

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Museums and Cultural Affairs

**AGENDA DATE:** June 26, 2012

**CONTACT PERSON NAME AND PHONE NUMBER:** Sean McGlynn, MCAD Director, 541-4898

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

**APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.**

That the City Manager be authorized to sign a Service Agreement by and between the City of El Paso ("CITY") and Vicki Scuri, for the amount of \$283,000.00 to assist with the final design, construction documents and construction oversight and management for the IH-10 and Airway interchange portion of the IH-10 Corridor Aesthetic Improvement Project identified in the 2008 Comprehensive Mobility Plan in collaboration with the Camino Real Regional Mobility Authority ("CRRMA") and TxDOT, costs to be covered according to the Interlocal Agreement between the City and the CRRMA entered on November 11, 2010.

**BACKGROUND / DISCUSSION:**

**Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?**

The City desires to enter into this agreement for the provision of final design plans and construction oversight services from the Artist as they relate to the IH-10 and Airway Boulevard interchange. Artist will select a local artist from the City of El Paso's Allied Artist Program pool of artists to assist her in order to gain the technical and administrative expertise needed to work in the public art field.

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

The City previously entered into an agreement with the Artist Vicki Scuri for the development of a Master Plan for the IH-10 Corridor Aesthetic Improvement Project identified in the 2008 Comprehensive Mobility Plan in collaboration with the Camino Real Regional Mobility Authority ("CRRMA") and TxDOT, costs were covered according to the Interlocal Agreement between the City and the CRRMA.

**AMOUNT AND SOURCE OF FUNDING:**

**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

Texas Department of Transportation Category 2 funds

**BOARD / COMMISSION ACTION:**

**Enter appropriate comments or N/A**

N/A

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

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(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

*Information copy to appropriate Deputy City Manager*

# RESOLUTION

## BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

**THAT** the City Manager be authorized to sign a Service Agreement by and between the City of El Paso (“CITY”) and Vicki Scuri, for the amount of \$283,000.00 to assist with the final design, construction documents and construction oversight and management for the I-10 and Airway interchange portion of the I-10 Corridor Aesthetic Improvement Project identified in the 2008 Comprehensive Mobility Plan in collaboration with the Camino Real Regional Mobility Authority (“CRRMA”) and TxDOT, costs to be covered according to the Interlocal Agreement between the City and the CRRMA entered on November 11, 2010.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2012.

CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Kristen L. Hamilton  
Assistant City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Sean P. McGlynn, Director  
Museums and Cultural Affairs Department



**ARTICLE ONE**  
**Contractual Relationship**

1.1 The City agrees to engage Artist, and Artist hereby agrees to perform services as required under this Agreement. The selection of Artist was based on the qualifications of Vicki Scuri, who possesses the skills to render and produce the design development to a final design and will provide construction oversight services as set forth herein.

1.2 Artist is an independent contractor. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the Parties or any of their officers, employees, agents or contractors.

1.3 Artist shall not receive any compensation or benefits from the City, other than as expressly set forth in this Agreement or in a subsequent written agreement that is signed by both parties.

1.4 Artist does not have, and will not attempt to assert, the authority to make commitments for or to bind the City to any obligation other than the obligations set forth in this Agreement or in any subsequent written agreement that is signed by both parties.

**ARTICLE TWO**  
**Scope of Services**

**2.1 Artist's Obligations.**

2.1.1 Artist, in collaboration with the GEC, shall perform all services and furnish all supplies, materials and/or equipment as necessary for the design development services for the Project and will provide construction management and oversight during the fabrication and construction of the project as more fully described in Exhibit "A" attached hereto and incorporated herein by reference. All work will be done in collaboration with the El Paso Museums and Cultural Affairs Department ("MCAD") and all parties identified by MCAD as reviewing parties. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.

2.1.2 Artist shall determine the expression, and design approach of each element of the design encompassed in the Conceptual Design, subject to review and acceptance by the reviewing parties which may include, but not be limited to a steering committee that will oversee the project, the CRRMA, the General Engineering Consultant ("GEC") engaged by the CRRMA, TxDOT and any other parties identified by MCAD as set forth in this Agreement. All aspects of Artist's Services shall be coordinated with MCAD's Public Arts Coordinator.

