



TEXAS TECH UNIVERSITY SYSTEM
Facilities Planning and Construction™

REQUEST FOR QUALIFICATIONS

PUBLIC ART

Clinical Sciences Building & Comprehensive Cancer Center

Texas Tech University Health Sciences Center El Paso

Project Number 23-06 & 23-12

El Paso, Texas

DEADLINE FOR SUBMISSION OF QUALIFICATIONS

3:00 PM, CT, Wednesday, March 25, 2026

Facilities Planning and Construction
Texas Tech University System
Box 42014
Lubbock, TX 79409
Phone: 806-742-2116

The Texas Tech University System is an Equal Opportunity Employer and encourages all Historically Underutilized Businesses to participate.

Article 1. Request For Qualifications In Public Art

- 1.1 The Texas Tech University System (Texas Tech) seeks Statements of Qualifications from Professional Visual Artists for the Project described below. Through the percent-for-art program, Texas Tech seeks to enrich the cultural and intellectual life of its campuses by building a collection of public art created by leading artists of our time.
- 1.2 The selected Artist will contract directly with Texas Tech to successfully complete the full scope, as detailed in Article 2, of the Project within the Project budget and on schedule. This Request for Qualifications (RFQ) provides information on the Project and information to aid in preparing responses to this RFQ.
- 1.3 Texas Tech will evaluate the inquiries, determine whether Addenda are required, and issue appropriate responses. Inquiries, responses, and Addenda issued related to this RFQ, if any, will be posted on the State of Texas Electronic State Business Daily (ESBD) website (<http://www.txsmartbuy.com/sp>). Google Chrome is the recommended browser for accessing this website. Only those responses to questions made by formal written Addenda shall be binding. Oral and other interpretations or clarifications will be without legal effect.
 - 1.3.1 NOTE: It is the responsibility of the Respondent to periodically check and review the ESBD website for revisions and acknowledge all posted Addenda. For any problems encountered with the ESBD website, contact Ms. Alexis Henry, TTUS Contract Administrator, at alexis.henry@ttu.edu.
- 1.4 **Texas Tech University System Facilities Planning and Construction (FP&C) is not responsible for the accuracy or comprehensiveness of information provided by other Texas Tech officials or other agencies. Artists should not rely on information obtained from sources other than the Program Director listed below.**
- 1.5 **Texas Tech reserves the right to waive any or all formalities. This RFQ does not commit Texas Tech to select a Respondent or to award a Contract to any Respondent. Texas Tech reserves the right to accept or reject, in whole or in part, any Proposal it receives pursuant to this RFQ. Submissions which are qualified with conditional clauses or alterations or items not called for in this RFQ, or irregularities of any kind, are subject to disqualification by Texas Tech at its option. If Texas Tech receives fewer than three (3) responses, Texas Tech has the right to reissue this RFQ in order to gain additional respondents.**
- 1.6 Except as provided in this RFQ and as otherwise necessary for the conduct of existing Texas Tech business operations, Respondents are expressly and absolutely prohibited from engaging in communications with Texas Tech Personnel who are involved in any manner in the drafting of this RFQ, in the review or evaluation of the Submission, in selection of a Contractor, or negotiation or formalization of a Contract. If any Respondent engages in conduct or communications that Texas Tech determines is contrary to the prohibitions set forth in this section, Texas Tech may at its sole discretion, disqualify the Respondent and remove the Submission from consideration.

Article 2. Project Information

| | |
|---------------------------------|---|
| Project: | Clinical Sciences Building & Comprehensive Cancer Center |
| Institution: | Texas Tech University Health Sciences Center El Paso |
| Location: | El Paso, TX |
| Texas Tech Public Art Director: | Emily Martinez (emilymaria.martinez@ttu.edu) |
| Completion Date | October 2028 |

Project Budget: \$987,400 (All Inclusive)

The Project budget amount is inclusive of all costs associated with this Public Art project including, but not limited to, artist fees, other consultants' and Subcontractors' fees, insurance conforming to Texas Tech standards, engineering, materials, fabrication, transportation, installation (including any site modification), and post-installation documentation.

NOTE: Artists submitting from outside of the United States may be subject to a thirty percent (30%) tax withholding from the Internal Revenue Service (IRS).

Project Scope:

The Texas Tech University System seeks to commission a Professional Visual Artist to create a site-specific artwork to be placed in the courtyard and/or to incorporate the formal west-side entrance of the Clinical Sciences Building and the Comprehensive Cancer Center (Fox Cancer Center). Public art will be installed at this location to serve as an interactive space for collaboration, rest, and hope for all who use the facility. The courtyard is approximately 52ft wide x 80ft long, with 75ft tall sidewalls, and includes a 670 sq ft set-aside area designed to hold a maximum weight of 4,000 lbs., designated for potential public art.

Ideal submissions and concepts will create a large sculptural work that reflects the mission of both the Clinical Sciences Building and the Comprehensive Cancer Center, supporting the significance of the healthcare, research, and innovations that will be offered to the region.

Artists should focus on the purpose of the space and the hope that will be inspired by the care provided. Artists should consider environmental interactions with the sun, as well as the constructed environment that surrounds the courtyard. Due to the exterior location of the courtyard, artists should consider the possible elemental exposure from the surrounding environment. This art installation will be seen from multiple views within the building, serving as a beacon of hope, peace, and comfort. Artists will also consider the view of the work as one approaches the front entrance of the building and may incorporate it into their proposal.

Submitting artists should consider themes of hope and tranquility that encourage repose. Artists can consider lavender as the universal color of cancer, and other cancer ribbon colors as inspiration. Other works on this campus include *Helix Garden* (2015), *El Intercambio* (2008) and *Between Earth and Sky* (2020). <https://ttuspublicart.com/texas-tech-university-health-sciences-center-el-paso/>

Any concepts that may be considered polemic or political should be avoided.

In order to be considered, proposed submissions must comply with the requirements outlined in this document. Objects that are mass-produced or of standard manufacture are not eligible for consideration.

Design Proposal Stipend: Selected finalists will receive a maximum of \$3000* for travel and design fees following the submission and presentation of a Design Proposal and a model.

NOTE: *Artists submitting from outside of the United States may be subject to a thirty percent (30%) tax withholding from the Internal Revenue Service (IRS).

Article 3. Background

3.1 Texas Tech University Health Sciences Center El Paso (Texas Tech Health El Paso)

3.1.1 The Texas Tech University Health Sciences Center El Paso has a 40-year long history of service to the community in education, research, and patient care. The fourth university under the Texas Tech University system, Texas Tech Health El Paso is located in the second largest bi-national metropolitan area on the U.S.-Mexico border. A population of 2.7 million makes up the Borderplex region. Due to its location, the university is positioned to lead the nation in border health initiatives making it an exciting place to learn, conduct research, and treat patients. Texas Tech Health Sciences Center El Paso's reach includes 108 West Texas counties. It is comprised of four schools: the Paul L. Foster School of Medicine, Gayle Greve Hunt School of Nursing, the L. Frederick Francis Graduate School of Biomedical Science, and the Woody L. Hunt School of Dental Medicine.

3.2 Texas Tech University System Public Art Program

3.2.1 The Texas Tech University System's Public Art Program was initiated by the Board of Regents as an investment in the campus environment and an extension of Texas Tech's educational mission. The Public Art Committee, with the Director of Public Art, commissions original public artworks of the highest quality, be they permanently sited, portable, or architecturally integrated. These works are funded using one percent (1%) of the estimated total cost of each new major capital project up to \$500,000. Since 2001, the Public Art Program has commissioned or purchased artworks by some of today's leading artists. Visit www.ttuspublicart.com to learn more about the collection and artists.

3.3 Project Background

3.3.1 Two transformational projects at TTUHSC El Paso are aligning to form a unique opportunity. The first project, the Clinical Sciences Building, will replace the current facility, which houses clinical practices including the Breast Care Center, Internal Medicine, Neurology, Obstetrics/Gynecology, Ophthalmology, Pediatrics, Surgery, and more. Each Specialty will have exam and procedure rooms to support the TTUHSC El Paso School of Medicine, as well as additional support areas for clinical operations. The current Clinical Sciences Building handles more than 150,000 appointments annually (equivalent to 22% of El Paso's population).

