

Office of Cultural Affairs

CITY OF DALLAS

Public Artist Handbook

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OFFICE OF CULTURAL AFFAIRS HISTORY

Established by ordinance in 1989, the Office of Cultural Affairs has its origins in the City Arts Program, which was established in 1976 as a division of the Dallas Park & Recreation Department. The Purpose of the City Arts Program was to coordinate details of existing cultural programs and increase opportunities for cultural activities in Dallas. The ordinance created the Public Art Committee to serve as advisory committee for public art.

The City Council created the Office of Cultural Affairs by ordinance in 1989, within the City Manager's Office and established a Director of Cultural Affairs to oversee the operations of this department. Many of the functions of the City Arts Program were transferred to this new Office of Cultural Affairs, which no longer reported to the Park & Recreation Department. In 1989 the City Council also authorized the establishment of an advisory board, the Cultural Affairs Commission, to be appointed by Mayor and Council by ordinance.

Today, the Office of Cultural Affairs operates a budget of over \$20 million, has oversight over 18 cultural facilities, and employs over 70 people dedicated to advancing the arts in Dallas and ensuring that all citizens and visitors have access to a broad array of arts and cultural opportunities.

PUBLIC ART PROGRAM HISTORY

The City of Dallas has a long-record of collecting art for public spaces. Many pieces in this collection were donated by civic leaders and community groups. In 1982, the Park and Recreation Board appointed an advisory Public Art (Art in Public Places) Committee to serve as an advisor on all projects and works of art offered to the City. In 1984, a Public Art Coordinator position was established to oversee public art projects and work with the Art in Public Places Committee. In 1985, the City Council adopted a City Cultural Policy, one of whose mandates was planning for a formal program to provide public art for and in the City.

The seeds of the current Public Art program were planted in the process that emerged from this mandate. Between 1986 and 1988, a Public Art Master Plan was developed with the Public Art Master Plan Advisory Committee of 30 members, who were charged with researching national programs, determining the needs of Dallas, and developing recommendations and guidelines for a public art program tailored to the City of Dallas. The PAMP Advisory Committee report, Visual Dallas, included a proposed percent for art ordinance.

City Council adopted the Percent for Art Ordinance in September 1988, providing from 0.75% to 1.5% of certain capital improvement projects to be used for the design services of artists, the commission of artworks, and the administration of the public art program. The ordinance also established a Public Art Committee.

When the Office of Cultural Affairs was established in 1989, the ordinance transferred the administration of the Public Art Program from the Park & Recreation Board to the Office of Cultural Affairs, and the Public Art Committee became an advisory committee of the Cultural Affairs Commission.

Through City of Dallas Bond Programs in 1989, 1995, 1998, 2003, 2006 and 2012 the City has nurtured a lively and growing Public Art program that has placed artworks in public facilities such as libraries, parks, police stations and other publicly-accessible locations. As of 2017, 124 commissions have been completed,

four of which were public/private partnerships. 168 works have been donated to the City of Dallas, many of which are heritage projects and date prior to the Public Art Ordinance that are part of the collection.

The Public Art Program manages the acquisition and commission of new public art. Conservation and maintenance of the existing City Collection in on-going and the Public Art Program works with other city departments to address urgent issues as needed.

The City's Cultural Policy outlines the artist selection and commissioning process for new projects (those funded through the City's Bond Programs) and it includes the participation of the community in the selection of the artist. The Office of Cultural Affairs manages the process, working collaboratively with other city departments. The Cultural Affairs Commission and its Public Art Committee are actively engaged in the review and recommendation of the selected artists and projects. Costs for new commissions are funded primarily through the percent for art Bond Fund, but some donations have also been given for specific projects.

PUBLIC ART IN DALLAS

In 2016 there were 290 projects in the City of Dallas Public Art Collection. See www.dallasculture.org and www.culturenow.org for images of the work.

There are 17 public art projects at Dallas Love Field. See www.lovfieldartprogram.com for information and images.

MISSION STATEMENT

Enrich the community through the integration of the vision and work of artists into planning, design and construction of public spaces.

GOALS OF THE PUBLIC ART PROGRAM

- To encourage artists to live and work in Dallas
- To make the citizens of Dallas aware of artists' contributions to the quality of life
- To encourage the utilization of recognized artists, with an emphasis places on local talent
- To acquire and display public art of the highest quality
- To take advantage of opportunities to display loans or donations of artworks that will enhance cultural awareness
- To promote diversity of style, scale, media and artists – including ethnicity and gender, by adherence to the city's good faith effort
- To strive for equitable distribution of artworks and art places throughout the City

BENEFITS OF THE PUBLIC ART PROGRAM FOR THE CITY OF DALLAS

What are the benefits of Public Art? Public art celebrates our public history, ever changing culture and informs civic memory. Artworks reflect their place and time, revealing elements of our society for public consideration.

Given the diversity of our city, there will be a variety of opinions about each work of public art, however the process by which public art is commissioned engages members of the community to provide input and engage in conversations about what is meaningful and valuable about their communities.

Every work of public art commissioned by the City of Dallas has been engaged an interactive process that involves community members, artists, architects, design professionals, civic leaders, politicians, funding agencies, fabrication and installation professionals. A city with public art values and invests in its diversity, identity, and future.

Who can participate in Public Art Commissions?

Emerging Artists: Artists who have little or no experience with public art who are a part of the Pre-Qualified List for City of Dallas Public art will have opportunities to win commissions of up to \$50,000 for the City of Dallas. Candidates for the Emerging Artists List are reviewed and approved by the Public Art Committee and the Cultural Affairs Commission. The next opportunity to apply to be an emerging artist will be in late August 2017. A Call for Emerging Artists will be posted on the OCA website at www.dallasculture.org. Artists will be directed to www.callforentries.org to apply. Additionally, the Public Art Program hosts workshops for emerging artists several times a year. Information about workshops will be posted on the Office of Cultural Affairs Facebook page at <https://www.facebook.com/dallasculture>.

Local, Regional, National and International Artists

Calls for Artists: Calls for Artists will be posted at www.dallasculture.org and at www.callforentries.org. Texas artists will be given preference for commissions up to \$100,000. Commissions larger than \$100,000 will be issued as an Open Call to all artists from around the world on www.callforentries.org. Specific guidelines and requirements for each commission will be published with the Call for Artists. Typically, the Call for Artists will request the submission of an artist’s qualifications for the project with images of recent work. A Selection Panel comprised of artists, arts professionals and community representatives will identify a short list of artists to be commissioned to complete a site-specific concept design for review by the Selection Panel.

LINK TO PUBLIC ART ORDINANCE AND CULTURAL POLICY

http://dallasculture.org/PDFs/COD_Public_Art_Ordinance.pdf
<http://dallasculture.org/publicArtHistOrd.asp>

PUBLIC ART COMMITTEE

1. Appointment and Responsibilities¹ – The Public Art Committee is a standing committee of the Cultural Affairs Commission. The responsibilities of this committee are to:
 - a. Oversee quality control of the Public Art Program and projects.

¹ City of Dallas Cultural Policy and Plan, November 2002. pp.4-5.

- b. Review and recommend for approval by the Cultural Affairs Commission through majority vote of the Public Art Committee, the nature and scope of projects and artworks, as well as artists for the Public Art Program.
- c. Make recommendations regarding any issues that arise from a specific artwork or art project.

The Public Art Committee is composed of the three full Council appointments to the Cultural Affairs Commission, and up to eight members who are qualified citizens appointed by the Chair of the Cultural Affairs Commission from a list of candidates provided by the Office of Cultural Affairs staff. An effort will be made to ensure balance on the Committee in terms of gender, ethnicity, and geographic representation within the City. The Chair of the Public Art Committee is one of the three Commission members, and is appointed by the Chair of the Cultural Affairs Commission.

