

Contract Number: _____
FOP: _____

Texas Tech University System

PUBLIC ART COMMISSION CONTRACT

BETWEEN

The Board of Regents of the Texas Tech University System
City of Lubbock, Lubbock County, Texas, 79409

("Texas Tech")

Acting by and through the Chancellor
of the
Texas Tech University System
or his designated representative

And

Name
Individual/Sole Proprietor
Address
City, State Zip

(the "Artist")

regarding

Project Name
TTU Entity
Location, Texas ("Site")
FP&C PROJECT NUMBER: 00-00

(the "Work")

This Contract becomes effective on the date of the last signature on the document.

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SAMPLE

BACKGROUND

1. Texas Tech desires to retain the Artist to perform services, and the Artist desires to perform the services pursuant to the terms of this Contract.
2. In choosing to retain the Artist under this Contract, Texas Tech is materially relying upon the Artist's representations that the Artist is fully qualified to perform the services.

For adequate consideration accepted, the Parties agree as follows:

ARTICLE 1: DEFINITIONS

- 1.1 Artist – a professional artist or group of professional artists selected by the University Public Art Committee to provide the design and to perform all services necessary to complete the Work.
- 1.2 Completion Date – the date established in the Contract, by the Artist and Texas Tech, by which the Work will be fully and satisfactorily complete in accordance with the Contract.
- 1.3 Contract – the entire agreement between Texas Tech and the Artist.
- 1.4 Design Proposal – a complete and properly signed proposal, submitted in accordance with the submission requirements, to perform the Work or designated portion thereof for the amount stipulated therein.
- 1.5 Notice to Proceed – a written communication which will be issued by Texas Tech to the Artist authorizing the Artist to proceed with the Work and establishing the date for commencement of the Work.
- 1.6 Parties – collectively, Texas Tech and the Artist are the “Parties”; individually, each is a “Party.”
- 1.7 Progress Report – a written document submitted monthly by the Artist to the Public Art Manager that includes photographs and any other relevant documentation, detailing the progress made on the project since the previous Progress Report was submitted.
- 1.8 Project Manager – the individual who acts as Texas Tech's point of contact for all matters involving Contract administration, including without limitation document interpretation, defining the scope of the Work, approving schedules, and approving Contract payments.
- 1.9 Site – the geographical area of the location of the Work.
- 1.10 Work – the Work includes the public art to be created under this Contract, as well as the administration and procurement of materials, labor, facilities, equipment, construction and all services necessary or incidental for the Artist, and/or its agents, to fulfill the Artist's obligations under the Contract.
- 1.11 University Public Art Committee – a body of individuals including Texas Tech University System faculty, staff, alumni, and students, as well as the Public Art Manager, the Vice Chancellor of Facilities Planning and Construction, professional artists, and individuals from the communities in which Texas Tech University System has a presence. This body both establishes the parameters for all Public Art projects and selects the Artists to provide services for these projects, subject to approval by the Chancellor of the Texas Tech University System.

ARTICLE 2: SCOPE OF ENGAGEMENT

2.1 General

- 2.1.1 The Artist shall perform all services and furnish all supplies, material, and equipment as necessary for the design, execution, fabrication, and transportation of the Work, as defined by the approved Design Proposal, at the Site.
- 2.1.2 The Artist shall determine the artistic expression, scope, design, color, size, material, and texture of the Work, subject to review and acceptance by the University Public Art Committee as set forth in this Contract.
- 2.1.3 Texas Tech may modify the scope of services set forth in this Contract. All such modifications will be made by a written amendment signed by both Parties.
- 2.1.4 The Artist shall notify Texas Tech of changes in the Artist's address. The failure to do so, if such failure prevents Texas Tech from locating the Artist, will be deemed a waiver by the Artist of the right subsequently to enforce those provisions of this Contract that include notice to and/or approval of the Artist for any repair, restoration, or alteration of the Work or Site, including but not limited to the provisions of Sections 6.3 and 6.4.
- 2.1.5 The Contract will be binding upon the Parties, their heirs, legatees, executors, administrators, assigns, transferees, and all their successors in interest, and Texas Tech's covenants attach and run with the Work and will be binding until twenty (20) years after the death of the Artist. However, the obligations imposed upon Texas Tech to notify the Artist or seek the approval of the Artist will terminate on the death of the Artist. Texas Tech will give any subsequent owner of the Work notice in writing of the Contract's covenants, and will require that any subsequent owner agree to be bound by them.
- 2.1.6 Where there is more than one Artist, all Artists shall be referred to collectively as "Artist," and each individual Artist shall be jointly and severally responsible for satisfying the Artist's obligations under this Contract, and each Artist shall be liable for the acts or omissions of every other Artist.

2.2 Design Proposal

- 2.2.1 The Artist shall carry out such reasonable Site inspections, interviews, and research as may be necessary, including meetings with representatives from Texas Tech in order to prepare a Design Proposal (the "Design Proposal") for the Work. Texas Tech shall make available to the Artist the necessary background materials and information on matters affecting the Site and installation of the Work including, where applicable, the most recent written requirements and specifications for the Work and the project design documents for the underlying capital project. It is the intent of the Parties that Texas Tech and the Artist shall establish a close and cooperative consultation throughout the duration of this Contract.
- 2.2.2 The Artist has submitted a preliminary Design Proposal to Texas Tech dated Date, attached as Exhibit A. The Design Proposal submitted to Texas Tech for its approval included the following:
 - 2.2.2.1 Project narrative (conceptual description);
 - 2.2.2.2 Description of the material(s) to be used in fabrication;
 - 2.2.2.3 Dimensions of the Work;
 - 2.2.2.4 Rendering(s) of the proposed work(s) of art;

- 2.2.2.5 Plans for production including fabrication, transportation, and installation;
- 2.2.2.6 Maintenance and technical information;
- 2.2.2.7 Project schedule; and
- 2.2.2.8 A well-defined budget, not to exceed \$00,000.00. **The budget is all inclusive.** The budget must include the Artist fee, insurance, travel, engineering, materials, fabrication, packing, shipping, installation, post-installation documentation, and contingencies.

