILITES	8
4.	FINAL PROPOSAL FOR THE ARTWORK	8-9
5.	FABRICATION AND INSTALLATION OF THE ARTWORK	9-12
6.	TERM & SCHEDULE	12
7.	ARTIST'S COMPENSATION	13-14
8.	ARTIST'S WARRANTIES	14-15
9.	MAINTENANCE	15
10.	ARTIST IS INDEPENDENT CONTRACTOR	15-16
11.	INDEMNIFICATION	16-17
12.	INSURANCE	17-19
13.	COPYRIGHTS	19-20
14.	REPUTATION AND CREDIT	20-21
15.	COMPLIANCE WITH LAWS	21-22
16.	DEFAULT/TERMINATION AND/OR SUSPENSION	22-24
17.	ASSIGNMENT	24
18.	SUBCONTRACTS	25
19.	NOTICE	25-26
20.	PROTECTION OF PERSONS AND PROPERTY	26-28
21.	CONFLICT OF INTEREST	28-29
22.	GIFTS TO PUBLIC SERVANTS	29
23.	VENUE	29
24.	RIGHT TO AUDIT CONTRACTOR'S RECORDS	30
25.	MISCELLANEOUS	30-31

ATTACHMENTS:	Exhibit A-1	SCHEDULE OF PERFORMANCE
	Exhibit B-1	PAYMENT SCHEDULE
	Exhibit C-1	FINAL PROPOSAL FOR ARTWORK

SECTION 1. DEFINITIONS

The following terms in this Agreement shall have the meanings set out below:

1.0. "Acceptance Notice" means the final notice by CITY to ARTIST that the completed ARTWORK is installed at the SITE and meets the requirements of this Agreement.

1.1. "ARTWORK" means the design and art fabricated and installed consistent with ARTIST'S final proposal to be submitted for review and approval of CITY.

1.2. "ARTIST" is _____.

1.3. "Board" means the Public Art Boards of the CITY.

1.4 "CITY" means the CITY of San Antonio, Texas, a home-rule, Texas Municipal Corporation located in Bexar County, Texas. CITY shall also designate one or more authorized representative who shall have the authority to represent and act for CITY. If no representative is specified, City Manager or her authorized representative shall be deemed authorized to act.

1.5. "Completion Notice" means notice by ARTIST to CITY that ARTWORK has been installed at the SITE.

1.6. "Construction Documents" mean the drawings, specifications, and addenda for the ARTWORK, which were developed by ARTIST and approved by CITY.

1.7. "Defects Notice" means notice by CITY to ARTIST that the ARTWORK does not meet the requirements of this Agreement.

1.8. "Design Consultant" means the individual or firm engaged by CITY to design the PROJECT and/or any of their contractors.

1.9. "DIRECTOR" means the Director of the Department for Culture and Creative Development (DCCD).

1.10. "OFF-SITE Element" means an element of the ARTWORK fabricated away from the SITE for later installation as a component of the ARTWORK.

1.11. "OFF-SITE Defects Notice" means notice by CITY to ARTIST that defects or deficiencies of an OFF-SITE element do not meet the CITY's requirements for formal approval.

1.12. "PASA" means Public Art San Antonio, which is in the CITY's Department for Culture and Creative Development and is responsible for public art.

1.13. "Plans" means the final requirements and specifications which were approved by CITY for fabrication and installation of the ARTWORK.

1.14. "PROJECT" means the _____ capital improvements and public art development undertaking of CITY for which ARTIST's services are to be provided.

1.15. "PROPOSAL" means Artist's Proposal to provide public art design services for this PROJECT.

1.16. "Schedule of Performance" means the schedule for the design, fabrication and installation of the ARTWORK set out in **EXHIBIT A-1**, attached and incorporated herein.

1.17. "SITE" means the physical place located at _____ where the ARTWORK will be installed.

1.18. "Subcontractor" means a person or entity hired by ARTIST to complete work arising from this Agreement.

1.19. "Transport Notice To Proceed" means a notice issued by CITY to ARTIST approving the transportation of an OFF-SITE element of the ARTWORK to the SITE.

SECTION 2. ARTIST'S GENERAL RESPONSIBILITIES

2.0. The ARTWORK is to be an artistic product representing the creative talents of ARTIST and satisfies the specifications to be set forth in the Final Proposal and the Construction Documents for the ARTWORK. ARTIST shall fabricate the ARTWORK consistent with the Final Proposal and the Construction Documents, which were approved by CITY and include without limitation, supervising all aspects of the fabrication. ARTIST shall be responsible for the transportation, delivery and installation of the ARTWORK to the SITE consistent with the Final Proposal for the ARTWORK.

2.0.0. ARTIST warrants that the ARTWORK, including the Artwork Design, is a unique work of art. ARTIST warrants that he/she will not replicate/duplicate the same ARTWORK or Artwork Design without the express written consent of City. This Clause shall survive termination of this Agreement.

2.0.1. In the event of conflict between the Final Proposal and this Agreement as to any element of the ARTWORK unrelated to the size, scope and/or aesthetic of the ARTWORK itself, this Agreement will control.

2.0.2. ARTIST's opinions of probable project cost or construction cost are to be made on the basis of ARTIST's experience and qualifications representing ARTIST's best judgment as a design professional familiar with the construction industry.

2.0.3. If ARTIST provides ARTWORK knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations, the ARTIST shall assume appropriate responsibility for such ARTWORK and bear the costs attributable to the correction thereof.

2.1. DEVIATIONS FROM PROPOSAL. It is understood that changes from the Final Proposal may become desirable as the ARTWORK is fabricated.

2.1.0. Certain specifications regarding the ARTWORK, including, but not limited to, the size, color and/or type or grade of material of some of the elements of the ARTWORK may not be identified in either the Final Proposal or the Construction Documents. To the extent that any ARTWORK specification remains unidentified, ARTIST shall seek CITY's prior written approval of these specifications before commencing fabrication of the ARTWORK.

2.1.1. The Parties also recognize that shifts in scale from preliminary drawings and maquette to a full-scale work may require artistic adjustments. ARTIST reserves the right to make minor adjustments to the ARTWORK as ARTIST deems aesthetically necessary. However, in no event may a change in design increase the ARTWORK budget or require a modification of the Construction Documents without CITY's prior written approval.

2.1.2. MATERIAL DEVIATIONS. Any material deviation from the Final Proposal or the Construction Documents in the scope, design, color, size, material, utility requirements, support requirements, texture and/or location of the ARTWORK must be approved in writing and in advance by CITY before ARTIST proceeds with completion of the ARTWORK. Material deviation also includes any change from the Final Proposal or the Construction Documents, which affects the fabrication, schedule of delivery or installation of the ARTWORK, preparation of the SITE and/or maintenance of the ARTWORK.

2.2. ADDITIONAL SERVICE AUTHORIZATION. No services for which ARTIST seeks additional compensation will be provided nor charged without CITY's prior written authorization.

2.3. PERSONNEL. ARTIST is responsible for providing, at ARTIST's expense, all personnel required by ARTIST to fulfill the responsibilities and obligations in this Agreement. All persons retained by ARTIST shall possess the requisite licenses and permits.

2.4. REPRESENTATIVES. Before starting installation, ARTIST shall designate in writing an authorized representative who will have the authority to represent and act for ARTIST and be present at the SITE of the work at such times as designated by the CITY.

2.5. COORDINATION. The Parties shall closely consult with each other during all stages of design, fabrication and installation of the ARTWORK. ARTIST agrees to meet with CITY, Design Consultant, and others as reasonably directed by CITY to ensure coordination of ARTIST's fabrication and installation of the ARTWORK.

2.6. PERMITS, FEES AND NOTICES. Unless otherwise provided in the Agreement, the ARTIST shall give notices as required by law, and secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper fabrication

and installation of the ARTWORK. CITY shall assist ARTIST, when reasonably requested, in obtaining such permits and licenses.

2.7. USE OF SITE. ARTIST will abide by all applicable rules and regulations of the CITY with respect to conduct, including smoking, parking of vehicles, security regulations and entry into adjacent facilities owned by the CITY.

2.7.0. ARTIST shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall ARTIST subject any part of the ARTWORK or adjacent property to stresses or pressures that may endanger it.

2.7.1. ARTIST shall confine ARTIST's construction equipment, the storage of materials and equipment and the operations of ARTIST's personnel to areas permitted by law, ordinances, permits and the requirements of the Agreement and shall not encumber the SITE unreasonably.

2.7.2. The ARTIST shall provide reasonable access to residents and businesses affected by the fabrication and installation of the ARTWORK to the greatest extent possible.

2.7.3. During the fabrication and installation of the ARTWORK, ARTIST shall keep the SITE and surrounding area free from accumulations of waste materials, rubbish, and other debris resulting from fabrication and/or installation of the ARTWORK. ARTIST shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units, operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of resulting debris. ARTIST shall be given three days notice to clean the SITE, otherwise the CITY may do so and the cost will be charged to the ARTIST

2.7.4. Prior to Substantial Completion of the ARTWORK, ARTIST shall remove all waste materials, rubbish and debris from and about the SITE as well as all tools, appliances, excess materials, construction equipment and machinery, and shall leave the SITE clean and ready for acceptance by CITY. ARTIST shall restore to their original condition those portions of the SITE not designated for alteration by the Agreement. If the ARTIST fails to clean the SITE as provided in the Agreement after three days notice from CITY, the CITY may do so and the resulting cost will be charged to the ARTIST.

2.8. REVIEW OF PROGRESS AND REPORTS. At reasonable times and with advance notice to ARTIST, CITY has the right to review the work in progress and to require and receive progress reports from ARTIST. CITY has the right to visit ARTIST's studio at all reasonable times to inspect and review the progress of the ARTWORK. ARTIST is responsible for arranging with ARTIST's subcontractors for reasonable access for review and inspection of the ARTWORK at any subcontractor's place of business.

2.9. RISK OF LOSS. Until the ARTWORK is formally accepted by CITY, any damage, theft, vandalism, or acts of God or nature affecting the ARTWORK are the responsibility of ARTIST, including, but not limited to, any loss occurring during the fabrication, storage, transportation, delivery or installation of the ARTWORK.

2.10 PREVAILING WAGE. The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to construction work performed on the CITY funded portion of this Agreement. ARTIST agrees that its construction contractor performing work on the CITY funded portion of the PROJECT will comply with Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

2.10.0. In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, ARTIST shall request upon advertisement of construction bids and CITY will provide the appropriate wage determination which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. With respect to the City funded portion of the ARTWORK, the ARTIST is required, and shall require its construction contractor and all subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time. The ARTIST is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with any contractor and subcontractors for construction of ARTWORK. ARTIST is responsible for and shall collect and monitor weekly certified payrolls and perform SITE visits to ensure the prevailing wage is paid to all workmen.

2.10.1. CITY will audit certified payroll records as deemed necessary by CITY to confirm compliance with this Agreement. Upon audit of the records and certified payrolls, should there be any violations the ARTIST or ARTIST's subcontractor shall forfeit as a penalty to the CITY $60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the stipulated rates for any work done under said contract, by the contractor or any subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code does not relieve Artist from its obligation under any federal or state law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement.

2.11. INTERNET-BASED PROJECT MANAGEMENT SYSTEMS. At its option, CITY may administer this Agreement through an Internet-based management system. In such cases, ARTIST shall communicate through this media and perform all Agreement related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, or payment requests and processing, Amendments, Change Orders and other administrative activities. When such systems are employed, the CITY shall administer the software, shall provide training to ARTIST and ARTIST's personnel, and shall make the software accessible via the Internet to ARTIST and ARTIST's personnel.

2.12. Tax Identification Number. No later than the date of ARTIST's execution of this Agreement, ARTIST will provide CITY with ARTIST's Tax Identification Number and any proof of ARTIST's Tax Identification Number as requested by CITY. ARTIST shall notify CITY of any change in ARTIST's Tax Identification Number.

SECTION 3. CITY'S RESPONSIBILITIES.

3.0. SITE Information. CITY is responsible for providing ARTIST, at no cost to ARTIST, copies of existing designs, drawings, reports, and other existing relevant SITE data, if any are required by ARTIST.

3.1. CITY is under no obligation to supervise the ARTIST's performance of services under this Agreement but may help facilitate meetings with the community, Board and other stakeholders.

SECTION 4. FINAL PROPOSAL FOR ARTWORK

4.0. ARTIST shall perform the following services to the satisfaction of CITY and within the deadlines set forth in **Exhibit A-1 Schedule of Performance** and in compliance with the attached **Exhibit C-1 Final Proposal for ARTWORK**.

4.1. Final Proposal for ARTWORK. ARTIST'S Final Proposal for the ARTWORK, attached and incorporated herein, should show the details of the ARTWORK including indication of form, scale, proposed materials (samples to be provided when appropriate) and information on structural considerations, surface integrity, permanence, and protection against theft and vandalism. ARTIST is also expected to have a detailed written description of the fabrication and installation method, detailed fabrication and installation schedule and the description of any operational, maintenance and conservation requirements for the ARTWORK.

4.2. Construction Documents. The Construction Documents should depict both the fabrication and installation of the Artwork as proposed and conform to all applicable federal, state and local laws and regulations. If applicable or upon request by CITY, any and all drawings must be certified by a qualified engineer or architect, licensed by the State of Texas. Construction Documents should include the following unless notified otherwise by CITY:

A. plans on reproducible sheets measuring 24 inches by 36 inches, and provided in digital PC-compatible format;

B. all engineering calculations associated with the submitted Construction Documents; and

C. specifications for ARTWORK including a final budget estimate listing the quantities and unit prices for fabrication and installation of ARTWORK including itemized cost for materials including applicable sales tax; OFF-SITE fabrication costs;

itemized General Contractor and sub-contractor costs; permits or other fees; insurance; transportation of the ARTWORK to SITE; and itemized installation costs.

4.3. CITY's approval of the Construction Documents and/or Final Proposal for the ARTWORK shall not release ARTIST of the responsibility for correcting mistakes, errors or omissions, proximately caused by ARTIST which may be the result of circumstances unforeseen when the Plans were developed or approved.

SECTION 5. FABRICATION AND INSTALLATION OF THE ARTWORK

5.0. INSPECTION NOTICE. CITY and ARTIST agree that various elements of the ARTWORK may be fabricated at locations away from the SITE (collectively, "OFF-SITE Elements"). The OFF-SITE Elements, include, but are not limited to, the elements described in the ARTWORK Design Development Proposal and Construction Documents. ARTIST shall notify CITY in writing when each element of the ARTWORK is ready for inspection, prior to transporting the OFF-SITE Elements to the SITE ("Inspection Notice"). CITY has the right to inspect each of the OFF-SITE Elements and all other aspects of the construction of ARTWORK.

5.1. NOTICE TO COMMENCE WORK. Within 15 business days of CITY's receipt of the Inspection Notice for each of the OFF-SITE Elements, CITY will inform ARTIST in writing that either: (1) the OFF-SITE Elements have been completed in accordance with this Agreement and are formally approved in writing for transport to the SITE ("Transport Notice To Proceed"); or (2) there are identified defects or deficiencies in the OFF-SITE Elements which prevent formal approval ("OFF-SITE Defects Notice"). If an OFF-SITE Elements is fabricated outside the CITY limits, the CITY may, at its sole discretion, delay inspection until the OFF-SITE Elements is delivered to the SITE. If CITY fails to issue the Transport Notice to Proceed or the OFF-SITE Defects Notice within the 15 business days inspection period, the Transport Notice To Proceed will be deemed issued at the end of 15 business days. In the event that CITY issues an OFF-SITE Defects Notice, ARTIST will promptly remedy any defects to the reasonable satisfaction of the CITY.

5.2. DELIVERY. Upon issuance of the Transport Notice To Proceed, ARTIST shall deliver the OFF-SITE Elements to the SITE. ARTIST shall coordinate with the CITY regarding the time, place and manner of the ARTWORK delivery and installation. CITY shall have the right to inspect the OFF-SITE Elements at the time each arrives at the SITE to determine if there is any damaged from transit or any deviations from the OFF-SITE Element previously approved by CITY or from the terms of this Agreement. ARTIST will promptly remedy any deviation, defect or damage to the Off-SITE Elements to the reasonable satisfaction of the CITY.

5.3. PLANS. ARTIST shall cause all labor and material incorporated in the ARTWORK to be furnished in accordance with the requirements and specifications approved by CITY including the Construction Documents, drawings and schedule (collectively, the "Plans"). The Plans, once approved by CITY, are final and, except as expressly provided in this subsection, no revisions shall be permitted except with CITY's prior written approval.

5.3.0. CITY's approval of the Plans shall not release ARTIST of the responsibility for the correction of ARTIST's mistakes, errors or omissions in the PLANS, including any mistakes, errors or omissions resulting from unforeseen circumstances. If public safety issues arise that, require any change to the Plans as determined at CITY's sole discretion, CITY can require ARTIST to address the public safety issues. ARTIST shall then propose modifications to the CITY for review and approval provided such modifications do not increase the TOTAL PRICE.

5.3.1 All completed drawings submitted by ARTIST for final approval or issuance of a permit that require the seal and certification of a licensed engineer or architect shall bear the seal with signature and date of a Texas registered architect/engineer licensed to practice in Texas.

5.4. WORK AT THE SITE

5.4.1. INSTALLATION. ARTIST will install the ARTWORK at the SITE, including without limitation, supervising the work of any subcontractors and coordinating the inspection of the installation of ARTWORK with the CITY. The ARTWORK will not be formally accepted until CITY issues the Acceptance Notice approving the ARTWORK installation at the SITE.

5.4.2. CITY'S ACCESS TO SITE. CITY's staff and designated representatives shall have free access to the ARTWORK for inspection purposes at all times during the installation of the ARTWORK at the SITE. If CITY determines that all or any portion of the work done on the ARTWORK is not in compliance with the Plans, CITY shall notify ARTIST of the same and ARTIST will promptly cure such defect to the reasonable satisfaction of CITY.

5.4.3. Whenever the ARTIST or ARTIST's authorized Representative are not present on the SITE and it becomes necessary to give direction for safety reasons, the DCCD Director or his designee shall have the right to give orders, which shall be obeyed by ARTIST's subcontractor and/or employees. At ARTIST's request, any order given by the DCCD Director or his designee will be confirmed in writing.

5.5. COMPLETION OF SERVICES.

5.5.0. COMPLETION NOTICE. ARTIST shall notify CITY when the ARTWORK is fully installed at the SITE ("Completion Notice"). Within 30 days of CITY's receipt of the Completion Notice, CITY shall notify ARTIST in writing that the ARTWORK as completed and installed meets the Agreement's requirements through an Acceptance Notice or if the ARTWORK does not meet this Agreement's requirements, CITY shall send ARTIST a Defects Notice.

5.5.0. REMEDY OF DEFECTS. ARTIST shall promptly remedy at ARTIST's own cost any defects noted in CITY's Defects Notice to CITY's reasonable satisfaction.

5.5.1. MAINTENANCE INSTRUCTIONS. As a condition of CITY's acceptance of the ARTWORK, ARTIST shall supply CITY with written maintenance instructions for the ARTWORK. These instructions shall include information in sufficient detail regarding the proper care, repair and maintenance of the ARTWORK.

5.5.2. FINAL DOCUMENTATION. As a condition of CITY's acceptance of the ARTWORK, ARTIST shall supply CITY with at least three publication quality images of the installed ARTWORK in both slide and digital formats and other information on the ARTWORK requested by CITY for its registration files. Use of these images will be in accordance with this Agreement.

5.5.3 ARTIST shall be available at such time or times as may be agreed upon between CITY and ARTIST to attend an inauguration or presentation ceremonies relating to the transfer of the ARTWORK to CITY.

5.6. DEATH OR INCAPACITY OF ARTIST. In the event of ARTIST's physical incapacity or death prior to the completion of the ARTWORK, all payments made up to the point of incapacity or death will be retained by ARTIST and all work performed to date of incapacity or death will be compensated. Upon payment, the incomplete ARTWORK and any materials paid for by CITY will become CITY property. However, if the ARTWORK is substantially designed and/or completed and it is feasible for the ARTWORK to be fully completed without undue delay while remaining faithful to the ARTIST's design, integrity and reputation, CITY may elect to proceed, under this Agreement, with completion and/or installation by ARTIST's REPRESENTATIVE. All remaining work to be completed in accordance with this Agreement will be delegated to: [NAME, ADDRESS, PHONE NUMBER] ("REPRESENTATIVE").

SECTION 6. TERM AND SCHEDULE.

6.0. This Agreement commences upon execution by all the Parties on _____, 2014 and shall terminate upon completion of all services required by this Agreement or _____, 20__, whichever date is sooner, unless either Party terminates this Agreement earlier in accordance with the terms herein.

6.1. ARTIST is to complete the services required of ARTIST herein in accordance with the schedule set out in the attached **EXHIBIT A-1**, entitled "Schedule of Performance".

6.1.0. Prior to commencement of the work, the Parties shall mutually agree to an inspection schedule, which may be adjusted from time to time by mutual written agreement.