2. Qualifications for membership on the Public Art Committee – All appointments to the Public Art Committee, both the three Commission and eight citizen members, must be recognized as a visual artist (by means of a currently demonstrable record of exhibitions, work sold/collected and/or commissioned) or as an architect, landscape architect, art historian or critic, arts advocate/collector, urban planner or engineer, with appropriate professional credentials, and some combination of the following:
 - a. Knowledge of and/or skills in the visual arts.
 - b. Wide knowledge of regional and national individual artists and their work.
 - c. Demonstrated experience as an advocate for the visual environment.
 - d. Evidence of willingness to encourage and promote change, experimentation, new artistic and design expressions.
 - e. Evidence of community activities significant enough to confirm knowledge of cultural and artistic issues and individuals within the City.
 - f. Understanding and empathy toward ethnic and gender diversity.
 - g. Knowledge of the Dallas Public Art Plan, its implications for the City, and the processes.

In addition, the eight citizen members must have resided in the City of Dallas for at least one year, and be current registered voters.

3. Term of Membership of Citizen Members -The term of membership of the eight citizen members on the Public Art Committee is two years, with a limitation of two consecutive terms. Appointments are made so as to ensure that there are always at least four continuing citizen members. A citizen member who is absent from more than 25 percent of the regular meetings during any 12month period, whether excused or not, shall be subject to dismissal. A citizen membership which has been forfeited under the provisions of this policy shall be filled for the remainder of the term by appointment of the Cultural Affairs Commission. The eight citizen members of the Committee may include other qualified members of the Cultural Affairs Commission, and residency/term/attendance requirements for their members will be dictated by Dallas City Code provisions for boards and commissions.

Responsibilities of the Public Art Committee, the Cultural Affairs Commission, and the Director of the Office of Cultural Affairs for administration of the Public Art Program are outlined in the Dallas City Code, Chapter 2, Article X, Section 2-105 (b).

SELECTION OF ARTIST

1. Selection of Artists - whenever feasible, a different selection panel will be recommended by the Public Art Committee for each public art project. The panels should be given as much latitude as possible, not only in selecting the artist(s) for the project(s), but also in refining the definition of the site and the parameters of the artist's contribution to the project. For these reasons the panels should be named at the very earliest possible time after the project has been identified in order to permit the implementation of a design collaboration should that be appropriate to the project. A member of the Public Art Committee should be named by the Chair of the Public Art Committee to serve as a non-voting liaison and advisor for each panel.

a. Eligibility Requirements:

- (1) Artists will be selected on the basis of their qualifications as demonstrated by past work, appropriateness of the proposal to the particular project, its probability of successful completion, and practicality of long-term maintenance.
- (2) Specifically excluded are undergraduate students; the design architect (or other design professional) or members of the firm (c): city employees or their relatives; and artists who are members of, or related to members of the Public Art Committee or the Cultural Affairs Commission, or artworks by any of the above.
- (3) The Public Art Committee may establish specific requirements for each project.

b. Methods of Selecting Artist(s):

If possible, when art is to be integrated into the design and construction of new and renovated facilities, the artist(s) shall be selected at the same time as other members of the design team.

- (1) Direct election-artist(s) chosen directly by artist-selection panel.
- (2) Limited competition (short-list)- artist(s) or artist/design teams invited by selection panel to submit proposals.
- (3) Open competition (Request for Qualifications) - any artist (s) /design team applies, subject to limitations established by selection panel or Public Art Committee.

c. Criteria for Selection of Artists or Artworks

- (1) Quality - of highest priority are capabilities of the artist(s) and the inherent quality of the artwork(s)
- (2) Media - required all visual forms may be considered, subject to limitations set by the selection panel or the Public Art Committee.
- (3) Style - artworks of all schools, styles, and tastes should be considered for the City collection.
- (4) Nature - artworks and artplaces should be appropriate in scale, material, form and content for the immediate, general, social, and physical environments with which they are to relate.

(5) Permanence - consideration should be given to structural and surface integrity and stability, to permanence, protection against theft, vandalism, and weathering, as well as to the probability of excessive maintenance and repair costs.

(6) Elements of Design - consideration should take into account that in addition to measuring up to aesthetic standards public art may also serve to establish focal points, terminate vistas; modify, enhance, or define spaces, or establish identity.

(7) Safety - artworks and artplaces must be free as far as reasonably possible from any unsafe conditions or factors.

(8) Diversity - the Public Art Program shall strive for diversity of style, scale, media, artists - including ethnicity and gender as well as equitable distribution of artworks and artplaces throughout the City.

d. Composition of Artist-Selection Panel - It shall be composed of at least three but no more than five voting members and a variable number of non-voting members. Every effort will be made to ensure minority representation on each selection panel.

(1) Voting Members

(a) One/two representative from the neighborhood or community in which the artwork or artplace will be located.

(b) Two to three artists and arts or design professionals (i.e., curators, collectors, administrators, architects), excluding any who might have a conflict of interest related the selection of the artist(s).

(c) At the discretion and by mutual consent of the Director of the Office of Cultural Affairs and the Director of the City department responsible for construction, one design professional (architect, landscape architect, engineer) representing the City.

(2) Non-Voting Advisors to the Selection Panel - may include, but are not limited to:
The design architect and/or engineer (if selected at this point.)

The project manager from the City department responsible for construction

A member of the Public Art Committee

The Public Art Coordinator for the Office of Cultural Affairs

A representative from the City department with management responsibility for the property where the artwork or artplace will be located.

e. Responsibilities of the Selection Panel – They must:

(1) Meet in open session as many times as necessary to make selection (no formal notice required).

(2) Implement the artist selection process based on any parameters established for the project by the Public Art Committee (i.e., site, medium/media, scope of project, national or regional significance, etc.)

(3) Respond to the Public Art Committee by recommending an artist, artists or design team to be commissioned for the project, or an artist or artists whose existing work is to be purchased for the project.

SAMPLE PUBLIC ART FORMS

- Office of Cultural Affairs Public Art Invoice
- Cultural Services Contract (Design Concept Contract)
- SAMPLE Budget worksheet (Exhibit A)
- 2017 Insurance Requirements (Exhibit B)
- Cultural Service Contract Scope of Work
- SAMPLE Artist Services Contact with Exhibits
 - Exhibit C – Final Artwork Information & Maintenance/Conservation Form
 - Exhibit D- Copyright and VARA stipulations from the Cultural Policy
 - Exhibit E - Texas Sales Tax and Local Sales Tax Exemption Certificate
 - Exhibit F – Artist’s Safety Responsibilities
 - Exhibit G- Approved Artwork Design

Administrative Action No. 17-_____
Approved: _____

STATE OF TEXAS §
COUNTY OF DALLAS §

CONTRACT FOR CULTURAL SERVICES
OFFICE OF CULTURAL AFFAIRS

THIS CONTRACT is made and entered into by and between the CITY OF DALLAS, a Texas municipal corporation, of Dallas County ("City"), acting by and through the Office of Cultural Affairs, and INSERT NAME AND ADDRESS

