

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

**DEPARTMENT:** Museum and Cultural Affairs Dept.

**AGENDA DATE:** 07/14/2009

**CONTACT PERSON/PHONE:** Sean McGlynn 541-4896

**DISTRICT(S) AFFECTED:** 8

**SUBJECT:**

A resolution that the City Manager be authorized to sign a Service Agreement by and Between the City of El Paso and Son Arc, Inc. ("Artist"), to prepare the design, budget and construction documentation for the public art to be known as the Cleveland Square Park Public Art Project, in the amount of EIGHTY THOUSAND EIGHT HUNDRED FORTY FOUR AND NO/100 DOLLARS (\$80,844.00) and to sign contracts for the fabrication and installation to carry out the design provided pursuant to the attached contract for a total project cost, including the attached contract, of FIVE HUNDRED THOUSAND AND NO/1000 DOLLARS (\$500,000.00) as approved in the Public Art Plan on January 20, 2009. (District 8)

**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?

A public art project to be located at Cleveland Square Park to encourage the integration of art into the architecture of municipal parks for the City of El Paso. Son Arc, Inc. ("Artist"), has been selected and approved by the CAAB to create and integrate a public artwork in and around Cleveland Square Park.

**PRIOR COUNCIL ACTION**

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

Ordinance No. 16324 adopted on April 4, 2006 providing for art in municipal places, establishing the El Paso public art committee and describing its powers and duties, and establishing a means of funding acquisition or commissioning of art for municipal places and repealing ordinances 15245 and 15073.

**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?

Fund 27263  
Account # 508011  
Dept 99331119

**BOARD / COMMISSION ACTION:**

Enter appropriate comments or N/A

N/A

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

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_

(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## RESOLUTION

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

THAT the City Manager be authorized to sign the attached Service Agreement by and between the City of El Paso and Son Arc, Inc. ("Artist"), to prepare the design, budget and construction documentation for the public art to be known as the Cleveland Square Park Public Art Project in the amount of EIGHTY THOUSAND EIGHT HUNDRED FORTY FOUR AND NO/100 DOLLARS (\$80,844.00), and to sign contracts for the fabrication and installation to carry out the design provided pursuant to the attached contract for a total project cost, including the attached contract, of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) as approved in the Public Art Plans on November 14, 2006, November 27, 2007 and January 20, 2009.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2009.

CITY OF EL PASO

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

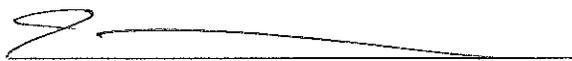
ATTEST:

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

APPROVED AS TO FORM:

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

APPROVED AS TO CONTENT:

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



## ARTICLE TWO Scope of Services

### 2.1 Artist's Obligations.

- 2.1.1 Artist shall perform all services ("Services") and furnish all supplies, materials and/or equipment as necessary for the design of the Artwork at the Site in accordance with the specified schedule and as further described hereinbelow and in EXHIBIT "B" including collaboration with the City Engineering Department, the City Parks and Recreation Department, the El Paso Public Library department and the Museums and Cultural Affairs Department (hereinafter "MCAD"). 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, design, dimensions and materials of the Artwork, subject to review and acceptance by the City, by and through "MCAD", the City Parks and Recreation Department, the El Paso Public Library department and the City Engineering Department 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 prepare the design concept and the corresponding budget described in Sections 2.3 and 2.4 of this Agreement. The design concept shall include a description of all materials and products utilized in the Artwork and the required routine care and upkeep involved, all required site preparations, all work that will need to be completed by any third parties that details the type of work and the cost for the same. The total budget for the Artwork must not exceed \$500,000.00, including the contract price herein.
- 2.1.4 At the discretion of the City, through MCAD, Artist shall attend public information meetings with the general public, attend design and construction coordination meetings with MCAD, the City Engineering Department, general contractor, landscape architect and other parties, as appropriate, to communicate about the Artwork and to ensure that the Artwork can be appropriately integrated and/or installed. Artist may participate in meetings by telephone.
- 2.1.5 Artist shall be available with reasonable advance notice for meetings, ceremonies and the like, as necessary.
- 2.1.6 Artist shall be responsible for compliance with all applicable laws and regulations, including but not limited to zoning or environmental regulations.