6.1.1. When work is not in progress and/or suspended, arrangements acceptable to the CITY shall be made for any required emergency work.

6.2. TIME. All limitations of time set forth in this Agreement are material and time is of the essence in the performance of ARTIST's services under this Agreement.

6.3. FORCE MAJEURE. CITY or ARTIST may grant temporary relief from any deadline for performance of any term of this Agreement if either Party is prevented from compliance and performance by an act of war, order of legal authority, act of God, terrorism, social unrest, strike, natural disaster, supply shortage, or other unavoidable cause not attributed to the fault or negligence of the Party. To obtain an extension based upon Force Majeure, ARTIST must provide written notice to CITY of the occurrence of the Force Majeure event within 10 days following the date that ARTIST becomes aware of the event and the fact that it will delay ARTIST's performance under this Agreement. CITY will not unreasonably withhold consent.

SECTION 7. ARTIST'S COMPENSATION.

7.0. COMPENSATION. ARTIST's total compensation for full and timely completion of the services required by this Agreement is **$_____** (the "TOTAL PRICE"). Such payment shall be full and complete compensation for work performed and services rendered by or on behalf of ARTIST, including, but not limited to, professional services and expenses, for all supervision, labor, supplies, materials, equipment or use thereof and for all other necessary incidentals. CITY is not obligated to compensate ARTIST unless and until CITY accepts the ARTWORK.

7.0.1 Payment Schedule. CITY shall make interim payments to ARTIST in the amounts and at the milestones as identified in the Payment Schedule, attached and incorporated as **Exhibit B-1**, as compensation to assist ARTIST with financing the fabrication, delivery and installation of the ARTWORK. The form of the invoice shall be subject to the reasonable approval of the CITY. Within 30 days of CITY's receipt of ARTIST's invoice indicating the appropriate milestone has been reached, CITY will pay ARTIST the amount allocated in the Payment Schedule.

7.0.2. Parties agree that the Payment Schedule may be modified only upon prior written authorization of the CITY and ARTIST. CITY's PASA Program Manager may approve changes, which are not considered material by CITY.

7.1. COST OVERRUN. If ARTIST incurs costs over the TOTAL PRICE, ARTIST will pay such excess at ARTIST's sole cost. CITY is not responsible for any part of such excess.

7.1.0. In the event that work for which the CITY has been invoiced does not meet the requirements of this Agreement, CITY in its sole discretion has the right to withhold payment until such deficiency is corrected. In such event, CITY shall provide detailed written notice to ARTIST within 10 days of receipt of such invoice, specifying the failure of performance for which CITY intends to withhold payment. ARTIST shall work to cure such failure in order to meet the Agreement standards as determined by CITY.

7.2. NO WAIVER OF RIGHTS. No payment to ARTIST for any work performed or services rendered shall constitute a waiver or release by CITY of any claims, rights or remedies CITY may have against ARTIST under this Agreement or by law, nor shall such payment constitute a waiver by the CITY of any failure or fault of ARTIST to perform satisfactorily under

this Agreement. ARTIST expressly acknowledges that approval of work to permit an interim payment is solely to permit ARTIST to receive an interim payment. Unless and until the CITY issues an Acceptance Notice for the ARTWORK, no interim approval shall constitute acceptance or approval of the ARTWORK by CITY nor is it a waiver of CITY's right to require that the ARTWORK conform strictly to the approved Plans.

7.3. If CITY approves a modification of the Plans resulting in cost savings such as but not limited to, the deletion of an element, substitution of lesser quality materials with no offsetting upgrade of other materials, or reduction in the size/scale, the cost savings from the modification will not be paid to ARTIST.

7.4. If the Parties mutually agree in writing to a modification of the ARTWORK resulting in an increased cost to ARTIST, including but not limited to the addition of an element, the substitution of more expensive materials, or the increase in size/scale, the resulting cost increases shall be paid to ARTIST.

7.5. If work for which the CITY has received a request for payment does not meet specifications required by this Agreement, CITY in its sole discretion shall have the right to withhold such payment until the deficiency is corrected. In such event, CITY shall provide detailed written notice to ARTIST within 10 days of receipt of such request for payment, specifying the failure of performance for which CITY intends to withhold payment. ARTIST shall cure such failure to the reasonable satisfaction of CITY.

SECTION 8. ARTIST'S WARRANTIES.

8.0. ARTIST warrants that the services required by this Agreement will be performed with the same degree of professional skill and care that are typically exercised by similar professionals performing similar services. ARTIST's installation and fabrication services shall comply with the Plans including the Construction Documents for the ARTWORK approved by CITY. Further ARTIST represents and warrants the following.

8.0.0. ARTIST has not previously sold, assigned, licensed, granted, encumbered, or utilized the ARTWORK, the ARTWORK'S design or any element thereof, in any manner, which may affect or impair the rights granted pursuant to this Agreement.

8.0.1. All work created or performed by ARTIST under this Agreement, whether created by ARTIST alone or in collaboration, is wholly original and will not infringe upon or violate the rights of any third party.

8.0.2. ARTIST has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.

8.0.3. The ARTWORK is a unique edition resulting from the artistic efforts of ARTIST. ARTIST acknowledges that CITY desires that the ARTWORK be unique, and ARTIST agrees not to duplicate the ARTWORK without CITY's written consent.

8.0.4. All services shall be performed in accordance with CITY's Standard Specifications if applicable, which are on file with the CITY's Transportation and Capital Improvements, (TCI). To the extent that the CITY's Standard Specifications conflict with the provisions set forth in this Agreement, this Agreement shall control.

8.0.5. ARTWORK will be delivered free and clear of any liens.

8.1. DEFECTS IN MATERIAL WORKMANSHIP AND INHERENT VICE. ARTIST warrants that the ARTWORK will be free of defects in workmanship, including Inherent Vice, and that the ARTIST will, at the ARTIST's own expense, remedy any defects due to faulty workmanship, or Inherent Vice, which appear within a period of one year from the date the ARTWORK is formally accepted. The term "Inherent Vice" means any quality within the material or materials incorporated into the ARTWORK that alone or in combination result in the unreasonable deterioration of the ARTWORK.

8.1.0 If the ARTWORK deteriorates due to Inherent Vice within one year from the date the ARTWORK receives an ACCPETANC NOTICE from the CITY, ARTIST will repair or replace the ARTWORK without charge for ARTIST's services in supervising the work of others or for repairing the work that they originally performed on the ARTWORK and ARTIST will pay for the cost of labor rendered by persons other than the ARTIST, materials and supplies.

8.1.1. ARTIST further warrants that the ARTWORK shall not constitute any threat to the safety of persons or property when used in the manner for which it is designed. ARTIST agrees to cooperate with CITY in making or permitting adjustments to the ARTWORK if needed to eliminate hazards, which become apparent after the ARTWORK receives an ACCPETANC NOTICE from the CITY.

8.2 These representations and warranties survive this Agreement's termination.

SECTION 9. MAINTENANCE.

9.0. CITY has the right to determine, after consultation with ARTIST or with a professional conservator, when and if repairs and restorations to the ARTWORK will be made. It is the policy of CITY to consult with ARTIST regarding repairs and restoration, which are undertaken during ARTIST's lifetime.

9.1. All repairs and restorations, whether performed by ARTIST, CITY, or third parties, shall be made in accordance with professionally recognized principles of conservation of ARTWORK and in accordance with the maintenance instructions provided to CITY by ARTIST.

SECTION 10. ARTIST IS INDEPENDENT CONTRACTOR.

10.0. ARTIST is an independent contractor and not an officer, agent, servant or employee of CITY and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between CITY and ARTIST.

ARTIST has no authority to bind the CITY. ARTIST shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants.

10.1. CITY shall not be liable for any third party claims, which may be asserted in connection with the performance of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give any third party any legal or equitable right, remedy or claim under or in respect of this Agreement or any authority to enforce this Agreement.

SECTION 11. INDEMNIFICATION.

11.0. The ARTIST, whose work product and services are the subject of this Agreement, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS against any and all claims by third parties, lawsuits, judgments, cost, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY ARTIST'S NEGLIGENT ACT, ERROR, OR OMISSION OF ARTIST, OR OF ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, ARTIST OR SUBARTIST OF ARTIST, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the services, rights or duties under this AGREEMENT. The INDEMNITY provided for in this paragraph shall not apply to any liability resulting from the NEGLIGENCE of CITY, its officers or employees, in instances where such NEGLIGENCE causes personal injury, death, or property damage. IN THE EVENT ARTIST AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.1. ARTIST shall advise CITY in writing within 24 hours of any claim or demand against the CITY or the ARTIST that is known to ARTIST related to or arising out of ARTIST's activities under this Agreement.

11.2. The provisions of this section are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

11.3. Acceptance of the Plans by the CITY shall not constitute nor be deemed a release of the responsibility and liability of the ARTIST, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, work drawings, Plans and Specifications or other documents; nor shall such acceptance be deemed an assumption of responsibility or liability by the CITY for any defect in the designs, work drawings, Plans and

Specifications or other documents prepared by ARTIST, its employees, sub-artists, and agents.

11.4. **THE ARTIST SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST THE CITY AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST THE CITY, TO THE EXTENT THAT THE ARTWORK PROVIDED UNDER THIS AGREEMENT CONSTITUTES AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

11.5. Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of ARTIST, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for ARTIST or any subcontractor under worker's compensation or other employee benefit acts.

SECTION 12. INSURANCE.

12.0. Prior to the commencement of any Services under this Agreement, ARTIST shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY's Department for Culture and Creative Development, which shall be clearly labeled "_____" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the CITY's Department for Culture and Creative Development. No officer or employee other than the CITY's Risk Manager shall have authority to waive this requirement.

12.1. ARTIST's financial integrity is of interest to the CITY. Therefore, subject to the ARTIST's right to maintain reasonable deductibles in such amounts as are approved by the CITY, the ARTIST shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the ARTIST's sole expense, insurance coverage written on an occurrence or claims made basis, as appropriate, by companies authorized and approved to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS

1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence

All notices under this Article shall be given to CITY at the following address:

City of San Antonio
Attn: _Department for Culture and Creative Development
P.O. Box 839966
San Antonio, Texas 78283-3966

12.2. With respect to the above required insurance, ARTIST agrees that all insurance policies are to contain or be endorsed to contain the following required provisions:

- Name the CITY and its officers, officials, employees, and elected representatives as an additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY;
- Provide for an endorsement that the "other insurance" clause shall not apply to the CITY where the CITY is an additional insured shown on the policy if such endorsement is permitted by law and regulations; and
- Provide 30 calendar days advance written notice directly to CITY of any suspension, cancellation or non-renewal or material change in coverage, and not less than 10 calendar days advance written notice for nonpayment of premium.

12.3. Within five calendar days of a suspension, cancellation or non-renewal of coverage, the ARTIST shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend the ARTIST's performance should there be a lapse in coverage at any time during this contract, and such suspension shall

continue until cured. Failure to provide and maintain the required insurance shall constitute a material breach of this contract.

12.4. In addition to any other remedies the CITY may have upon the ARTIST's failure to provide and maintain any insurance or policy endorsements to the extent and within the required time, the CITY shall have the right to order ARTIST to stop performing services and/or withhold any payment(s) which become due to the ARTIST hereunder until the ARTIST demonstrates compliance with the requirements hereof.

12.5. Nothing herein shall be construed as limiting in any way the extent to which the ARTIST may be held responsible for payments of damages to persons or property resulting from the ARTIST's or its sub-artist's performance of the services covered under this Agreement.

12.6. The ARTIST's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the CITY for liability arising out of operations under this Agreement.

12.7. The insurance required is in addition to and separate from any other obligation contained in this Agreement as respects additional insureds.

12.8. ARTIST and any subcontractors are responsible for all damage to their own property and/or equipment.

12.9 If applicable ARTIST shall comply with Texas Government Code Chapter 2253 provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to CITY prior to the start of construction).

SECTION 13. COPYRIGHTS.

13.0. CITY shall have ownership and possession of the Artwork Design upon acceptance of the final Artwork Design Proposal, approval of the Construction Documents and Plans and final payment by CITY. Upon completion of fabrication and installation of the ARTWORK and full payment for the ARTWORK, CITY shall have ownership and possession of the ARTWORK including exclusive right to display the ARTWORK, subject to this Agreement. CITY may make any and all reproductions or derivatives in whatever form of the ARTWORK or Artwork Design for educational, public relations, arts promotional, commercial or any other public purpose and such uses will not result in any additional payments to ARTIST.

13.1. ARTIST retains copyrights and intellectual property and/or patents related to the ARTWORK and the Artwork Design including potentially those patents, related to materials used in the fabrication or installation of the ARTWORK. However, any use of the Artwork Design by ARTIST or any third party must be approved, in advance, by CITY except that ARTIST is expressly allowed to use reproductions of the Artwork Design and documentation of ARTWORK for self-promotion, presentation and portfolio

use.

13.2 If CITY obtains a commercial benefit from the ARTWORK, or Artwork Design, by sale of reproductions or images of same, or by licensing same, revenues received by CITY from such commercial ventures shall be directed to long-term maintenance of the ARTWORK.

13.3. CITY has the exclusive right to display the ARTWORK and Artwork Design, including drawings, models, or any reproduction of the ARTWORK and to loan the ARTWORK, in whole or in part, including to other persons or institutions with authority to display it publicly. CITY acknowledges ARTIST's co-right to display images of the ARTWORK and to display the Artwork Design or images or reproductions of the Artwork Design, and to display or exhibit such images and/or reproductions, including the Artwork Design itself, so long as such display or exhibition is consistent with attribution to the CITY.

13.4. ARTIST expressly consents to both the installation and removal from the PROJECT of the ARTWORK and expressly waives his/her Moral Rights, as defined in the Visual Rights Act 17 U.S.C. § 106(A), to the ARTWORK. Further, ARTIST understands that the incorporation and installation of the ARTWORK into a CITY facility may subject the ARTWORK to destruction, distortion, mutilation, or other modification if and when removed. It is agreed that if the ARTWORK, or any portion thereof is removed causing destruction, distortion, mutilation or modification in any significant way, the ARTWORK may no longer be referred to as "an Artwork by the Artist".

13.5. The clauses in Section 13 shall survive termination of this Agreement.

SECTION 14. REPUTATION AND CREDIT.

14.0. Unless ARTIST requests to the contrary in writing, all references to the ARTWORK and all reproductions of the ARTWORK will credit the ARTWORK to ARTIST.

14.1. CITY may fabricate and install an identification plaque for the completed ARTWORK, which will include the following information: ARTIST's name, year in which ARTWORK is completed, ARTWORK title, funding agency and commissioning agency.

14.2. ARTIST agrees that all formal references to the ARTWORK made or authorized to be made by ARTIST shall include the following credit: "Collection of the City of San Antonio, Commissioned through Public Art San Antonio," or other language agreed to by the Parties.

14.3. ARTIST and ARTIST's contractors and subcontracts shall coordinate any releases of information regarding the ARTWORK to the public and news media with CITY staff. In all communications to the public and news media, the ARTIST must fully and accurately identify

the ARTIST's relationship to the CITY and credit the CITY for its role in funding the PROJECT.

14.4. FUTURE MODIFICATION OR RELOCATION. Removal or relocation of the ARTWORK, if practical and economically feasible as determined by CITY, in its sole discretion, will occur in conformity with the CITY's Public Art Policy. CITY's decisions regarding removal or relocation of the ARTWORK is final and may occur at any time.

14.4.0. CITY has the right to remove the ARTWORK from the SITE at any time. In addition, in the event that any element of the ARTWORK constitutes a public safety hazard, CITY has the right to remove only the element posing the public safety hazard without prior written notice to ARTIST.

14.4.1. CITY has the right to donate or sell the ARTWORK at any time. Before exercising this right, CITY shall give ARTIST 30 days from issuance of written notice to ARTIST to purchase the ARTWORK for the greater of the TOTAL PRICE or market value, plus all costs associated with the removal of the ARTWORK from the SITE, clean-up of the SITE and delivery to ARTIST.

14.4.2. CITY agrees to not intentionally modify the ARTWORK without providing ARTIST prior written notice. Should the need arise; CITY may negotiate with ARTIST to conduct or supervise ARTWORK restoration.

14.4.3. ARTIST's rights under this Agreement cease with ARTIST's death and do not extend to ARTIST's heirs, successors or assigns except that ARTIST will still receive credit for the ARTWORK and in the case of death or incapacity of the ARTIST as delineated in Paragraph 5.5.

SECTION 15. COMPLIANCE WITH LAWS.

15.0. ARTIST shall comply with all applicable federal, state and local laws, ordinances, codes and regulations including all CITY applicable construction and development regulations and will use reasonable efforts to ensure compliance by any and all contractors and subcontractors that may work on the ARTWORK.

15.1. NON-DISCRIMINATION. ARTIST understands and agrees to comply with the *Non-Discrimination Policy* of the CITY contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

15.2. None of ARTIST's services shall involve, and no portion of the funds received by ARTIST shall be used to support any sectarian or religious activity.

SECTION 16. DEFAULT/TERMINATION AND/OR SUSPENSION

16.0. TERMINATION WITH CAUSE. Right of Either Party to Terminate for Default

16.0.1. This Agreement may be terminated by either Party for substantial failure by the other Party to perform (through no fault of the terminating Party) in accordance with this Agreement and a failure to cure as provided in this Section.

16.0.2. The Party not in default must issue a signed, written notice of default and intent to terminate (citing this paragraph) to the other Party declaring the other Party to be in default and stating the reason(s) why they are in default. Upon receipt of such written notice of default, the party in receipt shall have a period of 10 days to cure any default. Upon the completion of such 10-day cure period, if such Party has not cured any failure to perform, such termination shall become effective without further written notice.

16.1. RIGHT OF CITY TO TERMINATE. CITY reserves the right to terminate this Agreement for reasons other than substantial failure by the ARTIST to perform by issuing a signed, written notice of termination (citing this paragraph) which shall take effect upon effective notice to ARTIST and/or upon the scheduled completion date of the performance phase in which ARTIST is currently working, whichever occurs first. In the event of termination by CITY without cause, ARTIST shall be entitled to payment for all work performed by or on behalf of ARTIST to date, together with reimbursement for all legitimate expenses incurred by ARTIST up to ARTIST's receipt of such notice.

16.2. RIGHT OF CITY TO SUSPEND GIVING RISE TO RIGHT OF ARTIST TO TERMINATE. CITY reserves the right to suspend this Agreement at the end of any phase for CITY's convenience by issuing a signed, written notice of suspension (citing this paragraph) outlining the reasons for the suspension and the expected duration of the suspension. Such expected duration shall in no way be a guarantee of the length of the suspension. Such suspension shall take effect immediately upon receipt of said notice of suspension by the ARTIST.

16.2.1 ARTIST has the right to terminate if such suspension extends for more than 120 days. ARTIST may exercise this right by issuing a signed, written notice of termination (citing this paragraph) to the CITY after 120 days have passed from the effective date of the suspension. Termination shall be effective upon receipt of said written notice by the CITY. In the event of termination by ARTISTS after such suspension, ARTIST shall be entitled to payment for all work performed by or on behalf of ARTIST, together with reimbursement for all legitimate expenses incurred by ARTIST prior to ARTIST's suspension.

16.3. PROCEDURES ARTIST TO FOLLOW UPON RECEIPT OF NOTICE OF TERMINATION WITH CAUSE. Upon receipt of a notice of termination with cause and prior to the effective date of termination, unless the notice otherwise directs or ARTIST immediately takes action to cure under the set cure period, ARTIST shall immediately

discontinue all services performed in connection with this Agreement and promptly cancel all existing orders and contracts chargeable to this Agreement. Within 30 days after receipt of such notice of termination (unless ARTIST has successfully cured a failure to perform), ARTIST shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. The CITY shall have the option to grant an extension to the time period for submittal of such statement.

16.3.1. Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and exhibits prepared under this Agreement prior to the effective date of termination shall be delivered to the CITY, in the form requested by the CITY as a pre-condition to final payment subject to the restrictions herein.

16.3.2. CITY has a duty to document the use of public funds. To this end, ARTIST understands that failure to comply with the submittal of the statement and documents shall constitute a waiver by ARTIST of any and all rights or claims to payment for services performed under this Agreement by ARTIST.

16.3.3. Upon the above conditions being met, CITY shall pay ARTIST that proportion of the compensation, which the services actually performed bear to the total services called for under this Agreement, less any previous payments.

16.4. PROCEDURES ARTIST TO FOLLOW UPON RECEIPT OF NOTICE OF SUSPENSION. Upon the effective date of suspension, ARTIST shall, immediately phase-out and discontinue all services associated with the performance of this Agreement including promptly suspending all existing orders and contracts chargeable to this Agreement, unless the notice directs otherwise.

16.4.0. ARTIST shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

16.4.1. Copies of all completed or partially completed designs, plans and specifications prepared prior to the effective date of suspension shall be prepared for possible delivery to the CITY but shall be retained by the ARTIST until such time as ARTIST may exercise the right to terminate.