The second project, the Comprehensive Cancer Center (Fox Cancer Center) at the Texas Tech Health El Paso campus, is poised to become the first NCI-designated Comprehensive Cancer Center serving the Borderplex. This center will enable patients to access world-class oncological treatment and care without having to leave El Paso, eliminating the need for long-distance travel. NCI-designated Cancer Centers dedicate significant resources to research, faculty, and facilities to advance innovations and are recognized for their leadership in laboratory and clinical research. The Fox Cancer Center is uniquely positioned to focus on health disparities affecting communities, particularly those faced by

the multi-generational U.S. Hispanic population, which comprises 83% of El Paso residents but only 4% of participants in research and trials.

Although it is a single building, each project will have its own identity within the facility. Within the building there are communal spaces for collective use to maximize collaboration between the two organizations. These two projects total nearly 357,000 gross square feet, rising five levels. Both projects will foster a comfortable, healing environment and will provide comprehensive, world-class healthcare to the Borderplex.

3.3.2 Finalists will develop a design concept that reflects the standards and culture of Texas Tech Health El Paso specific to the Clinical Sciences Building & Comprehensive Cancer Center projects and will prepare presentation materials, drawings, and related specifications in sufficient detail and in the format required to convey the design intent.

3.3.3 The commissioned Artist will be issued sets of Construction Documents and shall verify all dimensions prior to the commencement of work.

Article 4. Commission Requirements

4.1 If commissioned, the successful Artist shall be responsible for the following:

- 4.1.1 Performing all services and furnishing all supplies, material, and equipment as necessary for the design, execution, fabrication, transportation, and installation of the Work at the Site. This includes, but is not limited to, plinths, power, lighting, structural foundation, etc. Additionally, providing professional documentation photos and a brief artist video at the conclusion of the project.
- 4.1.2 Submitting to Texas Tech detailed working drawings of the commissioned Work and the Site(s) in order to permit Texas Tech to carry out architectural and engineering design reviews and to certify the compliance of the Work with applicable statutes and ordinances.
- 4.1.3 Strictly adhering to and managing the approved Project, budget, and schedule, including the submission of monthly written Progress Reports to Texas Tech.
- 4.1.4 Bearing the entire risk of loss or damage to the Work during design, fabrication, packing, shipping, and installation.
- 4.1.5 Providing and maintaining insurance to cover claims for damages for personal injury, bodily injury (including wrongful death), and property damage.
 - 4.1.5.1 The Artist shall require all Subcontractors to provide and maintain insurance.
 - 4.1.5.2 A complete list of insurance requirements will be provided to Project finalists.
- 4.1.6 The Artist's design(s) should complement Texas Tech University Health Sciences Center El Paso's architectural traditions and enhance the Site's identity and use.

Article 5. Submission Requirements

5.1 **Submissions due: 3:00 PM CT, Wednesday, March 25, 2026**

- 5.1.1 Upload access will be denied after submission deadline.
- 5.1.2 Responses submitted without a signed Attachment A Form of Response will be disqualified as non-responsive.

- 5.1.3 Prior to submission, Artists should check the Electronic State Business Daily site at <http://www.txsmartbuy.com/sp> (searchable by project or agency name) for any addenda that may be posted in relation to this Project. Google Chrome is the preferred browser to navigate this site.
- 5.2 Response Submittal: **All** materials required for the Statement of Qualifications should be submitted online at www.publicartist.org, including a scanned copy of Attachment A Form of Response and images of past work. No mailed submissions will be accepted.
- 5.3 Tentative Schedule:
- | | |
|-----------------------------------|---------------------------------------|
| RFQ Posted | February 11, 2026 |
| Written Inquiries Due | 5:00 PM CT, February 27, 2026 |
| Responses to Inquiries Posted | 5:00 PM CT, March 6, 2026 |
| Artist Submission Due | 3:00 PM CT, Wednesday, March 25, 2026 |
| Finalist(s) Selected and Notified | May 2026 |
| Finalist(s) Design Presentations | July/August 2026 |
| Commission Awarded | Early Fall 2026 |
| Project Completion | October 2028 |
- 5.3.1 Texas Tech reserves the right to modify this schedule as required.

Article 6. Response Requirements

- 6.1 All communication should be clearly identified with the Project Name. All Artists responding to this RFQ must submit complete responses to the information required in this section and must note any exceptions to any information required in the RFQ.
- 6.2 Submit all required materials online at www.publicartist.org, including a **signed scanned copy** of Attachment A Form of Response, noting the number of Addenda the artist has viewed (addenda can be found on the Electronic State Business Daily; see above for more information).
- 6.2.1 For issues with accessing the ESBD website, contact Alexis Henry, TTUS Contract Administrator, at alexis.henry@ttu.edu. For issues with www.publicartist.org, contact info@publicartist.org.
- 6.3 Responses will be evaluated based upon the Selection Criteria listed below:
- 6.3.1 Artist Resume (2 pages)
- 6.3.1.1 Include degrees held, a summary list of exhibitions/public art projects completed during the past ten (10) years, selected exhibitions/public art projects, awards, catalogues, current gallery affiliations, and grants/fellowships.
- 6.3.2 Digital Images of Past Work (5 to 15 images)
- 6.3.2.1 Images of Previous Work. Closely observe the following guidelines for the submittal of digital images:
- 6.3.2.1.1 Submit between five (5) and (15) images featuring select examples of previous public art projects with particular emphasis on works of a similar scope or utilizing similar techniques.

- 6.3.2.1.2 Include the artist's name, the year, location, media, and budget of featured artwork. Describe the project concept in one (1) to two (2) sentences maximum.
 - 6.3.2.1.3 Do NOT include proposed pieces that were not accepted. Only submit work that you have created or that is in process.
 - 6.3.3 Artist Statement (up to 500 words)
 - 6.3.3.1 Describe the conceptual basis for your body of work **as a whole** (limit to 500 words). In a separate paragraph, explain your experience working with architectural, engineering, and design specifications and drawings.
 - 6.3.4 Letter of Interest (500 words)
 - 6.3.4.1 Describe your initial impressions of and projected approach to this public art project (limit to 500 words). Specifically, address your thoughts on location and medium. If applicable, discuss any projects for which you used a similar approach.
 - 6.3.5 References (3 required)
 - 6.3.5.1 Include phone numbers **and email addresses** for at least three (3) professional references.
 - 6.3.6 Attachment A (Cover Sheet – REQUIRED BY THE STATE OF TEXAS)
 - 6.3.6.1 Include name, address, telephone, email, and website (if applicable) of the ARTIST to receive all Project information, or any official correspondence relating to the Project. Reference the project name and number, CSB + CCC, FP&C #23-06 & 23-12 , on all correspondence.
- 6.4 Texas Tech reserves the right to request additional information from individual Artists.

Article 7. Evaluation Criteria

- 7.1 Texas Tech will select the Artist that best meets the requirements, based on the information contained in their response to the Request for Qualifications, any reference checks conducted, and the information presented during any interviews conducted as part of the selection process.
- 7.2 Specifically, in the selection of finalists, Texas Tech University System and its University Public Art Committee will review and consider the following:
 - 7.2.1 The conceptual basis for the Artist's body of work as defined in the written statement;
 - 7.2.2 The quality – technical and aesthetic – of the Artist's past work as represented in the image submissions;
 - 7.2.3 The experience of the Artist in successfully designing, fabricating, administering, and completing public art projects and/or custom architectural elements on time and in budget;
 - 7.2.4 The Artist's training and education; and
 - 7.2.5 The quality and comprehensiveness of the submission package.
- 7.3 After evaluating the Artists' submissions, Texas Tech will select approximately two (2) to five (5) finalists to develop a design for presentation to the Public Art Committee in El Paso, TX. Each finalist will be paid a stipend not to exceed \$3000 for the development of their Design Proposal and

to facilitate travel for the presentation. The model will not be returned to the Artist if they are selected.

- 7.4 The Design Proposals will be subject to review and acceptance by Texas Tech's Public Art Committee, the President of Texas Tech University Health Sciences Center El Paso, and the Chancellor of the Texas Tech University System.

Article 8. Miscellaneous

8.1 American Iron and Steel

8.1.1 To the extent an Agreement relates to a Project as defined in Texas Government Code §2252.201(5) (a project to construct, remodel, or alter a building, structure, or infrastructure; to supply material for such a project; or to finance, refinance, or provide funds for such a project), and no exemption in Texas Government Code §2252.203 applies, any iron or steel product produced through a manufacturing process and used in the project that is the subject of an Agreement must be produced in the United States (as defined in Texas Government Code §2252.201(4)).