WITNESSETH

1. Consultant shall perform the services identified in the Cultural Services Scope of Work dated INSERT DATE, attached to and made a part of this Contract collectively as **Exhibit A**. Consultant agrees to perform the services in accordance with the terms of this Contract. This Contract shall be administered on behalf of the City by its Director of the Office of Cultural Affairs ("Director").
2. For the performance of the Work by Consultant, City agrees to pay Consultant for all services approved by the Director, a sum not to exceed \$ INSERT AMOUNT, upon receipt of Consultant's approved invoice. City may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to City from Consultant, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to City has been reduced to judgment by a court.
3. The term of this Contract shall commence on INSERT DATE and terminate upon satisfactory completion of all work hereunder described in **Exhibit A**, attached to and made a part of this Contract, unless sooner terminated in accordance with the provisions of this Contract. The schedule for completion of the Services shall be as provided in **Exhibit A**. For good cause shown by Contractor, the Director may extend the time to perform the Services.
4. The Director may terminate the performance of this Contract in whole or in part on ten (10) days advance written notice to Consultant at the address stated in **Exhibit A**. City agrees to pay Consultant for all services approved by the Director and properly completed prior to the effective date of such notice.
5. Indemnification. **Consultant shall indemnify and hold City whole and harmless against any and all claims for damages, costs, injuries, and expenses to persons or property arising out of, or in connection with, any negligent or strictly liable act of Consultant in the performance of this Contract. City shall be responsible for its act of negligence.**
6. This Contract is made subject to the Charter and ordinances of City, as amended, and all applicable laws of the state of Texas. This Contract is performable in the city of Dallas,

Texas, and venue for any legal action under this Contract shall lie exclusively in Dallas County, Texas. In construing this Contract, the laws and court decisions of the State of Texas shall control. Consultant also agrees to comply with the provisions of **Attachment 1**, attached to and made a part of this Contract, concerning conflicts of interest, gifts to public servants, notices of contract claims, and equal employment opportunity clause.

7. In performing services under this Contract, the relationship between City and Consultant is that of an independent contractor. Consultant shall exercise independent judgment in performing duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Work flow and determining how the Work is to be prepared. No term or provision of this Contract shall be construed as making Consultant the agent, servant or employee of City, or making Consultant or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which City provides its employees.

8. Consultant shall obtain and maintain during the Contract term all necessary licenses, permits and other approvals required by law for the provision of services under this Agreement.

9. Consultant shall provide a final report to the City within 30 days of completion of the Services which shall include any such information the City may request. The final report must be inspected, accepted, and approved by the City.

10. If Consultant fails to provide the Services described herein or fails to submit a final report in accordance with this Agreement, Consultant shall repay any funds under this Agreement determined to be due by the City for such failure. Such payment shall be due, owing and paid to the City within thirty (30) days after notice.

11. Consultant shall procure, pay for, and maintain during the term of this Contract, with a company authorized to do business in the State of Texas and otherwise acceptable to City, the minimum insurance coverage contained in **Exhibit B**, attached to and made a part of this Contract. Approval, disapproval or failure to act by City regarding any insurance supplied by Consultant or its sub-consultants shall not relieve Consultant of full responsibility or liability for damages, errors, omissions or accidents as set forth in this Contract. The bankruptcy or insolvency of Consultant's insurer or any denial of liability by Consultant's insurer shall not exonerate Consultant from the liability or responsibility of Consultant set forth in this Contract. However, if minimum insurance coverage is not required, insurance requirements will not be attached to this Agreement. In such an instance, the No-Insurance Requirement for Certain Office of Cultural Affairs Projects form will be attached hereto as **Exhibit B**

EXECUTED this the ___ day of _____, 20___, by CITY, signing by and through its City Manager, duly authorized to execute same by Administrative Action No. _____, approved on _____, 20___ and by CONSULTANT, acting through its duly authorized officials.

APPROVED AS TO FORM CITY OF DALLAS

LARRY E. CASTO

City Attorney

BY _____

Assistant City Attorney

T.C. BROADNAX

City Manager

BY _____

Assistant City Manager

RECOMMENDED BY THE DIRECTOR

JENNIFER SCRIPPS

Director of Cultural Affairs

CONSULTANT [INSERT NAME]

BY _____

Print Name/Title

ATTACHMENT I ON FOLLOWING PAGE

ATTACHMENT 1

A. CONFLICT OF INTEREST

The following section of the Charter of the City of Dallas shall be one of the conditions, and a part of, the consideration of this Contract, to wit:

“CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED.

(a) No city official or employee shall have any financial interest, direct or indirect, in any contract with the city, or be financially interested, directly or indirectly, in the sale to the city of any land, materials, supplies or services, except on behalf of the city as a city official or employee. Any violation of this section shall constitute malfeasance in office, and any city official or employee guilty thereof shall thereby forfeit the city official's or employee's office or position with the city. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the city shall render the contract involved voidable by the city manager or the city council.

(b) The alleged violations of this section shall be matters to be determined either by the trial board in the case of employees who have the right to appeal to the trial board, and by the city council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by city employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.

(d) This section does not apply to an ownership interest in a mutual or common investment fund that holds securities or other assets unless the person owns more than 10 percent of the value of the fund.

(e) This section does not apply to non-negotiated, form contracts for general city services or benefits if the city services or benefits are made available to the city official or employee on the same terms that they are made available to the general public.

(f) This section does not apply to a nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board. A nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board, must comply with any applicable conflict of interest or ethics provisions in the state law and the Dallas City Code. (Amend. of 8-12-89, Prop. No. 1; Amend. of 8-12-89, Prop. No. 15; Amend. of 11-4-14, Prop. Nos. 2 and 9)”

B. GIFT TO PUBLIC SERVANT

City may terminate this Contract immediately if Consultant has offered, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

For purposes of this section, "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.

Notwithstanding any other legal remedies, City may require Consultant to remove any employee of the Consultant from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

C. NOTICE OF CONTRACT CLAIM

This Contract is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract as if written word for word in this Contract. Consultant shall comply with the requirements of this ordinance as a precondition of any claim relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

D. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION

1. Consultant shall not discriminate against any employee or applicant for employment because of race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to their race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance. This action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. Consultant shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. Consultant agrees to post in conspicuous places a notice, available to employees and applicants, setting forth the provisions of this non-discrimination clause.

2. Consultant shall, in all solicitations or advertisements for employees placed by or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance.

3. Consultant shall furnish all information and reports required by the City Manager or his designee and shall permit the City Manager or his designee to investigate its payrolls and

personnel records which pertain to current professional services contracts with City for purposes of ascertaining compliance with this equal employment opportunity clause.

4. Consultant shall file compliance reports with City as may be required by the City Manager or his designee. Compliance reports must be filed within the time, must contain information as to the employment practices, policies, programs, and statistics of Consultant, and must be in the form that the City Manager or his designee prescribes.

5. If Consultant fails to comply with the equal employment opportunity provisions of this Contract, it is agreed that City at its option may do either or both of the following:

- (a) Cancel, terminate or suspend this Contract in whole or in part;
- (b) Declare Consultant ineligible for further City contracts until it is determined to be in compliance.