16.4.2. ARTIST shall promptly cancel or suspend all existing orders and contracts chargeable to this Agreement. If ARTIST is terminating, ARTISTS is responsible for submitting to CITY the above mentioned statement showing in detail the services performed prior to the effective date of suspension within 30 days after receipt by the CITY of ARTIST's notice of termination.

16.4.3. Any documents prepared in association with this Agreement shall be delivered to the CITY as a pre-condition to final payment.

16.4.4. ARTIST's failure to comply with this section may constitute a waiver by the ARTIST of any portion of the fee for which ARTIST did not supply such necessary statements and/or documents.

16.4.5. Upon the above conditions being met, CITY shall promptly pay ARTIST that proportion of the prescribed fee, which the services actually performed bear to the total services called for by this Agreement, less any previous payments, together with reimbursement for legitimate expenses incurred by ARTIST up to ARTIST's receipt of such notice.

16.5. COMPENSATION. If CITY terminates, CITY shall pay ARTIST for services performed up to date of termination consistent with this Agreement.

16.6. REMEDIES. The remedies under this Agreement are cumulative and are in addition to the rights available to the Parties at law or in equity. Nevertheless, if ARTIST breaches this Agreement, CITY has the right to exercise its termination rights as described herein and at its option proceed with the fabrication and installation of the ARTWORK without utilizing ARTIST's services. If CITY exercises its option to proceed, then CITY, upon ARTIST's written request will refrain from referencing the ARTWORK as the work of ARTIST.

SECTION 17. ASSIGNMENT

17.0. The expertise and experience of ARTIST are material considerations for this Agreement; therefore, ARTIST shall not assign or transfer any interest in this Agreement nor the performance of any of ARTIST's obligations. Any attempt by ARTIST to assign this Agreement or any rights, duties or obligations arising hereunder shall be void unless prior written consent is given by CITY. This section does not prevent ARTIST, at ARTIST's sole expense, from relying on or utilizing the services of such other consultant or artist as ARTIST may require in completing the ARTWORK.

SECTION 18. SUBCONTRACTS.

18.0. Prior to entering into any subcontractor agreements, ARTIST shall notify the CITY in writing of the names of all proposed first-tier Subcontractors. ARTIST shall not employ any Subcontractor, person or organization (including those who are to furnish the primary materials or equipment), whether initially or as a substitute, against whom CITY may have reasonable objection. A Subcontractor other person or organization identified in writing to CITY prior to the Notice of Award and not objected to in writing by CITY will be deemed acceptable to CITY. However, acceptance by CITY is not a waiver of any right of CITY to reject defective Work. If CITY, after due investigation, has reasonable objection to any Subcontractor, person or organization proposed by ARTIST after the Notice of Award, the ARTIST will be required to submit an acceptable substitute. The Contract Sum will be equitably adjusted for any change in the price of the subcontract work resulting from such substitution. ARTIST is not required to employ any Subcontractor, person, or organization against whom ARTIST has a reasonable objection.

18.1. ARTIST is fully responsible to CITY for all acts and omissions of his/her Subcontractors, persons and organizations directly or indirectly employed and of persons and organizations who may be liable to the same extent that ARTIST is responsible for the acts and omissions of persons directly employed by ARTIST. CITY shall in no event be obligated to any third party, including any sub-contractor of ARTIST, for performance of or payment for work or services.

18.2. All ARTWORK performed for ARTIST by a Subcontractor will be pursuant to a written agreement between ARTIST and the Subcontractor, which specifically binds the Subcontractor to the applicable terms and conditions of this Agreement. Where appropriate, ARTIST shall require each Subcontractor to enter into similar agreements with their sub-subcontractors. ARTIST will make copies of the Agreement available to each proposed Subcontractor, prior to the execution of the subcontract agreement.

SECTION 19. NOTICE

19.0. Submittals, requests, notices and reports (collectively, "Notices") required under this Agreement shall be delivered personally or through the mail, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a party.

For ARTIST:

For CITY:

City of San Antonio
Attn: Department for Culture and Creative Development - Public Art San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

19.1. Notices will be deemed effective on the date personally delivered, faxed, or sent by courier service. Notices which are mailed will be deemed effective three days after deposit in the mail.

19.2. ARTIST agrees for the duration of ARTIST's life, to provide CITY with ARTIST's current mailing address and facsimile number in the event ARTIST's address, as specified above, should change.

SECTION 20. PROTECTION OF PERSONS AND PROPERTY.

20.0. ARTIST shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. ARTIST shall adopt a reasonable safety program/policy applicable to the SITE and to the ARTWORK, which shall be reviewed by CITY

in advance of beginning the ARTWORK installation. While CITY has the right to inspect and verify ARTIST's compliance, ARTIST is responsible for initiating, maintaining and supervising all safety precautions and programs.

20.0.0. ARTIST has adopted or will adopt its own policy to assure a drug and alcohol free SITE. ARTIST's employees, agents, and subcontractors shall not perform any service for CITY while under the influence of alcohol or any controlled substance. ARTIST, its employees, agents, and subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs or alcoholic beverages while performing the ARTWORK. ARTIST will remove any of its employees from performing the ARTWORK any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. CITY has the right to require ARTIST to remove employees any time cause exists to suspect alcohol or drug use or who either refuses to take, or tests positive in, any alcohol or drug test.

20.1. EMERGENCIES. In an emergency affecting safety of persons or property, the ARTIST shall exercise best efforts to act to prevent or minimize threatened damage, injury or loss. ARTIST shall also notify CITY immediately, by telephone with prompt confirmation in writing, of all injuries and fatalities, including but not limited to copies of all reports and other documents filed or provided to ARTIST's insurers and the State of Texas in connection with such injuries or fatalities.

20.2. A breach or violation of this Section by ARTIST will be a material and substantial breach of this Agreement. If CITY reasonably determines the ARTIST has breached or violated this Section, then CITY shall notify ARTIST whether such breach shall necessitate a suspension or termination of the Agreement. If the ARTWORK is suspended, the ARTWORK shall not recommence until CITY is satisfied that the safety breach or violation will not occur again.

20.3. The ARTIST shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: 1) employees and other persons who may be impacted; 2) the ARTWORK and materials and equipment to be incorporated therein, whether in storage on or off the SITE, under the care, custody or control of the ARTIST or the ARTIST's Subcontractors or Sub-subcontractors; and 3) other property at the SITE or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of fabrication or installation of the ARTWORK.

20.3.0. The ARTIST will erect and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying CITY and users of adjacent sites and utilities.

20.3.1. When use or storage of explosives, other Hazardous Materials or equipment or unusual methods are necessary for the execution of the ARTWORK, the

ARTIST shall exercise extraordinary care and shall carry on such activities under the direct supervision of properly qualified personnel.

20.3.2. The ARTIST shall not load or permit any part of the construction or SITE to be loaded so as to endanger its safety or that of others.

20.4. Notwithstanding these provisions, CITY does not warrant nor represent to ARTIST, ARTIST's employees or agents, any subcontractors, or any other third party that ARTIST's safety policy meets the requirements of any applicable law, code, rule, or regulation, nor that the proper enforcement will insure that no accidents or injuries occur. In addition, any action by CITY under these provisions in no way diminishes ARTIST's obligations.

20.5. PUBLIC CONVENIENCE AND SAFETY. ARTIST shall, at all times, place materials stored at the SITE and shall fabricate and install the ARTWORK in a manner that causes no greater obstruction to the public than is reasonably considered necessary by the CITY.

20.5.0 Sidewalks or streets shall not be obstructed, except by special permission of the CITY. Materials excavated and construction materials or plants used in the performance of the ARTWORK shall be placed in a manner that does not endanger the ARTWORK or prevent free access to public infrastructure. The ARTIST shall, when directed by the CITY, keep any street or streets in condition for unobstructed use by CITY departments.

20.5.1. CITY reserves the right to remedy any neglect by ARTIST regarding public convenience and safety, which may come to the CITY's attention, after 24 hours notice in writing to the ARTIST. In case of an emergency, CITY shall have the right to immediately remedy any neglect without notice. In either case, the cost incurred by or for the CITY to remedy the ARTIST's neglect shall be deducted from the TOTAL PRICE due ARTIST.

20.6. If the ARTWORK is carried on, in, or adjacent to any street, alley or public place, ARTIST shall, at the ARTIST's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights arrangements for crossing over ditches or around structures and danger signals, provide sufficient watchmen, and take other precautionary measures as necessary for the protection of persons, property and the ARTWORK. All barricades shall be visible at night, and be illuminated by lights (flares, flashers, or other illuminated devices) from sunset to sunrise. A sufficient number of barricades with adequate markings and directional devices shall also be erected to keep vehicles from driving on or into any ARTWORK under construction. ARTIST is responsible for all damage to the ARTWORK due to failure to protect the ARTWORK. If evidence of such damage is found, CITY may order the damaged portion immediately removed and replaced by the ARTIST at ARTIST's expense.

20.7. If it is necessary to change or move the property of the CITY or of any telecommunications or public utility, such property shall not be removed or interfered with until approved by CITY. The CITY and any public or private utilities have the right to enter the SITE

to make such changes or repairs. The CITY reserves the right of entry upon the SITE for any purpose and at any time.

20.8. If the ARTIST encounters materials reasonably believed to be a Hazardous Substance at the SITE, the ARTIST shall immediately stop work in the affected area and report such in writing to the CITY. Work in the affected area shall not be resumed except by written order of the CITY and consent of the ARTIST, and until the material is determined not to be a Hazardous Substance or is remediated. If the Hazardous Substance is in the affected area due to the fault or negligence of the ARTIST, or ARTIST's subcontractor or supplier, ARTIST shall be responsible for remediating at ARTIST's sole expense.

SECTION 21. CONFLICT OF INTEREST.

21.0. The Charter of the CITY and its Ethics Code prohibit a CITY officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

a) a CITY officer or employee;
b) his parent, child or spouse;
c) a business entity in which the officer or employee, or his parent, child or spouse directly or indirectly owns 10% or more of the voting stock or shares of the business entity, or 10% or more of the fair market value of the business entity; or
d) a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner, or a parent or subsidiary business entity.

21.1. ARTIST warrants and certifies, and this Agreement is made in reliance that ARTIST, its officers, employees and agents are neither CITY officers nor employees. ARTIST further warrants and certifies that it has provided the CITY a Discretionary Contracts Disclosure Statement in compliance with CITY's Ethics Code. Any violation of this article shall constitute malfeasance in office, and any officer or employee of CITY guilty thereof shall forfeit his office or position. Any violation of this section, with the knowledge, express or implied, of the person(s), partnership, company, firm, association or corporation contracting with CITY shall void the Agreement.

SECTION 22. GIFTS TO PUBLIC SERVANTS.

22.0. The CITY may terminate this Agreement immediately if the ARTIST has offered, conferred, or agreed to confer any benefit on a CITY employee or official that the CITY employee or official is prohibited by law from accepting. For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit

to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

22.1. Notwithstanding other remedies, CITY may require ARTIST to remove any employee from the SITE who violates these restrictions or any similar law, and may obtain reimbursement for any expenditure made to the ARTIST because of the improper offer, agreement to confer, or benefit conferred to a CITY employee or official.

SECTION 23. RIGHT TO AUDIT CONTRACTOR'S RECORDS.

23.0. The ARTIST grants the CITY, or its designees, the right to audit, examine or inspect all of the ARTIST's records relating to ARTIST's performance on the Agreement both during the term of the Agreement and retention period herein. The audit, examination or inspection may be performed by a CITY designee, which may include its internal auditors or an outside representative engaged by the CITY.

23.1. ARTIST agrees to retain records relevant to this Agreement for a minimum of five years following completion of the ARTWORK and/or termination of the Agreement. Artist's records" include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of ARTIST records include but are not limited to billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, Agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question, and any and all other Agreements, sources of information and matters that may in the CITY's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any the Agreement.

23.2 CITY will exercise the right to audit, examine or inspect only during regular business hours and with reasonable notice to the ARTIST. The ARTIST agrees to allow the CITY's designee access to all of the ARTIST's Records, ARTIST's facilities, and current or former employees of ARTIST, deemed necessary by CITY or its designee(s), to perform such audit, inspection or examination. ARTIST also agrees to provide adequate and appropriate work space necessary to CITY or its designees to conduct such audits, inspections or examinations.

23.3. ARTIST must include this audit section in any subcontractor, supplier or vendor contract.

23.4. If CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of ARTIST's business, CITY may, by written request require that custody of the records be given to CITY to maintain. Access to such records and documents shall be granted to any party authorized by ARTIST, ARTIST's representatives, or ARTIST's successors-in-interest.

SECTION 24. MISCELLANEOUS.

24.0. The captions to the sections or paragraphs of this Agreement are for convenience only. They are not to be used in construing this Agreement.

24.1. APPLICABLE LAW & VENUE. **THIS AGREEMENT IS CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.** Any legal action or proceeding brought or maintained, directly or indirectly, resulting from this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

24.2. If any term, covenant, condition or provision of this Agreement shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

24.3. NO WAIVER. The Parties agree that any breach or violation of this Agreement is not a waiver even if both Parties are aware of said breach or violation.

24.4. This Agreement, including Exhibit A-1, B-1 and C-1 Final Proposal for the ARTWORK, represents the entire understanding of the Parties. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may only be modified by a written amendment duly executed by the Parties.

EXECUTED and AGREED to by the Parties on this the ____ day of _____, 20__.

CITY OF SAN ANTONIO	**ARTIST**
_____	_____
Sheryl Sculley City Manager	(Name) (Title)

APPROVED AS TO FORM

_____
City Attorney

EXHIBIT A – 1

SCHEDULE OF PERFORMANCE

ARTIST shall not commence ARTIST's services until this Agreement is fully executed and CITY issues a Notice to Commence Work. ARTIST shall perform work according to the following schedule for fabrication and installation:

Phase	**Time Frame**
Execution of this Agreement / mobilization:	**(X Days/Weeks)**
Fabrication Phase	**(X Days/Weeks)**
(TBD)	
(TBD)	**(X Days/Weeks)**
(TBD)	**(X Days/Weeks)**
(TBD)	**(X Days/Weeks)**
	(X Days/Weeks)
Installation Phase	
(TBD)	**(X Days/Weeks)**
(TBD)	**(X Days/Weeks)**
(TBD)	**(X Days/Weeks)**
(TBD)	**(X Days/Weeks)**

Final Completion Date

The Schedule of Performance may be modified by mutual agreement only upon prior written authorization by the CITY as evidenced by signature from the DIRECTOR or his designee.

EXHIBIT B – 1

PAYMENT SCHEDULE

PAYMENT SCHEDULE	
MILESTONE	PAYMENT
Upon execution of the agreement, start-up, mobilization and acquiring materials	**$**_____
Upon completion of Off-SITE ARTWORK	**$**_____
Upon transportation of ARTWORK to SITE, installation and clean up of SITE	**$**_____
Upon CITY's issuance of the ACCEPTANCE NOTICE	**$**_____
TOTAL PRICE	**$**_____

The Schedule for Payment shall occur in accordance with the milestones set forth. In the event that CITY accepts the ARTWORK, one or more payments may occur following the ARTWORK completion date.

EXHIBIT C – 1

FINAL PROPOSAL FOR ARTWORK

Exhibit
III

STATE OF TEXAS	§	PUBLIC ART
	§	
COUNTY OF BEXAR	§	DESIGN AGREEMENT
	§	
CITY OF SAN ANTONIO	§	

This Agreement ("Agreement") for the design services for CITY's _____ ("Project") is by and between the City of San Antonio, Texas ("CITY"), executed by the CITY pursuant to Ordinance No. 2012-10-11-0796 passed by City Council on October 11, 2012, and _____ ("ARTIST"), together referred to as the "Parties".

WHEREAS, City held a Bond Election on May 12, 2012 and received approval from the voters to fund a variety of Public Improvements including allocation of funds for construction, acquisition and development of public art and design enhancements related to the _____(Project from Proposition __ on the ballot); and

WHEREAS, the City and voters approved allocating 1% of the fund from Proposition ___ to public art which was communicated to voters in official materials that the City is bound by; and

WHEREAS, the City issued an RFQ on July 9, 2012 to create a Capital Projects Artist Pool from which ARTIST was chosen to complete Public Improvement related to the approved _____ (Bond project(s)) in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and

WHEREAS, ARTIST will complete a design for ARTWORK that shall be approved by the Public Art Board of San Antonio and upon approval may proceed to fabrication and installation of the ARTWORK; and

WHEREAS, the CITY finds that it is in the best interest of the CITY, its citizens and visitors to enhance and enliven the CITY's public spaces through the design of this ARTWORK on the terms and conditions in this Agreement;

NOW THEREFORE, in consideration of the mutual benefits, covenants and obligations herein, and for other good, fair and valuable considerations, the Parties agree as follows:

TABLE OF CONTENTS

INDEX

SECTION	TITLE	PAGE
1.	DEFINITIONS	3-4
2.	ARTISTS GENERAL RESPONSIBLITIES	4-6
3.	CITY'S RESPONSIBILITES	6
4.	DESIGN DEVELOPMENT OF THE ARTWORK	6-9
5.	TERM & SCHEDULE	9-10
6.	ARTIST'S COMPENSATION	10-11
7.	ARTIST'S WARRANTIES	11-12
8.	MAINTENANCE	12-13
9.	ARTIST IS INDEPENDENT CONTRACTOR	13
10.	INDEMNIFICATION	13-14
11.	INSURANCE	14-16
12.	COPYRIGHTS	16-17
13.	REPUTATION AND CREDIT	17
14.	COMPLIANCE WITH LAWS	17-18
15.	DEFAULT/TERMINATION AND/OR SUSPENSION	18-20
16.	ASSIGNMENT	20
17.	SUBCONTRACTS	21
18.	NOTICE	21-22
19.	PROTECTION OF PERSONS AND PROPERTY	22
20.	CONFLICT OF INTEREST	22-23
21.	GIFTS TO PUBLIC SERVANTS	23
22.	VENUE	24
23.	RIGHT TO AUDIT CONTRACTOR'S RECORDS	24-25
24.	MISCELLANEOUS	25

ATTACHMENTS: Exhibit A-1 SCHEDULE OF PERFORMANCE
Exhibit B-1 PAYMENT SCHEDULE

SECTION 1. DEFINITIONS

The following terms in this Agreement shall have the meanings set out below:

1.0. "ARTWORK" means the design and art fabricated and installed consistent with ARTIST'S final proposal to be submitted for review and approval of CITY.

1.1. "ARTIST" is _____.

1.2. "CITY" means the CITY of San Antonio, Texas, a home-rule, Texas Municipal Corporation located in Bexar County, Texas. CITY shall also designate one or more authorized representative who shall have the authority to represent and act for CITY. If no representative is specified, City's Manager or her authorized representative shall be deemed authorized to act.

1.3. "PASA" means Public Art San Antonio, which is in the CITY's Office of Culture and Creative Development and is responsible for public art.

1.4. "COMPENSATION SCHEDULE" means the values allocated to services associated with the public art design, fabrication and installation services, prepared in such form, and supported by such data as required by CITY.

1.5. "CONSTRUCTION DOCUMENTS/PLANS" mean the drawings, specifications, and addenda for the ARTWORK, which were developed by ARTIST and approved by CITY.

1.6. "DESIGN CONSULTANT" means the individual or firm engaged by CITY to design a facility or project.

1.7. "DIRECTOR" means the Director of the Department for Culture and Creative Development.

1.8. "PROJECT" means the capital improvement/public art development undertaking of CITY for which Artist's services, as stated in the Scope of Services, are to be provided pursuant to this Agreement.

1.9. "PROPOSAL" means Artist's Proposal to provide public art design services for this Project.

1.10. "SCHEDULE OF PERFORMANCE" is the schedule for the design of the ARTWORK set out in **EXHIBIT A-1**, attached and incorporated herein.

1.11. "SITE" means the physical place located at the _____ where the ARTWORK may be installed.

1.12. "SUBCONTRACTOR" means a person or entity hired by ARTIST to complete work arising from this Agreement.

SECTION 2. ARTIST'S GENERAL RESPONSIBILITIES

2.0. The ARTIST is to design an ARTWORK that is an artistic product representing the creative talents of ARTIST and includes the creation of specifications to be set forth in the Final Proposal and the Construction Documents for the potential fabrication and installation of the ARTWORK.

2.0.1 Design Within Budget Constraints. ARTIST is responsible for developing the Artwork Design so the ARTWORK can be constructed without exceeding the ARTWORK budget. ARTIST shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in ARTWORK.

2.0.2 ARTIST warrants that the ARTWORK, including the Artwork Design, is a unique work of art. ARTIST warrants that he/she will not replicate/duplicate the same ARTWORK or Artwork Design without the express written consent of City. This Clause shall survive termination of this Agreement.