8.2 Compliance with Texas Government Code § 2274.002

8.2.1 Contractor verifies it 1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and 2) will not discriminate during the term of the Contract against a firearm entity or trade association.

8.3 Conflict of Interest

8.3.1 The Artist affirms that, to the best of its knowledge, no actual or potential conflict exists between the Artist's family, business, or financial interests and the Artist's services under this Agreement, and that it shall immediately inform Texas Tech regarding any possible conflict of interest that may arise.

8.3.2 The Artist further affirms that it shall not hire any officer or employee of Texas Tech to perform any service covered by this Agreement.

8.3.3 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 in this Agreement.

8.4 Discrimination

8.4.1 The Artist shall not 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 Agreement.

8.5 Employment

8.5.1 Pursuant to Texas Government Code § 669.003, Artist certifies that it does not employ, or has disclosed its employment of, any former executive head of a Texas State agency or entity.

8.6 Health and Safety Code Chapter 161

8.6.1 If applicable, Artist affirmatively states that it will comply with the requirements of Texas Health and Safety Code, § 161.0085(c).

- 8.7 No Prohibited Boycott
 - 8.7.1 If applicable to this Contract, Artist agrees not to engage in any boycott prohibited by Texas Government Code §§ 2271.002, 2274.001.
- 8.8 Section Headings
 - 8.8.1 All section headings are for convenience of reference only and are not intended to define or limit the scope of any provisions of this RFQ.
- 8.9 Sex Offender Registration
 - 8.9.1 The Artist agrees to provide the notice required by Article 3 of Texas Tech University's current adopted Uniform General Conditions and Supplementary General Conditions.

Article 9. Certifications

- 9.1 The Artist and the undersigned Artist's representative represents and warrants that the Artist is a validly existing entity, in good standing under applicable law, and that each person signing on behalf of the Artist has received all necessary approvals to enter into and execute this Agreement.
- 9.2 The Artist certifies that an Agreement issued pursuant to this RFQ is not prohibited under Texas Government Code §2261.252(b) and agrees that if the Artist's certification is or becomes untrue, such an Agreement is void, and the Artist will not seek and waives its right to seek any legal or equitable remedy for past or future performance under such Agreement, including damages, whether under breach of contract, unjust enrichment, or any other legal theory; specific performance; and injunctive relief.
- 9.3 Under Section 231.006, Texas Family Code, the Artist certifies that the individual or business entity named in such an Agreement is not ineligible to receive the specified grant, loan, or payment and acknowledges that such an Agreement may be terminated, and payment may be withheld if this certification is inaccurate.
- 9.4 Under Section 2155.0061, Texas Government Code, the Artist certifies that the individual or business entity named in such an Agreement is not ineligible to receive the specified Agreement and acknowledges that such an Agreement may be terminated, and payment withheld if this certification is inaccurate.
- 9.5 Pursuant to Executive Order No GA-48, Contractor certifies that it, and, if applicable, its holding companies or subsidiaries, are not:
 - 9.5.1 Listed in Section 889 of the 2019 National Defense Authorization Act (NDAA); or
 - 9.5.2 Listed in Section 1260H of the 2021 NDAA; or
 - 9.5.3 Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4; or
 - 9.5.4 Controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4.

Article 10. Procurement Process

- 10.1 This RFQ complies with all State rules and Texas Tech University System Policies. Address any questions and/or concerns about the process or any awards made from it to:

Mr. Billy Breedlove
Vice Chancellor
Facilities Planning and Construction
Texas Tech University System
Box 42014
Lubbock, Texas 79409-2014
Phone: (806)742-2116

Article 11. Form of Response

11.1 See Attachment A.

Additional Attachments:

Attachment B – Sample Public Art Commission Agreement

Attachment C – Site Drawings and Renderings

Attachment A

FORM OF RESPONSE

Ms. Alexis Henry
Contract Administrator
Texas Tech University System
Facilities Planning & Construction
System Administration Building
1508 Knoxville Avenue, Suite 103
Lubbock, Texas 79409

Subject: **Public Art**
Clinical Sciences Building & Comprehensive Cancer Center, FP&C #23-06 & 23-12

Dear Ms. Henry:

Having examined the entire Request for Qualifications and other related information and being fully informed of the nature of the Work and conditions relating to its performance and completion I hereby submit my Qualifications for the above Public Art Project for the Texas Tech University System.

CONTACT INFORMATION

| | |
|----------------------------------|----------------------|
| Firm Name: | <input type="text"/> |
| Contact Individual: | <input type="text"/> |
| Telephone No: | <input type="text"/> |
| Email Address: | <input type="text"/> |
| Address: | <input type="text"/> |
| City, State, Zip Code | <input type="text"/> |
| Website Address (if applicable): | <input type="text"/> |
| Primary Medium: | <input type="text"/> |

ADDENDA

We have received () Addenda prior to the submission of this Response.

Sincerely,

Signature

Name

Title

Enclosures: **Apply online and include a scanned signed copy of this form.**

Attachment B

Texas Tech University System Public Art Commission Agreement

Agreement Number: [Enter number]

Texas Tech University System

Public Art Commission Agreement

BETWEEN

The Board of Regents of The Texas Tech University System
City of Lubbock, Lubbock County, Texas, 79409
("Texas Tech")

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

And

[Name of Individual and Company]
[A (Type of Entity and State)]
[Address]
[City, State Zip Code]
(The "Artist")

Regarding

[Project Name]
FP&C Project Number [XX-XX]
[Texas Tech University] Campus
[City], Texas
(The "Site")

This Agreement becomes effective as of the date of the last signature.

Attachment B

Texas Tech University System Public Art Commission Agreement

Table of Contents

| | |
|--|----|
| Background..... | 3 |
| Article 1. Definitions | 3 |
| Article 2. Scope of the Work | 4 |
| Article 3. Time Of Performance | 8 |
| Article 4. Compensation And Payment Schedule | 10 |
| Article 5. Warranties..... | 10 |
| Article 6. Artist Rights..... | 11 |
| Article 7. Standard Of Performance..... | 12 |
| Article 8. Ownership Of Work Documents And Work..... | 13 |
| Article 9. Confidentiality | 15 |
| Article 10. Safety And Security | 15 |
| Article 11. Indemnity And Hold Harmless | 15 |
| Article 12. Insurance..... | 16 |
| Article 13. Audits And Records..... | 17 |
| Article 14. Termination..... | 18 |
| Article 15. Notices | 19 |
| Article 16. Assignment | 20 |
| Article 17. Copyrights And Patents..... | 20 |
| Article 18. Dispute Resolution..... | 20 |
| Article 19. Miscellaneous | 21 |

Attachment B

Texas Tech University System Public Art Commission Agreement

Background

Texas Tech intends to retain the Artist to perform services, and the Artist commits to provide the services pursuant to the terms of this Agreement.

In choosing to retain the Artist under this Agreement, 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 *Supplementary Definitions:* Capitalized terms are as defined in the current adopted Uniform General Conditions and Supplemental General Conditions (UGSC), except for the following (references in this Agreement to the current adopted Uniform General Conditions and Supplemental General Conditions).
- 1.2 *Agreement:* The Agreement is this Public Art Commission Agreement, with the Attachments and Exhibits attached hereto and incorporated herein.
- 1.3 *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.
- 1.4 *Completion Date:* The date established in the Agreement, by the Artist and Texas Tech, by which the Work will be fully and satisfactorily complete in accordance with the Agreement.
- 1.5 *Contract:* The entire Agreement between Texas Tech and the Artist.
- 1.6 *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.
- 1.7 *Entity:* A company recognized by law as a single body with its own powers and liabilities, separate from those of the individual members.
- 1.8 *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.
- 1.9 *Owner:* An individual who owns some or all of the shares or other membership of the Entity's stock interests or other membership interests of the Entity.
- 1.10 *Parties:* Collectively, Texas Tech and the Artist are the "Parties;" individually, each is a "Party."
- 1.11 *Progress Report:* A written document submitted monthly by the Artist to the Public Art Director that includes photographs and any other relevant documentation detailing the progress made on the Project since the previous Progress Report was submitted.
- 1.12 *Project Director:* The individual who acts as the Texas Tech 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.
- 1.13 *Site:* The geographical area of the location of the Work.