2.2.3 Texas Tech shall, within thirty (30) days following the next regularly scheduled University Public Art Committee meeting after the Artist's submission and presentation of the Design Proposal, notify the Artist whether the Committee approves or disapproves the Design Proposal. During this period the Artist shall be available as reasonably required to meet with Texas Tech representatives to discuss the Design Proposal.

2.2.4 If Texas Tech approves the Design Proposal, it must receive all necessary documents, such as the required insurance, and deem the documents satisfactory, before the Artist is issued a Notice to Proceed for procurement of materials, fabrication and engineering. Upon acceptance by Texas Tech, the Design Proposal and all associated documents shall be incorporated into this Contract.

2.2.5 If Texas Tech does not approve the Design Proposal, it shall provide the Artist with a statement in writing of its reasons for its disapproval. In such an event, the Artist shall be afforded an opportunity either to submit a second Design Proposal for the Work within a reasonable period of time specified by Texas Tech, or to terminate this Contract. Within thirty (30) days following such submission by the Artist, Texas Tech shall notify the Artist in writing whether it approves or disapproves the Design Proposal. If Texas Tech also disapproves the second Design Proposal, it shall provide the Artist with a statement in writing of its reasons for disapproval, whereupon this Contract shall terminate.

2.2.6 In the event of termination of this Contract pursuant to this Section 2.2, the Artist shall retain the Design Proposal(s) and all compensation paid to the Artist, up to and through the date of termination, per the fee schedule in Section 4.1, and neither Party shall be under any further obligation to the other with respect to this Contract.

2.3 Architectural and Engineering Design Review

2.3.1 Within **thirty (30) days** after Texas Tech issues a Notice to Proceed, the Artist shall (after consultation and collaboration with the Design Professional) prepare and submit to Texas Tech schematic drawings of the Work and the Site indicating construction methods and precise dimensions of the proposed Work, together with such other graphic materials as may reasonably be requested by Texas Tech in order to permit Texas Tech to carry out any added installation cost estimates. The Artist shall also prepare and submit architectural and engineering design reviews to certify the compliance of the Work with applicable statutes, codes, and ordinances, in accordance with Section 7.1. Upon request by the Artist, Texas Tech shall promptly furnish all reasonably available information, materials, and assistance required by the Artist in connection with said submission.

2.3.2 Texas Tech may require the Artist to make such revisions to the Design Proposal as are necessary for the Work to comply with applicable statutes, codes, ordinances, or regulations of any governmental or regulatory agency having jurisdiction over the Work, and the Artist shall comply.

2.3.3 Texas Tech may also require revisions for practical or safety reasons, and the Artist shall

comply.

- 2.3.4 Within thirty (30) days after receipt of the Artist's submission pursuant to Section 2.3.1, Texas Tech shall notify the Artist of its approval (or disapproval) of such submission and of all revisions made in the Design Proposal. Revisions made pursuant to this Section 2.3 become a part of the Design Proposal and this Contract. If Texas Tech disapproves the revised submission, it shall provide the Artist with a statement in writing of its reasons for disapproval, whereupon this Contract shall terminate.
- 2.3.5 In the event of termination of this Contract pursuant to this Section 2.3, the Artist shall retain the Design Proposal(s) and all compensation paid to the Artist up to and through the date of termination per the fee schedule in Section 4.1, and neither Party shall be under any further obligation to the other with respect to this Contract.

2.4 **Execution of the Work**

- 2.4.1 The Artist will fabricate and transport the Work to the Site in accordance with the schedule proposed by the Artist in the approved Design Proposal. Such schedule may be amended only by written agreement between Texas Tech and the Artist.
- 2.4.2 Texas Tech will have the right to review the Work at reasonable times during the fabrication.
- 2.4.3 The Artist shall submit formal written **Progress Reports each month** to Texas Tech. The reports must include written and photographic documentation of the Work's progress.
- 2.4.4 The Artist shall complete the fabrication of the Work in substantial conformity with the Design Proposal.
- 2.4.5 The Artist shall present to Texas Tech in writing for further review and approval any significant changes in the appearance, scope, design, color, size, material, location, or texture of the Work not in substantial conformity with, or not permitted by, the Design Proposal. A significant change is any change that affects the appearance, installation, scheduling, Site preparation, Site, budget, or maintenance of the Work as represented by the Artist in the Artist's Design Proposal.

2.5 **Delivery and Installation**

- 2.5.1 The Artist shall notify Texas Tech in writing when fabrication of the Work is complete and ready for its delivery and installation at the Site to meet mutually agreed upon requirements provided by the Artist.
- 2.5.2 The Artist shall deliver the completed Work to the Site in compliance with the schedule as part of the approved Design Proposal.

2.6 **Post-Installation**

- 2.6.1 Within six (6) months after the installation of the Work, the Artist shall furnish Texas Tech with the following photographs of the Work as installed, which Texas Tech may use for Texas Tech's non-commercial purposes, including publicity, campus art brochures, campus tour materials, Texas Tech catalogs and similar publications, and for educational purposes, but not for sale without the Artist's prior written consent:

2.6.1.1 High-resolution digital photographs taken by an approved, professional photographer, of the completed Work, taken from at least four different viewpoints.

2.6.2 The Artist shall be available at such time or times as may be agreed between Texas Tech and the Artist to attend any inauguration or presentation ceremonies relating to the transfer of the Work to Texas Tech.

2.6.3 Upon installation of the Work, the Artist will provide to Texas Tech written instructions for appropriate maintenance and preservation of the Work.