SAMPLE BUDGET WORKSHEET

Description	Planned cost	DESCRIPTION
Final Design (typically 20 % of artist's fee)	INSERT	Artist's fee is typically 15% of the project budget
Engineering report	INSERT	Engineer must be licensed in the state of Texas
Project insurance-for period from contract initiation to completion	INSERT	Note insurance must be reviewed and approved by the City's Risk Management prior to contract approval. This can take up to 4 weeks. See Exhibit B for requirements
	\$0	
FABRICATION AND INSTALLATION		
Description	Planned cost	
Fabrication Plan: Project Completion Timeline and Final Budget (Typically 30% of artist's fee)	INSERT	
Artist's fabrication Labor	INSERT	
Assistant labor	INSERT	
Fabrication Services	INSERT	Typical services would be metal cutting, laser cutting, bending, powder coating, etc
Fabrication Materials	INSERT	
tools or equipment rental	INSERT	
Subtotal	\$0	
Description	Planned cost	
Administrative costs	COST	
Studio Overhead (For the time-period of the contract)	INSERT	
Project documentation	INSERT	
Copyright registration	\$65	paid upon documentation of copyright registration
Subtotal	#VALUE!	
Description	Planned cost	
Artist's fee at 100% completion of fabrication (typically 20%)	INSERT	

Shipping work to installation site	INSERT	
Shipping insurance documentation	INSERT	if not included in insurance above
Subtotal	#VALUE!	
Description	Planned cost	
Landscape design	INSERT	If applicable
lighting design	INSERT	If applicable
Site Preparation	INSERT	If applicable
Foundation preparation per engineering report	INSERT	If applicable
crane for installation	INSERT	If applicable
Installation equipment and supplies	INSERT	If applicable
Installation labor	INSERT	If applicable
lighting fixtures	INSERT	If applicable
Lighting installation and electrical connections, electrical meter	INSERT	If applicable
Completion of installation (typically 20% of Artist's fee)	INSERT	
Subtotal	#VALUE!	
Travel		Trips planned
Description	0	
Airfare (actual cost) or mileage reimbursement	INSERT	If applicable
car rental (if applicable)	INSERT	If applicable
Hotel per day \$100 (If applicable)	INSERT	paid at IRS.Gov rates
Parking \$20 per day	INSERT	If applicable
Per Diem per day \$70	INSERT	paid at IRS.Gov rates
Subtotal	\$0	
Description	Planned cost	
Artist's fee at completion of project (typically 10%)	INSERT	
Contingency	INSERT	
Total	#VALUE!	
not to exceed \$CONTRACT BUDGET		

SAMPLE

Exhibit B - Insurance Requirements for Public Art

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

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

INSURANCE COVERAGE REQUIRED

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

1. If ARTIST'S employees will be performing services under the contract at a CITY owned facility, then, Workers' Compensation with statutory limits; Employers Liability with minimum limits for bodily injury: a) by accident, \$100,000 per each accident b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.

NOTE: If ARTIST obtains and uses employees/laborers from a temporary help agency, an Alternate Employers Endorsement, (naming the ARTIST as the alternate employer), will be required on the temporary help agency Workers' Compensation policy. The temporary help agency's Workers' Compensation policy will waive subrogation against the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss. This requirement will be in addition to the ARTIST'S Workers' Compensation policy.

2. If vehicles will be used in the performance of services under the contract, then, Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$500,000 per occurrence.

3. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$500,000 per occurrence, \$1,000,000 general aggregate. If this insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than twelve (12) months following completion of the contract and acceptance by the City. Coverage, including any renewals, shall contain the same retroactive date as the original policy applicable to this contract.

REQUIRED PROVISIONS

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

a. Name the City of Dallas and its officers, employees and elected representatives as additional insureds to all applicable coverages.

b. State that coverage shall not be canceled, nonrenewed or materially changed except after thirty (30) days written notice by certified mail to:

(i) Office of Cultural Affairs, Attention: Public Art Program Manager, 1925 Elm Street, Suite 500, Dallas, Texas 75201 and

(ii) Assistant Director, Risk Management Division, Human Resources Department, 1500 Marilla, 6A-South, Dallas, Texas 75201.

c. Waive subrogation against the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.

d. Provide that the ARTIST'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.

e. Provide that all provisions of this contract concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

f. Ensure that all certificates of insurance identify the service or product being provided and name the City department shown in REQUIRED PROVISIONS b.(i) as the Certificate Holder.

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

insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

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

CULTURAL SERVICES SCOPE OF WORK SAMPLE

SCOPE

Consultant shall produce a site-specific concept proposal responsive to the Scope of Work below and present the concept to the Public Art Selection Panel:

Artwork must be responsive to the following guidelines: (SAMPLE ONLY)

- Artwork must be highly visible in the landscape,
- Respond to the history of South Dallas
- Artwork must require minimal maintenance
- Be resistant to graffiti and vandalism,
- Require no electricity
- Be free of safety hazards
- Comply with ADA requirements,

All services are subject to the approval of the City of Dallas Office of Cultural Affairs, in accordance with the City of Dallas Cultural Policy, as amended.

DELIVERABLES

Consultant will prepare a site-specific concept (digital images or maquette) of the proposed artwork; written description; estimated budget and timeline for production and installation to the Office of Cultural Affairs Public Art Staff. All services are subject to the approval of the City of Dallas Office of Cultural Affairs, in accordance with the City of Dallas Cultural Policy.

SCHEDULE

All services will be completed by INSERT DATE in accordance with the terms of the contract.

COMPENSATION

The fee for this service is **\$INSERT FEE** to be paid in accordance with the terms of the contract as follows: The City of Dallas will pay Consultant in one (1) payments of **\$INSERT FEE** each within thirty (30) working days from receipt of Consultant's invoice.

CONSULTANT

INSERT NAME AND ADDRESS

STATE OF TEXAS §

COUNTY OF DALLAS § ARTIST SERVICES CONTRACT

THIS CONTRACT ("Contract") is entered into as of INSERT DATE by and between the CITY OF DALLAS, a Texas municipal corporation, located in Dallas County, Texas (hereinafter called "City") and INSERT NAME by (hereinafter called "Artist,") whose address is INSERT ADDRESS.

1. Purpose

The purpose of the Contract is to state the terms and conditions under which the Artist shall produce a final design consistent with the design approved by INSERT APPROVING ENTITY and the Public Art Program staff, fabricate and install a site-specific artwork at the INSERT LOCATION (Exhibit G.)

2. Description of Services

The Artist's services hereunder shall include, but shall not be limited to, the following:

A. The Artist shall perform all the services related to the Artwork and in the time frame set forth in the Scope of Work, Schedule of Completion and Payment Schedule attached hereto as **Exhibit A** and made a part of this Contract for all purposes; provided, however, should there be any conflict between Exhibit A and the terms of this Contract, the terms of this Contract shall be final and binding.

B. The Artist shall work with and cooperate with the Director of the Office of Cultural Affairs or their designee (the "Director"), and appropriate City officials, and perform any and all related tasks required by the Directors in order to fulfill the terms of this Contract. All disputes and other matters in question between the Artist, and the City relating to this Contract or any interpretation of this Contract shall be resolved by the Directors.

C. Direct supervision of the design, fabrication and installation phases of the Artwork identified in Exhibit A shall be the responsibility of the Artist except where work has been assigned to an appropriate contractor as shown in Exhibit A.

D. The Artist shall communicate with the Director to review progress of design, fabrication and installation of the Artwork and to ensure the continuing feasibility of the Artwork and the Artwork timeline, as set by the Director and as outlined in Exhibit A.

E. The Artist and the City agree that the Artist shall retain artistic control of the services performed under this Contract, subject only to the limitations and conditions imposed by this Contract.

F. The City shall be responsible for providing the Artist, without cost to Artist, copies of the existing designs, drawings, reports, and other relevant data needed by the Artist in order to design and install the Artwork.

G. As an express condition of this Contract, the Artist shall complete the design, fabrication and installation of the Artwork so that it can be completed without exceeding the public art budget for this project of **\$INSERT BUDGET** including work done for this public art project by contractors as outlined in Exhibit A and so that reasonable maintenance of the Artwork will not require procedures or materials

substantially in excess of those described in the maintenance recommendations submitted by the Artist, specified in Exhibit C. The Artist shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in the Artist's performance. This includes redesign of the Artwork to meet the established budget.