2.1.3 Artist shall be responsible for the design development services that, with the assistance of the GEC, will be used to develop the construction documents necessary

for the Project. The design development shall include services outlined in Exhibit “A” including civic entryways, gateways, lighting, fencing, slope paving, bridges: wings, walls, abutments, barrier rails, columns, spans and girders, landscaping, special treatments: towers, markers, murals medallions, railroad arches or other private, public options, as appropriate.

- 2.1.4 At the discretion of the City, acting through MCAD, Artist shall attend public information meetings with the general public, attend design and construction coordination meetings with TxDOT, CRRMA, the GEC and other parties, as appropriate and identified by MCAD, to communicate about the Conceptual Design and to ensure that the Conceptual Design can be appropriately integrated and/or implemented.
- 2.1.5 Artist shall be available with reasonable advance notice for meetings, ceremonies and the like, as necessary.
- 2.1.6 Artist will work with GEC to ensure that the Conceptual Design is in compliance with all applicable laws and regulations, including but not limited to zoning or environmental regulations.
- 2.1.7 Artist shall provide ongoing coordination with MCAD and GEC during fabrication and construction to ensure adherence to the design as further described in Exhibit “A.”
- 2.1.8 Artist will work with a local artist who will be engaged by the City to serve as an apprentice working under the Artist during the development of the project (hereinafter the “Apprentice”). This shall include allowing the Apprentice to participate in the following: collecting information for the Design, site review, community meetings and other meetings coordinated by MCAD. MCAD and Artist shall agree on additional duties to be coordinated with the Apprentice, which may include but not be limited to Artist receiving proposals and presentations from the Apprentice to be incorporated into the project.
- 2.1.9 This Agreement is subject to the approval of CRRMA and TxDOT. No funds shall be expended by the City or the Artist in connection with this Agreement until such time as the City has received written notice of the approval of this Agreement and an agreement between City and CRRMA regarding the development of the I-10 Project.

## **2.2 City’s Obligations.**

- 2.2.1 MCAD shall be responsible for leading Artist through the required review process. MCAD shall be responsible for organizing and scheduling meetings with reviewing Parties, and for providing Artist written instructions for the materials required at such meetings.

## **2.3 Design.**

### **2.3.1 Concept/Schematic Design**

2.3.1.1 The Artist's fee proposal dated April 16, 2012 is attached hereto as Exhibit "A" and incorporated as if fully set forth herein. Upon MCAD's notice to proceed, Artist shall begin milestone 1, and shall complete each milestone within the number of days stated on Exhibit "A," unless parties agree to alter the number of days. MCAD shall provide notice to Artist to proceed on each milestone listed on Exhibit "A".

2.3.1.2 Artist shall coordinate with the GEC hired by the CRRMA at all stages of the services to ensure compliance with all applicable requirements.

### **2.3.2 Approval**

2.3.2.1 Within a reasonable time after the Artist submits the completed Final Design for review by the require parties, MCAD shall notify Artist whether it approves or disapproves of the Final Design. The reviewing parties will have discretion in approving outright or with conditions, or rejecting the Final Design. The City, through MCAD, shall notify Artist of any revisions to the Final Design that are necessary for the Artist's work to comply with any applicable laws, ordinances and/or regulations and other reasons including, but not limited to, ensuring the physical integrity of the Final Design. If agreed upon by both parties, such revisions will become a part of the accepted Artwork.

2.3.2.2 If the reviewing parties disapprove of or require revisions to the Final Design, MCAD will submit to Artist in writing the reasons for such disapproval or requested revisions. In such event, Artist shall submit a revised design ("Revised Final Design Document") within 30 days after the MCAD has notified Artist of the reviewing parties' disapproval or requested revisions. Artist will not be paid an additional fee for the Revised Final Design.

2.3.2.3 The Revised Final Design will reflect changes made to address the reviewing parties' stated reasons for disapproval or requested revisions, as well as any adjustments in the budget or schedule that may be necessary. The City shall notify Artist in writing whether the Revised Final Design is approved or disapproved within ten (10) days after Artist submits the Revised Final Design.