2.7 **Final Acceptance**

Texas Tech will notify the Artist of its final acceptance of the Work. Texas Tech will not unreasonably withhold its final acceptance of the Work. Final acceptance will be contingent upon the Artist providing satisfactory proof in the form of an affidavit, signed and sworn to by the Artist, verifying that all accounts and amounts outstanding with suppliers and subcontractors associated with this Work are paid in full, and providing a waiver of lien from each supplier and subcontractor of the Artist.

2.8 **Risk of Loss**

The risk of loss or damage to the Work will be borne by the Artist until final acceptance, and the Artist will take such measures as are necessary to protect the Work from loss or damage until final acceptance.

2.9 **Title**

Title to the Work will pass to Texas Tech upon final acceptance.

ARTICLE 3: TIME OF PERFORMANCE

3.1 **Completion**

Except as otherwise provided herein, the Artist agrees to install the finished Work no later than Date (the "Completion Date"). The schedule, submitted as part of the approved Design Proposal, may be extended or otherwise modified only upon written agreement between the Artist and Texas Tech.

3.2 **Construction Delays**

It is anticipated that the Work will be installed on or before the Completion Date in Section 3.1. If the Artist notifies Texas Tech that the Work is ready for shipping and installation, and the subcontractor is delayed from installing the Work within the time specified in the schedule as a result of the construction of the underlying capital project rendering the Site not being sufficiently complete and/or accessible to reasonably permit installation of the Work, Texas Tech will provide storage facilities for the Work.

3.3 **Early Completion of Artist Services**

The Artist shall bear any transportation and storage costs resulting from the completion of the Work prior to the time provided in the schedule for shipping and installation.

3.4 Time Extensions

Texas Tech will grant a reasonable extension of time to the Artist in the event that there is a delay on the part of Texas Tech in performing its obligations under this Contract or in completing the underlying capital project, or if conditions beyond the Artist's control render timely performance of the Artist's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of Contract, provided that such obligations will be suspended only for the duration of such conditions. Delays caused by or due to requirements of the Artist's other projects are not conditions beyond the Artist's control for purposes of this Contract.

3.5 Liquidated Damages

For each consecutive calendar day after the Completion Date set forth in Section 3.1, plus any extensions of time granted by written amendment to this Contract, that the Work, including the correction of deficiencies found during the final inspection, is not completed, the amount of **Written Dollar Amount and 00/100 Dollars (\$00,000.00)** will be deducted from the money due or that becomes due the Artist, not as a penalty but as liquidated damages, representing the Parties' estimate at the time of Contract execution of the damages that Texas Tech will sustain related to Texas Tech's inability to utilize the Work due to late completion. If money due or that becomes due the Artist is less than the amount of liquidated damages, the Artist is liable for the excess of liquidated damages over the amount ultimately due the Artist, and shall pay that amount within ten (10) days following written demand. Liquidated damages do not cover, and Artist is liable for, any additional costs Texas Tech incurs as a result of late completion if the delay directly impacts another Texas Tech project, and the impact results in additional costs to Texas Tech. For example, where late completion of the Work delays progress on another construction or operational project, resulting in Texas Tech incurring additional costs related to the other construction or operational project, the additional costs are payable to Texas Tech by the Artist in addition to liquidated damages. Payment of liquidated damages does not preclude recovery by Texas Tech of other damages or losses under other provisions of the Contract, except for claims related to Texas Tech's inability to utilize the Work. Texas Tech's right to receive liquidated damages for this purpose will not affect Texas Tech's right to terminate the Contract, nor shall termination of the Contract release the Artist from the obligation to pay the liquidated damages.

ARTICLE 4: COMPENSATION AND PAYMENT SCHEDULE

4.1 Fee

Texas Tech will pay the Artist a fixed fee of **Written Dollar Amount and 00/100 Dollars (\$00,000.00)**, which will constitute full compensation for all services and materials to be performed and furnished by the Artist and the Artist's agents, subcontractors, and employees under this Contract. Upon receipt and approval of invoices from the Artist, the fee will be paid in the following installments:

- 4.1.1 **\$00,000.00** An initial payment for materials, fabrication, and engineering. Payment may be processed once Texas Tech has approved the Design Proposal, has received and approved the necessary documents described in Section 2.2.4, and has issued the Notice to Proceed.
- 4.1.2 **\$00,000.00** A progress payment payable when 50% of the Work is fabricated and approved by Texas Tech.
- 4.1.3 **\$00,000.00** A progress payment payable when 100% of the Work is fabricated,

approved by Texas Tech, and ready for shipping and installation.

- 4.1.4 **\$00,000.00** A final payment after the completed Work has been fully installed and accepted by Texas Tech. Approval to process payment at this phase will require the Artist to provide the documentation required by Section 2.7.

4.2 **Artist's Expenses**

The Artist shall be responsible for all costs related to design, fabrication, and shipping of the Work, including payment of all mailing or shipping charges on submissions to Texas Tech, engineering (if applicable), the cost of fabricating, storing (except where Section 3.2 applies), transporting to, and installing the Work at the Site, the costs of all travel by the Artist and the Artist's agents, subcontractors, and employees necessary for the proper performance of the services required under this Contract, and post-installation photo documentation of the work by a professional photographer, as specified in Section 2.6.

ARTICLE 5: WARRANTIES

5.1 **General Warranties**

The Artist represents and warrants, except as otherwise disclosed to Texas Tech in writing as part of the Design Proposal described in Section 2.2, that:

- 5.1.1 The execution and fabrication of the Work will be performed in a good and workmanlike manner, consistent with best industry standards and practices;
- 5.1.2 The Work, as fabricated and installed, will be free of defects in material and workmanship, including any latent defects or qualities which cause or accelerate deterioration of the Work; and
- 5.1.3 Reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist to Texas Tech.
- 5.1.4 The warranties described in this Section will be in effect for a period of one (1) year after final acceptance of the Work. Texas Tech will give notice to the Artist of any observed warranty issues, deficiencies, or defects with reasonable promptness. The Artist will, at the request of Texas Tech, and at no cost to Texas Tech, promptly resolve warranty issues, deficiencies, or defects which are curable by the Artist and which cure shall be conducted in a workmanlike manner and consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Work).