H. The Artist shall complete the final design, fabrication and installation of the Artwork in conformance with the attached Scope of Work, Exhibit A. Artist agrees to comply with all applicable City, State and Federal laws, regulations, and ordinances relating to performance of the work under this Contract.

I. The Artist will produce final design for the Artwork to confirm that the work is appropriate for general audiences INSERT LOCATION prior to proceeding to fabrication and installation. The Director or his/her designees will review the designs before any work is begun on creation of the Artwork and must approve the final design prior to initiating work on the artwork.

J. Delay which prohibits or impedes performance by the Artist of his/her contractual obligations will excuse Artist from doing or performing the same during such period of delay, so that the time period applicable to such performance, shall be extended for a period of time not to exceed the period the Artist was delayed. Acceptable circumstances for delays include but are not limited to:

- a) protracted negotiations over this Contract,
- b) the necessity of lengthy engineering studies,
- c) previously scheduled use of the space,
- d) the state of construction of the site itself, and
- e) the failure of the fabricators or contractor to adequately and timely perform their functions and deliveries.

Each party agrees to notify the other in writing at the address set forth herein, if there are any delays which may affect the installation as set forth in Exhibit A. If such delay exceeds a period of ninety (90) calendar days, the City and Artist will have the option to cancel this Contract or renegotiate the terms of this Contract including but not limited to modification of the installation period, Exhibit A and the amount of the Artist's fee.

K. Post-Installation. No later than thirty (30) days after the installation of the Artwork, the Artist shall furnish the Director with the following relating to the Artwork as completed and installed:

- a) Final Artwork Information & Maintenance/Conservation Form
- b) Notebook of Maintenance Instructions and Schedule as defined in Exhibit C
- c) Vendor/Suppliers, Warranty Specification Sheets
- d) Invoices from Vendors (replacement parts only)
- e) Final Artwork documentation: One (1) set of six (6) color high-resolution (at least 300 dpi at 8 x 10 inches) digital images of the complete Artwork, one taken from each of three different viewpoints.

M. Final Acceptance. The Artist shall give the Director written notice when all services required prior to those described in Exhibit C ("Post-Installation" above) have been completed in substantial conformity with Exhibit A attached hereto. The Director's final acceptance of the Artwork shall be conditioned upon the Artist's disclosure of any outstanding or disputed claims by contractors, suppliers or foundries, or upon the Artist's certification that no such claims exist. If the Director determines and

notifies the Artist within one (1) year of installation that services are incomplete or do not meet with the design specifications, the Artist shall resolve the issues to the satisfaction of the Director and City.

3. Performance of Services

The Artist and his employees, associates or assistants shall perform all the services under this Contract in a timely, cost effective manner. The Artist represents that any employees, associates or assistants who perform services under this Contract on behalf of Artist shall be fully qualified and competent to perform those services described in Exhibit A. The Artist also agrees to comply with the "Artist's Safety Responsibilities," attached hereto as Exhibit F and made a part of this Contract for all purposes.

The Artist acknowledges that if the Artist fails to complete installation of the Artwork by the completion date for the project, identified as **INSERT DATE** and as specified in Exhibit A, and such failure shall be due to the fault of the Artist, such failure may cause the City to suffer substantial damages, including loss of goodwill, which may be difficult to ascertain or prove. For that reason, but subject to extensions that may be approved in writing by the City (through the Director), if the Artist has not completed the Artwork by the completion date specified in Exhibit A, City may, in its sole discretion, require the Artist to pay liquidated damages (and not as a penalty) at the rate of \$100.00 per day for each day from the completion date for the Artwork specified in Exhibit A to the date of actual completion of the Artwork. The Artist acknowledges that the liquidated damages described in this Section 3 are not an exclusive remedy and City may pursue any other remedies at its sole discretion

4. Term

The term of this Contract shall commence on the date first written above, and unless this Contract is sooner terminated in accordance with its provisions, all invoices under this Contract shall be completed by **INSERT DATE** ("Termination Date"). The Artist understands and agrees that time is of the essence for completion of the performance of the services. All services are to be completed and delivered to the City by the Termination Date unless an extension of time, based upon good reasons presented by the Artist, is approved by the Director.

5. Payment

In consideration of the professional services to be performed by the Artist under the terms of this Contract, the City shall authorize payment to the Artist for services actually performed as identified in Exhibit A, a fee not to exceed **INSERT AMOUNT** in accordance with the schedule as set forth in Exhibit A, as full compensation for the services performed under this Contract, including, but not limited to all costs associated with the design development, final design, fabrication, installation, and documentation of the Artwork as set forth in Exhibit A, and not including work performed by others as set forth in Exhibit A. If other conditions necessitate additional services, the additional services must be authorized in advance by the City. Payments to the Artist shall be made in the amount shown by the invoices and other documentation submitted and shall be subject to the Director's approval. Such compliance shall be determined by City in its sole, but reasonable, discretion. The due date of each payment shall be thirty (30) business days after the Director's initial receipt of any instalment invoice (or documentation) from the Artist. Failure to make payment of an installment invoice within seven (7) business days following its respective due date shall give the Artist the right to cease performing its obligations under this Contract, in addition to any other remedies for payment which may be available. All services shall be performed as

identified in the scope of work and approved by the Director, and the City shall not be liable for any payment under this Contract for services which have not been approved by the Director. The City may, at its option, offset any amounts due and payable under this Contract against any debt lawfully due to the City from the Artist, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to the City has been reduced to judgment by a court.

The City is a tax-exempt organization and no state or local sales taxes or federal excise taxes shall be due upon the Artwork. The City shall supply the Artist with the "Texas Sales Tax and Local Sales Tax Exemption Certificate," in substantially the same form as that attached hereto and incorporated herein as Exhibit E for use by Artist in the fulfillment of this Contract.

6. Change in Service

City (through its Director) may request, from time to time, changes in the Scope of Work conducted or to be conducted by Artist pursuant to this Contract. Any change which varies significantly from the Scope of Work set out in Exhibit A and would entail a significant increase in cost or expense to the Artist shall be mutually agreed on by the Artist and the City. Agreed to changes in the Scope of Work, which in the opinion of the Artist and the Director, would require additional funding by the City must first be authorized in advance by the City.

7. Warranties

The Artist warrants that: (A) the design and Artwork being commissioned are the original product of the Artist's own creative efforts and is not the subject of an existing patent or copyright owned by any other person; and (B) unless otherwise stipulated, the Artwork is original, that it is in an edition of one (1), and the Artist shall not sell or reproduce the Artwork or design or allow others to do so without the prior written consent of the City. The warranties stated in this paragraph shall survive the termination of this Contract.

8. Death or Incapacity of Artist

In the event of the Artist's death or incapacity rendering the Artist unable to complete the Artwork, the City may elect to complete the Artwork in accordance with all applicable laws and all payments made up to the point of death or incapacity will be retained by the Artist or the Artist's estate and all work performed to date of death or incapacity will be compensated. The incomplete Artwork and any materials paid for by City will become the property of the City upon payment to compensate Artist or Artist's estate for all work performed to the date of incapacity or death. The artist will nominate an individual or agency who could complete the work as identified in Exhibit A.

9. Maintenance and Conservation

The artwork commissioned by this contract is expected to last in the location installed without significant maintenance for a period of (20 typically) years. Upon completion and installation of the Artwork, the Artist shall prepare and submit to the Director a written recommendation for maintenance of the Artwork, describing materials, procedures, frequency, and estimated annual cost. The City, through its

management agreement with (INSERT IF APPLICABLE), shall be responsible for maintaining the Artwork as will be set forth in Exhibit C. Repairs, restorations, or conservation of the Artwork contracted to Artist shall be the responsibility of the Artist for one (1) year after acceptance of the Artwork.. Thereafter, the City shall be responsible for maintaining the Artwork. The City shall make a good and reasonable effort to notify the Artist in writing and obtain the Artist's advice before any repairs or treatments are performed. If the Artwork is a discrete object and not integral to the architecture the City may offer the Artist the opportunity to perform or supervise the work. The City reserves the right to perform maintenance or make minor and/or emergency repairs without consulting the Artist, provided this work is done according to maintenance and materials information provided by the Artist at the time of installation.