2.3.2.4 If Artist refuses to revise the Artwork pursuant to this Agreement, or if Artist fails to adequately revise the Artwork in the judgment of the reviewing Parties, this Agreement will terminate and the parties will be under no further obligation to each other as of the date of such termination. The effective date of termination will be the date the City, acting through MCAD, submits its written disapproval of the Revised Final Design to Artist. MCAD shall

submit to Artist a written termination notice with the disapproval. The termination notice must advise Artist that this Agreement has been terminated pursuant to this Article. The termination notice will notify Artist that Artist is entitled to retain the compensation paid prior to the termination date, and that the Parties are under no further obligation to each other. The termination notice will confirm that the City will retain ownership of the Final Design, the any Revised Final Design and renderings thereof submitted hereunder.

### **2.3.3 Final/Construction Documents**

2.3.3.1 Within 30 days of the City's acceptance of the Final Design or the Revised Final Design, Artist, in collaboration with the GEC, shall prepare structural drawings, documentation, a model or photographs detailing every physical feature of the construction of the Artwork and its integration with the Site such as are adequate for an engineer to determine structural soundness. These drawings and supplementary documents shall indicate any issues involved in the construction, integration and maintenance of the Artwork, as well as any third party subcontractor needed to work on the project.

2.3.3.2 Where appropriate as determined by MCAD, Artist shall present such drawings or materials to the GEC, licensed by the State of Texas, for certification that the Artwork shall be of adequate structural integrity and Artist shall provide MCAD with such certification, signed and stamped by the licensed engineer.

2.3.3.3 Where appropriate, Artist shall present the Design to a qualified conservator, who shall make recommendations on the maintenance of the Artwork and Artist shall provide a written copy of the conservator's recommendations to MCAD.

## **ARTICLE THREE Term and Termination**

**3.1 Term.** This Agreement will be in effect for two (2) years from the effective date, or until terminated earlier as provided for herein.

**3.2 Unilateral Termination.** The City may unilaterally terminate the Agreement with or without cause at any time, such termination effective immediately upon written notice to Artist as provided herein. In the event the City terminates this Agreement, Artist will be entitled to compensation for services in accordance with the Payment Schedule as described below in Article 4, with the understanding that the final 25% of the contract price may be withheld unless 100% completion of the services required herein is provided by Artist and is accepted by the City. Should the City unilaterally terminate this Agreement, the City will retain all design work completed and all rights thereto.

**3.3 Termination by Mutual Consent.** The Parties may terminate the Agreement by mutual consent upon terms that they agree to in writing.

**3.4 Time of Performance– Force Majeure.** The Services must be undertaken and completed as appropriate to carry out the purposes of this Agreement. Except as otherwise provided, neither Artist nor the City will be liable to the other for any delay in, or failure of performance of any requirement contained in this Agreement caused by force majeure. The existence of such causes of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. “Force majeure” includes those causes generally recognized under Texas law as constituting impossible conditions.

## **ARTICLE FOUR Fees and Expenses**

**4.1 Fee.** Artist agrees to perform the services contemplated hereunder for a total fee of up to TWO HUNDRED EIGHTY THREE THOUSAND AND NO/100 DOLLARS (\$283,000.00). Artist shall be paid in accordance with the Payment Schedule set forth below and more fully described in Exhibit “A” attached hereto and fully incorporated by reference.

### **4.2 Payment Schedule.**

- 4.2.1 Upon reasonable time after funds are made available to the City, after receipt by MCAD of an itemized statement from the Artist to document the completion of **Milestone 1**, the City shall pay to Artist an amount not to exceed FORTY THREE THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$43,200.00), for the purchase of material or labor, for the phase of the project.
- 4.2.2 Upon reasonable time after funds are made available to the City, after receipt by MCAD of an itemized statement from the Artist to document the completion of **Milestone 2**, the City shall pay to Artist an amount not to exceed THIRTY TWO THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$32,400.00), for the purchase of material or labor, for the Design phase of the project.
- 4.2.3 Upon reasonable time after funds are made available to the City, after receipt by MCAD of an itemized statement from the Artist to document the completion of **Milestone 3**, and the approval of the Final Design or Revised Final Design, the City shall pay to Artist an amount not to exceed THIRTY TWO THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$32,400.00), for the purchase of material or labor, for the Conceptual Design.
- 4.2.4 Upon reasonable time after funds are made available to the City, after receipt by MCAD of an itemized statement from the Artist to document the completion of each of milestone 4 as discussed in Exhibit “A,” which is 30% of the Construction Documents, City will pay to Artist an amount not to exceed TWENTY ONE THOUSAND SIX HUNDRED AND NO/100 DOLLARS (\$21,600.00).