2.0.3 ARTIST is responsible for submitting the Final Proposal to CITY for approval at CITY's sole discretion. In the event of conflict between the Final Proposal and this Agreement as to any element of the Project unrelated to the size, scope and/or aesthetic of the ARTWORK itself, this Agreement will control.

2.0.4. ARTIST's opinions of probable project cost or construction cost are to be made on the basis of ARTIST's experience and qualifications representing ARTIST's best judgment as a design professional familiar with the construction industry.

2.1. DEVIATIONS FROM PROPOSAL. It is understood that changes from the Final Proposal may become desirable as the ARTWORK is fabricated.

2.1.1 Certain specifications regarding the ARTWORK, including, but not limited to, the size, color and/or type or grade of material of some of the elements of the ARTWORK may not be identified in either the Final Proposal or the Construction Documents. To the extent that any ARTWORK specification remains unidentified, ARTIST shall seek CITY's prior written approval of these specifications before commencing fabrication of the ARTWORK.

2.1.2. The Parties also recognize that shifts in scale from preliminary drawings and maquette to a full-scale work may require artistic adjustments. ARTIST reserves the right to make minor adjustments to the ARTWORK as ARTIST deems aesthetically necessary. However, in no event may a change in

design increase the ARTWORK budget or require a modification of the Construction Documents without CITY's prior written approval.

2.1.3. MATERIAL DEVIATIONS. Any material deviation from the Final Proposal or the Construction Documents in the scope, design, color, size, material, utility requirements, support requirements, texture and/or location of the ARTWORK must be approved in writing and in advance by CITY before ARTIST proceeds with completion of the ARTWORK. Additionally, material deviation shall also include any change from the Final Proposal or the Construction Documents, which affects the fabrication, schedule of delivery or installation of the ARTWORK, preparation of the SITE and/or maintenance of the ARTWORK.

2.2. ADDITIONAL SERVICE AUTHORIZATION. No services for which ARTIST seeks additional compensation will be provided nor charged without CITY's prior written authorization.

2.3. PERSONNEL. ARTIST is responsible for providing, at ARTIST's expense, all personnel required by ARTIST to fulfill the responsibilities and obligations in this Agreement. All persons retained by ARTIST shall possess the requisite licenses and permits.

2.4. COORDINATION. The Parties shall consult with each other during all design stages of the ARTWORK. ARTIST agrees to meet with CITY, DESIGN CONSULTANT, and others as reasonably directed by CITY.

2.5. If ARTIST provides ARTWORK knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations, the ARTIST shall assume appropriate responsibility for such ARTWORK and bear the costs attributable to the correction thereof.

2.6. ARTIST will abide by all applicable rules and regulations of the CITY with respect to conduct, including smoking, parking of vehicles, security regulations and entry into adjacent facilities owned by the CITY.

2.6.1. ARTIST shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall ARTIST subject any part of the ARTWORK or adjacent property to stresses or pressures that may endanger it.

2.8. REVIEW OF PROGRESS AND REPORTS. At reasonable times and with advance notice to ARTIST, CITY has the right to review the work in progress and to require and receive progress reports from ARTIST. CITY shall have the right to visit ARTIST's studio at all reasonable times to inspect and review the progress of the ARTWORK. ARTIST shall be responsible for arranging with ARTIST's subcontractors for reasonable access for review and inspection of the ARTWORK at any subcontractor's place of business.

2.9. INTERNET-BASED PROJECT MANAGEMENT SYSTEMS. At its option, CITY may administer its design and construction management through an Internet-based management system. In such cases, ARTIST shall communicate through this media and perform all ARTWORK related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, or payment requests and processing, Amendments, Change Orders and other administrative activities. When such systems are employed, the CITY shall administer the software, shall provide training to ARTIST and ARTIST's personnel, and shall make the software accessible via the Internet to ARTIST and ARTIST's personnel.

2.10. Tax Identification Number. No later than the date of ARTIST's execution of this Agreement, ARTIST shall provide City with ARTIST's Tax Identification Number and any proof of ARTIST's Tax Identification Number as requested by City. ARTIST shall notify City of any change in ARTIST's Tax Identification Number.

SECTION 3. CITY'S RESPONSIBILITIES.

3.0. SITE Information. CITY shall be responsible for providing ARTIST, at no cost to ARTIST, copies of existing designs, drawings, reports, and other existing relevant SITE data, if any are required by ARTIST.

3.1. CITY is under no obligation to supervise the ARTIST's performance of services under this Agreement but may help facilitate meetings with the community.

SECTION 4. DESIGN DEVELOPMENT OF THE ARTWORK

4.0. ARTIST shall perform the following design services to the satisfaction of CITY and within the deadlines set forth in **Exhibit A-1 Schedule of Performance**.

4.1. Research. ARTIST shall meet with CITY staff in order to understand the uses of the Project and facilities surrounding the Project for the purposes of defining goals for the ARTWORK appropriate to the general social and immediate physical environment of the ARTWORK. ARTIST shall also attend at least three individual meetings with local experts or other interested parties as designated by CITY. The times and dates of these meetings shall be subject to the mutual agreement of the Parties. Any required travel incurred by ARTIST above and beyond what is provided for by this Agreement shall be requested in writing, will need to be approved by both Parties and may be subject to a separate agreement.

4.2. Concept and Schematic Designs.

4.2.1. ARTIST shall prepare one or more concept designs showing ARTIST's idea(s) for the ARTWORK ("Concept Design Proposal"). The Concept Design Proposal will include the general intent, the proposed form and indication of location, scale and proposed materials of the ARTWORK.

4.2.2. Following CITY's approval of the Concept Design Proposal, ARTIST shall prepare one or more designs showing ARTIST's schematic design for the ARTWORK ("Schematic Design Proposal"). The Schematic Design Proposal will include form, scale, and proposed materials (samples to be provided where appropriate) as well as information on structural considerations, surface integrity, permanence and protection against theft and vandalism.

4.2.3. ARTIST shall investigate and prepare preliminary cost estimates for the fabrication and installation of the ARTWORK proposed in the Schematic Design Proposal. The estimates shall indicate the feasibility of producing the proposed ARTWORK within the CITY's budget ("Preliminary Cost Estimate") including a contingency equal to 10% of the fabrication and installation budget to cover unforeseen costs, which shall be retained by the CITY until final payment.

4.2.4. The Schematic Design Proposal shall include an outline of the proposed installation method, and a schedule for the ARTWORK fabrication and installation (collectively, the "Proposed Installation Method").

4.3. Artwork Design Development Proposal. Upon receipt of CITY's Notice to Proceed, ARTIST shall develop a final proposal for the ARTWORK ("Artwork Design Development Proposal") showing the details of the ARTWORK. The Artwork Design Development Proposal will include indication of form, scale, and proposed materials (samples to be provided when appropriate). The Artwork Design Development Proposal shall also include information on structural considerations, surface integrity, permanence, and protection against theft and vandalism (collectively, the "Artwork Design Specifications").

4.3.1. ARTIST shall develop a detailed budget estimate ("Artwork Budget Estimate") covering all estimated costs to fabricate and install the ARTWORK, including, but not limited to: itemized cost estimates for materials including applicable sales tax; OFF-SITE fabrication costs; itemized General Contractor and sub-contractor costs; permits or other fees; insurance; transportation of the ARTWORK to SITE; and itemized installation costs.

4.3.2. 10% of the Artwork Budget shall be set aside as a contingency to cover unforeseen costs, that may arise during the fabrication and installation.

4.3.3. The Artwork Design Development Proposal shall include a detailed written description of the fabrication and installation method ("Installation Specifications"), detailed fabrication and installation schedule ("Installation Schedule") and the description of any operational, maintenance and conservation requirements for the ARTWORK ("Maintenance Specifications").

4.4. Artwork Design Development Proposal Review.

4.4.1. ARTIST shall provide presentation quality visual material of the Artwork Design Development Proposal in conjunction with the review by CITY staff, the Reviewing Body, and for release to the press. CITY shall dictate the specific types of presentation materials to be used.

4.4.2. The Artwork Design Development Proposal shall be submitted to the CITY for review and submittal to the Reviewing Body. CITY may require ARTIST to make modifications to the Artwork Design Development Proposal prior to submission.

4.4.3. ARTIST, at CITY's option, shall be available to present the Artwork Design Development Proposal, in the form approved by the CITY, at one or more meetings of the Reviewing Body.

4.4.4. The Reviewing Body may recommend approval, approval with minor changes or disapproval. In the event that the Reviewing Body recommends disapproval or approval with minor changes, ARTIST, upon written notification by CITY, shall respond to the recommended changes in writing and submit a revised Artwork Design Development Proposal to the CITY for review. The Reviewing Body may assess the Artwork Design Development Proposal as revised and make additional recommendations.

4.4.6. Should the final design proposal be disapproved and the ARTIST has performed the services set out in Agreement to the satisfaction of the CITY, ARTIST may be compensated to submit a modified design proposal as specified by the PASA Program Manager.

4.5. Construction Documents. ARTIST, at CITY's option, shall be responsible for the preparation of any drawings depicting both the fabrication and installation of the Artwork as proposed by the Artwork Design Development Proposal ("Construction Documents"). ARTIST shall be responsible for obtaining any and all information necessary to prepare the Construction Documents, including without limitation, any field measurements of the proposed SITE.

4.5.1. Construction Documents must conform to all applicable federal, state and local laws and regulations. If applicable or upon request by CITY, any and all drawings must be certified by a qualified engineer or architect, licensed by the State of Texas and

4.5.2. When seeking approval of the Construction Documents, ARTIST shall submit the following to CITY unless notified otherwise by CITY:

A. plans on reproducible sheets measuring 24 inches by 36 inches, and provided in digital PC-compatible format;

B. all engineering calculations associated with the submitted Construction Documents; and

C. specifications for ARTWORK including a final budget estimate listing the quantities and unit prices for fabrication and installation of ARTWORK.

4.5.3. The Construction Documents for the ARTWORK are subject to approval by CITY who will notify ARTIST in writing once the Construction Documents are approved. CITY's approval of the Plans shall not release ARTIST of the responsibility for correcting mistakes, errors or omissions, proximately caused by ARTIST which may be the result of circumstances unforeseen when the Plans were developed or approved.

4.6. Notice of Acceptance. If all approvals are secured, the CITY will issue a written Notice of Acceptance of the Artwork Design Development Proposal to ARTIST. CITY's acceptance does not obligate the CITY to commission fabrication and/or install the ARTWORK.

4.7. DEATH OR INCAPACITY OF ARTIST. In the event of ARTIST's physical incapacity or death prior to the completion of the ARTWORK, all payments made up to the point of incapacity or death will be retained by ARTIST and all work performed to date of incapacity or death will be compensated. Upon payment, the incomplete ARTWORK and any materials paid for by CITY will become CITY property. However, if the ARTWORK is substantially designed and/or completed and it is feasible for the ARTWORK to be fully completed without undue delay while remaining faithful to the ARTIST's design, integrity and reputation, CITY may elect to proceed, under this Agreement, with completion and/or installation by ARTIST's REPRESENTATIVE. All remaining work to be completed in accordance with this Agreement will be delegated to: [NAME:_____, Address: _____ Phone: _____] ("REPRESENTATIVE").

SECTION 5. TERM & SCHEDULE.

5.0. This Agreement commences upon execution by all the Parties on _____, 2014 and shall terminate upon completion of all services required by this Agreement unless either Party terminated this Agreement earlier in accordance with the terms herein.

5.1. ARTIST is to complete the services required of ARTIST herein in accordance with the schedule set out in the attached **EXHIBIT A-1**, entitled "Schedule of Performance".

5.1.1. Prior to commencement of the work, the Parties shall mutually agree to an inspection schedule, which may be adjusted from time to time by mutual written agreement.

5.1.2. When work is not in progress and/or suspended, arrangements acceptable to the CITY shall be made for any required emergency work.

5.2. TIME. All limitations of time set forth in this Contract are material and time is of the essence in the performance of ARTIST's services under this Agreement.

5.3. FORCE MAJEURE. CITY or ARTIST may grant temporary relief from any deadline for performance of any term of this Agreement if either Party is prevented from compliance and performance by an act of war, order of legal authority, act of God, terrorism, social unrest, strike, natural disaster, supply shortage, or other unavoidable cause not attributed to the fault or negligence of the Party. To obtain an extension based upon Force Majeure, ARTIST must provide written notice to CITY of the occurrence of the Force Majeure event within 10 days following the date that ARTIST becomes aware of the event and the fact that it will delay ARTIST's performance under this Agreement. CITY will not unreasonably withhold consent.

SECTION 6. ARTIST'S COMPENSATION.

7.0. COMPENSATION. ARTIST's total compensation for full and timely completion of the services required by this Agreement is **$**_____ (the "TOTAL PRICE"). Such payment shall be full and complete compensation for work performed and services rendered by or on behalf of ARTIST, including, but not limited to, professional services and expenses, for all supervision, labor, supplies, materials, equipment or use thereof and for all other necessary incidentals. CITY is not obligated to compensate ARTIST unless and until CITY accepts the ARTWORK.

7.0.1 Payment Schedule. CITY shall make interim payments to ARTIST in the amounts and at the milestones as identified in the Payment Schedule, attached and incorporated as **Exhibit B-1**, as compensation to assist ARTIST with financing the fabrication, delivery and installation of the ARTWORK. The form of the invoice shall be subject to the reasonable approval of the CITY. Within 30 days of CITY's receipt of ARTIST's invoice indicating the appropriate milestone has been reached, CITY will pay ARTIST amount allocated in the Payment Schedule.

7.0.2. Parties agree that the Payment Schedule may be modified only upon prior written authorization of the CITY and ARTIST. CITY's PASA Program Manager may approve changes, which are not considered material by CITY.

7.1. COST OVERRUN. In the event ARTIST incurs costs over the TOTAL PRICE, ARTIST shall pay such excess at ARTIST's sole cost. CITY is not responsible for any part of such excess.

7.1 If the CITY is invoiced for work which does not meet the specifications required by this Agreement, CITY in its sole discretion shall have the right to withhold such payment until such deficiency is corrected. In such event, CITY shall provide detailed written notice to ARTIST within 10 days of receipt of such invoice, specifying the failure of performance for which CITY intends to withhold payment. ARTIST shall work to cure such failure in order to meet the Agreement standards to the reasonable satisfaction of CITY.

7.2. NO WAIVER OF RIGHTS. No payment to ARTIST for any work performed or services rendered shall constitute a waiver or release by CITY of any claims, rights or remedies CITY may have against ARTIST under this Agreement or by law, nor shall such payment constitute a waiver by the CITY of any failure or fault of ARTIST to perform satisfactorily under this Agreement. ARTIST expressly acknowledges that approval of work to permit an interim payment is solely to permit ARTIST to receive an interim payment. Unless and until the CITY issues an Acceptance Notice for the ARTWORK, no interim approval shall constitute acceptance or approval of the ARTWORK by CITY nor is it a waiver of CITY's right to require that the ARTWORK conform strictly to the approved Construction Documents/PLANS.

7.3. If CITY approves a modification of the ARTWORK or PLANS resulting in cost savings such as but not limited to, the deletion of an element, substitution of lesser quality materials with no offsetting upgrade of other materials, or reduction in the size/scale, the cost savings from the modification will not be paid to ARTIST.

7.4. If the Parties mutually agree in writing to a modification of the ARTWORK or PLANS resulting in an increased cost to ARTIST, including but not limited to the addition of an element, the substitution of more expensive materials, or the increase in size/scale, the resulting cost increases shall be paid to ARTIST.

7.5. If work for which the CITY has received a request for payment does not meet specifications required by this Agreement, CITY in its sole discretion shall have the right to withhold such payment until the deficiency is corrected. In such event, CITY shall provide detailed written notice to ARTIST within 10 days of receipt of such request for payment, specifying the failure of performance for which CITY intends to withhold payment. ARTIST shall cure such failure to the reasonable satisfaction of CITY.

SECTION 8. ARTIST'S WARRANTIES.

8.0. ARTIST warrants that the services required by this Agreement will be performed with the same degree of professional skill and care that are typically exercised by similar professionals performing similar services. ARTIST's installation and fabrication services shall comply with the Construction Documents/PLANS for the ARTWORK which were approved by CITY. Further ARTIST represents and warrants the following.

8.0.1. ARTIST has not previously sold, assigned, licensed, granted, encumbered, or utilized the ARTWORK, the ARTWORK'S design or any element thereof, in any manner, which may affect or impair the rights granted pursuant to this Agreement.

8.0.2. All work created or performed by ARTIST under this Agreement, whether created by ARTIST alone or in collaboration, is wholly original and will not infringe upon or violate the rights of any third party.

8.0.3. ARTIST has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.

8.0.4. The ARTWORK is a unique edition resulting from the artistic efforts of ARTIST. ARTIST acknowledges that CITY desires that the ARTWORK be unique, and ARTIST agrees not to duplicate the ARTWORK without CITY's written consent.

8.0.5. All services shall be performed in accordance with City's Standard Specifications if applicable, which are on file with the CITY's Department of Capital Improvements Management Services, Architectural Division. To the extent that the CITY's Standard Specifications conflict with the provisions set forth in this Agreement, this Agreement shall control.

8.0.6. ARTWORK will be delivered free and clear of any liens.

8.1. DEFECTS IN MATERIAL WORKMANSHIP AND INHERENT VICE. ARTIST warrants that the ARTWORK will be free of defects in workmanship, including Inherent Vice, and that the ARTIST will, at the ARTIST's own expense, remedy any defects due to faulty workmanship, or Inherent Vice, which appear within a period of one year from the date the ARTWORK is formally accepted. The term "Inherent Vice" means any quality within the material or materials incorporated into the ARTWORK that alone or in combination result in the unreasonable deterioration of the ARTWORK.

8.1.1 If the ARTWORK deteriorates due to Inherent Vice within one year from the date the ARTWORK is formally accepted, ARTIST will repair or replace the ARTWORK without charge for ARTIST's services in supervising the work of others or for repairing the work that they originally performed on the ARTWORK and ARTIST will pay for the cost of labor rendered by persons other than the ARTIST, materials and supplies.

8.1.2. ARTIST further warrants that the ARTWORK shall not constitute any threat to the safety of persons or property when used in the manner for which it is designed. ARTIST agrees to cooperate with CITY in making or permitting adjustments to the ARTWORK if needed to eliminate hazards, which become apparent after the ARTWORK is formally accepted by CITY.

8.2 These representations and warranties survive the Agreement's termination.

SECTION 9. MAINTENANCE.

9.0. CITY shall have the right to determine, after consultation with ARTIST or with a professional conservator, when and if repairs and restorations to the ARTWORK will be made. It is the policy of CITY to consult with ARTIST regarding repairs and restoration, which are undertaken during ARTIST's lifetime.

9.1. All repairs and restorations, whether performed by ARTIST, CITY, or third parties, shall be made in accordance with professionally recognized principles of conservation of ARTWORK and in accordance with the maintenance instructions provided to CITY by ARTIST.

SECTION 10. ARTIST IS INDEPENDENT CONTRACTOR.

10.0. ARTIST is an independent contractor and not an officer, agent, servant or employee of CITY and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between CITY and ARTIST. ARTIST has no authority to bind the CITY. ARTIST shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants.

10.1 CITY shall not be liable for any third party claims, which may be asserted in connection with the performance of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give any third party any legal or equitable right, remedy or claim under or in respect of this Agreement or any authority to enforce this Agreement.

SECTION 11. INDEMNIFICATION.

11.0. The ARTIST, whose work product and services are the subject of this Agreement for professional services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS against any and all claims by third parties, lawsuits, judgments, cost, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY ARTIST'S NEGLIGENT ACT, ERROR, OR OMISSION OF ARTIST, OR OF ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, ARTIST OR SUBARTIST OF ARTIST, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the services, rights or duties under this AGREEMENT. The INDEMNITY provided for

in this paragraph shall not apply to any liability resulting from the NEGLIGENCE of CITY, its officers or employees, in instances where such NEGLIGENCE causes personal injury, death, or property damage. IN THE EVENT ARTIST AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.1. ARTIST shall advise CITY in writing within 24 hours of any claim or demand against the CITY or the ARTIST that is known to ARTIST related to or arising out of ARTIST's activities under this Agreement.

11.2. The provisions of this section are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

11.3. Acceptance of the Final PLANS by the CITY shall not constitute nor be deemed a release of the responsibility and liability of the ARTIST, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, work drawings, Plans and Specifications or other documents; nor shall such acceptance be deemed an assumption of responsibility or liability by the CITY for any defect in the designs, work drawings, Plans and Specifications or other documents prepared by ARTIST, its employees, sub-artists, and agents.

11.4. **THE ARTIST SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST THE CITY AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST THE CITY, TO THE EXTENT THAT THE ARTWORK PROVIDED UNDER THIS AGREEMENT CONSTITUTES AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

11.5. <u>Employee Litigation</u> – In any and all claims against any party indemnified hereunder by any employee of ARTIST, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for ARTIST or any subcontractor under worker's compensation or other employee benefit acts.