Attachment B

Texas Tech University System Public Art Commission Agreement

- 1.14 *Work:* The Work includes the public art to be created under this Agreement, 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 Agreement.
- 1.15 *University Public Art Committee:* A body of individuals including Texas Tech University System faculty, staff, alumni, and students, as well as the Public Art Director, 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 the Work

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 Agreement.
- 2.1.3 Texas Tech may modify the scope of services set forth in this Agreement. 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 Agreement 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 Article 6 Artist Rights.
- 2.1.5 The Agreement 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 Agreement's covenants and will require that any subsequent owner agree to be bound by them.
- 2.1.6 The Parties acknowledge that the "Artist" for this Agreement is [Company Name, Entity Type], with Owner(s) [named Individual's Name(s)]. Where references in this Agreement clearly relate to the Entity (e.g., payment to the Artist and Artist's expenses), "Artist" means [Company Name]. Where references in the Agreement to "Artist" are strictly personal in nature or by definition relate to an individual, the term "Artist" means [Individual's Name(s)], (e.g., "death of the Artist," "estate of the Artist," or "family of the Artist"). If the context is not clear, the term "Artist" means [Company Name] and [Individual's Name(s)], jointly and severally. [Modify if multiple Owners]
- 2.1.7 Where there is more than one Artist, all Artists shall be referred to collectively as "Artist." If the Artist is comprised of two (2) or more individual persons or

Attachment B

Texas Tech University System Public Art Commission Agreement

Entities, each individual person or Entity shall be jointly and severally responsible for satisfying the Artist's obligations under this Agreement, and each individual person or Entity shall be liable for the acts or omissions of every other individual person or Entity.

- 2.1.8 Any work that is subcontracted shall be made subject to this Agreement between Texas Tech and the Artist.
 - 2.1.8.1 Prior to entering into any agreement with a potential Subcontractor, the Artist must disclose in writing to Texas Tech whether the desired Subcontractor that is related to, affiliated with, partially or wholly owns, or is partially or wholly owned by the Artist.
 - 2.1.8.2 As described above, the Artist shall not contract with any Subcontractor, whether initially, or as a substitute against whom Texas Tech has a reasonable objection, including if the Artist is related to, affiliated with, partially or wholly owns, or is partially or wholly owned by the potential Subcontractors.
- 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.
 - 2.2.1.1 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.
 - 2.2.1.2 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 Agreement.
 - 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 \$000,000.00. **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.

Attachment B

Texas Tech University System Public Art Commission Agreement

- 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 Agreement.
- 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.
 - 2.2.5.1 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 Agreement.
 - 2.2.5.1.1 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.
 - 2.2.5.2 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 Agreement shall terminate.
- 2.2.6 In the event of termination of this Agreement 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 Agreement.
- 2.3 Design Professional 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 as needed) 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.
 - 2.3.1.1 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.
 - 2.3.1.2 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,

Attachment B

Texas Tech University System Public Art Commission Agreement

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.

2.3.4.1 Revisions made pursuant to this Section 2.3 become a part of the Design Proposal and this Agreement.

2.3.4.2 If Texas Tech disapproves the revised submission, it shall provide the Artist with a statement in writing of its reasons for disapproval, whereupon this Agreement shall terminate.

2.3.5 In the event of termination of this Agreement 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 Agreement.

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.

2.4.5.1 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

Attachment B

Texas Tech University System Public Art Commission Agreement

- 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 (4) 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
 - 2.7.1 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
 - 2.8.1 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.
- 2.9 Title
 - 2.9.1 Title to the Work will pass to Texas Tech upon final acceptance.

Article 3. Time Of Performance

- 3.1 Completion
 - 3.1.1 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
 - 3.2.1 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

Attachment B

Texas Tech University System Public Art Commission Agreement

- 3.3.1 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
 - 3.4.1 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 Agreement 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.
 - 3.4.1.1 Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of Agreement, provided that such obligations will be suspended only for the duration of such conditions.
 - 3.4.1.2 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 Agreement.
- 3.5 Liquidated Damages
 - 3.5.1 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 Agreement, 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 Agreement execution of the damages that Texas Tech will sustain related to Texas Tech's inability to utilize the Work due to late completion.
 - 3.5.2 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.
 - 3.5.3 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.
 - 3.5.3.1 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.
 - 3.5.4 Payment of liquidated damages does not preclude recovery by Texas Tech of other damages or losses under other provisions of the Agreement, except for claims related to Texas Tech's inability to utilize the Work.
 - 3.5.4.1 Texas Tech's right to receive liquidated damages for this purpose will not affect Texas Tech's right to terminate the Agreement, nor shall termination of the Agreement release the Artist from the obligation to pay the liquidated damages.

Article 4. Compensation And Payment Schedule

4.1 Fee

4.1.1 Texas Tech will pay the Artist a fixed fee of [Written Dollar amount and 00/100 Dollars (\$000,000.00)], 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 Agreement. Upon receipt and approval of invoices from the Artist, the fee will be paid in the following installments:

- 4.1.1.1 \$[000,000.00] 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.
- 4.1.1.2 \$[000,000.00] A progress payment payable when fifty percent (50%) of the Work is fabricated and approved by Texas Tech.
- 4.1.1.3 \$[00,000.00] A progress payment payable when one hundred percent (100%) of the Work is fabricated, approved by Texas Tech, and ready for shipping and installation.
- 4.1.1.4 \$[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

4.2.1 The Artist shall be responsible for all costs and expenses 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 Agreement, 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

- 5.1.1 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:
 - 5.1.1.1 The execution and fabrication of the Work will be performed in a good and workmanlike manner, consistent with best industry standards and practices;
 - 5.1.1.2 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

Attachment B

Texas Tech University System Public Art Commission Agreement

- 5.1.1.3 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.
- 5.1.2 The warranties described in this Section 5 will be in effect for a period of one (1) year after final acceptance of the Work.
 - 5.1.2.1 Texas Tech will give notice to the Artist of any observed warranty issues, deficiencies, or defects with reasonable promptness.
 - 5.1.2.2 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
 - 5.2.1 The Artist represents and warrants that:
 - 5.2.1.1 The Work is solely the result of the artistic effort of the Artist ;
 - 5.2.1.1.1 Except as otherwise disclosed in writing to Texas Tech, the Work is unique and original and does not infringe upon any copyright;
 - 5.2.1.1.2 The Work, or a duplicate thereof, has not been accepted for sale elsewhere;
 - 5.2.1.2 The Work is free and clear of any liens from any source whatsoever; and
 - 5.2.1.3 A work made up of the elements of the Work combined in substantially the same or similar configuration as in the Work will not be sold to any other individual, entity, or institution.
 - 5.2.2 The foregoing warranties shall survive the termination of this Agreement.

Article 6. Artist Rights

- 6.1 Artist Identification
 - 6.1.1 Texas Tech will, at its own expense, prepare and install at the Site a plaque identifying the Artist, the title of the Work, the year of completion, and will reasonably maintain the plaque in good repair.
- 6.2 Maintenance of the Work
 - 6.2.1 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
 - 6.3.1 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.

Attachment B

Texas Tech University System Public Art Commission Agreement

- 6.3.1.1 During the Artist's lifetime and to the extent the Artist can be reasonably located, 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 restorations 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.
- 6.3.1.2 **If the Artist fails to approve any reasonable repairs or restorations, or if an agreement cannot be reached regarding the Artist's services regarding the repairs or restoration, 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 Director 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, make a good faith effort to locate and notify the 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

Revised 01/20/2026

Public Art Commission Agreement – Corporate

Project Name, FP&C [XX-XX]

Attachment B

Texas Tech University System Public Art Commission Agreement

- 7.1 The Artist's services under this Agreement 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 Agreement. The Artist agrees to maintain in full force and effect such required licenses, certificates, approvals, and permits throughout the term of this Agreement.
- 7.3 In the event that the Artist fails to comply with the standard of performance, as set forth in this Agreement, the Artist shall promptly correct, to the satisfaction of Texas Tech, those services provided under this Agreement 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 Agreement, 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 Agreement. 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.