- 4.2.5 Upon reasonable time after funds are made available to the City, after receipt by MCAD of an itemized statement from the Artist to document the completion of each of milestone 5 as discussed in Exhibit "A," which is 60% of the Construction Documents, City will pay to Artist an amount not to exceed TWENTY ONE THOUSAND SIX HUNDRED AND NO/100 DOLLARS (\$21,600.00).
- 4.2.6 Upon reasonable time after funds are made available to the City, after receipt by MCAD of an itemized statement from the Artist to document the completion of each of milestone 6 as discussed in Exhibit "A," which is 90% of the Construction Documents, City will pay to Artist an amount not to exceed TWENTY ONE THOUSAND SIX HUNDRED AND NO/100 DOLLARS (\$21,600).
- 4.2.7 Upon reasonable time after funds are made available to the City, after receipt by MCAD of an itemized statement from the Artist to document the completion of each of milestone 7 as discussed in Exhibit "A," which is 100% of the Construction Documents, City will pay to Artist an amount not to exceed FIVE THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$5,400.00).
- 4.2.8 Upon reasonable time after funds are made available to the City, after receipt by MCAD of an itemized statement from the Artist to document the completion of each of milestone 8 as discussed in Exhibit "A," which is for Artist's work related to the construction oversight, City will pay to Artist an amount not to exceed SIXTY FOUR THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS (\$64,800.00).
- 4.2.9 City shall reimburse Artist for travel related expenses and direct expenses upon a reasonable time after receipt of Artists proof of payment for up to the following amounts:
- Travel Allowance & Direct Expenses:**  
Allow up to twenty (20) trips at the approved rate for Airfare, rental car, hotel, parking and meals totaling no more than \$2,000.00 per trip to coordinate with CRRMA, GEC, Apprentices and City, if needed.

## **ARTICLE FIVE**

### **Insurance and Indemnification Provisions**

**5.1 LIABILITY INSURANCE.** Artist shall provide Commercial General Liability insurance in the amount of \$1,000,000 combined, single limit bodily injury and property damage. City shall be listed as an additional name insured on the policy for all operations performed within the scope of this Agreement between the City and the Artist. Artist shall provide general liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one accident or other cause.

- 5.1.1 Artist is required to purchase liability insurance on behalf of the City or, alternatively, may name the City as an additional insured on the policy of general liability insurance referenced above.
- 5.1.2 Artist shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise as a result of Artist's performance of this Agreement and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and contractors, its officers, agents, servants or employees up to the limits of the liability shown in the certificate of insurance.
- 5.1.3 No Services will be provided by the City until Artist files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk and MCAD. Such policy or certificate must provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the Term of this Agreement will be grounds for cancellation of this Agreement.

**5.2 INDEMNITY. As a condition of this Agreement, Artist or its insurer will INDEMNIFY, DEFEND, AND HOLD HARMLESS CITY, ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LEGAL ADMINISTRATIVE PROCEEDINGS, CLAIMS OR DEMANDS AND COSTS ATTENDANT THERETO, ARISING FROM, IN CONNECTION WITH OR CAUSED BY: (A) ANY PERSONAL INJURY OR PROPERTY DAMAGE CAUSED, DIRECTLY OR INDIRECTLY, BY ANY ACT OR OMISSION OF ARTIST. Without modifying the conditions precedent for preserving defenses, asserting claims or enforcing any legal liability, against the City as required by the City Charter or any law, the City shall promptly forward to Artist/insurer every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Artist/insurer will thereafter: 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as Artist/insurer may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Artist/insurer shall pay all judgments in actions defended by Artist/insurer pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Artist/insurer, and premiums on any appeal bonds. The City, at its election shall have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City shall not be responsible for any loss of or damage to Artist's property from any cause.**