5.2 **Warranties of Title**

The Artist represents and warrants that:

- 5.2.1 The Work is solely the result of the artistic effort of the Artist:
- 5.2.1.1 Except as otherwise disclosed in writing to Texas Tech, the Work is unique and original and does not infringe upon any copyright;
- 5.2.1.2 The Work, or a duplicate thereof, has not been accepted for sale elsewhere;
- 5.2.2 The Work is free and clear of any liens from any source whatsoever; and

5.2.3 A work made up of the elements of the Work combined in substantially the same configuration as in the Work will not be sold to any other individual, entity, or institution.

5.2.4 The foregoing warranties shall survive the termination of this Contract.

ARTICLE 6: ARTIST RIGHTS

6.1 Artist Identification

Texas Tech will, at its own expense, prepare and install at the Site a plaque identifying the Artist, the title of the Work, and the year of completion, and will reasonably maintain the plaque in good repair.

6.2 Maintenance of the Work

Both parties recognize that maintenance of the Work on a regular basis is essential to the integrity of the Work. Texas Tech will take reasonable steps to assure that the Work is properly maintained and protected in accordance with the instructions of the Artist provided in Section 2.6.3, and will reasonably protect and maintain the Work.

6.3 Repairs and Restoration

Texas Tech will have the right to determine, after consultation with a professional conservator, when and if repairs and restorations to the Work will be made. During the Artist's lifetime, the Artist will have the right to approve all repairs and restorations, provided, however, that the Artist will not unreasonably withhold approval for any repair or restoration of the Work. To the extent practical, the Artist, during the Artist's lifetime, will be given the opportunity to make or personally supervise significant repairs and restorations and will be paid a reasonable fee for any such services, provided that Texas Tech and the Artist agree in writing, prior to the commencement of any significant repairs or restorations, upon the Artist's fee for such services. **If the Artist fails to approve any reasonable repairs or restorations, or if an agreement cannot be reached regarding a reasonable Artist's fee for such services, then Texas Tech will have the right to make or contract for such repairs or restorations at its own expense, provided such repairs or restorations do not distort, mutilate or modify the Work beyond the extent necessary to conserve the Work. All repairs and restorations will be made in accordance with recognized principles of conservation.**

6.4 Alteration of the Work or Site

6.4.1 The Work is purchased as an unconditional sale. However, if Texas Tech determines it is appropriate to make any alterations which will materially affect the character and appearance of the Work, the Public Art Manager will notify the Artist of the proposed alterations and will make a good faith effort to consult with the Artist in the planning and execution of the alteration to prevent any modification of the Work which would be prejudicial to the Artist's honor or reputation.

6.4.2 Texas Tech agrees not to arbitrarily remove or relocate the Work without making a good faith effort to notify the Artist, or, if the Artist is deceased, to notify the then current owner of the copyright. If the removal or relocation is due to safety concerns, Texas Tech may remove or relocate the Work before notifying the Artist.

6.4.3 If the Work is incorporated into the Site, the installation or removal of the Work may subject it to destruction, distortion, mutilation or other modification by reason of its installation or removal.

- 6.4.4 In the event that the Work is incorporated into the Site such that it may be removed without damaging or destroying the Work or the Site, the Artist may be given written notice and ninety (90) days to remove the Work at the Artist's sole expense. If the Artist fails to remove the Work, Texas Tech shall have the right to remove and dispose of the Work by any means, including its destruction.
- 6.4.5 If the Work is substantially damaged or altered, Texas Tech shall no longer represent the Work as that of the Artist if the Artist gives written notice to Texas Tech that it is the position of the Artist to deny authorship of the Work.
- 6.4.6 Under certain extenuating circumstances, Texas Tech reserves the right to "deaccess" the Work according to its Deaccession Policy in place at the time of the proposed deaccession. Under these circumstances, the Artist will be given written notice and ninety (90) days to remove the Work at the Artist's sole expense.

ARTICLE 7: STANDARD OF PERFORMANCE

- 7.1 The Artist's services under this Contract shall be performed in a good and workmanlike manner consistent with best industry standards and practices. All information provided by the Artist will therefore be timely and represent the Artist's use of best industry standards and practices, and the most accurate and current data available. If architectural, engineering, or other professional services are required, they shall be supervised by an architect, engineer, or other professional currently licensed in the State of Texas, and all construction documents shall bear the seal of a licensed architect/engineer/professional in accordance with Texas law.
- 7.2 The Artist shall maintain and shall require that the Artist's subcontractors, if any, maintain any and all required governmental licenses, certificates, approvals, and permits that are required of the Artist for the performance of the Artist's services under this Contract. The Artist agrees to maintain in full force and effect such required licenses, certificates, approvals, and permits throughout the term of this Contract.
- 7.3 In the event that the Artist fails to comply with the standard of performance, as set forth in this Contract, the Artist shall promptly correct, to the satisfaction of Texas Tech, those services provided under this Contract that are not in compliance at no additional cost to Texas Tech. This will in no way waive any additional remedies Texas Tech might have under Texas law.
- 7.3.1 Correction of deficiencies that are caused by conflicting instructions or interpretations from Texas Tech and/or governing and/or reviewing agencies shall not be the responsibility of the Artist, provided that the Artist can show written evidence of such conflict(s) from Texas Tech and/or governing and/or reviewing agencies.
- 7.3.2 Correction of deficiencies that are caused by changes in laws, statutes, regulations, or requirements after the work documents have been received and approved by Texas Tech shall not be the responsibility of the Artist, provided the Artist can show written evidence of such change(s).
- 7.4 The Artist shall complete the Work within the budget established by Texas Tech unless Texas Tech subsequently adjusts the budget in writing. In the event that the design process results in a Work where the estimated costs exceed the established budget, the Artist shall redesign the Work within the established budget at no additional cost to Texas Tech.
- 7.5 This Contract, regardless of where executed or performed, will be governed by and construed in accordance with the laws of the State of Texas.