## **2.2 City's Obligations.**

- 2.2.1 The City shall be responsible for providing Artist, at no expense to the Artist, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data, if any, which is needed by Artist in order to perform.
- 2.2.2 The City shall inform Artist of any limitations, of which the City is aware, to the Artwork, during any stage of its design imposed by zoning or environmental laws and/or regulations.
- 2.2.3 MCAD shall be responsible for leading Artist through the required review process. MCAD shall be responsible for organizing and scheduling meetings with review entities, (PAC, CAAB, etc.) 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 Pre-Design concept is attached hereto as Exhibit "C". Within 90 days of the execution of this Agreement, Artist shall submit to MCAD the schematic design (the "Schematic Design") in the form of detailed color, drawings, models, and/or other documents as are required to present a meaningful representation of the Artwork. The Schematic Design also includes form, indication of the scale, and proposed materials, structural considerations, surface integrity, permanence, and protection against theft and vandalism. Artist shall investigate costs and prepare preliminary cost estimates related to the fabrication and installation of the Schematic Design and outline the proposed installation method, and schedule for fabrication and installation.
- 2.3.1.2 Within 30 days of receiving the Schematic Design, MCAD shall notify Artist whether City approves outright, with conditions, or rejects it. If the City disapproves or requires revisions to the Schematic 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 Schematic Design") within 30 days after the MCAD has notified Artist of the City's disapproval or requested revisions. Artist will not be paid an additional fee for the Revised Schematic Design. Once the Schematic Design is approved, City through MCAD shall give Artist written notice to proceed to the final design "Final Design."
- 2.3.1.3 Following the notice provided according to paragraph 2.3.1.1, Artist shall develop the design to prepare the Final Design for the Artwork, showing the details of the Artwork to include indication of form, scale, and proposed materials. The Final Design shall include the project name, information of structural considerations, surface integrity, permanence and protection against

theft and vandalism, a description of the method by which the Artwork is to be fabricated and installed, a description of any operational, maintenance and preservation requirements for the Artwork, a description of the placement of the Artwork at the Site and any site preparations that may be required by the City including, but not limited to, any changes or modifications to any utility system or structure of the Site as necessary. During the Artwork's design development phase, Artist shall also consult with the City Engineering Department, the City Parks and Recreation Department, the El Paso Public Library department and representatives of the community and consider their input and concerns.

2.3.1.4 The Final Design must provide sufficient detail to permit the City to assure compliance with applicable local, state or federal laws, ordinances and/or regulations. The Artist shall attach to the Design a detailed budget for the design, fabrication and installation of the Artwork, as described in EXHIBIT "D" of this Agreement. The budget must cover all costs related to the design, fabrication and installation of the Artwork, including itemized costs for materials, off-site fabrication costs, costs for labor of assistants, Artist's time for coordination, fabrication, supervision and installation, itemized estimated General Contractor and sub-contractor costs, permits or other fees, insurance, studio and operation expense, consultants' fees, communications, Artist's travel, transportation of the Artwork to site, itemized installation costs and any other estimated cost for the entire project

## **2.3.2 Approval**

2.3.2.1 Within 30 days after the Artist submits the Final Design, MCAD shall notify Artist whether it approves or disapproves of the Final Design. MCAD 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 Artwork to comply with any applicable laws, ordinances and/or regulations and other reasons including, but not limited to, ensuring the physical integrity of the Artwork or its installation at the Site. If agreed upon by both parties, such revisions will become a part of the accepted Final Design.

2.3.2.2 If the City disapproves of or requires 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") within 30 days after the MCAD has notified Artist of the City's 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 City's 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 it approves or disapproves of the Revised Final Design within ten (10) days after Artist submits the Revised Final Design.

2.3.2.4 If Artist refuses to revise the Final Design pursuant to Section 2.3.2.2, or if Artist fails to adequately revise the Final Design in the judgment of the City, through MCAD, 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, 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 all Designs, revised Designs and renderings thereof submitted hereunder.

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

2.3.3.1 Within 90 days of the City's acceptance of the Final Design or the Revised Final Design, Artist shall prepare structural drawings detailing every physical feature of the construction of the Artwork and its integration with the Site. These drawings and supplementary documents must 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 City's Development Services Department deems appropriate according to the City Code or Regulations, Artist shall present such drawings to the City's Engineering Department for review by an engineer and for certification that the Artwork will be of adequate structural integrity.

## **2.4 Budget, Construction Schedule and Progress Reports.**

### **2.4.1 Budget**

2.4.1.1 Artist shall prepare a budget that includes all goods, services and materials, with such costs itemized as outlined in Paragraph 2.3.1.4 above ("the Budget"). The Budget must be submitted to and approved by the City as part of the Design, and must be consistent with the budget outline attached to this Agreement as Exhibit "D". All costs, expenses of any kind and applicable taxes may not exceed \$500,000.00.