**ARTICLE SIX**  
**Copyright**

**6.1** The issue of copyright will be treated in accordance with applicable law and City ordinances.

**6.2** Subject to the provisions noted herein, the Artist shall retain all proprietary rights for work created by the Artist or Apprentice, including copyright, patent, trademark, trade-secret and other rights in the project designs, the final design plan or other work provided by the Artist or Apprentices pursuant to this Agreement (collectively referred to as the “Artist’s Work”). After completion or termination of this Agreement and the acceptance of the Final Design or Revised Final Design or other such work, all Artist’s Work shall remain the property of the City. Except as may be expressly noted herein, all data prepared by the Artist and Apprentices shall be provided to the City without restriction or limitation on further use. All documents not already provided to the City shall be transmitted in the form of electronic version (or photocopy reproduction when an electronic version is not available) within a reasonable time following completion or termination of this Agreement and acceptance of the Final Design or Revised Final Design.

Further, the Artist and Apprentices shall grant the City an irrevocable, perpetual, nonexclusive license to use all intellectual property acquired or developed under this Agreement. Such grant includes, but is not limited to, the City’s ability to: (i) develop, design and construct additional aesthetic improvements in the region based in whole or in part on the Artist’s Work; (ii) graphically reproduce (through digital media or otherwise) the design plan or any other parts of the Artist’s Work; (iii) authorize third parties to graphically reproduce and distribute such work as desired by the City to promote or display the Artist’s Work; and (iv) to promote or display the development, design or construction of any aesthetic improvements developed in whole or in part on the Artist’s Work. In the event any reproduction of the Artist’s Work is pursued, the Artist shall be acknowledged on each reproduction. All rights enumerated herein shall be assignable by the City to TxDOT, and Artist recognizes that City will assign these rights to TxDOT for development of the I-10 Project; provided, however, that the parties recognize the preference that the implementation of any aesthetic projects resulting from the Artist’s Work be limited to implementation within the El Paso District of the Texas Department of Transportation.

**6.3** The City acknowledges that Artist is retaining the copyright of the design. Artist will be responsible for registering with the United States Register of Copyrights, a copyright in the design in the Artist’s name, at Artist’s expense. The City will not be responsible for the payment of any royalties to the Artist who created the Conceptual Design, through any activities of the City or any third party.

**ARTICLE SEVEN**  
**General Administrative Provisions**

**7.1 Governmental Function.** Artist expressly agrees that, in all things relating to this Agreement, the City is performing a governmental function, as defined by the Texas Tort Claims

Act. The Parties hereby agree that the City enters into this Agreement in its capacity as a governmental entity for the purpose of performing a governmental function.

**7.2 City Not Obligated to Third Parties.** The City will not be obligated or liable hereunder to any person other than Artist.

**7.3 Waiver/Modification of Agreement.** Except as expressly noted herein, no waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained will be valid unless provided as a written amendment hereto signed and approved as provided herein. No evidence of any waiver or modification may be offered or received in evidence of any proceeding arising between the Parties out of or affecting this Agreement, or the rights or obligations of the Parties under this Agreement, unless such waiver or modification is in writing as hereinabove described. The Parties further agree that the provisions of this Section 7.3 cannot be waived.

**7.4 Complete Agreement.** This Agreement constitutes and expresses the entire agreement between the parties hereto in reference to the Services described herein, and in reference to any of the matters or things herein provided for, or hereinbefore discussed or mentioned in reference to such Services, all promises, representations and understanding relative thereto herein being merged.

**7.5 Severability.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of the Agreement.

**7.6 Choice of Law.** It is the intention of the Parties that this Agreement be construed in accordance with and under the laws of the State of Texas.

**7.7 Venue.** Venue will be in the County of El Paso, Texas.

**7.8 Compliance with Law.** Artist shall comply with all Federal, State and local laws and ordinances applicable to the Services described herein.

**7.9 Place of Performance.** The place where such Services are to be performed is in the City and County of El Paso, Texas.