Attachment B

Texas Tech University System Public Art Commission Agreement

- 8.1.1 The Artist grants Texas Tech a royalty-free, exclusive license in the drawings, specifications and other documents prepared for the Work by the Artist and the Artist's Subcontractor(s).
 - 8.1.1.1 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.
 - 8.1.1.2 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 to other parties without the Artist's consent.
 - 8.1.1.3 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 Agreement.
- 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 Agreement, 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 Agreement regarding the copyright, and with no violation of either Party's rights of privacy or other personal or proprietary rights they may possess.
 - 8.3.4.1 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.
 - 8.3.4.2 In utilizing photographs of 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.

- 8.3.4.3 Texas Tech reserves the right to use imagery in photography or video of the Work, and specifications of the Work for marketing, educational or archival purposes. Publications which may be distributed to the public for the purpose of describing the campus of Texas Tech or its architecture, which uses imagery in photography or video of the Work, shall be considered for marketing, educational or archival purposes.

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 Agreement shall be used only for the purposes contemplated in this Agreement, 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 Agreement, 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 Agreement, 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 and its Owner(s), [Individual's Name], covenant and agree to FULLY INDEMNIFY AND HOLD HARMLESS Texas Tech and the Regents, its component institutions, 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 Agreement, 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 Agreement, 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,

Attachment B

Texas Tech University System Public Art Commission Agreement

INCLUDING ANY CLAIM OF RIGHT, TITLE, OWNERSHIP, MONETARY OR ROYALTY INTEREST.

- 11.1.1 The indemnity provided for in this Section 11.1 does not apply to any liability resulting from the negligence of the Texas Tech, its officers or employees, separate Contractors or assigned Contractors, in instances where such negligence causes personal injury, death or property damage.
- 11.2 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.
- 11.3 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.
- 11.4 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 Agreement. 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 Director.
- 11.5 The indemnity provisions set forth in this Article shall survive the expiration or earlier termination of this Agreement and any other services to be provided pursuant to this Agreement.

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, the title shall transfer to Texas Tech.
- 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.
- 12.3 The Artist will provide and maintain, until the Work is complete and accepted by Texas Tech, the minimum insurance coverage as follows:
- 12.3.1 Commercial General Liability
- | | | |
|----------|-----------------|-----------------------------|
| 12.3.1.1 | Bodily Injury | \$1,000,000 each occurrence |
| 12.3.1.2 | Property Damage | \$1,000,000 each occurrence |
- 12.3.2 Commercial Automobile Liability (**if the Artist will drive on campus**)

Attachment B

Texas Tech University System Public Art Commission Agreement

- 12.3.2.1 Bodily Injury \$1,000,000 each occurrence
- 12.3.2.2 Property Damage \$1,000,000 each occurrence
- 12.3.3 Workers' Compensation
 - 12.3.3.1 Coverage A in compliance with Texas law
 - 12.3.3.2 Coverage B \$1,000,000/\$1,000,000/\$1,000,000
- 12.3.4 Owner's Contractors Protective Policy
 - 12.3.4.1 The Artist will obtain at the Artist's expense an Owner's Protective Liability Insurance Policy naming Texas Tech University System and its employees as insured with the following limits:
 - 12.3.4.1.1 Bodily Injury \$1,000,000 each occurrence
 - 12.3.4.1.2 Property Damage \$1,000,000 each occurrence
- 12.3.5 Waiver of Subrogation
- 12.3.6 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.
 - 12.3.6.1 Such insurance shall continue until the work(s) of art is installed.
 - 12.3.6.2 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.
 - 12.3.6.3 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.
 - 12.3.6.4 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 and the State Auditor's Office 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 1) inspecting the books and records of the Artist during normal business hours; 2) examining any reports with respect to this Work; 3) interviewing the Artist's employees, Subcontractors, agents, and consultants; 4) visiting the Project Site; and 5) other reasonable actions.
 - 13.1.1 The Artist shall ensure such information is available and open to review, inspection, and audit by Texas Tech or its representatives, or the Texas State Auditor's Office at any place(s) where such information is kept or at Texas Tech's place of business, if requested by Texas Tech.
 - 13.1.2 Required financial and other records, including supporting documentation, shall be provided electronically to Texas Tech or its designated representative(s) or to the Texas State Auditor's Office within five (5) business days of a request for records and at no expense to Texas Tech.

Attachment B

Texas Tech University System Public Art Commission Agreement

- 13.2 Final payment under this Agreement will not be made until any audit under this Article has been completed and all issues resolved.
- 13.3 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.
- 13.4 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 Agreement.

Article 14. Termination

- 14.1 Termination for Cause
 - 14.1.1 This Agreement 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 Agreement.
- 14.2 Termination for Convenience
 - 14.2.1 Texas Tech may also terminate this Agreement without cause and at any time if it determines that it will not be beneficial to proceed with all or part of the Work.
 - 14.2.2 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.
- 14.4 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.
- 14.5 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.
- 14.6 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 Agreement.
 - 14.6.1 If the Artist's work has progressed to the point of fabrication of the Work, in the event of termination under Section 14.1, Texas Tech shall have the right to complete the Work.
 - 14.6.2 Special regard shall be made for the Artist's intended results and credit deemed appropriate by Texas Tech shall be given to the Artist.
- 14.7 In the event of the bankruptcy, insolvency, or dissolution of [Company Name], or the Artist's death or incapacity, as determined at Texas Tech's sole discretion, during the term of this Agreement, Texas Tech shall have the right to terminate this Agreement on payment to the Artist or the Artist's successors for all work and services performed prior to the Artist's bankruptcy, insolvency, dissolution, or the death or incapacity of the individual Artist.

Attachment B

Texas Tech University System Public Art Commission Agreement

- 14.7.1 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.
- 14.7.2 Special regard shall be made for the Artist's intended results and credit deemed appropriate by Texas Tech shall be given to the Artist.
- 14.8 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 Agreement must be in writing and will be deemed to have been duly given or served when delivered by nationally recognized courier service, or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed 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) as follows:

- 15.1.1 If to the Artist:

Individual's Name
Company Name
Address
City, State Zip |
Phone No.: (000)000-0000
Email address |

- 15.1.2 If to Texas Tech:

Billy Breedlove
Vice Chancellor for Facilities Planning and Construction
Texas Tech University System
System Administration Building
1508 Knoxville Avenue, Suite 103
Lubbock, TX 79409
Box 42014
Lubbock, Texas 79409-2014
Phone No.: (806) 742-2116

- 15.2 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
System Administration Building
1508 Knoxville Avenue, Suite 301
Lubbock, Texas 79409
Box 42021
Lubbock, Texas 79409-2021
Phone No.: (806) 742-2155
Fax No.: (806) 742-2330

Attachment B

Texas Tech University System Public Art Commission Agreement

- 15.3 If the notice is mailed, it shall be deemed delivered within forty-eight (48) hours after the postmark date.
- 15.4 Either Party may change its designations by written notice to the other.

Article 16. 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 Agreement without Texas Tech's prior written consent.

Article 17. Copyrights And Patents

- 17.1 THE ARTIST AND ITS OWNER(S), [INDIVIDUAL'S NAME], 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 AGREEMENT, INCLUDING ITS USE BY TEXAS TECH.

Article 18. Dispute Resolution

- 18.1 The Artist's claim for breach of this Agreement 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 Agreement. 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 Agreement 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 AGREEMENT BY TEXAS TECH NOR ANY OTHER CONDUCT OF ITS REPRESENTATIVES RELATING TO THIS AGREEMENT 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 Agreement, 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 This Agreement represents the entire and integrated Agreement between the Parties and supersedes all prior negotiations, representations and agreements concerning the Work, either written or oral.
 - 19.1.1 It may be modified only by written amendment signed by both Parties.
 - 19.1.2 To the extent any terms in the Design Proposal conflict with this Agreement, the terms of the Agreement prevail.
- 19.2 This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original.
- 19.3 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.
- 19.4 American Iron and Steel
 - 19.4.1 To the extent this Agreement relates to a project as defined by Texas Government Code §2252.201(5)(a) project to construct, remodel, or alter a building, structure, or infrastructure; to supply material for such a project; or to finance, refinance, or provide funds for such a project), and no exemption in Texas Government Code §2252.203 applies, any iron or steel product produced through a manufacturing process and used in the project that is the subject of this Agreement must be produced in the United States (as defined in Texas Government Code §2252.201(4)).
- 19.5 Available Funds
 - 19.5.1 Texas Tech shall have the right to cancel this Agreement at the end of the then current fiscal period if funds are not allotted for the next fiscal year to continue this Agreement.
 - 19.5.2 Texas Tech may affect 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.
 - 19.5.3 Upon cancellation of this Agreement, Texas Tech shall not be responsible for the payment of any services received which occur after the end of the current Agreement period.
- 19.6 Authorization
 - 19.6.1 Texas Tech hereby authorizes the Chancellor of the Texas Tech University System, or his designated representative, to execute any amendments or modifications to this Agreement.
- 19.7 Certifications
 - 19.7.1 The Artist and the undersigned Artist's representative represent and warrant that the Artist is a valid existing Entity, in good standing under applicable law, and that the person signing on behalf of the Artist has received all necessary approvals to enter into and execute this Agreement.
 - 19.7.2 The Artist certifies this Agreement is not prohibited under Texas Government Code §2261.252(b) and agrees that if the Artist's certification is or becomes untrue, this Agreement is void, and the Artist will not seek and waives its right to seek any legal or equitable remedy for past or future performance under this

Attachment B

Texas Tech University System Public Art Commission Agreement

Agreement, including damages, whether under breach of Contract, unjust enrichment, or any other legal theory; specific performance; and injunctive relief.