10. Confidential Work

The parties acknowledge that the City cannot guarantee that any information received will be kept confidential, and this Contract is not a basis for excepting information from required public disclosure under the Public Information Act, Texas Government Code, Chapter 552. The Public Information Act provides that all information in the possession of a governmental body is generally available to the public, unless the requested information is within one of the exceptions to required public disclosure. Should someone make an open records request after this Contract is executed for any of the reports, information, project designs, data or any other documentation developed by, given to, prepared by or assembled by the Artist under this Contract, however, the City will notify the Artist in writing within ten (10) business days after receiving the request for the information. The Artist bears the burden of demonstrating to the satisfaction of the Texas Attorney General's Office that the information requested is within one of the exceptions to required public disclosure under the Public Information Act.

11. Copyright in the Finished Artworks

The Artist's final design and all other work product (including the final Artwork under this Contract) shall become the property of the City upon final acceptance, without restriction on future use, except as provided below. The Artist may retain copyright and other intellectual property rights in and to the final design and the final Artwork. By execution of this Contract, the Artist grants to the City a perpetual, irrevocable license to graphically depict or display the final Artwork for any purpose whatsoever in any medium or forum, including the internet; for purposes of this limitation, any graphic depiction or display of the final Artwork intended to promote or benefit the City, its public services or its public purposes, regardless of whether or not a fee is charged to the public, or whether revenue is otherwise received by the City, shall be deemed a non-commercial purpose.

12. Waiver of Visual Artists Rights Act.

The Artist agrees and understands that nothing in this Contract shall affect or limit the City's absolute, unrestricted right incidental to the City's full ownership of the Artwork to alter, change, modify, destroy, remove, move, replace, operate, maintain, transport, sell or transfer, in whole or in part, the final Artwork when the City deems it necessary within its discretion, in order to otherwise exercise the City's powers and responsibility in regard to public works and improvements, in furtherance of the City's operations or for any other reason. Should such action become necessary, the City agrees to honor its responsibility as provided in Section III, E-1 (a-d) of the City's Cultural Policy (**presented in Exhibit D**) and under State, Federal and local law applicable to visual artwork. Artist acknowledges the existence, if any, of its statutory moral rights as those rights are described in 17 U.S.C. § 106A(a), the Visual Artists Rights Act of 1990, ("VARA") and knowingly executes this Contract on the following terms: (A) this waiver applies

to the Artwork and to any promotional materials connected with the Artwork; and (B) the Artist hereby expressly and forever waives any and all rights under 17 U.S.C. § 106A, and any rights arising under U.S. federal or state law or under the laws of any other country that conveys rights of the same nature as those conveyed by 17 U.S.C. §106A, or any other type of moral right or droit moral under which artists claim an interest in their work. The Artist understands that, despite the City's commitment to not intentionally damage, alter, or modify the Artwork without the prior written approval of the Artist, removal of the Artwork may subject the Artwork to destruction, distortion, mutilation, or other modification, by reason of its removal

13. Artist's Liability

Approval of the Director shall not constitute nor be deemed a release of the responsibility and liability of the Artist or the Artist's employees, associates or assistants for the accuracy and competency of the Artist's services, nor shall approval be deemed to be the assumption of such responsibility by the City for any defect, error or omission on the services performed by the Artist or the Artist's employees, associates or assistants.

14. Artist Credit

All reproductions by the City shall credit the Artist and include a copyright notice substantially in the following form: "© [Artist's name], installation date, date of publication, Commissioned by the City of Dallas through the Office of Cultural Affairs Public Art Program." Because its final form is unique, the Artist shall not make any 2- or 3-dimensional replication of the final Artwork for commercial purposes nor shall the Artist grant permission to others to do so except with the written permission of Cultural Affairs for the lifetime of the Artwork. The Artist retains the right to make 2-D reproductions of the work for use in promotional materials, portfolios, websites and other locations where the artist is promoting the work.

15. Artist Reproduction Credit

If the Artist is granted permission by the City to reproduce the Artwork in a limited edition, the Artist agrees to include on or in any form of reproduction of the Artwork initiated or authorized by the Artist a credit to the City of Dallas in the following form: "Collection of the City of Dallas Public Art Program".

16. Insurance

The Artist shall procure, pay for, and maintain during the term of this Contract, with a company authorized to do business in the State of Texas and acceptable to the City's Office of Risk Management, the minimum insurance coverage contained in **Exhibit B**, attached to and made part of this Contract. The cost for such insurance may be included in the Artwork budget.

17. Risk of Loss

With the exception of that part of the work undertaken by third parties as set forth in Exhibit A, the risk of loss or damage to the Artwork shall be borne by the Artist until final acceptance by the Director and the Artist shall take such measures as are necessary to protect the Artwork from loss or damage until final acceptance by the Director.

18. Indemnification

The Artist agrees to defend, indemnify and hold the City (including their officers, agents and employees) harmless against any and all claims, lawsuits, judgments, costs and expenses for: (A) any infringement of patent or copyright arising out of the services performed by the Artist under this Contract regardless of whether or not the Artist or the City had knowledge of any existing patents or copyrights during the course of performance of this Contract; and (B) personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by the Artist's breach of any of the terms or provisions of this Contract, or by any negligent act or omission of the Artist, its officers, agents, associates, employees or sub consultants, in the performance of this Contract. The indemnity for personal injury, property damage or other harm caused by the Artist's contractual breach or negligence provided in (B) shall not apply to any liability resulting from the sole negligence of the City, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both the Artist and the City, responsibilities and indemnity, if any, 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. The provisions of this Section 17 are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

19. Right of Review and Audit

The City, including designees thereof, may review any and all of the services performed by the Artist under this Contract. The City is granted the right to audit, at the City's election and cost, all of Artist's records and billings relating to the performance of this Contract. The Artist agrees to retain such records for a minimum of three (3) years following completion of this Contract. Any payment, settlement, satisfaction, or release provided under this Contract shall be subject to the City's rights as may be disclosed by such audit.

20. Conflict of Interest of City Employees

The following section of the Charter of the City of Dallas, as amended, shall be one of the conditions, and a part of, the consideration of this Contract, to wit:

"CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED -

(a) No officer or employee shall have any financial interest, direct or indirect, in any contract with the City or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit his office or position with the City. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City Manager or the City Council.

(b) The alleged violations of this section shall be matters to be determined either by the Trial Board in the case of employees who have the right to appeal to the Trial Board, and by the City Council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by City employees in federally-funded housing programs, to the extent permitted by applicable federal or state law."

(d) This section does not apply to an ownership interest in a mutual or common investment fund that holds securities or other assets unless the person owns more than 10 percent of the value of the fund.

(e) This section does not apply to non-negotiated, form contracts for general city services or benefits if the city services or benefits are made available to the city official or employee on the same terms that they are made available to the general public.