**7.10 Notice.** Any notices required under this Agreement will be sufficient if sent by Certified Mail, Return Receipt Requested, postage prepaid, to the City or Artist at the following addresses:

CITY: City of El Paso  
ATTN: City Manager  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

CITY: City of El Paso  
Director, Museums and Cultural Affairs Department  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

ARTIST: Vicki Scuri  
16218 39<sup>th</sup> Avenue NE  
Lake Forest Park, Washington 98155

Changes may be made to the names and addresses noted herein through timely written notice to the other party.

**7.11 Successor and Assigns.** This Agreement will be binding on the City and Artist, their successors and assigns. Neither party may assign, sublet or transfer its interest in this Agreement without the prior written consent of the other except as provided in Section 6.2. Nothing herein may be construed as creating any personal liability on the part of any principal or agent of the City.

**7.12 Captions.** The captions of this Agreement are for informational purposes only and in no way affect the substantive terms or conditions of this Agreement.

**7.13 Warranty of Capacity to Execute Agreement.** The people signing this Agreement on behalf of the parties warrant that they have the authority to do so and to bind the party for which they have authority to sign this Agreement and all the terms and conditions contained herein.

**7.14. Binding Effect.** Each person signing below represents that he or she has read this Agreement in its entirety; understands its terms; and agrees on behalf of such party that such party will be bound by those terms.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement at El Paso, Texas effective as of the first date appearing heretofore.

**SIGNED** this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**CITY OF EL PASO**

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Kristen L. Hamilton  
Assistant City Attorney

\_\_\_\_\_  
Sean P. McGlynn, Director  
Museums and Cultural Affairs Department

**ARTIST: VICKI SCURI:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT "A"



Vicki Scuri  
Interdisciplinary Design & Public Art Specialist

16218 39th Avenue NE 206 361 5964 studio / fax  
Lake Forest Park, WA 98155 206 930 1769 cell

[vickiscuri.com](http://vickiscuri.com)

[vicki@vickiscuri.com](mailto:vicki@vickiscuri.com)

**April 16, 2012**

To: Sean McGlynn, Pat Dalbin  
Re: Scope of Work for I-10: Airway;

**I. Project I-10 Master Plan Implementation: Airway**

**Fee Proposal: Includes Design & CM Estimate during Fabrication & Construction**

**Hourly Rate: 135.00**

**Project 1:**

**Projected Timeline/with Reviews: 3.5 years (through construction)**

**Projected Deliverables:**

**Milestone 1: Conceptual Design: 320**

**Milestone 2: Design Development: 240**

**Milestone 3: Final Design: 240**

**Milestone 4: 30% CD: 160**

**Milestone 5: 60% CD: 160**

**Milestone 6: 90% CD: 160**

**Milestone 7: 100% Plans: 40**

**Milestone 8: Construction: 480**

**Sub-Total: Conceptual Design – Final Design: 800 @ 135.00 = 108,000.00**

**Sub-Total: Contract Documents: 520 @ 135.00 = 70,200.00**

**Travel Allowance & Reimbursable Expenses for Design & Contract Documents: 20,000.00**

**Construction & Fabrication Oversight: 480 @ 135.00 = 64,800.00**

**Travel Allowance & Reimbursable Expenses During Construction & Fabrication:  
20,000.00**

**1. Airway Scope of Work Includes:**

- Slope Paving & Landscape Designs (from the intersection to the gores/landscape & paving)
- LS wall design
- MSE Wall Stain (color selection & application / could include sandblasting)

- Landscape Median Designs
- Identity Facades/Grills
- Columnar Light Sculptures/Custom Laser-Cut Patterning
- Column Designs/Custom Laser-Cut Patterning
- Utility Box Treatments
- Paving Designs
- Crosswalk Designs
- Abutment Wall Treatments
- Ceiling Treatments
- Pedestrian & Roadway Lighting Treatments
- Specialty Lighting Treatments for Facades and Sculptures
- Relocation of Elements, as needed to complete work
- Coordination with Jacobs Engineering Team, The City of El Paso & TXDOT

Note: The Artist Team will work with City of El Paso, TXDOT, and Jacobs Engineering to complete the identity design elements for the Airway Interchange.

Jacobs will supply electronic and hard copy base drawings for all architectural elevations and plans for the Artist Team’s design work. Jacobs will assist the Artist Team with detailing the Artwork for the Project. Jacob’s will incorporate the Artist's work into the Contract Documents and provide professional stamps for sealing the Documents. The work will become part of the Contract Documents.