2.4.1.2 Calculation of the Budget will take into consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date.

2.4.1.3 Artist shall retain all original receipts pertaining directly to the design of the Artwork, and City will have the discretion to review those receipts.

2.4.1.4 Upon City's written request, Artist will make available the books and other records related to the Artwork in El Paso, Texas, for inspection by the City.

## **2.4.2 Schedule**

2.4.2.1 Artist shall notify MCAD of the tentative schedule for fabrication and installation of the Artwork, including a schedule for the submission of progress reports and inspections if any (the "Schedule"). MCAD will have the right to require any submitted schedule to be coordinated with the City Parks and Recreation Department. MCAD must approve the tentative schedule before it will take effect. The schedule may be amended by written agreement of both parties, which may require approval by City Council.

## **ARTICLE THREE Term and Termination**

**3.1 Term.** This Agreement will be in effect until December 31, 2010, 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 hereinbelow in Article 4, with the understanding that the final 25% of the contract price may be withheld unless 100% completion of the Artwork is provided by Artist and is accepted by the City. Should the City unilaterally terminate this Agreement, the City will retain the Design 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 EIGHTY THOUSAND EIGHT HUNDRED FOURTY-FOUR AND NO/100 DOLLARS (\$80,844,000.00). Artist shall be paid in accordance with the Payment Schedule described herein.

4.2 **Payment Schedule.**

4.2.1 Within thirty (30) City working days of receipt by MCAD of an itemized statement from the Artist to include but not be limited to the purchase of materials or labor, the City shall pay to Artist an amount not to exceed TWENTY ONE THOUSAND FIVE HUNDRED TWENTY TWO AND NO/100 DOLLARS (\$21,522.00), for the purchase of material or labor, for the Design phase of the project.

4.2.2 The City agrees to pay Artist an additional TWENTY ONE THOUSAND FIVE HUNDRED THIRTY SIX AND NO/100 DOLLARS (\$21,536.00), within thirty (30) City working days of the City's acceptance of the Artist's completed Design or Revised Design.

4.3.3 The City agrees to pay Artist an additional THIRTY-SEVEN THOUSAND SEVEN HUNDRED EIGHTY-SIX HUNDRED THIRTY SIX AND NO/100 DOLLARS (\$37,786.00) within thirty (30) City working days of the City's acceptance of the construction documents.

**ARTICLE FIVE**  
**Insurance and Indemnification Provisions**

5.1 **LIABILITY INSURANCE.** Artist shall provide public 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. Such insurance shall provide coverage for any alleged acts or omissions of the City, its agents, employees or independent contractors, alleged or asserted by any individual, in connection with the performance of this Agreement.

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 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.

- 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 the City, its officers, agents and employees, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ALL JUDGMENTS, SETTLEMENT AMOUNTS, ATTORNEYS' FEES, COURT COSTS AND EXPENSES INCURRED IN THE INVESTIGATION, HANDLING, DEFENSE AND LITIGATION OF ANY CLAIM OR SUIT, INCLUDING BUT NOT LIMITED TO ANY CLAIM OR SUIT) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON REGARDLESS OF THE MERITS OF OR OUTCOME OF SUCH CLAIM OR SUIT ARISING OUT OF OR RELATED TO THIS AGREEMENT. THIS INDEMNIFICATION PARAGRAPH SHALL APPLY EVEN WHERE SUCH BODILY OR PERSONAL INJURY, ILLNESS, LOSS OF SERVICES, PHYSICAL OR MENTAL IMPAIRMENT TO OR DEATH OF ANY PERSON, OR FOR DAMAGE OR DESTRUCTION TO ANY PROPERTY RESULTS FROM OR INVOLVES NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES. 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 every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Artist 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 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 shall pay all judgments in actions defended by Artist 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, 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 SEVEN Copyright

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

7.2 The City will have absolute, unrestricted rights incidental to its full ownership of the final artistic work to alter, change, modify, destroy, remove, move, replace, transport, or transfer in whole or in part, the final artistic work when the City deems necessary within its discretion in order to exercise the City's powers and responsibilities in regard to public works and improvements, in furtherance of the City's operations or for any other good cause. Should the City alter, change, modify or destroy the Artwork, the City will notify the Artist and the Artist will have the option to sever the Artist's association with the Artwork. The Artist may retain copyright and other intellectual property rights in and to the final design. For purposes of this Agreement, the parties agree that any advertisement of the Cleveland Square Park Public Art Project, or other public facility to which the Artwork may be moved in the future, which encourages the use of said facility or highlights its services, and includes any image of the Artwork, will not be considered to be a commercial purpose, as the facility serves a governmental function.