(f) This section does not apply to a nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board. A nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board, must comply with any applicable conflict of interest or ethics provisions in the state law and the Dallas City Code. (Amend. of 8-12-89, Prop. No. 1; Amend. of 8-12-89, Prop. No. 15; Amend. of 11-4-14, Prop. Nos. 2 and 9)”

21. Gift to Public Servants

A. The City may terminate this Contract immediately if Artist has offered, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

B. For purposes of this section, “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.

C. Notwithstanding any other legal remedies, the City may require Artist to remove any employee of Artist from the project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

22. Notice of Contract Claim

This Contract is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract as if written word for word in this Contract. Artist is expected to fully comply with the requirements of this ordinance in the event of a claim, in addition to all other requirements in this Contract related to claims and notice of claims.

23. Equal Employment Opportunity/Nondiscrimination

A. Artist shall not discriminate against any employee or applicant for employment because of race, age, color, religion, gender, ancestry, national origin, military or veteran status, sexual orientation, disability unrelated to job performance or place of birth. Artist shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to their race, age, color, religion, gender, ancestry, national origin, military or veteran status, sexual orientation, City of Dallas Office of Cultural Affairs Public Art Program 2017

disability unrelated to job performance, or place of birth. This action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. Artist shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. Artist agrees to post in conspicuous places, available to employees and applicants, notices to be provided by City setting forth the provisions of this non-discrimination clause.

B. Artist shall, in all solicitations or advertisements for employees placed by or on behalf of Artist, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, ancestry, national origin, military or veteran status, sexual orientation, disability unrelated to job performance, or place of birth.

C. Artist shall furnish all information and reports required by the City Manager or his designee and shall permit the City Manager or his designee to investigate his payrolls and personnel records which pertain to current professional services contracts with City for purposes of ascertaining compliance with this equal employment opportunity clause.

D. Artist shall file compliance reports with City as may be required by the City Manager or his designee. Compliance reports must be filed within the time, must contain information as to the employment practices, policies, programs, and statistics of Artist, and must be in the form that the City Manager or his designee prescribes.

E. If Artist fails to comply with the equal employment opportunity provisions of this Contract, it is agreed that City at its option may do either or both of the following:

- (1) Cancel, terminate or suspend this Contract in whole or in part;
- (2) Declare Artist ineligible for further City contracts until he is determined to be in compliance.

24. Contract Personal

The Contract provides for Artist's services, involving the skill and creativity of the Artist. Therefore, the Artist shall not assign this Contract, in whole or in part, without the prior written consent of the City.

25. Termination

The City may terminate this Contract, in whole or part, for breach of the terms this Contract, upon ten (10) days written notice to Artist with the understanding that all services being performed under this Contract shall cease upon the date specified in such notice, provided such breach is not cured within the ten (10) day notice period. Artist shall invoice the City for all services completed and shall be compensated in accordance with the terms of this Contract for all services performed by the Artist prior to the date specified in such notice. Upon notice of termination, the Artist shall promptly discontinue all services affected (unless otherwise directed by the notice) and promptly deliver to the City all data, drawings, specifications, calculations, reports, estimates, materials and completed or partially completed work produced by the Artist under this Contract. The Artist may terminate this Contract for the City's breach of City of Dallas Office of Cultural Affairs Public Art Program 2017

the material terms this Contract, upon thirty (30) days written notice to the City, provided such breach is not cured within the thirty (30) day notice period, and any payments for work made by the City to the date of termination will be retained by the Artist, and ownership of the work to such date shall remain with the Artist.

26. Notices

All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for City, to:

If intended for Artist, to:

If intended for City, to:

If intended for Artist, to:

INSERT

INSERT

INSERT

INSERT

INSERT

INSERT

Dallas, TX 75201

With copy to:

Director

Office of Cultural Affairs

1925 Elm Street, Suite 400

Dallas, Texas 75201

27. Independent Artist

In performing services under this Contract, the relationship between the City and the Artist is that of independent Artist, and the City and the Artist by the execution of this Contract does not change the independent status of the Artist. The Artist shall exercise independent judgment in performing his duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the work flow and determining how the work is to be performed. No term or provision of this Contract shall be construed as making the Artist or any of his employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provide their own employees.

28. Venue

The obligations of the parties to this Contract are performable in Dallas County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Dallas County, Texas

29. Applicable Laws

This Contract is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable State and federal laws.

30. Governing Law

This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

31. Legal Construction

In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

32. Counterparts

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

33. Captions

The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

34. Successors and Assigns

This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Contract, their assigns.

35. Entire Agreement

This Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties relating to matters in this Contract, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Contract.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

EXECUTED and effective as of _____ by City, signing by and through its City Manager, duly authorized to execute same by City Council Resolution INSERT approved on INSERT, and by the artist.

APPROVED AS TO FORM:
LARRY E. CASTO
City Attorney

CITY OF DALLAS
T.C. BROADNAX
City Manager

BY: _____
Assistant City Attorney

BY: _____
Assistant City Manager

ARTIST:

INSERT NAME

Exhibit C – Final Artwork Information & Maintenance/Conservation Form

Artist: _____

Title of Work: _____

Date Created/Completed: _____

Dimensions: _____

Medium: _____

Materials: _____

Location: _____

CONCEPTUAL INFORMATION

1. Please provide conceptual information on the work, including subject and source of inspiration. This information will be used for educational purposes or as Public Art promotional material.
2. Provide a brief statement to be used on the wall label for the artwork.

MEDIUM AND TECHNIQUE

1. Principal materials used in fabrication; describe in detail (i.e. specific metal, brand name, source, or manufacturer, etc.), (and supply brand names of materials used when possible):
2. If applicable, describe any electrical components used, their operation and supplier (provide manufactures specification sheets and warranties):
3. Other materials used (i.e., screws, nails, glue, armatures, etc.):
4. Preliminary work methods (i.e. drawings, smaller models, etc.)
5. Equipment used in construction:
6. List vendors/Artists used in the construction:
 - Final work methods:
 1. Describe in detail (i.e. cast, welded, carved, modeled, thrown, assembled, etc.):
 2. If the work has been cast, specify how many have been and/or will be produced, (where are the molds located):
 3. Describe how final surface/patina achieved:

4. Protective coating (method of application):
5. Where was work completed? (i.e., name of studio, foundry, address, phone, etc.):
6. How long was work in process?

INSTALLATION

- Are there any special installation considerations (i.e. viewing height, measured distance from relative objects. etc.)?
- If work is comprised of more than one piece requiring special assembly, supply documentation on how to install correctly (provide photographs or sketches):

EXTERNAL FACTORS

- Describe existing environmental factors which may affect the condition of the artwork and any precautionary measures which should be taken (e.g.), direct sunlight, extremes of annual rain or snowfall, temperature, air moisture or dryness, acidity of rainfall, flooding, wind, vibrations, air pollutants, vehicular and/or pedestrian traffic; animal interaction with artwork - potential for nesting, droppings, etc.; human interaction with artwork- touching, sitting, climbing, vandalism):

DESIRED APPEARANCE

- Describe in specific terms and, if necessary, with drawings or photographs, the physical qualities for which the agency should strive in order to maintain the artist's intent (e.g. matte rather than glossy luster, color of patina). What may be acceptable alteration in form, surface, texture, coloration as related to natural aging of materials?
- If the work is site-specific, describe in detail the particular relationship of the work to its site, including any significant physical aspects of the site which, if altered, would significantly alter the intended meaning and/or appearance of the work:

MAINTENANCE/CONSERVATION INSTRUCTIONS

- Provide instructions regarding the methods and frequency of maintenance for the artwork (with observations regarding permanency/durability of materials and techniques):
- Routine maintenance (e.g., removal of dust, dirt; maintenance of protective surfaces; tightening, adjusting, oiling; etc.):
- Cyclical maintenance (less frequent and more extensive preventive measures, e.g., disassembly and inspection; reapplication of protective sealers; repainting; etc.):

SPECIAL CONSIDERATION

- Provide detailed information about the artwork if it includes any electrical, mechanical, other unique or contemporary materials:
- Are there any electrical components (lights, motors, transformers, photovoltaic, etc), mechanical (bearings, springs, universal joints, etc), or unique materials (resins, plastics, expanded polystyrene, etc):
- Please provide detailed schematics of electrical components or mechanical drawings and names of manufacturers as well as detailed information of where these components were purchased:
- How often and in what ways should these components be maintained (tighten connections, replace bulbs, check timers, replace batteries, etc):
- Provide any other pertinent information for the care of these components as well as location of electrical power disconnect, if applicable:

Exhibit D: VARA stipulations from the City of Dallas Office of Cultural Affairs Cultural Policy.