**A. Airway: Conceptual Design - Final Design: 800**

**Time Estimate: 6 months**

a. Hours: 800 @ 135 = 108,000.00

b. Develop Airway identity approach and designs for all elements

/provide alternative approaches as needed and directed by Engineering Team & City :

- Slope Paving & Landscape Designs (from the intersection to the gores)
- LS wall design
- MSE Wall Stain (color selection & application)
- Landscape Median Designs
- Identity Facades/Grills
- Columnar Light Sculptures
- Column Designs
- Utility Box Treatments
- Paving Designs
- Crosswalk Designs
- Abutment Wall Treatments
- Ceiling Treatments
- Pedestrian & Roadway Lighting Treatments
- Specialty Lighting Treatments for Facades and Sculptures

**B. Ongoing Coordination, 3D Cutting Files, Through Contract Documents: 520 hrs**

**Time Estimate: 12 months**

a. Hours:  $520 @ 135.00 = 70,200.00$

**b. Refinements, Specifications & Cost Estimates for Project: 160hrs**

•ongoing coordination with Jacobs to collaborate/assist with all design elements including specifications & cost estimates for all custom elements, laser cut metal, paint, paving, formliners, LED lighting, sandblasting, etc.

**c. Define 2D & 3D Pattern Relief for for LS walls; light columns; column wraps: 160hrs**

•provide 3D visualizations for all pattern units: LS walls; sculpture bases;  
•paving patterns  
•provide preliminary 3D or 2D cutting files for all units: LS walls/sculpture bases/column wraps  
•(note: final files and test samples to be determined during fabrication with fabricator; artist to work closely with selected fabricators for all art elements)

**d. On Going Documentation / Reviews & Coordination / Airway: 160hrs**

•provide pattern key and pattern templates for all design elements  
•provide pattern maps for all elements: pictorial and numeric code  
•provide finish and color

**e. 100% plans: 40**

•final refinements

**C. Travel Allowance & Reimbursable Expenses During Design & CD's: \$20,000.00 (on receipt/as needed)**

a. Assume 10 trips @ 2,000.00 per trips

•includes trips to El Paso for coordination and review  
•includes trips to Dallas at Jacobs for 2-3 day, design workshops, as needed

**D. Construction CM: 64,800.00**

**Time Estimate: 12 months**

Note: more specific tasks and trips to be determined at the end of Final Design

Assume:  $480 \text{ hrs} @ 135.00 = 64,800.00$

a. Ongoing Shop Drawing & Digital Reviews for all artistic elements

b. Artist Aesthetic Oversight for Formliner Fabrication & Prototype Pours/Project

(for paving patterns, landscape walls, sculpture bases)

• Assume up to 4-6 Trips  
•Shop Drawing Review  
•On-going digital reviews of prototype & fabrication  
•Scope will be based on the final work accepted for implementation  
•Oversight for CNC cutting/on-site work

c. Artist Oversight for Laser Cut Patterns: Facades, Columns, Sculptures

•Assume 4-6 trips  
•Shop Drawing Review  
•On-going digital reviews of prototype & fabrication  
•Coordination & Participation as needed

- Oversight & on-site reviews for fencing, façade, pier and columnar sculpture mock-ups
- d. Oversight for Sidewalk and Paving Designs
  - color sample review
  - stamping review
  - sandblast review
- e. Oversight for LED Custom Lighting Applications
  - study mock-up
  - on-site mock-up for all custom lighting applications
- f. Oversight for Slope Paving & LS designs
  - as needed/TBD
- g. TBD (as needed; to be determined at the end of Final Design)

**E. Travel Allowance & Reimbursable Expenses During Construction: \$20,000.00 (on receipt/as needed)**

- a. Assume 10 trips @ 2,000.00 per trips
  - includes trips to El Paso for coordination and review
  - includes trips to Fabrication Sites

**II. GRAND TOTAL for Design Services & CM: \$283,000.00**

\*(1) Note: Hours may vary from phase to phase or from line to line for all line items, but the total hours are not to exceed the projected Contract amount without written approval from the Engineer and Client.