<u>SECTION 12. INSURANCE.</u>

12.0. Prior to the commencement of any Services under this Agreement, ARTIST shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY's Department for Culture and Creative

Development, which shall be clearly labeled "**Public Art Project**" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the CITY's Capital Improvements Management Services Department. No officer or employee other than the CITY's Risk Manager shall have authority to waive this requirement.

12.1. ARTIST's financial integrity is of interest to the CITY. Therefore, subject to the ARTIST's right to maintain reasonable deductibles in such amounts as are approved by the CITY, the ARTIST shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the ARTIST's sole expense, insurance coverage written on an occurrence or claims made basis, as appropriate, by companies authorized and approved to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence

All notices under this Article shall be given to CITY at the following address:

CITY of San Antonio
Attn: _Department of Culture and Creative Development
P.O. Box 839966
San Antonio, Texas 78283-3966

12.2. With respect to the above required insurance, ARTIST agrees that all insurance policies are to contain or be endorsed to contain the following required provisions:

- Name the CITY and its officers, officials, employees, and elected representatives as an additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY;
- Provide for an endorsement that the "other insurance" clause shall not apply to the CITY where the CITY is an additional insured shown on the policy if such endorsement is permitted by law and regulations; and
- Provide 30 calendar days advance written notice directly to CITY of any suspension, cancellation or non-renewal or material change in coverage, and not less than 10 calendar days advance written notice for nonpayment of premium.

12.3. Within five calendar days of a suspension, cancellation or non-renewal of coverage, the ARTIST shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend the ARTIST's performance should there be a lapse in coverage at any time during this contract, and such suspension shall continue until cured. Failure to provide and maintain the required insurance shall constitute a material breach of this contract.

12.4. In addition to any other remedies the CITY may have upon the ARTIST's failure to provide and maintain any insurance or policy endorsements to the extent and within the required time, the CITY shall have the right to order ARTIST to stop performing services and/or withhold any payment(s) which become due to the ARTIST hereunder until the ARTIST demonstrates compliance with the requirements hereof.

12.5. Nothing herein shall be construed as limiting in any way the extent to which the ARTIST may be held responsible for payments of damages to persons or property resulting from the ARTIST's or its sub-artist's performance of the services covered under this Agreement.

12.6. The ARTIST's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the CITY for liability arising out of operations under this Agreement.

12.7. The insurance required is in addition to and separate from any other obligation contained in this Agreement as respects additional insureds.

12.8. ARTIST and any subcontractors are responsible for all damage to their own property and/or equipment.

12.9 If applicable ARTIST shall comply with Texas Government Code Chapter 2253 provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).

SECTION 13. COPYRIGHTS.

13.0. CITY shall have ownership and possession of the Artwork Design upon acceptance of the Final Proposal for Artwork Design including exclusive right to display the ARTWORK, subject to this Agreement. CITY may make any and all reproductions or derivatives in whatever form of the Artwork Design for educational, public relations, arts promotional, commercial or any other purpose and such uses will not result in any additional payments to ARTIST.

13.1. ARTIST retains copyrights and intellectual property and/or patents related to the ARTWORK and the Artwork Design including potentially those patents, related to materials used in the fabrication or installation of the ARTWORK. However, any use of the Artwork Design by ARTIST or any third party must be approved, in advance, by CITY except that ARTIST is expressly allowed to use reproductions of the Artwork Design and documentation of ARTWORK for self-promotion, presentation and portfolio use.

13.2 If CITY obtains a commercial benefit from the ARTWORK, or Artwork Design, by sale of reproductions or images of same, or by licensing same, revenues received by CITY from such commercial ventures shall be directed to long-term maintenance of the ARTWORK.

13.3. CITY has the exclusive right to display the Artwork Design, including drawings, models, or any reproduction, in whole or in part, including to other persons or institutions with authority to display it publicly. CITY acknowledges ARTIST's co-right to display the Artwork Design or images or reproductions of the Artwork Design, and to display or exhibit such images and/or reproductions, including the Artwork Design itself, so long as such display or exhibition is consistent with attribution to the CITY.

13.4. The clauses in Section 13 shall survive termination of this Agreement.

SECTION 14. REPUTATION AND CREDIT.

14.0. Unless ARTIST requests to the contrary in writing, all references to the ARTWORK and all reproductions of the ARTWORK will credit the ARTWORK to ARTIST.

14.1. ARTIST agrees that all formal references to the ARTWORK made or authorized to be made by ARTIST shall include the following credit: "Collection of the City of San Antonio, Commissioned through Public Art San Antonio," or other language agreed to by the Parties.

14.2. ARTIST and ARTIST's contractors and subcontracts shall coordinate any releases of information regarding the ARTWORK to the public and news media with CITY staff. In all communications to the public and news media, the ARTIST must fully and accurately identify the ARTIST's relationship to the CITY and credit the CITY for its role in funding the Project.

SECTION 15. COMPLIANCE WITH LAWS.

15.0. ARTIST shall comply with all applicable federal, state and local laws, ordinances, codes and regulations and will use reasonable efforts to ensure compliance by any and all contractors and subcontractors that may do work arising from this Agreement.

15.2. Non-Discrimination. ARTIST understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

15.2 None of ARTIST's services shall involve, and no portion of the funds received by ARTIST shall be used to support any sectarian or religious activity.

SECTION 16. DEFAULT/TERMINATION AND/OR SUSPENSION

16.0. TERMINATION WITH CAUSE. Right of Either Party to Terminate for Default

16.0.1. This Agreement may be terminated by either Party for substantial failure by the other Party to perform (through no fault of the terminating Party) in accordance with this Agreement and a failure to cure as provided in this Section.

16.0.2. The Party not in default must issue a signed, written notice of default and intent to terminate (citing this paragraph) to the other Party declaring the other Party to be in default and stating the reason(s) why they are in default. Upon receipt of such written notice of default, the party in receipt shall have a period of 10 days to cure any default. Upon the completion of such 10-day cure period, if such Party has not cured any

failure to perform, such termination shall become effective without further written notice.

16.1. RIGHT OF CITY TO TERMINATE. CITY reserves the right to terminate this Agreement for reasons other than substantial failure by the ARTIST to perform by issuing a signed, written notice of termination (citing this paragraph) which shall take effect upon effective notice to ARTIST and/or upon the scheduled completion date of the performance phase in which ARTIST is currently working, whichever occurs first. In the event of termination by CITY without cause, ARTIST shall be entitled to payment for all work performed by or on behalf of ARTIST to date, together with reimbursement for all legitimate expenses incurred by ARTIST up to ARTIST's receipt of such notice.

16.2. RIGHT OF CITY TO SUSPEND GIVING RISE TO RIGHT OF ARTIST TO TERMINATE. CITY reserves the right to suspend this Agreement at the end of any phase for CITY's convenience by issuing a signed, written notice of suspension (citing this paragraph) outlining the reasons for the suspension and the expected duration of the suspension. Such expected duration shall in no way be a guarantee of the length of the suspension. Such suspension shall take effect immediately upon receipt of said notice of suspension by the ARTIST.

16.2.1 ARTIST has the right to terminate if such suspension extends for more than 120 days. ARTIST may exercise this right by issuing a signed, written notice of termination (citing this paragraph) to the CITY after 120 days have passed from the effective date of the suspension. Termination shall be effective upon receipt of said written notice by the CITY. In the event of termination by ARTISTS after such suspension, ARTIST shall be entitled to payment for all work performed by or on behalf of ARTIST, together with reimbursement for all legitimate expenses incurred by ARTIST prior to ARTIST's suspension.

16.3. PROCEDURES ARTIST TO FOLLOW UPON RECEIPT OF NOTICE OF TERMINATION WITH CAUSE. Upon receipt of a notice of termination with cause and prior to the effective date of termination, unless the notice otherwise directs or ARTIST immediately takes action to cure under the set cure period, ARTIST shall immediately discontinue all services performed in connection with this Agreement and promptly cancel all existing orders and contracts chargeable to this Agreement. Within 30 days after receipt of such notice of termination (unless ARTIST has successfully cured a failure to perform), ARTIST shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. The CITY shall have the option to grant an extension to the time period for submittal of such statement.

16.3.1. Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and exhibits prepared under this Agreement prior to the effective

date of termination shall be delivered to the CITY, in the form requested by the CITY as a pre-condition to final payment subject to the restrictions and conditions herein.

16.3.2. CITY, as a public entity, has a duty to document the expenditure of public funds. To this end, ARTIST understands that failure to comply with the submittal of the statement and documents shall constitute a waiver by ARTIST of any and all rights or claims to payment for services performed under this Agreement by ARTIST.

16.3.3. Upon the above conditions being met, CITY shall pay ARTIST that proportion of the compensation, which the services actually performed bear to the total services called for under this Agreement, less any previous payments.

16.4. PROCEDURES ARTIST TO FOLLOW UPON RECEIPT OF NOTICE OF SUSPENSION. Upon the effective date of suspension, ARTIST shall, immediately phase-out and discontinue all services associated with the performance of this Agreement including promptly suspending all existing orders and contracts chargeable to this Agreement, unless the notice directs otherwise.

16.4.1. ARTIST shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

16.4.2. Copies of all completed or partially completed designs, plans and specifications prepared prior to the effective date of suspension shall be prepared for possible delivery to the CITY but shall be retained by the ARTIST until such time as ARTIST may exercise the right to terminate.

16.4.3. ARTIST shall promptly cancel or suspend all existing orders and contracts chargeable to this Agreement. If ARTIST is terminating, ARTISTS is responsible for submitting to CITY the above mentioned statement showing in detail the services performed prior to the effective date of suspension within thirty 30 days after receipt by the CITY of ARTIST's notice of termination.

16.4.4. Any documents prepared in association with this Agreement shall be delivered to the CITY as a pre-condition to final payment.

16.4.5. ARTIST's failure to comply substantially with the submittal of the statements and documents as required may constitute a waiver by the ARTIST of any portion of the fee for which ARTIST did not supply such necessary statements and/or documents.

16.4.5. Upon the above conditions being met, CITY shall promptly

pay ARTIST that proportion of the prescribed fee, which the services actually performed bear to the total services called for by this Agreement, less any previous payments, together with reimbursement for legitimate expenses incurred by ARTIST up to ARTIST's receipt of such notice.

16.5. COMPENSATION. If CITY terminates, CITY shall pay ARTIST for services performed up to date of termination consistent with this Agreement.

16.6. REMEDIES. The remedies under this Agreement are cumulative and are in addition to the rights available to the Parties at law or in equity. Nevertheless, if ARTIST breaches this Agreement, CITY has the right to exercise its termination rights as described herein and at its option proceed with the fabrication and installation of the ARTWORK without utilizing ARTIST's services. If CITY exercises its option to proceed, then CITY, upon ARTIST's written request will refrain from referencing the ARTWORK as the work of ARTIST.

SECTION 17. ASSIGNMENT

17.0. The expertise and experience of ARTIST are material considerations for this Agreement; therefore, ARTIST shall not assign or transfer any interest in this Agreement nor the performance of any of ARTIST's obligations. Any attempt by ARTIST to assign this Agreement or any rights, duties or obligations arising hereunder shall be void unless prior written consent is given by CITY. This section does not prevent ARTIST, at ARTIST's sole expense, from relying on or utilizing the services of such other consultant or artist as needed by ARTIST.

SECTION 18. SUBCONTRACTS.

18.0. Prior to entering into any subcontractor agreements, ARTIST shall notify the CITY in writing of the names of all proposed first-tier Subcontractors.

18.1. ARTIST shall not employ any Subcontractor, person or organization (including those who are to furnish the primary materials or equipment), whether initially or as a substitute, against whom CITY may have reasonable objection. A Subcontractor other person or organization identified in writing to CITY prior to the Notice of Award and not objected to in writing by CITY will be deemed acceptable to CITY. However, acceptance by CITY is not a waiver of any right of CITY to reject defective Work. If CITY, after due investigation, has reasonable objection to any Subcontractor, person or organization proposed by ARTIST after the Notice of Award, the ARTIST will be required to submit an acceptable substitute. The Contract Sum will be equitably adjusted for any change in the price of the subcontract work resulting from such substitution. ARTIST is not required to employ any Subcontractor, person, or organization against whom ARTIST has a reasonable objection.

18.2. ARTIST is fully responsible to CITY for all acts and omissions of his/her Subcontractors, persons and organizations directly or indirectly employed and of

persons and organizations who may be liable to the same extent that ARTIST is responsible for the acts and omissions of persons directly employed by ARTIST. CITY shall in no event be obligated to any third party, including any sub-contractor of ARTIST, for performance of or payment for work or services.

18.3. All ARTWORK performed for ARTIST by a Subcontractor will be pursuant to a written agreement between ARTIST and the Subcontractor, which specifically binds the Subcontractor to the applicable terms and conditions of this Agreement. Where appropriate, ARTIST shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. ARTIST shall make copies of the Agreement available to each proposed Subcontractor, prior to the execution of the subcontract agreement.

SECTION 19. NOTICE

19.0. Submittals, requests, notices and reports (collectively, "Notices") required under this Agreement shall be delivered personally or through the mail, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a party. Notices may also be sent by facsimile.

For ARTIST: _____

For CITY: CITY of San Antonio
Attn: Department of Cultural and Creative Development - Public Art
P.O. Box 839966
San Antonio, Texas 78283-3966

19.1. Notices will be deemed effective on the date personally delivered, faxed, or sent by courier service. Notices which are mailed will be deemed effective three days after deposit in the mail.

19.2. ARTIST agrees for the duration of ARTIST's life, to provide CITY with ARTIST's current mailing address and facsimile number in the event ARTIST's address, as specified above, should change.

SECTION 20. PROTECTION OF PERSONS AND PROPERTY.

20.0. SAFETY PRECAUTIONS AND PROGRAMS. ARTIST shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. ARTIST shall adopt a reasonable safety program applicable to the SITE and to the ARTWORK, review such program with CITY in advance of beginning the ARTWORK, and enforce such program at all times. While CITY has the right, but not the obligation, to inspect and verify ARTIST's compliance, ARTIST is responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Agreement.

20.1. Notwithstanding these provisions, CITY does not warrant nor represent to ARTIST, ARTIST's employees or agents, any subcontractors, or any other third party that ARTIST's safety policy meets the requirements of any applicable law, code, rule, or regulation, nor that the proper enforcement will insure that no accidents or injuries occur. Any action by CITY under these provisions in no way diminishes ARTIST's obligations.

20.2. PUBLIC CONVENIENCE AND SAFETY. ARTIST shall conduct all work at the SITE in a manner that causes no greater obstruction to the public or CITY Department than is reasonably considered necessary by the CITY.

SECTION 21. CONFLICT OF INTEREST.

21.0. The Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as CITY-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

a) a CITY officer or employee;
b) his parent, child or spouse;
c) a business entity in which the officer or employee, or his parent, child or spouse directly or indirectly owns 10% or more of the voting stock or shares of the business entity, or 10% or more of the fair market value of the business entity; or
d) a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner, or a parent or subsidiary business entity.

21.1. ARTIST warrants and certifies, and this Agreement is made in reliance that ARTIST, its officers, employees and agents are neither CITY officers nor employees. ARTIST further warrants and certifies that it has provided the CITY a Discretionary Contracts Disclosure Statement in compliance with CITY's Ethics Code. Any violation of this article shall constitute malfeasance in office, and any officer or employee of CITY guilty thereof shall forfeit his office or position. Any violation of this section, with the knowledge, express or implied, of the person(s), partnership, company, firm, association or corporation contracting with CITY shall void the Agreement.

SECTION 22. GIFTS TO PUBLIC SERVANTS.

22.0. The CITY may terminate this Agreement immediately if the ARTIST has offered, conferred, or agreed to confer any benefit on a CITY employee or official that the CITY employee or official is prohibited by law from accepting. For purposes of this

Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

22.1. Notwithstanding other remedies, CITY may require ARTIST to remove any employee from the SITE who violates these restrictions or any similar law, and may obtain reimbursement for any expenditure made to the ARTIST because of the improper offer, agreement to confer, or benefit conferred to a CITY employee or official.

SECTION 23. VENUE.

23.0. **THIS AGREEMENT IS CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.** Any legal action or proceeding brought or maintained, directly or indirectly, resulting from this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

SECTION 24. RIGHT TO AUDIT CONTRACTOR'S RECORDS.

24.0. The ARTIST grants the CITY, or its designees, the right to audit, examine or inspect all of the ARTIST's records relating to ARTIST's performance on the Agreement both during the term of the Agreement and retention period herein. The audit, examination or inspection may be performed by a CITY designee, which may include its internal auditors or an outside representative engaged by the CITY.

24.1. ARTIST agrees to retain records relevant to this Agreement for a minimum of five years following completion of the ARTWORK and/or termination of the Agreement. Artist's records" include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of ARTIST records include but are not limited to billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, Agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question, and any and all other Agreements, sources of information and matters that may in the CITY's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any the Agreement.

24.2 CITY agrees that it will exercise the right to audit, examine or inspect only during regular business hours and with reasonable notice to the ARTIST. The ARTIST agrees to allow the CITY's designee access to all of the ARTIST's Records, ARTIST's facilities, and current or former employees of ARTIST, deemed necessary by CITY or its designee(s), to perform such audit, inspection or examination. ARTIST also agrees to

provide adequate and appropriate work space necessary to CITY or its designees to conduct such audits, inspections or examinations.

24.3. ARTIST must include this audit clause in any subcontractor, supplier or vendor contract.

24.4. Custody of Records. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of ARTIST's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY to maintain. Access to such records and documents shall be granted to any party authorized by ARTIST, ARTIST's representatives, or ARTIST's successors-in-interest.

SECTION 25. MISCELLANEOUS.

25.0. The captions to the sections or paragraphs of this Agreement are for convenience only. They are not to be used in construing this Agreement.

25.1. This Agreement, including Exhibit A-1 and B-1, represents the entire understanding of the Parties. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may only be modified by a written amendment duly executed by the Parties.

25.2. If any term, covenant, condition or provision of this Agreement shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

25.3. NO WAIVER. The Parties agree that any breach or violation of this Agreement is not a waiver even if both Parties are aware of said breach or violation.

EXECUTED and AGREED to by the Parties on this the ____ day of _____, 20__.

CITY OF SAN ANTONIO

_____

Felix Padron
Director, DCCD

ARTIST

_____

APPROVED AS TO FORM

_____

City Attorney

EXHIBIT A – 1

SCHEDULE OF PERFORMANCE

ARTIST shall not commence ARTIST's services until this Agreement is fully executed. The following are milestone dates that must be met in accordance with this Agreement. ARTIST shall perform work according to the following schedule for design:

.

Phase	Time Period
1. Commencement of Work	_____
a. Artist shall commence work upon full execution of this Agreement.	
2. Concept Design	_____
a. Submit Concept Design Proposals to Staff and Community for review	
b. Public Art Board's review of Concept Design Proposal	
3. Schematic Design	_____
a. Submit Schematic Design Proposal to staff and Community for review	
4. Design Development	_____
a. Submit Artwork Design Development Proposal to staff for review	
b. Public Art Board's review of Artwork Design Development Proposal	
c. All "other" Review of Artwork Design Development Proposal	
5. Construction Documents	_____
a. Construction Documents, Calculations & Final Budget	
6. Final Completion Date	_____

The Schedule of Performance may be modified by mutual agreement only upon prior written authorization by the CITY as evidenced by signature from the Director or his designee.

EXHIBIT B – 1

PAYMENT SCHEDULE

PAYMENT SCHEDULE	
MILESTONE	PAYMENT
Upon execution of the agreement, research & start-up	$_____
Concept & Schematic Design	$_____
Submission of Final Proposal for Artwork Design	$_____
Final Completion upon approval of Artwork Design and Construction Documents	$_____
TOTAL PRICE	$_____

The Schedule for Payment shall occur in accordance with the milestones set forth. In the event that CITY accepts the ARTWORK, one or more payments may occur following the ARTWORK completion date.

Exhibit
IV

STATE OF TEXAS	§	**PUBLIC ART**
	§	
COUNTY OF BEXAR	§	**DESIGN, FABRICATION,**
	§	
CITY OF SAN ANTONIO	§	**& INSTALLATION AGREEMENT**

This Agreement ("Agreement") is made and entered into in San Antonio, Bexar County, Texas, between the City of San Antonio, a Municipal Corporation in the State of Texas ("CITY") and _____ ("ARTIST"), said Agreement being executed by the CITY pursuant to the Ordinance No. 2012-10-11-0796 passed by City Council on October 11, 2012and by the ARTIST, for the design, fabrication and installation services for CITY's _____.