- 7.6 No waiver of performance by either party will be construed as a waiver of any subsequent default of any terms, covenants, and conditions of this Contract. The payment or acceptance of fees for any period after a default will not be deemed a waiver of any right or acceptance of defective performance.

ARTICLE 8: OWNERSHIP OF WORK DOCUMENTS AND WORK

- 8.1 The drawings, specifications and other documents, including those in electronic form, prepared by the Artist, its agents, employees, and the Artist's subcontractor(s) for this Project (the "work documents") are instruments of the Artist's service. The Artist and the subcontractor(s) shall be deemed the authors and owners of their respective work documents and shall retain all common law, statutory or other reserved rights, including copyright.
- 8.1.1 The Artist grants Texas Tech a royalty-free, non-exclusive license in the drawings, specifications and other documents prepared for the Work by the Artist and the Artist's subcontractor(s). The Artist warrants that it will require that all contracts with subcontractors will have language granting the Artist the right to grant Texas Tech the license contemplated by this Section. When necessary, Texas Tech will retain copies, including reproducible copies, of the work documents and Texas Tech, its employees, agents, and subcontractor(s) are free to use the documents; however, they may not be sold or otherwise transferred to other parties without the Artist's consent. The Artist and other providers of services of this Work shall not be held responsible for any changes or modifications to the drawings and specifications made by Texas Tech or its representatives after termination of this Contract.
- 8.1.2 Submission or distribution of the work documents to meet official regulatory requirements or law or for similar purposes in connection with the Work is not to be construed as publication in derogation of the Artist's and the Artist's subcontractors' reserved rights, nor is the type of use described in Section 2.6.1.
- 8.2 After successful completion of this Contract, Texas Tech shall retain possession of the work documents, drawings, specifications, and electronic data as provided in Section 8.1 and, subject to the limitations in Section 8.1.1, shall be entitled to use such materials without the Artist's written permission.
- 8.3 Title and copyright to the Work and work documents will be transferred as follows:
- 8.3.1 Rights to drawings, models, maquettes, photographs, and all other studies used in creating the Work will at all times belong to the Artist.
- 8.3.2 Title to the Work will remain vested in the Artist until the Artist has received payment in full as set forth in Article 4, at which time title to the Work is transferred unconditionally to Texas Tech.
- 8.3.3 Except as otherwise provided herein, the Artist will retain the copyright to the Work and prohibits Texas Tech from any unauthorized commercial use of the Work.
- 8.3.4 Each Party gives to the other its permission to use the other Party's name, picture, and portrait with regard to the Work in all forms of media, including but not limited to, exhibition, display, advertising, and editorial uses, subject to the provisions of this Contract regarding the copyright, and with no violation of either Party's rights of privacy or other personal or proprietary rights they may possess. The Artist agrees to allow Texas

Tech to make, or have made, photographs of the Work on the condition that such photographs will not present a negative or harmful view of the Work and that Texas Tech will make every reasonable effort to specifically identify the Artist as the creator of the Work. In utilizing photographs for the Work for promotional or editorial purposes, the Artist will make every reasonable effort to specifically identify Texas Tech as owner of the Work, if in fact title has passed to Texas Tech.

ARTICLE 9: CONFIDENTIALITY

- 9.1 The Artist acknowledges and agrees that any Confidential Information disclosed by Texas Tech to the Artist, the Artist's employees, agents, subcontractors or other representatives pursuant to this Contract shall be used only for the purposes contemplated in this Contract, shall be maintained in strict confidence, and shall remain Texas Tech's property.
- 9.2 The term "Confidential Information" means all confidential, trade secret or proprietary information supplied to or obtained by the Artist during the course of this Contract, including technical, engineering, operating and economic information.

ARTICLE 10: SAFETY AND SECURITY

- 10.1 The Artist shall direct all of the Artist's employees, agents and subcontractors performing services in connection herewith to fully comply with all rules, regulations and other requirements of Texas Tech and any contractor having jurisdiction over the construction means and methods. The Artist shall also comply with applicable laws and governmental regulations pertaining to the Artist's employees, agents and subcontractors, and shall require the Artist's subcontractors to so comply.
- 10.2 While providing services under this Contract, the Artist and all of the Artist's employees and subcontractors shall promptly inform Texas Tech if the Artist becomes aware of any unsafe conditions and/or security concerns.

ARTICLE 11: INDEMNITY AND HOLD HARMLESS

- 11.1 The Artist covenants and agrees to FULLY INDEMNIFY AND HOLD HARMLESS Texas Tech and the Regents, officials, employees, officers, directors, volunteers and representatives of Texas Tech, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, and fees, including reasonable costs of defense, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon Texas Tech directly or indirectly arising out of, resulting from or related to the Artist's and the Artist's representative's activities under this Contract, including any acts or omissions of the Artist and the Artist's representative, any agent, officer, director, representative, employee, consultant or subcontractor of the Artist and the Artist's representative, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract, AND SPECIFICALLY INCLUDING ANY CLAIM MADE BY THE ARTIST, or the heirs, legatees, executors, administrators, assigns, transferees, and all their successors in interest of the Artist, OF ANY TYPE OR NATURE WHATSOEVER, INCLUDING ANY CLAIM OF RIGHT, TITLE, OWNERSHIP, MONETARY OR ROYALTY INTEREST. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of Texas Tech, its officers or employees, separate contractors or assigned contractors, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT THE ARTIST AND THE ARTIST'S REPRESENTATIVE AND TEXAS TECH 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 THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE ARTIST AND THE ARTIST'S REPRESENTATIVE SHALL ALSO INDEMNIFY TEXAS TECH'S OWNER'S REPRESENTATIVE AND PROJECT MANAGER UNDER THE TERMS SET FORTH HEREIN. THE ARTIST'S AND THE ARTIST'S REPRESENTATIVE'S DUTY TO FULLY INDEMNIFY AND HOLD HARMLESS INCLUDES THE DUTY TO DEFEND WITH COUNSEL APPROVED BY TEXAS TECH.