Waiver of Visual Artists Rights Act.

The artist agrees and understands that nothing in this contract shall affect or limit the City's absolute, unrestricted right incidental to the City's full ownership of the artwork to alter, change, modify, destroy, remove, move, replace, operate, maintain, transport, sell or transfer, in whole or in part, the final Artwork when the City deems it necessary within its discretion, in order to otherwise exercise the City's powers and responsibility in regard to public works and improvements, in furtherance of the City's operations or for any other reason. Should such action become necessary, the City agrees to honor its responsibility as provided in Section III, B-8, E-1 (d) of the City's Cultural Policy:

The artist may retain copyright and other intellectual property rights in and to the final design and the final artistic work itself. The Artist shall grant to the City a

perpetual, irrevocable license to graphically to depict or display the final artistic

work for any non-commercial purpose whatsoever. When a work of visual art is

incorporated in or made part of a City-owned building in such a way that removing the work from the building will cause the destruction, distortion, mutilation, or other modification of the work, the City shall have absolute, unrestricted rights incidental to its full ownership of the final artistic work to alter, change, modify, destroy, remove, move, replace, transport, or transfer, in whole

or in part, the final artistic work when the City deems it necessary within its discretion in order to exercise the City's powers and responsibilities in regard to public works and improvements, in furtherance or the City's operations or for any other good cause.

When an artwork is acquired by the City after the City Council's adoption of this Cultural Policy and Program, and the artwork is a painting, drawing, print, or sculpture, or a photographic image created for exhibition purposes only, existing in a single copy, or in signed, consecutively numbered limited editions of no more than 200 copies, and the artwork either is not an integral part of a City-owned facility, or is part of a City facility but can be reasonably removed without distortion, mutilation or other modification, the artist shall have the right to: 1) prevent any intentional distortion, mutilation, or other modification of the artwork that would be prejudicial to the artist's honor or reputation, or 2) prevent destruction of the work when it is of recognized stature. These rights may be waived by the artist through a signed, written instrument. The City shall make a diligent, good faith effort to notify the artist of the intended action affecting the artwork, to include providing such notice in writing to the artist by registered mail before proceeding with its plans.

Exhibit E - Texas Sales Tax and Local Sales Tax Exemption Certificate

TEXAS STATE LIMITED SALES & USE TAX

EXEMPTION CERTIFICATE

The City of Dallas hereby claims exemption from payment of taxes under Chapter 151, Section 309, Civil Statutes of Texas, for all tangible personal property service purchased from:

The reason that the said purchaser is claiming this exemption is

Maintenance & Operation of a Governmental Entity

The purchaser will be liable for payment of the Limited Sales & Sales & Use Tax if the purchaser uses the tangible personal property/services in some other manner or for some use other than reason listed above, and shall pay the tax based on the price paid for the tangible personal property/services.

EXECUTED THIS THE _____ DAY OF _____, 20_____

Federal Tax I.D. #75-6000508 City of Dallas, TX

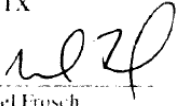
By 
Michael Frosch
Purchasing Agent
Business Development & Procurement Services

Exhibit F – Artist’s Safety Responsibilities

Artist’s Safety Responsibilities

Section A: The artist agrees to work responsibly and to adhere to standard practices for Occupational Health and Safety as outlined in the City of Dallas Safety Manual.

The City of Dallas Safety Manual is available upon request.

EXHIBIT G APPROVED DESIGN

Insert image of approved design

RESOURCES FOR ARTISTS

Forecast Public Art Tool kit for artists	http://forecastpublicart.org/toolkit/
Call for Entries	https://www.callforentry.org/
Public Art Network resources	http://www.americansforthearts.org/by-program/networks-and-councils/public-art-network/tools-resources/public-art-artists
AMERICANS FOR THE ARTS	http://www.americansforthearts.org/
PUBLIC ART NETWORK TOOLS	http://www.americansforthearts.org/by-program/networks-and-councils/public-art-network/tools-resources

On-line Readings

[Minding your RFP's and Q's](#) by Elizabeth Keithline, ARTSblog
[Copyrights & Copywrongs: A Quick Overview of Basic Issues](#) by Clark Wiegman, ARTSblog
[Creating, Collaborating, Connecting with Art, Activism, and the Internet](#) by Xavier Cortada, ARTSblog
[Public Art Creates an Elevated Mood](#) by Helen Lessick, ARTSblog
[Artists Evaluating Their Own Public Art](#) by Lajos Heder, ARTSblog
[Changing Art, Changing Habits](#) by Bill Mackey, ARTSblog
[Why Public Art is Good for All Artists](#) by Cathy Breslaw, ARTSblog
[Tales from the Resident Artist: The Final Chapter](#) by Leo Berk, ARTSblog
[Working on a Public Site](#) by Lajos Heder, ARTSblog
[Public Art: Reconsidering Site](#) by Cher Knight and Harriet Senie, ARTSblog

[Best Practices Goals & Guidelines](#), Americans for the Arts Public Art Network
[Best Practices for Integrating Art into Capital Improvement Projects and Why Design Matters for Transit](#), American Public Transportation Association
[Public Art and Private Development Resource Guide for Developers](#), Americans for the Arts Public Art Network

Books: [The Artist's Guide to Public Art](#) by Lynn Basa

ON-LINE LEARNING

[Webinar: Beyond Good Intentions: Public Art Practices for Achieving Civic Engagement & Social Change](#)
[Webinar: Public Art Academy for Artists \(Part 1 of 3\)](#)
[Webinar: Public Art Academy for Artists \(Part 2 of 3\)](#)
[Webinar: Public Art Academy for Artists \(Part 3 of 3\)](#)
[Webinar: Public Art 50/50](#)
[Webinar: Public Art 101 for Artists](#)

PUBLIC ART STAFF (2017)

Office of Cultural Affairs	214.670.3687 www.dallasculture.org
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Lynn Rushton Public Art Conservation and Collection Manager	214.670.0634 lynn.rushton@dallascityhall.com
Love Field Art Program Staff	
Guy Bruggeman Art Program Coordinator	214.670.7143 guy.bruggeman@dallascityhall.com
Sheena Swehla Graphic Designer	214.671.1898 sheena.swehla@dallascityhall.com

PUBLIC ART COMMITTEE MEMBERS (2017)

Petrine Abrams, Landscape Architect

Leigh Arnold, Ph.D., Assistant Curator Nasher Sculpture Center

Jorge L. Baldor, Arts Advocate and Cultural Affairs Commissioner

Paul Fuller, Photographer and Cultural Affairs Commissioner

Scott Horn, Artist

Paul D. Rich, Collector and Cultural Affairs Commissioner

John Spriggins, Artist, Curator and Cultural Affairs Commissioner

Michelle Tarsney, Public Art Artist and Architect

Ex Officio

John Paul Batiste, Cultural Affairs Commission Chair