7.3 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 Artwork, through any activities of the City or any third party.

7.4 Artist agrees that it is selling, transferring and releasing to the City full and exclusive right to the project name: Cleveland Square Park Public Art Project. Artist further agrees to cease and desist from using the project name Cleveland Square Park Public Art Project for future commercial use. The City agrees that Artist may use the name Cleveland Square Park Public Art Project for historical reference and non-commercial purposes.

7.4.1 The non-commercial use of the Cleveland Square Park Public Art Project by Artist, including the name and reproduction of the images of the Artwork, will not require the prior written consent of the City. Non-commercial uses of the Artwork include, but are not limited to, publication of the Artwork in order to show Artist's body of work, or publication or reproduction of the name of the project or the Artwork in a pamphlet or brochure or other historical documentation for Artist's archival purposes. All other parties must request the City's consent to use the Cleveland Square Park Public Art Project name and/or reproduce the images of the assets.

7.4.2 The parties agree that the current project name "Cleveland Square Park Public Art" may change during the term of this Agreement. Said name change must occur in writing and be approved in accordance with the provisions of Section 2.3.2.1. A formal amendment to this Agreement will not be necessary, but the City Clerk's Office must have on file the agreed to name change. Should the name change from "Cleveland Square Park Public Art Project", all provisions of this Agreement related to the name "Cleveland

Square Park Public Art Project” will apply to the new project name, including, but not limited to, this Article Seven.

## **ARTICLE EIGHT**

### **General Administrative Provisions**

**8.1 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.

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

**8.3 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 8.3 cannot be waived.

**8.4 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.

**8.5 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.

**8.6 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.

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

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

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

**8.10 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: Son Arc, Inc.  
223 East Second St.  
New York, NY 10009

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

**8.11 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. Nothing herein may be construed as creating any personal liability on the part of any principal or agent of the City.

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

**8.13 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.

**8.14. 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.

*(SIGNATURES APPEAR ON FOLLOWING PAGE)*

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

CITY OF EL PASO

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

SON ARC, INC.:

By: Bill Bucher  
Printed Name: Bill Bucher  
Title: president

APPROVED AS TO FORM:

Kristen L. Choi  
Kristen L. Choi  
Assistant City Attorney

APPROVED AS TO CONTENT:

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

**EXHIBIT "A"**

*CLEVELAND SQUARE PARK PUBLIC ART PROJECT*

**LEGAL DESCRIPTION OF THE SITE**

19 MILLS  
ALL OF BLK & ALL OF BLK 8 OF  
HART  
(67600 SQ FT)

## EXHIBIT "B"

### CLEVELAND SQUARE PARK PUBLIC ART PROJECT

#### SCHEDULE

Artist shall perform work according to the following schedule:

-Schematic Design - 90 days from Effective Date of Agreement. (*Artist shall not commence Artist's Services until this Agreement is fully executed and City issues a notice to proceed with work.*)

-Final Design - 45 days after receiving MCAD's approval and MCAD's notice to proceed to Final Design according to paragraph 2.3.1.2.

-Construction Documents - 30 days after receiving MCAD's approval of the Final Design

## EXHIBIT "C"

### Pre-Design Concept

#### *CLEVELAND SQUARE PARK PUBLIC ART PROJECT*

Artists are to work with city officials and community to assist in the development of the design, budget and construction documents of their conceptual public art proposal attached hereto as selected by the Artist Selection Panel (ASP) for Cleveland Square Park. Factors to be addressed in design include the incorporation of the existing building façade, shade, color, light and interactive components.

SUN GARDEN / JARDÍN DEL SOL  
BILL AND MARY BUCHEN

**APPROACH**

Our concept for Cleveland Square celebrates El Paso's Sun City nickname by enhancing awareness of solar phenomena, music and nature.

We propose to create an engaging green space enlivened day and night. by interactivity, color and light. Visitors to the Square can enjoy a picnic, relax in the shade, explore solar projections, or play music and a game of chess in an exuberant garden environment.

The design accommodates open space for large special events and shaded spaces for small gatherings. By introducing activities for all ages, Cleveland Square functions as a vital destination and a green oasis for the community and city visitors in the cultural corridor.

Our proposal offers a comprehensive approach for artworks within the budget and additionally offers a schematic overview for making the entire Square solar efficient and providing additional shade structures.