- 19.7.3 By execution of this Agreement, under Section 231.006, Family Code, the Artist certifies that any individual or entity named in this Agreement is eligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 19.7.4 Under Section 2155.0061, Texas Government Code, the Artist certifies that the individual or business entity named in this procurement or Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 19.7.5 Pursuant to Executive Order No GA-48, Contractor certifies that it, and, if applicable, its holding companies or subsidiaries, are not:
 - 19.7.5.1 Listed in Section 889 of the 2019 National Defense Authorization Act (NDAA); or
 - 19.7.5.2 Listed in Section 1260H of the 2021 NDAA; or
 - 19.7.5.3 Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4; or
 - 19.7.5.4 Controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4.
- 19.8 Compliance
 - 19.8.1 This Agreement and the Parties' performance under this Agreement 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 Planning and Construction Operating Procedures for Contracting, as those laws, policies, and procedures may be amended from time to time.
- 19.9 Conflict of Interest
 - 19.9.1 The Artist and its Owner(s), [Individual's Name], affirm that, to the best of their knowledge, no actual or potential conflict exists between the Artist and its Owner's family, business or financial interests and the Artist's services under this Agreement, and that it shall immediately inform Texas Tech regarding any possible conflict of interest that may arise.
 - 19.9.2 The Artist further affirms that it shall not hire any officer or employee of Texas Tech to perform any service covered by this Agreement.
 - 19.9.3 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 in this Agreement.
- 19.10 Discrimination
 - 19.10.1 The Artist shall not 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

Attachment B

Texas Tech University System Public Art Commission Agreement

race, color, religion, national origin, age, veteran status, sex, or disability. Breach of this covenant may be considered a material breach of the Agreement.

19.11 Employment

- 19.11.1 Pursuant to Texas Government Code § 669.003, the Artist certifies that it does not employ or has disclosed its employment of any former executive head of a Texas State agency or entity.

19.12 Force Majeure

- 19.12.1 “Event of Force Majeure” means an event beyond the control of the Artist or Texas Tech which prevents or makes a Party’s compliance with any of its obligations under this Agreement illegal or impracticable, including but not limited to: act of God (including, without limitation, fire, explosion, earthquake, tornado, drought, and flood); war, act or threats of terrorism, hostilities (whether or not war be declared), invasion, act of enemies, mobilization, requisition, or embargo; rebellion, insurrection, military or usurped power, or civil war; contamination or destruction from any nuclear, chemical, or biological event; riot, commotion, strikes, go slows, lock outs, or disorder; epidemic, pandemic, viral outbreak, or health crisis; or directive of governmental authority.
- 19.12.2 No Party will be considered in breach of this Agreement to the extent that performance of their respective obligations is prevented or made illegal or impracticable by an Event of Force Majeure that arises during the term (or after execution of the Agreement but prior to the beginning of the term).
- 19.12.3 A Party asserting an Event of Force Majeure hereunder (“Affected Party”) will give reasonable notice to the other Party of an Event of Force Majeure upon it being foreseen by, or becoming known to, Affected Party. In the event of an Event of Force Majeure, Affected Party will endeavor to continue to perform its obligations under the Agreement only as far as reasonably practicable.

19.13 Governance

- 19.13.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be considered performable in Lubbock County, Texas. Provided the conditions of Article 18 Dispute Resolution are met, venue and jurisdiction shall be in Lubbock, Texas.

19.14 Hazardous Materials

- 19.14.1 Unless otherwise provided in the Agreement, 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.
- 19.14.2 However, the Artist shall promptly notify Texas Tech if the Artist discovers any hazardous material during the provision of the Work.

19.15 Health and Safety Code Chapter 161.

- 19.15.1 If applicable, the Artist affirmatively states that it will comply with the requirements of [Texas Health and Safety Code, § 161.0085\(c\)](#).

19.16 Incorporated by Reference

Attachment B

Texas Tech University System Public Art Commission Agreement

- 19.16.1 All exhibits and attachments and all other documents are incorporated by reference for all purposes.
- 19.17 Independent Contractor
- 19.17.1 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 Agreement.
- 19.17.2 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.
- 19.17.3 Nothing contained in this Agreement is deemed to create a partnership, joint venture, employment or agency agreement between Texas Tech and the Artist.
- 19.18 No Prohibited Boycott
- 19.18.1 If applicable to this Agreement, the Artist agrees not to engage in any boycott prohibited by Texas Government §§2271.002 and §§2274.001.
- 19.19 Number/Gender
- 19.19.1 References to the singular include the plural unless the Agreement requires otherwise.
- 19.19.2 References to a gender include the other unless the Agreement requires otherwise.
- 19.20 Program Director
- 19.20.1 Texas Tech will designate a Project Director who will be the Artist's sole point of contact with Texas Tech 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.
- 19.20.2 The Program Director for the Project is:
- Emily Wilkinson, Director Public Art
Facilities Planning and Construction
Texas Tech University System
System Administration Building
1508 Knoxville Avenue, Suite 103
Lubbock, TX 79409
Box 42014
Lubbock, TX 79409-2014
Telephone No. (806) 742-2116
Email: emily.wilkerson@ttu.edu
- 19.20.3 The Artist shall take direction only from the Project Director.
- 19.20.4 Action taken in response to direction received from other sources will be corrected at the Artist's own expense.
- 19.20.5 These designations shall remain in full force and effect until and unless the Artist is otherwise notified in writing by Texas Tech.

Attachment B

Texas Tech University System Public Art Commission Agreement

19.21 Public Statements

- 19.21.1 The Parties shall coordinate with one another on all public statements, whether written or oral and no matter how disseminated, regarding their contractual relationship as set forth in this Agreement or the performance by either of them of their respective obligations under this Agreement and the Artist may not use the name “Texas Tech University” or any variation of that name or Texas Tech’s protected marks in connection with any sales promotion or publicity event without Texas Tech’s prior written approval.

19.22 Section Headings

- 19.22.1 All section headings are for convenience of reference only and are not intended to define or limit the scope of any provisions of this Agreement.

19.23 Sex Offender Registration

- 19.23.1 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:

- 19.23.1.1 **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 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.**

19.24 Survival

- 19.24.1 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 Agreement.

19.25 Texas Public Information Act

- 19.25.1 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).
- 19.25.2 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.

Attachment B

Texas Tech University System Public Art Commission Agreement

- 19.25.3 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.
- 19.25.4 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.
- 19.26 Third Party
- 19.26.1 Nothing in this Agreement shall create a contractual relationship between a Third Party and either Texas Tech or the Artist.
- 19.27 U.S. Government Contractor
- 19.27.1 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.
- 19.28 Validity/Enforceability
- 19.28.1 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.
- 19.29 Waiver
- 19.29.1 Texas Tech's failure to insist upon strict compliance with any provision of this Agreement shall not be deemed a waiver of such provision or any other provision.