WHEREAS, City held a Bond Election on May 12, 2012 and received approval from the voters to fund a variety of Public Improvements including allocation of funds for construction, acquisition and development of public art and design enhancements related to the _____ from Proposition _____; and

WHEREAS, the City and voters approved allocating 1% of the fund from Proposition ____ to public art which was communicated to voters in official materials that the City is bound by; and

WHEREAS, the City issued an RFQ on July 9, 2012 to create a Capital Projects Artist Pool from which ARTIST was chosen to complete Public Improvement related to the approved _____ (Bond project(s)) in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and

WHEREAS, ARTIST has/will complete a design for the ARTWORK that shall be approved by the Public Art Board of San Antonio and upon approval proceed to fabrication and installation of the ARTWORK; and

WHEREAS, the CITY finds that it is in the best interest of the CITY, its citizens and visitors to enhance and enliven the CITY's public spaces through the design, fabrication and installation of this ARTWORK on the terms and conditions in this Agreement;

NOW THEREFORE, in consideration of the mutual benefits, covenants and obligations herein, and for other good, fair and valuable considerations, the Parties agree as follows:

TABLE OF CONTENTS

SECTION	TITLE	PAGE
1.	DEFINITIONS	3
2.	ARTISTS GENERAL RESPONSIBILITIES	4
3.	CITY'S RESPONSIBILITIES	8
4.	DESIGN DEVELOPMENT OF THE ARTWORK 9	
5.	FABRICATION AND INSTALLATION OF THE ARTWORK	11
6.	SCHEDULE	14
7.	ARTIST'S COMPENSATION	15
8.	ARTIST'S WARRANTIES	16
9.	MAINTENANCE	17
10.	ARTIST IS INDEPENDENT CONTRACTOR	17
11.	INDEMNIFICATION	18
12.	INSURANCE	19
13.	COPYRIGHTS	21
14.	REPUTATION AND CREDIT	22
15.	COMPLIANCE WITH LAWS	23
16.	DEFAULT/TERMINATION AND/OR SUSPENSION	24
17.	ASSIGNMENT	27
18.	SUBCONTRACTS	27
19.	NOTICE	28
20.	PROTECTION OF PERSONS AND PROPERTY	28
21.	CONFLICT OF INTEREST	31
22.	GIFTS TO PUBLIC SERVANTS	31
23.	VENUE	32
24.	RIGHT TO AUDIT CONTRACTOR'S RECORDS	32
25.	MISCELLANEOUS	33

ATTACHMENTS: Exhibit A-1 SCHEDULE OF PERFORMANCE
Exhibit B-1 PAYMENT SCHEDULE

SECTION 1. DEFINITIONS

The following terms in this Agreement shall have the meanings set out below:

1.0. "ACCEPTANCE NOTICE" means notice by CITY to ARTIST that the completed ARTWORK is installed at the SITE and meets the requirements of this Agreement.

1.1. "ARTWORK" means the design and art fabricated and installed consistent with ARTIST'S final proposal to be submitted for review and approval of CITY.

1.2. "ARTIST" is _____.

1.3. "CITY" means the CITY of San Antonio, Texas, a home-rule, Texas Municipal Corporation located in Bexar County, Texas. CITY shall also designate one or more authorized representative who shall have the authority to represent and act for CITY. If no representative is specified, City's Manager or her authorized representative shall be deemed authorized to act.

1.4. "PASA" means PUBLIC ART SAN ANTONIO, which is in the CITY's Department for Culture and Creative Development and is responsible for public art.

1.5. "COMPENSATION SCHEDULE" means the values allocated to services associated with the public art design, fabrication and installation services, prepared in such form, and supported by such data as required by CITY.

1.6. "COMPLETION NOTICE" means notice by ARTIST to CITY that ARTWORK has been installed at the SITE.

1.7. "CONSTRUCTION DOCUMENTS/PLANS" mean the drawings, specifications, and addenda for the ARTWORK, which were developed by ARTIST and approved by CITY.

1.8. "DEFECTS NOTICE" means notice by CITY to ARTIST that the ARTWORK does not meet the requirements of this Agreement.

1.9. "DESIGN CONSULTANT" means the individual or firm engaged by CITY to design a facility or project.

1.10. "DIRECTOR" means the Director of the Department for Culture and Creative Development, (DCCD).

1.11. "NOTICE TO COMMENCE" means notice by CITY to ARTIST to begin design, fabrication and installation of the ARTWORK.

1.12. "OFF-SITE Element" means an element of the ARTWORK fabricated away from the SITE for later installation as a component of the ARTWORK.

1.13. "OFF-SITE Defects Notice" means notice by CITY to ARTIST that defects or deficiencies of an OFF-SITE element do not meet the CITY's requirements for formal approval.

1.14. "PROJECT" means the capital improvement/public art development undertaking of CITY for which Artist's services, as stated in the Scope of Services, are to be provided pursuant to this Agreement

1.15. "PROPOSAL" means Artist's Proposal to provide public art design services for this Project.

1.16. "SCHEDULE OF PERFORMANCE" means the schedule for the design, fabrication and installation of the ARTWORK set out in **EXHIBIT A-1**, attached and incorporated herein.

1.17. "SITE" means the physical place located at _____ where the ARTWORK will be installed.

1.18. "SUBCONTRACTOR" means a person or entity hired by ARTIST to complete work arising from this Agreement.

1.19. "Transport Notice To Proceed" means a notice issued by CITY to ARTIST approving the transportation of an OFF-SITE element of the ARTWORK to the SITE.

SECTION 2. ARTIST'S GENERAL RESPONSIBILITIES

2.0. The ARTWORK is to be an artistic product representing the creative talents of ARTIST and satisfies the specifications to be set forth in the Final Proposal and the Construction Documents for the ARTWORK. ARTIST shall fabricate the ARTWORK consistent with the Final Proposal and the Construction Documents, which were approved by CITY and include without limitation, supervising all aspects of the fabrication. ARTIST shall be responsible for the transportation, delivery and installation of the ARTWORK to the SITE consistent with the Final Proposal for the ARTWORK.

2.0.1. Design Within Budget Constraints. ARTIST is responsible for developing the Artwork Design so the ARTWORK can be constructed without exceeding the total compensation. ARTIST shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in ARTWORK.

2.0.2. ARTIST warrants that the ARTWORK, including the Artwork Design, is unique. ARTIST warrants that he/she will not replicate/duplicate the

same ARTWORK or Artwork Design without the express written consent of City. This Clause shall survive termination of this Agreement.

2.0.3. ARTIST is responsible for submitting the Final Proposal to CITY for approval at CITY's sole discretion. In the event of conflict between the Final Proposal and this Agreement as to any element of the Project unrelated to the size, scope and/or aesthetic of the ARTWORK itself, this Agreement will control.

2.0.4. ARTIST's opinions of probable project cost or construction cost are to be made on the basis of ARTIST's experience and qualifications representing ARTIST's best judgment as a design professional familiar with the construction industry.

2.1. DEVIATIONS FROM PROPOSAL. It is understood that changes from the Final Proposal may become desirable as the ARTWORK is fabricated.

2.1.1 Certain specifications regarding the ARTWORK, including, but not limited to, the size, color and/or type or grade of material of some of the elements of the ARTWORK may not be identified in either the Final Proposal or the Construction Documents. To the extent that any ARTWORK specification remains unidentified, ARTIST shall seek CITY's prior written approval of these specifications before commencing fabrication of the ARTWORK.

2.1.2. The Parties also recognize that shifts in scale from preliminary drawings and maquette to a full-scale work may require artistic adjustments. ARTIST reserves the right to make minor adjustments to the ARTWORK as ARTIST deems aesthetically necessary. However, in no event may a change in design increase the ARTWORK budget or require a modification of the Construction Documents without CITY's prior written approval.

2.1.3. MATERIAL DEVIATIONS. Any material deviation from the Final Proposal or the Construction Documents in the scope, design, color, size, material, utility requirements, support requirements, texture and/or location of the ARTWORK must be approved in writing and in advance by CITY before ARTIST proceeds with completion of the ARTWORK. Additionally, material deviation shall also include any change from the Final Proposal or the Construction Documents, which affects the fabrication, schedule of delivery or installation of the ARTWORK, preparation of the SITE and/or maintenance of the ARTWORK.

2.2. ADDITIONAL SERVICE AUTHORIZATION. No services for which ARTIST seeks additional compensation will be provided nor charged without CITY's prior written authorization.

2.3. PERSONNEL. ARTIST is responsible for providing, at ARTIST's expense, all personnel required by ARTIST to fulfill the responsibilities and obligations in this

Agreement. All persons retained by ARTIST shall possess the requisite licenses and permits.

2.4. REPRESENTATIVES. Before starting installation, ARTIST shall designate in writing an authorized representative who shall have the authority to represent and act for ARTIST. ARTIST's authorized representative shall be present at the SITE of the work at such times as designated by the CITY.

2.5. COORDINATION. The Parties shall closely consult with each other during all stages of fabrication and installation of the ARTWORK. ARTIST agrees to meet with CITY, DESIGN CONSULTANT, and others as reasonably directed by CITY to ensure coordination of ARTIST's fabrication and installation of the ARTWORK.

2.6. PERMITS, FEES AND NOTICES. Unless otherwise provided in the Agreement, the ARTIST shall give notices as required by law, and secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper fabrication and installation of the ARTWORK, which are customarily secured after execution of this Agreement. CITY and Design Consultant shall assist ARTIST, when reasonably requested, in obtaining such permits and licenses.

2.6.1 If ARTIST provides ARTWORK knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations, the ARTIST shall assume appropriate responsibility for such ARTWORK and bear the costs attributable to the correction thereof.

2.6.2 The ARTIST shall also assist CITY in obtaining all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System regulations, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the ARTWORK. Any drainage alterations made by ARTIST during the construction process, which require the issuance of a permit, shall be at ARTIST's sole cost.

2.7 USE OF SITE. ARTIST will abide by all applicable rules and regulations of the CITY with respect to conduct, including smoking, parking of vehicles, security regulations and entry into adjacent facilities owned by the CITY.

2.7.1. ARTIST shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall ARTIST subject any part of the ARTWORK or adjacent property to stresses or pressures that may endanger it.

2.7.2. ARTIST shall confine ARTIST's construction equipment, the storage of materials and equipment and the operations of ARTIST's personnel to areas

permitted by law, ordinances, permits and the requirements of the Agreement and shall not encumber the SITE unreasonably.

2.7.3. The ARTIST shall provide reasonable access to residents and businesses affected by the fabrication and installation of the ARTWORK to the greatest extent possible.

2.7.4. During the progress of the ARTWORK, ARTIST shall keep the SITE and surrounding area free from accumulations of waste materials, rubbish, and other debris resulting from fabrication and/or installation of the ARTWORK. ARTIST shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units, operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of resulting debris. ARTIST shall be given three days notice to clean the SITE, otherwise the CITY may do so and the cost shall be charged to the ARTIST

2.7.5. Prior to Substantial Completion of the ARTWORK, ARTIST shall remove all waste materials, rubbish and debris from and about the SITE as well as all tools, appliances, excess materials, construction equipment and machinery, and shall leave the SITE clean and ready for acceptance by CITY. ARTIST shall restore to their original condition those portions of the SITE not designated for alteration by the Agreement. If the ARTIST fails to clean up the SITE as provided in the Agreement after three days' notice from CITY, the CITY may do so and the resulting cost shall be charged to the ARTIST.

2.8. REVIEW OF PROGRESS AND REPORTS. At reasonable times and with advance notice to ARTIST, CITY has the right to review the work in progress and to require and receive progress reports from ARTIST. CITY shall have the right to visit ARTIST's studio at all reasonable times to inspect and review the progress of the ARTWORK. ARTIST shall be responsible for arranging with ARTIST's subcontractors for reasonable access for review and inspection of the ARTWORK at any subcontractor's place of business.

2.9. RISK OF LOSS. Until the ARTWORK is formally accepted by CITY, any damage, theft, vandalism, or acts of God or nature affecting the ARTWORK are the responsibility of ARTIST, including, but not limited to, any loss occurring during the fabrication, storage, transportation, delivery or installation of the ARTWORK.

2.10 PREVAILING WAGE. The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to this agreement. ARTIST shall pay or cause to be paid, prevailing wages for all work under this Agreement and shall not accept affidavits.

2.10.1. In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, ARTIST shall request and City will provide the appropriate

wage determination which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. The ARTIST is required, and shall require its construction contractor and all subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time. The ARTIST is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with any contractor and subcontractors for construction of ARTWORK. ARTIST is responsible for and shall collect and monitor certified payrolls and perform SITE visits to ensure the prevailing wage is paid to all workmen.

2.10.2. City may audit certified payroll records as needed. Upon audit of the records and certified payrolls, should there be any violations the ARTIST or ARTIST's subcontractor shall forfeit as a penalty to the CITY $60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the stipulated rates for any work done under said contract, by the contractor or any subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code does not relieve Artist from its obligation under any federal or state law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed.

2.11. INTERNET-BASED PROJECT MANAGEMENT SYSTEMS. At its option, CITY may administer its design and construction management through an Internet-based management system. In such cases, ARTIST shall communicate through this media and perform all ARTWORK related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, or payment requests and processing, Amendments, Change Orders and other administrative activities. When such systems are employed, the CITY shall administer the software, shall provide training to ARTIST and ARTIST's personnel, and shall make the software accessible via the Internet to ARTIST and ARTIST's personnel.

2.12. Tax Identification Number. No later than the date of ARTIST's execution of this Agreement, ARTIST shall provide City with ARTIST's Tax Identification Number and any proof of ARTIST's Tax Identification Number as requested by City. ARTIST shall notify City of any change in ARTIST's Tax Identification Number.

SECTION 3. CITY'S RESPONSIBILITIES.

3.0. SITE Information. CITY shall be responsible for providing ARTIST, at no cost to ARTIST, copies of existing designs, drawings, reports, and other existing relevant SITE data, if any are required by ARTIST.

3.1. CITY is under no obligation to supervise the ARTIST's performance of services under this Agreement but may help facilitate meetings with the community.

SECTION 4. DESIGN DEVELOPMENT OF THE ARTWORK

4.0. ARTIST shall perform the following design services to the satisfaction of CITY and within the deadlines set forth in **Exhibit A-1 Schedule of Performance**.

4.1. Research. ARTIST shall meet with CITY staff in order to understand the uses of the Project and facilities surrounding the Project for the purposes of defining goals for the ARTWORK appropriate to the general social and immediate physical environment of the ARTWORK. ARTIST shall also attend at least three individual meetings with local experts or other interested parties as designated by CITY. The times and dates of these meetings shall be subject to the mutual agreement of the Parties. Any required travel incurred by ARTIST above and beyond what is provided for by this Agreement shall be requested in writing, will need to be approved by both Parties and may be subject to a separate agreement.

4.2. Concept and Schematic Designs.

4.2.1. ARTIST shall prepare one or more concept designs showing ARTIST's idea(s) for the ARTWORK ("Concept Design Proposal"). The Concept Design Proposal will include the general intent, the proposed form and indication of location, scale and proposed materials of the ARTWORK.

4.2.2. Following CITY's approval of the Concept Design Proposal, ARTIST shall prepare one or more designs showing ARTIST's schematic design for the ARTWORK ("Schematic Design Proposal"). The Schematic Design Proposal will include form, scale, and proposed materials (samples to be provided where appropriate) as well as information on structural considerations, surface integrity, permanence and protection against theft and vandalism.

4.2.3. ARTIST shall investigate and prepare preliminary cost estimates for the fabrication and installation of the ARTWORK proposed in the Schematic Design Proposal. The estimates shall indicate the feasibility of producing the proposed ARTWORK within the CITY's budget ("Preliminary Cost Estimate") including a contingency equal to 10% of the fabrication and installation budget to cover unforeseen costs, which shall be retained by the CITY until final payment.

4.2.4. The Schematic Design Proposal shall include an outline of the proposed installation method, and a schedule for the ARTWORK fabrication and installation (collectively, the "Proposed Installation Method").

4.3. Artwork Design Development Proposal. Upon receipt of CITY's Notice to Proceed, ARTIST shall develop a final proposal for the ARTWORK ("Artwork Design Development Proposal") showing the details of the ARTWORK. The Artwork Design Development Proposal will include indication of form, scale, and proposed materials (samples to be provided when appropriate). The Artwork Design Development Proposal

shall also include information on structural considerations, surface integrity, permanence, and protection against theft and vandalism (collectively, the "Artwork Design Specifications").

4.3.1. ARTIST shall develop a detailed budget estimate ("Artwork Budget Estimate") covering all estimated costs to fabricate and install the ARTWORK, including, but not limited to: itemized cost estimates for materials including applicable sales tax; OFF-SITE fabrication costs; itemized General Contractor and sub-contractor costs; permits or other fees; insurance; transportation of the ARTWORK to SITE; and itemized installation costs.

4.3.2. 10% of the Artwork Budget will be set aside as a contingency to cover unforeseen costs, that may arise during the fabrication and installation.

4.3.3. The Artwork Design Development Proposal shall include a detailed written description of the fabrication and installation method ("Installation Specifications"), detailed fabrication and installation schedule ("Installation Schedule") and the description of any operational, maintenance and conservation requirements for the ARTWORK ("Maintenance Specifications").

4.4. Artwork Design Development Proposal Review.

4.4.1. ARTIST shall provide presentation quality visual material of the Artwork Design Development Proposal in conjunction with the review by CITY staff, the Reviewing Body, and for release to the press. CITY shall dictate the specific types of presentation materials to be used.

4.4.2. The Artwork Design Development Proposal shall be submitted to the CITY for review and submittal to the Reviewing Body. CITY may require ARTIST to make modifications to the Artwork Design Development Proposal prior to submission.

4.4.3. ARTIST, at CITY's option, shall be available to present the Artwork Design Development Proposal, in the form approved by the CITY, at one or more meetings of the Reviewing Body.

4.4.4. The Reviewing Body may recommend approval, approval with minor changes or disapproval. If the Reviewing Body recommends disapproval or approval with minor changes, ARTIST, upon written notification by CITY, shall respond to the recommended changes in writing and submit a revised Artwork Design Development Proposal to the CITY for review. The Reviewing Body may assess the Artwork Design Development Proposal as revised and make additional recommendations.

4.4.5. Should the final design proposal be disapproved and the ARTIST has performed the services set out in Agreement to the satisfaction of the CITY,

ARTIST may be compensated to submit a modified design proposal as specified by the PASA Program Manager.

4.5. Construction Documents. ARTIST, at CITY's option, is responsible for the preparation of any drawings depicting both the fabrication and installation of the Artwork as proposed by the Artwork Design Development Proposal ("Construction Documents")and for obtaining any and all information necessary to prepare the Construction Documents, including without limitation, any field measurements of the proposed SITE.

4.5.1. Construction Documents must conform to all applicable federal, state and local laws and regulations. If applicable or upon request by CITY, any and all drawings must be certified by a qualified engineer or architect, licensed by the State of Texas; and

4.5.2. When seeking approval of the Construction Documents, ARTIST shall submit the following to CITY unless notified otherwise by CITY:

A. plans on reproducible sheets measuring 24 inches by 36 inches, and provided in digital PC-compatible format;

B. all engineering calculations associated with the submitted Construction Documents; and

C. specifications for ARTWORK including a final budget estimate listing the quantities and unit prices for fabrication and installation of Artwork.

4.5.3. The Construction Documents for the ARTWORK are subject to approval by CITY who will notify ARTIST in writing once the Construction Documents are approved. CITY's approval of the Plans shall not release ARTIST of the responsibility for correcting mistakes, errors or omissions, proximately caused by ARTIST which may be the result of circumstances unforeseen when the Plans were developed or approved.

4.6. Notice of Acceptance. If all approvals are secured, the CITY will issue a written Notice of Acceptance of the Artwork Design Development Proposal to ARTIST. CITY's acceptance does not obligate the CITY to commission fabrication and/or install the ARTWORK.

SECTION 5. FABRICATION AND INSTALLATION OF THE ARTWORK

5.0. INSPECTION NOTICE. CITY and ARTIST agree that various elements of the ARTWORK may be fabricated at locations away from the SITE (collectively, "OFF-SITE Elements"). The OFF-SITE Elements, include, but are not limited to, the elements described in the ARTWORK Design Development Proposal and Construction

Documents. ARTIST shall notify CITY in writing when each element of the ARTWORK is ready for inspection, prior to transporting the OFF-SITE Elements to the SITE ("Inspection Notice"). CITY has the right to inspect each of the OFF-SITE Elements and all other aspects of the construction of ARTWORK.

5.1. NOTICE TO COMMENCE WORK. Within 15 business days of CITY's receipt of the Inspection Notice for each of the OFF-SITE Elements, CITY will inform ARTIST in writing that either: (1) the OFF-SITE Elements have been completed in accordance with this Agreement and are formally approved in writing for transport to the SITE ("Transport Notice To Proceed"); or (2) there are identified defects or deficiencies in the OFF-SITE Elements which prevent formal approval ("OFF-SITE Defects Notice"). In the event that an OFF-SITE Elements is fabricated outside San Antonio, the CITY may, at its sole discretion, delay inspection until the OFF-SITE Elements is delivered to the SITE. If CITY fails to issue the Transport Notice to Proceed or the OFF-SITE Defects Notice within the 15 business days inspection period, the Transport Notice To Proceed will be deemed issued at the end of 15 business days. In the event that CITY issues an OFF-SITE Defects Notice, ARTIST will promptly remedy any defects to the reasonable satisfaction of the CITY.