11.1.1 Except as otherwise provided, the provisions of this indemnification are solely for the benefit of the Parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

11.1.2 The Artist shall promptly advise Texas Tech in writing of any claim or demand against Texas Tech known to the Artist related to or arising out of the Artist's activities under this Contract. The Artist's duty to promptly advise of claims or demands also applies to claims or demands against Texas Tech's owner's representative and Project Manager.

ARTICLE 12: INSURANCE

12.1 The risk of loss or damage to the Work will be borne by the Artist until final acceptance, and the Artist will take such measures as are necessary to protect the Work from loss or damage until final acceptance. When the Work is complete, installed, and accepted by Texas Tech, and title has transferred to Texas Tech, Texas Tech assumes the risk of loss at which time all related insurance held by the Artist may terminate.

12.2 The Artist will provide and maintain, and will require all subcontractors to provide and maintain, insurance to cover claims for damages for personal injury, bodily injury (including wrongful death), and property damage. The coverage will provide protection for all operations by the Artist or any subcontractor or by anyone directly or indirectly employed by either of them. The Artist will provide and maintain, until the Work is complete and accepted by Texas Tech, the minimum insurance coverage as follows:

1. Commercial General Liability
 - a. Bodily Injury \$1,000,000 each occurrence
 - b. Property Damage \$1,000,000 each occurrence
2. Commercial Automobile Liability **(if the Artist will drive on campus)**
 - a. Bodily Injury \$1,000,000 each occurrence
 - b. Property Damage \$1,000,000 each occurrence
3. Workers' Compensation – Coverage A in compliance with Texas law. Coverage B \$1,000,000/\$1,000,000/\$1,000,000.
4. Owner's Contractors Protective Policy: The Artist will obtain at the Artist's expense an Owner's Protective Liability Insurance Policy naming the Texas Tech University System and its employees as insured with the following limits:
 - a. Bodily Injury \$1,000,000 each occurrence
 - b. Property Damage \$1,000,000 each occurrence
5. Waiver of Subrogation.
6. Prior to shipping and installation, the Artist will obtain at the Artist's expense insurance

coverage on the work(s) of art while in transit. Such insurance shall continue until the work(s) of art are installed. The coverage shall be acceptable to Texas Tech and with limits equal at all times to the finished value of the work(s) of art. The policy issued in the name of the Artist will also name the Artist's subcontractors and Texas Tech as additional insureds, as their respective interests may appear. The policy shall be written or endorsed such that said insurance is primary and not considered contributing with any permanent insurance maintained by Texas Tech.

ARTICLE 13: AUDITS AND RECORDS

- 13.1 Texas Tech may inspect, verify, and audit all information created or maintained by the Artist or its subcontractors relating to the Work, including but not limited to information relating to the Artist's costs, reimbursable expenses, payments, billings, certificates, accountings, and statements, as well as any other correspondence, books, records, documents, and electronic data, of any kind, relating to the Work, at any time, whether before or after payment therefore, by (i) inspecting the books and records of the Artist during normal business hours; (ii) examining any reports with respect to this Work; (iii) interviewing the Artist's employees, subcontractors, agents and consultants; (iv) visiting the project Site; and (v) other reasonable actions. Such information shall be available and open to review, inspection, and audit by Texas Tech, the Texas Sate Auditor's Office, or their representatives at any place(s) where such information is kept or at Texas Tech's place of business, if requested by Texas Tech. Required financial and other records, including supporting documentation, shall be provided electronically to Texas Tech or its designated representative(s) or to the State Auditor's Office within five (5) business days of a request for records and at no expense to Texas Tech. Final payment under this Contract will not be made until any audit under this Section has been completed and all issues resolved. The Artist and its subcontractors, agents and consultants must keep all such records until final acceptance and then for a minimum of forty-eight (48) months after the later of the date that final payment has been made or the Work is complete unless Texas Tech otherwise instructs the Artist in writing. The Artist shall provide in all of its agreements and subcontracts a written statement indicating that Texas Tech and the State Auditor's Office will have the right to audit and inspect all such information under the conditions set forth in this Contract.

ARTICLE 14: TERMINATION

14.1 Termination for Cause

This Contract may be terminated by either Party, upon thirty (30) days written notice to the other, for a material failure or refusal to perform in accordance with this Contract.

14.2 Termination for Convenience

Texas Tech may also terminate this Contract without cause and at any time if it determines that it will not be beneficial to proceed with all or part of the Work. Termination under this provision will be effective as of the date of the notice of termination.

- 14.3 Upon termination, Texas Tech will pay the Artist for all authorized services provided and all actual expenses and charges outstanding at the time of termination. In addition, if Texas Tech terminates for convenience in accordance with Section 14.2, Texas Tech will reimburse the Artist for any cancellation charges applicable to materials or equipment on order or rental at the time of cancellation. Regardless of whether Texas Tech terminates for cause or convenience, Texas Tech will not pay the Artist for loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

- 14.4 Upon receipt of notice of termination, unless the notice directs otherwise, the Artist shall discontinue all services and work, placing orders, or entering into contracts for supplies, services, facilities, and materials, and shall promptly cancel all existing orders and contracts that are chargeable to this Contract. If the Artist's work has progressed to the point of fabrication of the Work, in the event of termination under this Article, Texas Tech shall have the right to complete the Work. Special regard shall be made for the Artist's intended results and credit deemed appropriate by Texas Tech shall be given to the Artist.
- 14.5 In the event of the Artist's bankruptcy, insolvency, death, or incapacity, as determined at Texas Tech's sole discretion, during the term of this Contract, Texas Tech shall have the right to terminate this Contract on payment to the Artist or the Artist's successors for all work and services performed prior to the bankruptcy, insolvency, or the death or incapacity of the Artist. All finished and unfinished drawings, sketches, photographs, models and Work shall become the property of Texas Tech, and Texas Tech shall have the right to complete the Work itself or to contract with another artist to complete the Work. Special regard shall be made for the Artist's intended results and credit deemed appropriate by Texas Tech shall be given to the Artist.
- 14.6 The Artist shall furnish Texas Tech with copies of all drawings, specifications and any other materials related to the Work within thirty (30) days of receipt of notice of termination, unless termination is for convenience.