Attachment B

Texas Tech University System Public Art Commission Agreement

OWNER:

TEXAS TECH UNIVERSITY SYSTEM

By: _____
Tedd L. Mitchell, M.D., Chancellor

Date: _____

By: _____
Billy Breedlove, Vice Chancellor

Date: _____

REVIEWED FOR FISCAL IMPLICATIONSBy: _____
James Mauldin, Chief Financial Officer**ARTIST:**

[COMPANY NAME]

By: _____
[Individual's Name, Individually and as
Member/Stockholder/Partner]

Date: _____

By: _____
Owner(s)

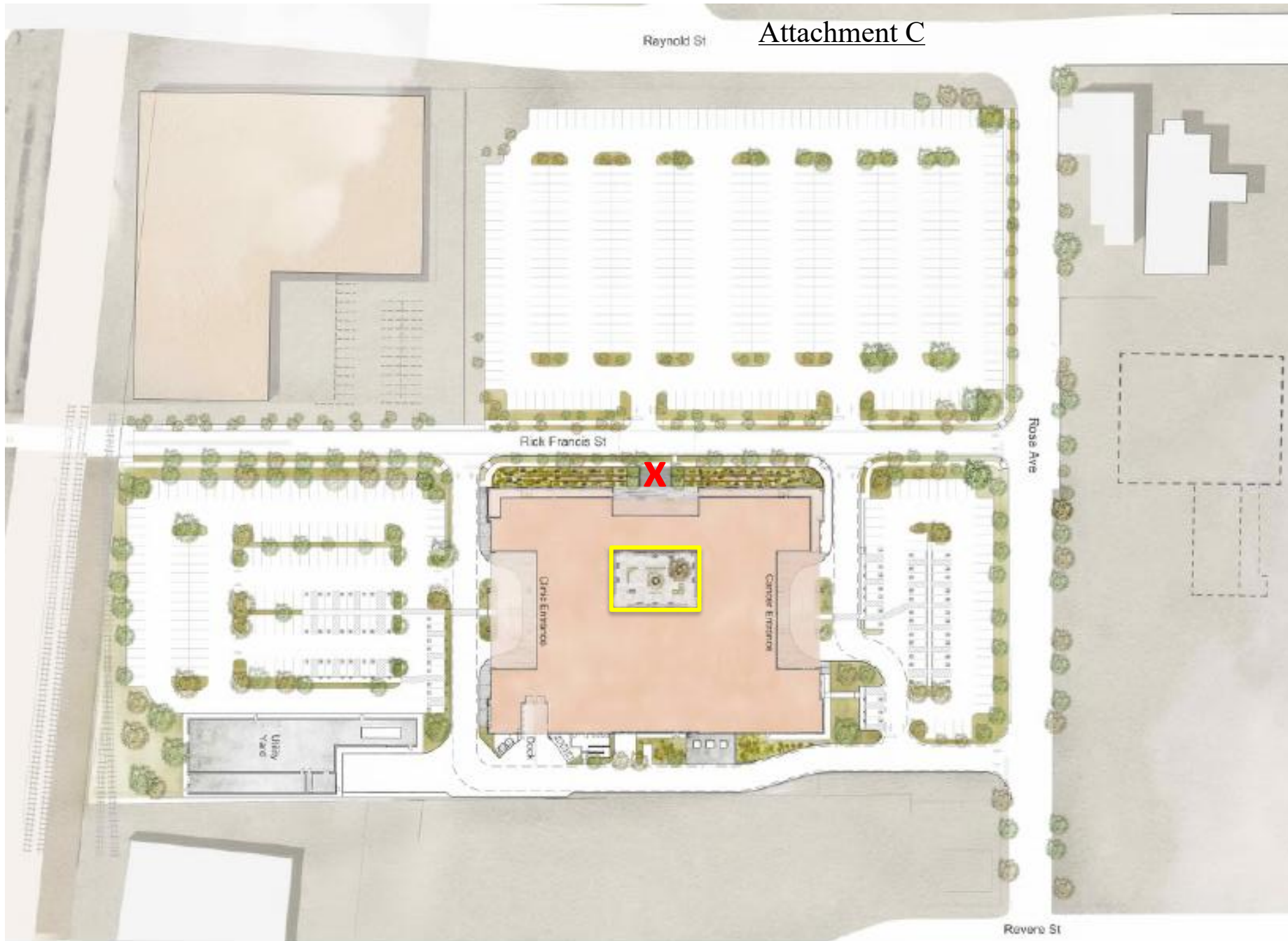
Date: _____

Exhibits Incorporated in the Agreement:

Exhibit A – Preliminary Design Proposal dated [Date]
Form of Proposal dated [Date]

Attachment C

Raynold St



Clinical Sciences Building & Comprehensive Cancer Center – Aerial Map

Yellow square marks courtyard
location

Red "x" marks the formal west-side
entrance on Rick Francis St.

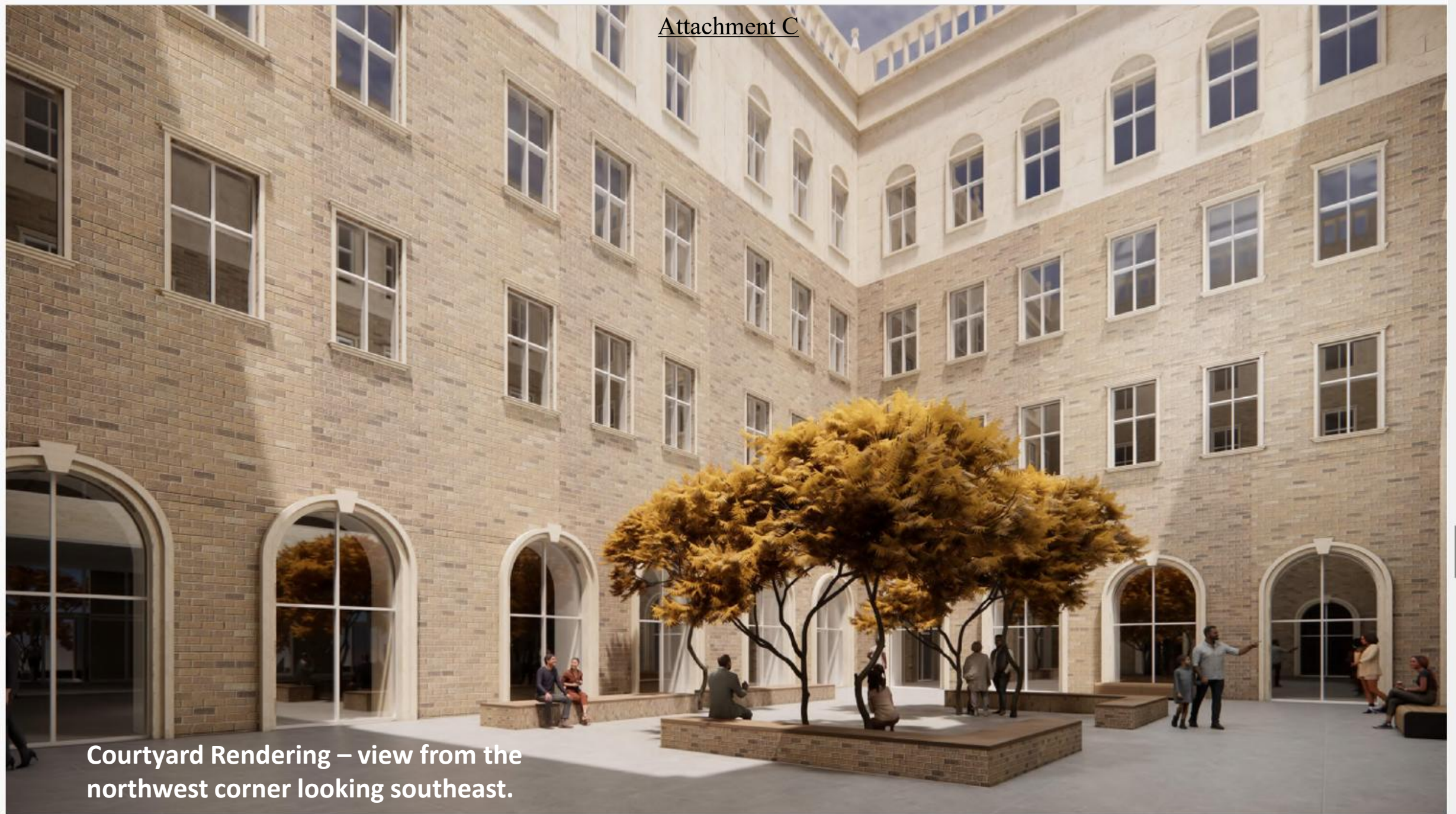
Exterior Rendering of Formal West-Side Entrance