5.2. DELIVERY. Upon issuance of the Transport Notice To Proceed, ARTIST shall deliver the OFF-SITE Elements to the SITE. ARTIST shall coordinate with the CITY regarding the time, place and manner of the ARTWORK delivery and installation. CITY shall have the right to inspect the OFF-SITE Elements at the time each arrives at the SITE to determine if there is any damaged from transit or any deviations from the OFF-SITE Element previously approved by CITY or from the terms of this Agreement. ARTIST shall promptly remedy any deviation, defect or damage to the Off-SITE Elements to the reasonable satisfaction of the CITY.

5.3. PLANS. ARTIST shall cause all labor and material incorporated in the ARTWORK to be furnished in accordance with the requirements and specifications approved by CITY (collectively, the "PLANS"). The PLANS, once approved by CITY, are final and, except as expressly provided in this subsection, no revisions shall be permitted except with CITY's prior written approval.

5.3.1. CITY's approval of the Plans shall not release ARTIST of the responsibility for the correction of ARTIST's mistakes, errors or omissions in the PLANS, including any mistakes, errors or omissions resulting from unforeseen circumstances. If public safety issues arise that, require any change to the PLANS as determined at CITY's sole discretion, CITY can require ARTIST to address the public safety issues. ARTIST shall then propose modifications to the CITY for review and approval provided such modifications do not increase the TOTAL PRICE.

5.3.2 All completed drawings submitted by ARTIST for final approval or issuance of a permit that require the seal and certification of a licensed engineer

or architect shall bear the seal with signature and date of a Texas registered architect/engineer licensed to practice in Texas.

5.4. WORK AT THE SITE

5.4.1. INSTALLATION. ARTIST shall be responsible for installation of ARTWORK at the SITE, including without limitation, supervising the work of any subcontractors and coordinating the inspection of the installation of ARTWORK with the CITY. The ARTWORK will not be formally accepted until CITY issues the ACCEPTANCE NOTICE approving the ARTWORK installation at the SITE.

5.4.2. CITY'S ACCESS TO SITE. CITY's staff and designated representatives shall have free access to the ARTWORK for inspection purposes at all times during the progress of work on the ARTWORK at the SITE. If CITY determines that all or any portion of the work done on the ARTWORK is not in compliance with the Plans, CITY shall notify ARTIST of the same and ARTIST shall promptly cure such defect to the reasonable satisfaction of CITY.

5.4.3. Whenever the ARTIST or ARTIST's authorized representative are not present on the SITE and it becomes necessary to give direction for safety reasons, the DCCD Director or his designee shall have the right to give orders, which shall be obeyed by ARTIST's subcontractor and/or employees. At ARTIST's request, any order given by the DCCD Director or his designee will be confirmed in writing.

5.5. COMPLETION OF SERVICES.

5.5.1. COMPLETION NOTICE. ARTIST shall notify CITY when the ARTWORK is fully installed at the SITE ("Completion Notice"). Within 30 days of CITY's receipt of the Completion Notice, CITY shall notify ARTIST in writing that the ARTWORK as completed and installed meets the Agreement's requirements ("Acceptance Notice") or if the ARTWORK does not meet this Agreement's requirements, CITY shall notify ARTIST in writing ("Defects Notice").

5.5.2. REMEDY OF DEFECTS. ARTIST shall promptly remedy at ARTIST's own cost any defects noted in CITY's Defects Notice to CITY's reasonable satisfaction.

5.5.3. MAINTENANCE INSTRUCTIONS. As a condition of CITY's acceptance of the ARTWORK, ARTIST shall supply CITY with written maintenance instructions for the ARTWORK. These instructions shall include information in sufficient detail regarding the proper care, repair and maintenance of the ARTWORK.

5.5.4. FINAL DOCUMENTATION. As a condition of CITY's acceptance of the ARTWORK, ARTIST shall supply CITY with at least three publication quality

images of the installed ARTWORK in both slide and digital formats and other information on the ARTWORK requested by CITY for its registration files. Use of these images will be in accordance with Section 12.2 of this Agreement.

5.5.5 ARTIST shall be available at such time or times as may be agreed upon between CITY and ARTIST to attend an inauguration or presentation ceremonies relating to the transfer of the ARTWORK to CITY.

5.6. DEATH OR INCAPACITY OF ARTIST. In the event of ARTIST's physical incapacity or death prior to the completion of the ARTWORK, all payments made up to the point of incapacity or death will be retained by ARTIST and all work performed to date of incapacity or death will be compensated. Upon payment, the incomplete ARTWORK and any materials paid for by CITY will become CITY property. However, if the ARTWORK is substantially designed and/or completed and it is feasible for the ARTWORK to be fully completed without undue delay while remaining faithful to the ARTIST's design, integrity and reputation, CITY may elect to proceed, under this Agreement, with completion and/or installation by ARTIST's REPRESENTATIVE. All remaining work to be completed in accordance with this Agreement will be delegated to: [NAME, ADDRESS, PHONE NUMBER] ("REPRESENTATIVE").

SECTION 6. SCHEDULE.

6.0. This Agreement commences upon execution by all the Parties on _____, 2014 and shall terminate upon completion of all services required by this Agreement unless either Party terminated this Agreement earlier in accordance with the terms herein.

6.1. ARTIST is to complete the services required of ARTIST herein in accordance with the schedule set out in the attached **EXHIBIT A-1**, entitled "Schedule of Performance".

6.1.1. Prior to commencement of the work, the Parties shall mutually agree to an inspection schedule, which may be adjusted from time to time by mutual written agreement.

6.1.2. When work is not in progress and/or suspended, arrangements acceptable to the CITY shall be made for any required emergency work.

6.2. TIME. All limitations of time set forth in this Contract are material and time is of the essence in the performance of ARTIST's services under this Agreement.

6.3. FORCE MAJEURE. CITY or ARTIST may grant temporary relief from any deadline for performance of any term of this Agreement if either Party is prevented from compliance and performance by an act of war, order of legal authority, act of God, terrorism, social unrest, strike, natural disaster, supply shortage, or other unavoidable cause not attributed to the fault or negligence of the Party. To obtain an extension

based upon Force Majeure, ARTIST must provide written notice to CITY of the occurrence of the Force Majeure event within 10 days following the date that ARTIST becomes aware of the event and the fact that it will delay ARTIST's performance under this Agreement. CITY will not unreasonably withhold consent.

SECTION 7. ARTIST'S COMPENSATION.

7.0. COMPENSATION. ARTIST's total compensation for full and timely completion of the services required by this Agreement is **$_____** (the "TOTAL PRICE"). Such payment shall be full and complete compensation for work performed and services rendered by or on behalf of ARTIST, including, but not limited to, professional services and expenses, for all supervision, labor, supplies, materials, equipment or use thereof and for all other necessary incidentals. CITY is not obligated to compensate ARTIST unless and until CITY accepts the ARTWORK.

7.0.1 Payment Schedule. CITY shall make interim payments to ARTIST in the amounts and at the milestones as identified in the Payment Schedule, attached and incorporated as **Exhibit B-1**, as compensation to assist ARTIST with financing the fabrication, delivery and installation of the ARTWORK. The form of the invoice shall be subject to the reasonable approval of the CITY. Within 30 days of CITY's receipt of ARTIST's invoice indicating the appropriate milestone has been reached, CITY will pay ARTIST amount allocated in the Payment Schedule.

7.0.2. Parties agree that the Payment Schedule may be modified only upon prior written authorization of the CITY and ARTIST. CITY's PASA Program Manager may approve changes, which are not considered material by CITY.

7.1. COST OVERRUN. In the event ARTIST incurs costs over the TOTAL PRICE, ARTIST shall pay such excess at ARTIST's sole cost. CITY is not responsible for any part of such excess.

7.1.1 In the event that work for which the CITY has been invoiced does not meet the specifications required by this Agreement, CITY in its sole discretion shall have the right to withhold such payment until such deficiency is corrected. In such event, CITY shall provide detailed written notice to ARTIST within 10 days of receipt of such invoice, specifying the failure of performance for which CITY intends to withhold payment. ARTIST shall work to cure such failure in order to meet the Agreement standards to the reasonable satisfaction of CITY.

7.2. NO WAIVER OF RIGHTS. No payment to ARTIST for any work performed or services rendered shall constitute a waiver or release by CITY of any claims, rights or remedies CITY may have against ARTIST under this Agreement or by law, nor shall such payment constitute a waiver by the CITY of any failure or fault of ARTIST to perform satisfactorily under this Agreement. ARTIST expressly acknowledges that approval of work to permit an interim payment is solely to permit ARTIST to receive an

interim payment. Unless and until the CITY issues an Acceptance Notice for the ARTWORK, no interim approval shall constitute acceptance or approval of the ARTWORK by CITY nor is it a waiver of CITY's right to require that the ARTWORK conform strictly to the approved Construction Documents/PLANS.

7.3. If CITY approves a modification of the Final Proposal or PLANS resulting in cost savings such as but not limited to, the deletion of an element, substitution of lesser quality materials with no offsetting upgrade of other materials, or reduction in the size/scale, the cost savings from the modification will not be paid to ARTIST.

7.4. If the Parties mutually agree in writing to a modification of the ARTWORK resulting in an increased cost to ARTIST, including but not limited to the addition of an element, the substitution of more expensive materials, or the increase in size/scale, the resulting cost increases shall be paid to ARTIST.

7.5. If work for which the CITY has received a request for payment does not meet specifications required by this Agreement, CITY in its sole discretion shall have the right to withhold such payment until the deficiency is corrected. In such event, CITY shall provide detailed written notice to ARTIST within 10 days of receipt of such request for payment, specifying the failure of performance for which CITY intends to withhold payment. ARTIST shall cure such failure to the reasonable satisfaction of CITY.

SECTION 8. ARTIST'S WARRANTIES.

8.0. ARTIST warrants that the services required by this Agreement will be performed with the same degree of professional skill and care that are typically exercised by similar professionals performing similar services. ARTIST's installation and fabrication services shall comply with the Construction Documents/PLANS for the ARTWORK approved by CITY. Further ARTIST represents and warrants the following.

8.0.1. ARTIST has not previously sold, assigned, licensed, granted, encumbered, or utilized the ARTWORK, the ARTWORK'S design or any element thereof, in any manner, which may affect or impair the rights granted pursuant to this Agreement.

8.0.2. All work created or performed by ARTIST under this Agreement, whether created by ARTIST alone or in collaboration, is wholly original and will not infringe upon or violate the rights of any third party.

8.0.3. ARTIST has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.

8.0.4. The ARTWORK is a unique edition resulting from the artistic efforts of ARTIST. ARTIST acknowledges that CITY desires that the ARTWORK be unique, and ARTIST agrees not to duplicate the ARTWORK without CITY's written consent.

8.0.5. All services shall be performed in accordance with City's Standard Specifications if applicable, which are on file with the CITY's Transportation and Capital Improvements, (TCI) Architectural Division. To the extent that the CITY's Standard Specifications conflict with the provisions set forth in this Agreement, this Agreement shall control.

8.0.6. ARTWORK will be delivered free and clear of any liens.

8.1. DEFECTS IN MATERIAL WORKMANSHIP AND INHERENT VICE. ARTIST warrants that the ARTWORK will be free of defects in workmanship, including Inherent Vice, and that the ARTIST will, at the ARTIST's own expense, remedy any defects due to faulty workmanship, or Inherent Vice, which appear within a period of one year from the date the ARTWORK is formally accepted. The term "Inherent Vice" means any quality within the material or materials incorporated into the ARTWORK that alone or in combination result in the unreasonable deterioration of the ARTWORK.

8.1.1 If the ARTWORK deteriorates due to Inherent Vice within one year from the date the ARTWORK is formally accepted, ARTIST will repair or replace the ARTWORK without charge for ARTIST's services in supervising the work of others or for repairing the work that they originally performed on the ARTWORK and ARTIST will pay for the cost of labor rendered by persons other than the ARTIST, materials and supplies.

8.1.2. ARTIST further warrants that the ARTWORK shall not constitute any threat to the safety of persons or property when used in the manner for which it is designed. ARTIST agrees to cooperate with CITY in making or permitting adjustments to the ARTWORK if needed to eliminate hazards, which become apparent after the ARTWORK is formally accepted by CITY.

8.2 These representations and warranties survive the Agreement's termination.

SECTION 9. MAINTENANCE.

9.0. CITY shall have the right to determine, after consultation with ARTIST or with a professional conservator, when and if repairs and restorations to the ARTWORK will be made. It is the policy of CITY to consult with ARTIST regarding repairs and restoration, which are undertaken during ARTIST's lifetime.

9.1. All repairs and restorations, whether performed by ARTIST, CITY, or third parties, shall be made in accordance with professionally recognized principles of conservation of ARTWORK and in accordance with the maintenance instructions provided to CITY by ARTIST pursuant to Section 5.2.3.

SECTION 10. ARTIST IS INDEPENDENT CONTRACTOR.

10.0. ARTIST is an independent contractor and not an officer, agent, servant or employee of CITY and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between CITY and ARTIST. ARTIST has no authority to bind the CITY. ARTIST shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants.

10.1 CITY shall not be liable for any third party claims, which may be asserted in connection with the performance of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give any third party any legal or equitable right, remedy or claim under or in respect of this Agreement or any authority to enforce this Agreement.

SECTION 11. INDEMNIFICATION.

11.0. The ARTIST, whose work product and services are the subject of this Agreement for professional services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS against any and all claims by third parties, lawsuits, judgments, cost, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY ARTIST'S NEGLIGENT ACT, ERROR, OR OMISSION OF ARTIST, OR OF ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, ARTIST OR SUBARTIST OF ARTIST, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the services, rights or duties under this AGREEMENT. The INDEMNITY provided for in this paragraph shall not apply to any liability resulting from the NEGLIGENCE of CITY, its officers or employees, in instances where such NEGLIGENCE causes personal injury, death, or property damage. IN THE EVENT ARTIST AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.1. ARTIST shall advise CITY in writing within 24 hours of any claim or demand against the CITY or the ARTIST that is known to ARTIST related to or arising out of ARTIST's activities under this Agreement.

11.2. The provisions of this section are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

11.3. Acceptance of the Final PLANS by the CITY shall not constitute nor be deemed a release of the responsibility and liability of the ARTIST, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, work drawings, Plans and Specifications or other documents; nor shall such acceptance be deemed an assumption of responsibility or liability by the CITY for any defect in the designs, work drawings, Plans and Specifications or other documents prepared by ARTIST, its employees, sub-artists, and agents.

11.4. **THE ARTIST SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST THE CITY AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST THE CITY, TO THE EXTENT THAT THE ARTWORK PROVIDED UNDER THIS AGREEMENT CONSTITUTES AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

11.5. Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of ARTIST, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for ARTIST or any subcontractor under worker's compensation or other employee benefit acts.

SECTION 12. INSURANCE.

12.0. Prior to the commencement of any Services under this Agreement, ARTIST shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY's Department for Culture and Creative Development, which shall be clearly labeled "_____" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the CITY's Department for Culture and Creative Development. No officer or employee other than the CITY's Risk Manager shall have authority to waive this requirement.

12.1. ARTIST's financial integrity is of interest to the CITY. Therefore, subject to the ARTIST's right to maintain reasonable deductibles in such amounts as are approved by the CITY, the ARTIST shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the ARTIST's sole expense, insurance coverage written on an occurrence or claims made basis, as appropriate, by companies authorized and approved to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence

All notices under this Article shall be given to CITY at the following address:

CITY of San Antonio
Attn: _Department for Culture and Creative Development
P.O. Box 839966
San Antonio, Texas 78283-3966

12.2. With respect to the above required insurance, ARTIST agrees that all insurance policies are to contain or be endorsed to contain the following required provisions:

- Name the CITY and its officers, officials, employees, and elected representatives as an additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY;
- Provide for an endorsement that the "other insurance" clause shall not apply to the CITY where the CITY is an additional insured shown on the policy if such endorsement is permitted by law and regulations; and
- Provide 30 calendar days advance written notice directly to CITY of any suspension, cancellation or non-renewal or material change in coverage, and not less than 10 calendar days advance written notice for nonpayment of premium.

12.3. Within five calendar days of a suspension, cancellation or non-renewal of coverage, the ARTIST shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend the ARTIST's performance should there be a lapse in coverage at any time during this contract, and such suspension shall continue until cured. Failure to provide and maintain the required insurance shall constitute a material breach of this contract.

12.4. In addition to any other remedies the CITY may have upon the ARTIST's failure to provide and maintain any insurance or policy endorsements to the extent and within the required time, the CITY shall have the right to order ARTIST to stop performing services and/or withhold any payment(s) which become due to the ARTIST hereunder until the ARTIST demonstrates compliance with the requirements hereof.

12.5. Nothing herein shall be construed as limiting in any way the extent to which the ARTIST may be held responsible for payments of damages to persons or property resulting from the ARTIST's or its sub-artist's performance of the services covered under this Agreement.

12.6. The ARTIST's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the CITY for liability arising out of operations under this Agreement.

12.7. The insurance required is in addition to and separate from any other obligation contained in this Agreement as respects additional insureds.

12.8. ARTIST and any subcontractors are responsible for all damage to their own property and/or equipment.

12.9 If applicable ARTIST shall comply with Texas Government Code Chapter 2253 provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).

SECTION 13. COPYRIGHTS.

13.0. CITY shall have ownership and possession of the Artwork Design upon acceptance of the final Artwork Design Proposal, approval of the Construction Documents and final payment by CITY. Upon completion of fabrication and installation of the ARTWORK and full payment for the ARTWORK, CITY shall have ownership and possession of the ARTWORK including exclusive right to display the ARTWORK, subject to this Agreement. CITY may make any and all reproductions or derivatives in whatever form of the ARTWORK or Artwork Design for educational, public relations, arts promotional, commercial or any other purpose and such uses will not result in any additional payments to ARTIST.

13.1. ARTIST retains copyrights and intellectual property and/or patents related to the ARTWORK and the Artwork Design including potentially those patents, related to materials used in the fabrication or installation of the ARTWORK. However, any use of the Artwork Design by ARTIST or any third party must be approved, in advance, by CITY except that ARTIST is expressly allowed to use reproductions of the Artwork Design and documentation of ARTWORK for self-promotion, presentation and portfolio use.

13.2 If CITY obtains a commercial benefit from the ARTWORK, or Artwork Design, by sale of reproductions or images of same, or by licensing same, revenues received by CITY from such commercial ventures shall be directed to long-term maintenance of the ARTWORK.

13.3. CITY has the exclusive right to display the ARTWORK and Artwork Design, including drawings, models, or any reproduction of the ARTWORK and to loan the ARTWORK, in whole or in part, including to other persons or institutions with authority to display it publicly. CITY acknowledges ARTIST's co-right to display images of the ARTWORK and to display the Artwork Design or images or reproductions of the Artwork Design, and to display or exhibit such images and/or reproductions, including the Artwork Design itself, so long as such display or exhibition is consistent with attribution to the CITY.

13.4. ARTIST expressly consents to both the installation and removal from the Project of the ARTWORK and expressly waives his/her Moral Rights, as defined in the Visual Rights Act 17 U.S.C. § 106(A), to the ARTWORK. Further, ARTIST understands that the incorporation and installation of the ARTWORK into a CITY facility may subject the ARTWORK to destruction, distortion, mutilation, or other modification if and when removed. It is agreed that if the ARTWORK, or any portion thereof is removed causing destruction, distortion, mutilation or modification in any significant way, the ARTWORK may no longer be referred to as "an Artwork by the Artist".

13.5. The clauses in Section 13 shall survive termination of this Agreement.

SECTION 14. REPUTATION AND CREDIT.

14.0. Unless ARTIST requests to the contrary in writing, all references to the ARTWORK and all reproductions of the ARTWORK will credit the ARTWORK to ARTIST.

14.1. CITY may fabricate and install an identification plaque for the completed ARTWORK, which will include the following information: ARTIST's name, year in which ARTWORK is completed, ARTWORK title, funding agency and commissioning agency.

14.2. ARTIST agrees that all formal references to the ARTWORK made or authorized to be made by ARTIST shall include the following credit: "Collection of the City of San Antonio, Commissioned through Public Art San Antonio," or other language agreed to by the Parties.

14.3. ARTIST and ARTIST's contractors and subcontracts shall coordinate any releases of information regarding the ARTWORK to the public and news media with CITY staff. In all communications to the public and news media, the ARTIST must fully and accurately identify the ARTIST's relationship to the CITY and credit the CITY for its role in funding the Project.

14.4. FUTURE MODIFICATION OR RELOCATION. Removal or relocation of the ARTWORK, if practical and economically feasible as determined by CITY, in its sole discretion, will occur in conformity with the City's Public Art Policy. CITY's decisions regarding removal or relocation of the ARTWORK is final and may occur at any time.