ARTICLE 15: NOTICES

- 15.1 Any notice required or permitted to be given under this Contract shall be in writing and shall be delivered, served or mailed to the Parties, or upon notice of the identity (to Texas Tech's satisfaction) and address of the Artist's heirs, legatees, executors, administrators, assigns, transferees, and all their successors in interest and the following designated representative(s). If the notice is mailed, it shall be deemed delivered within forty-eight (48) hours after the post-mark date. Either Party may change its designations by written notice to the other.

If to the Artist:

Name
Address
City, State Zip
Phone No.: (000) 000-0000
Fax No.: (000) 000-0000
Email address

If to Texas Tech:

Michael S. Molina, AIA
Vice Chancellor for Facilities Planning and Construction
Texas Tech University System
Texas Tech Plaza, Suite 200
1901 University
Lubbock, TX 79410
Box 42014
Lubbock, Texas 79409-2014
Phone No.: (806) 742-2116
Fax No.: (806) 742-1169

The Artist shall send an additional copy of any notice of termination or notice required by Article 18, concerning dispute resolution to:

Vice Chancellor and General Counsel
Texas Tech University System
Administration Building, Room #115
15th and Akron
Box 42021
Lubbock, Texas 79409-2021
Phone No.: (806) 742-2155
Fax No.: (806) 742-2330

ARTICLE 16: NON-ASSIGNMENT

- 16.1 The Artist's services are personal in character, and the Artist may not assign any of the Artist's rights or obligations under this Contract without Texas Tech's prior written consent.

ARTICLE 17: COPYRIGHTS AND PATENTS

- 17.1 The Artist shall INDEMNIFY AND HOLD HARMLESS Texas Tech and its Regents, officers, agents, employees, and representatives from liability of any nature or kind, including cost and expense, for or on account of infringement or use of any copyrighted, patented or otherwise protected invention, process, material, object, or article in the performance of this Contract, including its use by Texas Tech.

ARTICLE 18: DISPUTE RESOLUTION

- 18.1 The Artist's claim for breach of this Contract that the Parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Government Code, Chapter 2260, Subchapter B. To initiate the process, the Artist shall submit written notice, as required by Subchapter B, to the Vice Chancellor for Facilities Planning and Construction, with an additional copy to the Vice Chancellor and General Counsel. Said notice shall also be given to all other representatives of Texas Tech and the Artist that are otherwise entitled to notice under this Contract. Compliance by the Artist with Subchapter B is a condition precedent to the filing of a contested case proceeding under Government Code, Chapter 2260, Subchapter C.
- 18.2 The contested case process provided in Government Code Chapter 2260, Subchapter C, shall be the Artist's sole and exclusive process for seeking a remedy for an alleged breach of Contract by Texas Tech if the Parties are unable to resolve their disputes in the ordinary course of business or under Section 18.1 of this provision, UNLESS, after considering the recommendation of the Administrative Law Judge, the Legislature grants the Artist consent to sue under Chapter 107 of the Civil Practices and Remedies Code.
- 18.3 NEITHER THE EXECUTION OF THIS CONTRACT BY TEXAS TECH NOR ANY OTHER CONDUCT OF ITS REPRESENTATIVES RELATING TO THIS CONTRACT SHALL BE CONSIDERED A WAIVER OF TEXAS TECH'S SOVEREIGN IMMUNITY TO SUIT.
- 18.4 The dispute resolution process provided for in Government Code Chapter 2260 will not, at any time, affect Texas Tech's right or ability to bring suit against the Artist for disputes arising under this Contract, nor will it affect Texas Tech's ability to assert all claims and defenses in a lawsuit.
- 18.5 Pursuant to Government Code Chapter 2260, the submission, processing and resolution of the

Artist's claim is governed by the published rules adopted by the Texas Attorney General's Office, as currently effective, hereafter enacted or subsequently amended.

- 18.6 Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Artist, in whole or in part.

ARTICLE 19: MISCELLANEOUS

- 19.1 The terms and provisions of Article 5, "Warranties"; Article 7, "Standard of Performance"; Article 8, "Ownership of Work"; Article 9, "Confidentiality"; Article 11, "Indemnity and Hold Harmless"; Article 12, "Insurance"; Article 13, "Audits and Records"; Article 16, "Non-Assignment"; Article 17, "Copyrights and Patents"; and Article 18, "Dispute Resolution" shall survive termination of this Contract.
- 19.2 The Work shall be performed by the Artist in such a manner and at such a time so as to minimize interference with or interruption of the operations of Texas Tech.
- 19.3 This Contract shall be governed by and construed in accordance with the laws of the State of Texas, and shall be considered to be performed in and venue is proper in Location, Texas.
- 19.4 Texas Tech's failure to insist upon strict compliance with any provision of this Contract shall not be deemed a waiver of such provision or any other provision.
- 19.5 The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision.
- 19.6 The Artist agrees to provide the following notice to all of its employees, agents, and subcontractors who may work on any campus of the Texas Tech University System:
- All sex offenders required to register with local law enforcement authorities under Chapter 62 of the Texas Code of Criminal Procedure and who intend to work or carry on a vocation (full-time or part-time) on any campus of Texas Tech University System for a consecutive period exceeding fourteen (14) days or for an aggregate period exceeding thirty (30) days in a calendar year are required to register (or verify registration) with the law enforcement authority for campus security in accordance with Article 62.153 of the Texas Code of Criminal Procedure within seven (7) days of beginning the work on any campus of Texas Tech University System. In addition, such sex offenders are required to notify the law enforcement authority for campus security within seven (7) days of terminating work on any campus of Texas Tech University System. For additional information, please contact the Texas Tech University Police Department, 2901 4th St., Lubbock, TX 79409, (806) 742-3931.**
- 19.7 This Contract represents the entire and integrated Contract between the Parties and supersedes all prior negotiations, representations and agreements concerning the Work, either written or oral. It may be modified only by written amendment signed by both Parties. To the extent any terms in the Design Proposal conflict with this Contract, the terms of the Contract prevail.
- 19.8 This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original.
- 19.9 The Artist is an independent contractor, and shall maintain complete control of the Artist's employees, agents, subcontractors, and operations. As such, the Artist shall pay all salaries, wages, expenses, social security taxes, federal and state unemployment taxes, and any similar