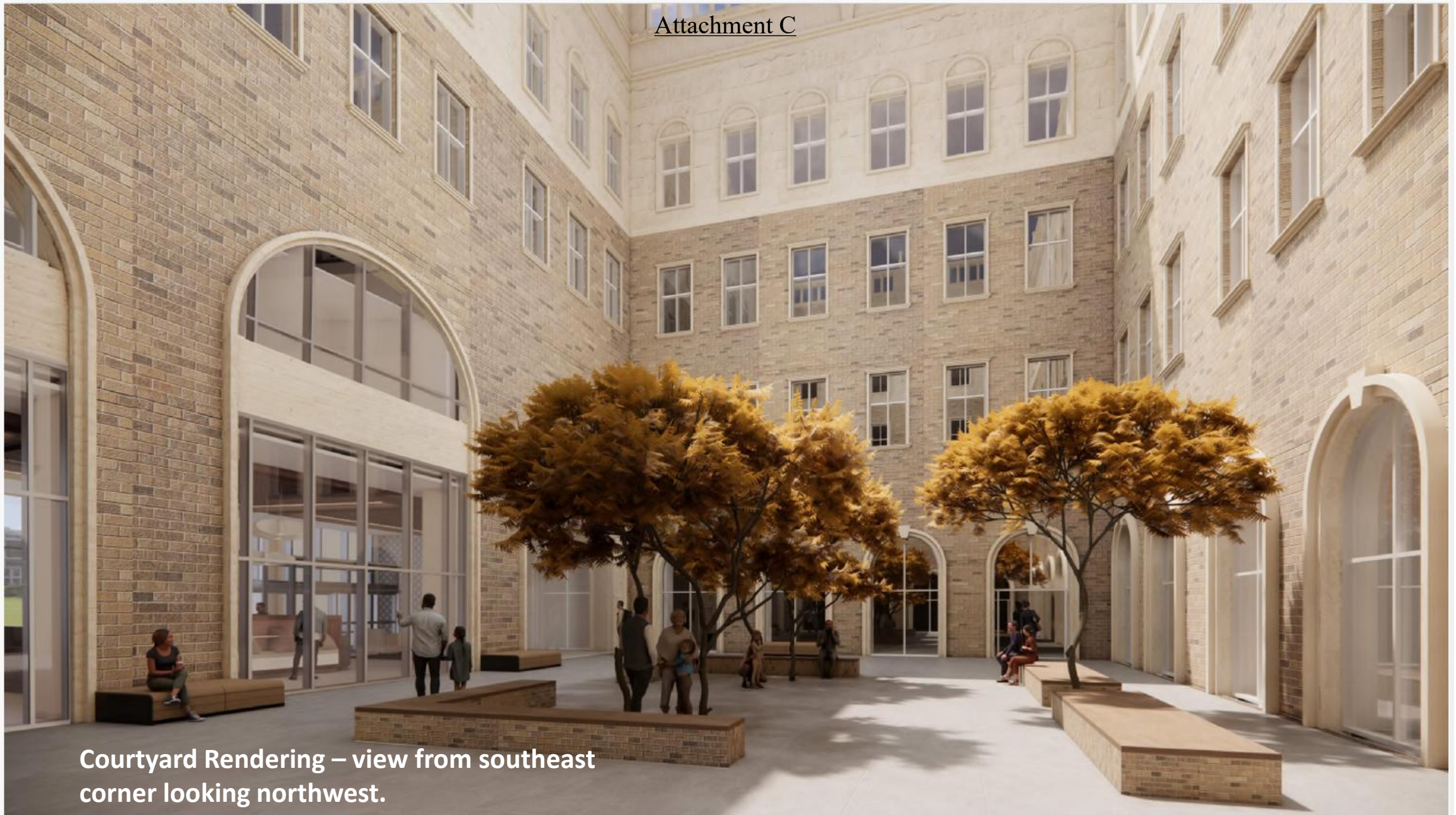
WEST ENTRY ON RICK FRANCIS ST.

Exterior Rendering – view from northwest



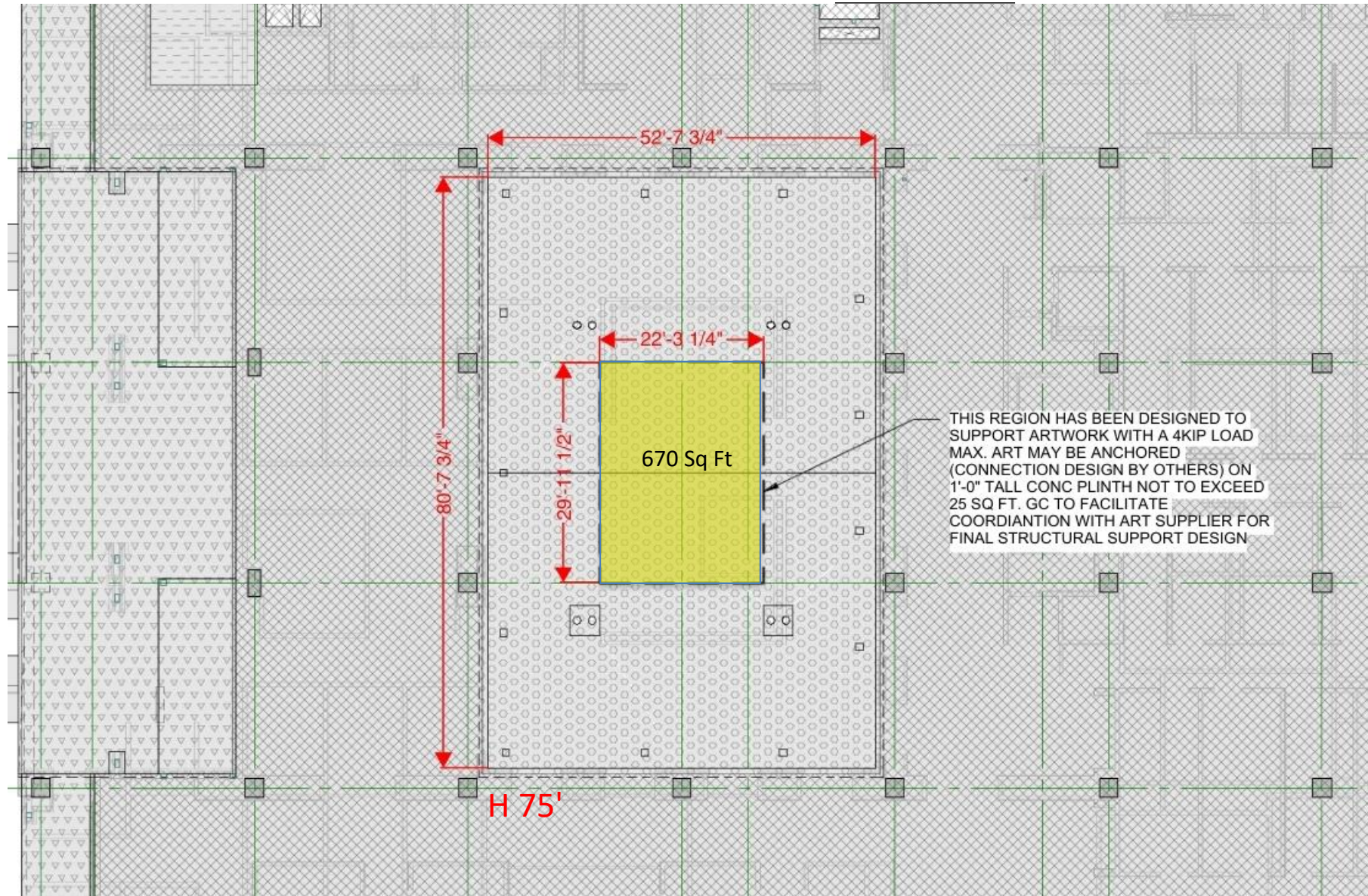


Courtyard Rendering – view from the northwest corner looking southeast.



Courtyard Rendering – view from southeast corner looking northwest.

Attachment C



Drawing with Measurements

Yellow square marks 670 Sq Ft area designated for artwork.

Red arrows and numbers define the measurements of both the 670 Sq Ft area, and the full courtyard.