14.4.1. CITY has the right to remove the ARTWORK from the SITE at any time. In addition, in the event that any element of the ARTWORK constitutes a public safety hazard, CITY has the right to remove only the element posing the public safety hazard without prior written notice to ARTIST.

14.4.2. CITY has the right to donate or sell the ARTWORK at any time. Before exercising this right, CITY shall give ARTIST 30 days from issuance of written notice to ARTIST to purchase the ARTWORK for the greater of the TOTAL PRICE or market value, plus all costs associated with the removal of the ARTWORK from the SITE, clean-up of the SITE and delivery to ARTIST.

14.4.3. CITY agrees to not intentionally modify the ARTWORK without providing ARTIST prior written notice. Should the need arise; CITY may negotiate with ARTIST to conduct or supervise ARTWORK restoration.

14.4.3. ARTIST's rights under this Agreement cease with ARTIST's death and do not extend to ARTIST's heirs, successors or assigns except that ARTIST will still receive credit for the ARTWORK and in the case of death or incapacity of the ARTIST as delineated in 5.2.4.

SECTION 15. COMPLIANCE WITH LAWS.

15.0. ARTIST shall comply with all applicable federal, state and local laws, ordinances, codes and regulations and will use reasonable efforts to ensure compliance by any and all contractors and subcontractors that may work on the ARTWORK.

15.1. ARTIST shall comply with the all local, state and federal environmental requirements including all City applicable construction and development regulations as well as federal Environmental Protection Agency, Texas Department of State Health Services and Texas Commission on Environmental Quality rules and regulations and all other regulations and laws relating to the environment, Hazardous Substances or exposure to such.

15.2. Non-Discrimination. ARTIST understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

15.3 None of ARTIST's services shall involve, and no portion of the funds received by ARTIST shall be used to support any sectarian or religious activity.

SECTION 16. DEFAULT/TERMINATION AND/OR SUSPENSION

16.0. TERMINATION WITH CAUSE. Right of Either Party to Terminate for Default

16.0.1. This Agreement may be terminated by either Party for substantial failure by the other Party to perform (through no fault of the terminating Party) in accordance with this Agreement and a failure to cure as provided in this Section.

16.0.2. The Party not in default must issue a signed, written notice of default and intent to terminate (citing this paragraph) to the other Party declaring the other Party to be in default and stating the reason(s) why they are in default. Upon receipt of such written notice of default, the party in receipt shall have a period of 10 days to cure any default. Upon the completion of such 10-day cure period, if such Party has not cured any failure to perform, such termination shall become effective without further written notice.

16.1. RIGHT OF CITY TO TERMINATE. CITY reserves the right to terminate this Agreement for reasons other than substantial failure by the ARTIST to perform by issuing a signed, written notice of termination (citing this paragraph) which shall take effect upon effective notice to ARTIST and/or upon the scheduled completion date of the performance phase in which ARTIST is currently working, whichever occurs first. In the event of termination by CITY without cause, ARTIST shall be entitled to payment for all work performed by or

on behalf of ARTIST to date, together with reimbursement for all legitimate expenses incurred by ARTIST up to ARTIST's receipt of such notice.

16.2. RIGHT OF CITY TO SUSPEND GIVING RISE TO RIGHT OF ARTIST TO TERMINATE. CITY reserves the right to suspend this Agreement at the end of any phase for CITY's convenience by issuing a signed, written notice of suspension (citing this paragraph) outlining the reasons for the suspension and the expected duration of the suspension. Such expected duration shall in no way be a guarantee of the length of the suspension. Such suspension shall take effect immediately upon receipt of said notice of suspension by the ARTIST.

16.2.1 ARTIST has the right to terminate if such suspension extends for more than 120 days. ARTIST may exercise this right by issuing a signed, written notice of termination (citing this paragraph) to the CITY after 120 days have passed from the effective date of the suspension. Termination shall be effective upon receipt of said written notice by the CITY. In the event of termination by ARTISTS after such suspension, ARTIST shall be entitled to payment for all work performed by or on behalf of ARTIST, together with reimbursement for all legitimate expenses incurred by ARTIST prior to ARTIST's suspension.

16.3. PROCEDURES ARTIST TO FOLLOW UPON RECEIPT OF NOTICE OF TERMINATION WITH CAUSE. Upon receipt of a notice of termination with cause and prior to the effective date of termination; unless the notice otherwise directs or ARTIST immediately takes action to cure under the set cure period, ARTIST shall immediately discontinue all services performed in connection with this Agreement and promptly cancel all existing orders and contracts chargeable to this Agreement. Within 30 days after receipt of such notice of termination (unless ARTIST has successfully cured a failure to perform), ARTIST shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. The CITY shall have the option to grant an extension to the time period for submittal of such statement.

16.3.1. Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and exhibits prepared under this Agreement prior to the effective date of termination shall be delivered to the CITY, in the form requested by the CITY as a pre-condition to final payment subject to the restrictions herein.

16.3.2. CITY has a duty to document the use of public funds. To this end, ARTIST understands that failure to comply with the submittal of the statement and documents shall constitute a waiver by ARTIST of any and all rights or claims to payment for services performed under this Agreement by ARTIST.

16.3.3. Upon the above conditions being met, CITY shall pay ARTIST that proportion of the compensation, which the services actually performed bear to the total services called for under this Agreement, less any previous payments.

16.4. PROCEDURES ARTIST TO FOLLOW UPON RECEIPT OF NOTICE OF SUSPENSION. Upon the effective date of suspension, ARTIST shall, immediately phase-out and discontinue all services associated with the performance of this Agreement including promptly suspending all existing orders and contracts chargeable to this Agreement, unless the notice directs otherwise.

16.4.1. ARTIST shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

16.4.2. Copies of all completed or partially completed designs, plans and specifications prepared prior to the effective date of suspension shall be prepared for possible delivery to the CITY but shall be retained by the ARTIST until such time as ARTIST may exercise the right to terminate.

16.4.3. ARTIST shall promptly cancel or suspend all existing orders and contracts chargeable to this Agreement. If ARTIST is terminating, ARTISTS is responsible for submitting to CITY the above mentioned statement showing in detail the services performed prior to the effective date of suspension within thirty 30 days after receipt by the CITY of ARTIST's notice of termination.

16.4.4. Any documents prepared in association with this Agreement shall be delivered to the CITY as a pre-condition to final payment.

16.4.5. ARTIST's failure to comply with this section may constitute a waiver by the ARTIST of any portion of the fee for which ARTIST did not supply such necessary statements and/or documents.

16.4.6. Upon the above conditions being met, CITY shall promptly pay ARTIST that proportion of the prescribed fee, which the services actually performed bear to the total services called for by this Agreement, less any previous payments, together with reimbursement for legitimate expenses incurred by ARTIST up to ARTIST's receipt of such notice.

16.5. COMPENSATION. If CITY terminates, CITY shall pay ARTIST for services performed up to date of termination consistent with this Agreement.

16.6. REMEDIES. The remedies under this Agreement are cumulative and are in addition to the rights available to the Parties at law or in equity. Nevertheless, if ARTIST breaches this Agreement, CITY has the right to exercise its termination rights

as described herein and at its option proceed with the fabrication and installation of the ARTWORK without utilizing ARTIST's services. If CITY exercises its option to proceed, then CITY, upon ARTIST's written request will refrain from referencing the ARTWORK as the work of ARTIST.

SECTION 17. ASSIGNMENT

17.0. The expertise and experience of ARTIST are material considerations for this Agreement; therefore, ARTIST shall not assign or transfer any interest in this Agreement nor the performance of any of ARTIST's obligations. Any attempt by ARTIST to assign this Agreement or any rights, duties or obligations arising hereunder shall be void unless prior written consent is given by CITY. This section does not prevent ARTIST, at ARTIST's sole expense, from relying on or utilizing the services of such other consultant or artist as ARTIST may require to complete the ARTWORK.

SECTION 18. SUBCONTRACTS.

18.0. Prior to entering into any subcontractor agreements, ARTIST shall notify the CITY in writing of the names of all proposed first-tier Subcontractors.

18.1. ARTIST shall not employ any Subcontractor, person or organization (including those who are to furnish the primary materials or equipment), whether initially or as a substitute, against whom CITY may have reasonable objection. A Subcontractor other person or organization identified in writing to CITY prior to the Notice of Award and not objected to in writing by CITY will be deemed acceptable to CITY. However, acceptance by CITY is not a waiver of any right of CITY to reject defective Work. If CITY, after due investigation, has reasonable objection to any Subcontractor, person or organization proposed by ARTIST after the Notice of Award, the ARTIST will be required to submit an acceptable substitute. The Contract Sum will be equitably adjusted for any change in the price of the subcontract work resulting from such substitution. ARTIST is not required to employ any Subcontractor, person, or organization against whom ARTIST has a reasonable objection.

18.2. ARTIST is fully responsible to CITY for all acts and omissions of his/her Subcontractors, persons and organizations directly or indirectly employed and of persons and organizations who may be liable to the same extent that ARTIST is responsible for the acts and omissions of persons directly employed by ARTIST. CITY shall in no event be obligated to any third party, including any sub-contractor of ARTIST, for performance of or payment for work or services.

18.3. All ARTWORK performed for ARTIST by a Subcontractor will be pursuant to a written agreement between ARTIST and the Subcontractor, which specifically binds the Subcontractor to the applicable terms and conditions of this Agreement. Where appropriate, ARTIST shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. ARTIST shall make copies of the Agreement available to each proposed Subcontractor, prior to the execution of the subcontract agreement.

SECTION 19. NOTICE

19.0. Submittals, requests, notices and reports (collectively, "Notices") required under this Agreement shall be delivered personally or through the mail, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a party. Notices may also be sent by facsimile.

For ARTIST:

For CITY: City of San Antonio
Attn: Department for Culture and Creative Development - Public Art San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

19.1. Notices will be deemed effective on the date personally delivered, faxed, or sent by courier service. Notices which are mailed will be deemed effective three days after deposit in the mail.

19.2. ARTIST agrees for the duration of ARTIST's life, to provide CITY with ARTIST's current mailing address and facsimile number in the event ARTIST's address, as specified above, should change.

SECTION 20. PROTECTION OF PERSONS AND PROPERTY.

20.0. ARTIST shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. ARTIST shall adopt a reasonable safety program/policy applicable to the SITE and to the ARTWORK, which shall be reviewed by CITY in advance of beginning the ARTWORK installation. While CITY has the right to inspect and verify ARTIST's compliance, ARTIST is responsible for initiating, maintaining and supervising all safety precautions and programs.

20.0.1. ARTIST has adopted or will adopt its own policy to assure a drug and alcohol free SITE. ARTIST's employees, agents, and subcontractors shall not perform any service for CITY while under the influence of alcohol or any controlled substance. ARTIST, its employees, agents, and subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs or alcoholic beverages while performing the ARTWORK. ARTIST will remove any of its employees from performing the ARTWORK any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. CITY has the right to require ARTIST to remove employees any time cause

exists to suspect alcohol or drug use or who either refuses to take, or tests positive in, any alcohol or drug test.

20.1. EMERGENCIES. In an emergency affecting safety of persons or property, the ARTIST shall exercise best efforts to act to prevent or minimize threatened damage, injury or loss. ARTIST shall also notify CITY immediately, by telephone with prompt confirmation in writing, of all injuries and fatalities, including but not limited to copies of all reports and other documents filed or provided to ARTIST's insurers and the State of Texas in connection with such injuries or fatalities.

20.2. A breach or violation of this Section by ARTIST will be a material and substantial breach of this Agreement. If CITY reasonably determines the ARTIST has breached or violated this Section, then CITY shall notify ARTIST whether such breach shall necessitate a suspension or termination of the Agreement. If the ARTWORK is suspended, the ARTWORK shall not recommence until CITY is satisfied that the safety breach or violation will not occur again.

20.3. The ARTIST shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

a. Employees and other persons who may be impacted;

b. The ARTWORK and materials and equipment to be incorporated therein, whether in storage on or off the SITE, under the care, custody or control of the ARTIST or the ARTIST's Subcontractors or Sub-subcontractors; and

c. Other property at the SITE or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of Construction or Installation of the ARTWORK.

20.3.1 The ARTIST shall erect and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying CITY and users of adjacent sites and utilities.

20.3.2. When use or storage of explosives or other Hazardous Materials or equipment or unusual methods are necessary for the execution of the ARTWORK, the ARTIST shall exercise extraordinary care and shall carry on such activities under the direct supervision of properly qualified personnel.

20.3.3. The ARTIST shall not load or permit any part of the construction or SITE to be loaded so as to endanger its safety or that of others.

20.4. Notwithstanding these provisions, CITY does not warrant nor represent to ARTIST, ARTIST's employees or agents, any subcontractors, or any other third party that ARTIST's safety policy meets the requirements of any applicable law, code, rule, or regulation, nor that the proper enforcement will insure that no accidents or injuries occur. In addition, any action by CITY under these provisions in no way diminishes ARTIST's obligations.

20.5. PUBLIC CONVENIENCE AND SAFETY. ARTIST shall, at all times, place materials stored at the SITE and shall fabricate and install the ARTWORK in a manner that causes no greater obstruction to the public than is reasonably considered necessary by the CITY.

20.5.1 Sidewalks or streets shall not be obstructed, except by special permission of the CITY. Materials excavated and construction materials or plants used in the performance of the ARTWORK shall be placed in a manner that does not endanger the ARTWORK or prevent free access to public infrastructure. The ARTIST shall, when directed by the CITY, keep any street or streets in condition for unobstructed use by CITY departments.

20.5.2. CITY reserves the right to remedy any neglect by ARTIST regarding public convenience and safety, which may come to the CITY's attention, after 24 hours notice in writing to the ARTIST. In case of an emergency, CITY shall have the right to immediately remedy any neglect without notice. In either case, the cost incurred by or for the CITY to remedy the ARTIST's neglect shall be deducted from the TOTAL PRICE due ARTIST.

20.6. If the ARTWORK is carried on, in, or adjacent to any street, alley or public place, ARTIST shall, at the ARTIST's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights arrangements for crossing over ditches or around structures and danger signals, provide sufficient watchmen, and take other precautionary measures as necessary for the protection of persons, property and the ARTWORK. All barricades shall be painted in a color that will be visible at night, and shall be illuminated by lights (flares, flashers, or other illuminated devices) from sunset to sunrise. A sufficient number of barricades with adequate markings and directional devices shall also be erected to keep vehicles from driving on or into any ARTWORK under construction. ARTIST is responsible for all damage to the ARTWORK due to failure to protect the ARTWORK. If evidence of such damage is found, CITY may order the damaged portion immediately removed and replaced by the ARTIST at ARTIST's expense.

20.7. If it is necessary to change or move the property of the CITY or of any telecommunications or public utility, such property shall not be removed or interfered with until cleared by CITY. The CITY and any public or private utilities have the right to enter the SITE to make such changes or repairs. The CITY reserves the right of entry upon the SITE for any purpose and at any time.

20.8. If the ARTIST encounters materials reasonably believed to be a Hazardous Substance at the SITE, the ARTIST shall immediately stop work in the affected area and report such in writing to the CITY. Work in the affected area shall not be resumed except by written order of the CITY and consent of the ARTIST, and until the material is determined not to be a Hazardous Substance or is remediated. If the Hazardous Substance is in the affected area due to the fault or negligence of the ARTIST, or ARTIST's subcontractor or supplier, ARTIST shall be responsible for remediating at ARTIST's sole expense.

SECTION 21. CONFLICT OF INTEREST.

21.0. The Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as CITY-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

a) a CITY officer or employee;
b) his parent, child or spouse;
c) a business entity in which the officer or employee, or his parent, child or spouse directly or indirectly owns 10% or more of the voting stock or shares of the business entity, or 10% or more of the fair market value of the business entity; or
d) a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner, or a parent or subsidiary business entity.

21.1. ARTIST warrants and certifies, and this Agreement is made in reliance that ARTIST, its officers, employees and agents are neither CITY officers nor employees. ARTIST further warrants and certifies that it has provided the CITY a Discretionary Contracts Disclosure Statement in compliance with CITY's Ethics Code. Any violation of this article shall constitute malfeasance in office, and any officer or employee of CITY guilty thereof shall forfeit his office or position. Any violation of this section, with the knowledge, express or implied, of the person(s), partnership, company, firm, association or corporation contracting with CITY shall void the Agreement.

SECTION 22. GIFTS TO PUBLIC SERVANTS.

22.0. The CITY may terminate this Agreement immediately if the ARTIST has offered, conferred, or agreed to confer any benefit on a CITY employee or official that the CITY employee or official is prohibited by law from accepting. For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

22.1. Notwithstanding other remedies, CITY may require ARTIST to remove any employee from the SITE who violates these restrictions or any similar law, and may obtain reimbursement for any expenditure made to the ARTIST because of the improper offer, agreement to confer, or benefit conferred to a CITY employee or official.

SECTION 23. VENUE.

23.0. THIS AGREEMENT IS CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES ARE PERFORMABLE IN BEXAR COUNTY, TEXAS. Any legal action or proceeding brought or maintained, directly or indirectly, resulting from this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

SECTION 24. RIGHT TO AUDIT CONTRACTOR'S RECORDS.

24.0. The ARTIST grants the CITY, or its designees, the right to audit, examine or inspect all of the ARTIST's records relating to ARTIST's performance on the Agreement both during the term of the Agreement and retention period herein. The audit, examination or inspection may be performed by a CITY designee, which may include its internal auditors or an outside representative engaged by the CITY.

24.1. ARTIST agrees to retain records relevant to this Agreement for a minimum of five years following completion of the ARTWORK and/or termination of the Agreement. Artist's records" include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of ARTIST records include but are not limited to billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, Agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question, and any and all other Agreements, sources of information and matters that may in the CITY's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any the Agreement.

24.2 CITY will exercise the right to audit, examine or inspect only during regular business hours and with reasonable notice to the ARTIST. The ARTIST agrees to allow the CITY's designee access to all of the ARTIST's Records, ARTIST's facilities, and current or former employees of ARTIST, deemed necessary by CITY or its designee(s), to perform such audit, inspection or examination. ARTIST also agrees to provide adequate and appropriate work space necessary to CITY or its designees to conduct such audits, inspections or examinations.

24.3. ARTIST must include this audit clause in any subcontractor, supplier or vendor contract.

24.4. If CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of ARTIST's business, CITY may, by written request require that custody of the records be given to CITY to maintain. Access to such records and documents shall be granted to any party authorized by ARTIST, ARTIST's representatives, or ARTIST's successors-in-interest.

SECTION 25. MISCELLANEOUS.

25.0. The captions to the sections or paragraphs of this Agreement are for convenience only. They are not to be used in construing this Agreement.

25.1. This Agreement, including Exhibit A-1 and B-1 and any other attachments including the Final Proposal for the ARTWORK, represents the entire understanding of the Parties. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may only be modified by a written amendment duly executed by the Parties.

25.2. If any term, covenant, condition or provision of this Agreement shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

25.3. NO WAIVER. The Parties agree that any breach or violation of this Agreement is not a waiver even if both Parties are aware of said breach or violation.

EXECUTED and AGREED to by the Parties on this the ____ day of _____, 20__.

CITY OF SAN ANTONIO	**ARTIST**
_____	_____
[redacted]	(Name)
City Manager	(Title)

APPROVED AS TO FORM

_____
City Attorney

EXHIBIT A – 1

SCHEDULE OF PERFORMANCE

ARTIST shall not commence ARTIST's services until this Agreement is fully executed and CITY issues a Notice to Commence Work. ARTIST shall perform work according to the following schedule for design, fabrication and installation:

Design Development Phase

Execution of this Agreement / mobilization:	**(X Days/Weeks)**
Project team and community concept review meetings:	**(X Days/Weeks)**
Development of Final Artwork Design Proposal:	**(X Days/Weeks)**
Completion of the Construction Documents:	**(X Days/Weeks)**

Fabrication Phase

(TBD)	**(X Days/Weeks)**
(TBD)	**(X Days/Weeks)**
(TBD)	**(X Days/Weeks)**
(TBD)	**(X Days/Weeks)**

Installation Phase

(TBD)	**(X Days/Weeks)**
(TBD)	**(X Days/Weeks)**
(TBD)	**(X Days/Weeks)**
(TBD)	**(X Days/Weeks)**

Final Completion Date

The Schedule of Performance may be modified by mutual agreement only upon prior written authorization by the CITY as evidenced by signature from the Director or his designee.

EXHIBIT B – 1

PAYMENT SCHEDULE

PAYMENT SCHEDULE	
MILESTONE	PAYMENT
TBD:	$_____
TBD:	$_____
TBD:	$_____
TBD:	$_____
TBD:	$_____
TOTAL PRICE	$_____

The Schedule for Payment shall occur in accordance with the milestones set forth. In the event that CITY accepts the ARTWORK, one or more payments may occur following the ARTWORK completion date.