taxes, including franchise taxes, relating to the performance of this Contract. The Artist, the Artist's employees, agents, and subcontractors shall in no way represent themselves or act as Texas Tech's employees or agents, enter into any Agreements or incur any obligations on Texas Tech's behalf, nor shall they commit Texas Tech in any manner.

- 19.10 The Artist affirms that, to the best of its knowledge, no actual or potential conflict exists between the Artist and its family, business or financial interests and the Artist's services under this Contract, and that it shall raise with Texas Tech any questions regarding possible conflict of interest that may arise. The Artist further affirms that it shall not hire any officer or employee of Texas Tech to perform any service covered by this Contract. If the Work is to be performed in connection with a federal contract or grant, the Artist shall not hire any employee of the United States Government to perform any service set forth herein.
- 19.11 The Artist covenants not to discriminate against an employee or applicant for employment with respect to hiring, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, veteran status, sex, or disability. Breach of this covenant may be considered a material breach of the Contract.
- 19.12 Certifications
- 19.12.1 By execution of this Contract, under Section 231.006, Family Code, the Artist certifies that any individual or business entity named in this Contract is eligible to receive the specified payment and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- 19.12.2 Under Chapter 2155, Texas Government Code, the Artist certifies that the individual or business entity named in this procurement or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- 19.13 Texas Tech serves from time to time as a contractor for the United States Government. Accordingly, if the Artist provides goods or services in connection with such contracts, it shall comply with federal laws, rules and regulations applicable to subcontractors of government contracts.
- 19.14 Unless otherwise provided in the Contract, the Artist and the Artist's subcontractors shall not be responsible for the discovery, presence, handling, removal or disposal of hazardous material, or for exposure of persons to hazardous materials or toxic substances at the work Site. However, the Artist shall promptly notify Texas Tech if the Artist discovers any hazardous material during the provision of the Work.
- 19.15 Nothing in this Contract shall create a contractual relationship between a third party and either Texas Tech or the Artist.

- 19.16 References to the singular include the plural unless the Contract requires otherwise. References to a gender include the other, unless the Contract requires otherwise.
- 19.17 Texas Tech shall have the right to cancel this Contract at the end of the then current fiscal period if funds are not allotted for the next fiscal year to continue this Contract. Texas Tech may effect such cancellation by giving the Artist written notice of its intention to cancel not less than thirty (30) days prior to the end of the then current fiscal period, stating its reasons for cancellation. Upon cancellation of this Contract, Texas Tech shall not be responsible for the payment of any services received which occur after the end of the current Contract period.
- 19.18 The Artist acknowledges its understanding that Texas Tech is a public institution of higher education in the State of Texas and is subject to requests for information under the Texas Public Information Act (Texas Government Code, Chapter 552). Under this Act, there are exceptions to requests for disclosure, which include but are not limited to, information confidential by law and certain commercial information and trade secrets. The Texas Attorney General's office makes the final determination whether or not requested information is to be disclosed on a case by case basis after reviewing the materials and assertions against disclosure. If proprietary information is requested, the Act requires Texas Tech to provide written notice to the Party whose proprietary information may be subject to the request and that Party may also submit information to the Texas Attorney General to establish that disclosure of the information would cause substantial competitive harm.
- 19.19 This Contract and the Parties' performance under this Contract must comply with and is subject to state and federal laws, and Texas Tech's institutional policies and procedures, including its Regents' Rules, Operating Policies, and Facilities and Planning and Construction Operating Procedures for Contracting, as those laws, policies, and procedures may be amended from time to time.
- 19.20 Texas Tech hereby authorizes the Chancellor of the Texas Tech University System, or his designated representative, to execute any amendments or modifications to this Contract. Texas Tech will also designate a Project Manager who will be Texas Tech's sole point of contact for all matters of Contract administration including, but not limited to, interpretation of documents, defining the scope of work, approving schedules, and approving Contract payments.
- 19.20.1 The Artist shall take direction only from the Project Manager. Action taken in response to direction received from other sources will be corrected at the Artist's own expense.
- 19.20.2 These designations shall remain in full force and effect until and unless the Artist is otherwise notified in writing by Texas Tech.

The Project Manager for this Contract is:

Emily Wilkinson, Public Art Manager
Texas Tech University System
Facilities Planning and Construction
P.O. Box 42014
Lubbock, Texas 79409-2014
Email: erin.vaden@ttu.edu
Office: (806) 742-2116
Fax: (806) 742-1169

OWNER
TEXAS TECH UNIVERSITY SYSTEM

ARTIST
NAME

By: _____
Robert Duncan, Chancellor

By: _____
Name, Artist

Date: _____

Date: _____

By: _____
Michael S. Molina, Vice Chancellor

Date: _____

REVIEWED FOR FISCAL IMPLICATIONS:

By: _____
Gary Barnes, Chief Financial Officer

Date: _____

**REVISED CONTRACT FORM APPROVED BY
THE OFFICE OF GENERAL COUNSEL
ON: July 28, 2014**

Exhibits: Exhibit A, Preliminary Design Proposal dated Date