**EL PASO RHYTHMS** is inspired by Aztec and global musical instruments. The sculptural music ensemble is comprised of a variety of hand drums and an earth drum played with the feet. Components include:

**huehuetl - we-wet**

**teponatzli - te-po-NAZT-li**

**ayoti - a-yo-t**

**AZTEC HUEHUET DRUM** was the 'king' or 'alpha' of Aztec musical instruments. The horizontal Teponatzli was the 'queen' or 'omega': They were usually played alongside each other. Both were believed, according to legend, to have been gods banished to earth in the form of drums. As such, they were sacred, and led the rhythms that formed a crucial part of all major Aztec ceremonies and festivals in the great central courtyard of Tenochtitlan. *Stainless steel*

**AZTEC TEPONATZLI DRUM** ('queen' or 'omega' horizontal log drum) is a horizontal log drum. Carvings on Teponatzlis were usually of sacred creatures and warriors. The H-shaped "tongues" cut into the top of the drum produce different notes. *Powder-coated steel*

**AYOT TURTLE DRUM:** based the Aztec instrument Ayotl (drum made from a turtle shell). This is a hemisphere with vibrating tongues similar to a log drum. Its form refers to the turtle common to Native American mythology. *Powder-coated steel*

**TALKING DRUMS** derive from the Afro-Cuban tradition of conga, quinto and tumba drums. They are the most famous drum trio in the Americas and each has a different tone. They are known as 'barrel' drums as their waist is larger than the head and base. *Stainless steel*

**DJEMBE DRUMS** are found primarily on the West Coast of Africa and are used in almost all African music. They are a 'wasted' drum as their middle is thinner than the head and base. *Stainless steel*

**SUN DRUMS:** inspired by frame drums from around the world. *Stainless*

**EARTH DRUM** is originally from Africa where a pit covered by a skin or leaf is played as a drum. Our stainless steel Earth Drum is anchored in the ground and played with the feet. Other forms of this drum are the Native American powwow drum which has the same shape.

### **SCHEMATIC PAVILIONS**

These are schematic studies for shade pavilions. Artist needs further design review to determine siting and feasibility within budget constraints.

**SOLAR WING SHADE PAVILION** is a gathering place for playing music or relaxing under a shady canopy.

Oriented directly south for optimum efficiency, solar panels mounted on the pavilion roof generate energy for nighttime illumination. Holographic glass incorporated in the panels not only increases efficiency, but also have an aesthetic quality whereby the prismatic effect reveals a light spectrum slicing through the pavilion in a direct north/south orientation.

Solar energy is converted to electrical energy through the use of holographic film. The solar panels are located in the vertical spine running between the two shade wings. Electricity is stored in batteries and used to light the pavilion at night.

**PALO VERDE PAVILION:** Palo Verde leaf patterns are used as a motif for a shade structure. Slats create shade while keeping the form light and elegant. Palo Verde and other indigenous leaf forms are laser cut into the roof casting shadows.

**STAR SHADE PAVILION** is an observatory charting the movement of the stars throughout the year. A star map of major constellations is drilled out of a 10'-12' domed dish. Degrees of magnitude are represented by varying sizes of holes. The North Star (Stella Polaris) is in the center of the star field. By standing on the appropriate month or season marked on the floor beneath the dome, the location of constellations of that season's sky will be easily read by gazing overhead. The sky as observed moves counter clockwise around the North Star in the night sky.

**SOLAR PROJECTIONS** introduce color, light and shadow as interactive media for tracking the sun's movement.

## Quetzalcoatl - Kweh-tsal-KO-at

**The Legend of Quetzalcóatl** Quetzalcóatl is the Aztec name for the Feathered-Serpent deity of ancient Mesoamerica, one of the main gods of many Mexican and northern Central American civilizations.

The long-tailed Quetzal of Mexico and Central America was associated by the ancient Maya and Aztecs with the plumed serpent god Quetzalcóatl. They used its magnificent tail feathers in religious ceremonies.

Interpreting the tail of Quetzalcóatl as an interactive, luminous artwork, a series of colored glass triangles are mounted at right angles to the **library wall**. When sunlit, they create a series of colored 'shadows' or reflections that shift and play across the library facade.

### *ITEM BELOW IS OMITTED*

*On the **history museum** facade, a semicircle of dichroic or colored glass 'feathers' casts shifting, colored reflections as the angle and direction of sunlight changes incrementally over the day. Colored glass is an architectural product with a laminate. Dichroic glass and its reflection are two different colors: for example, the glass panel appears blue but casts a green reflection. Dichroic is more expensive and cost analysis will determine how it is used.*

*These are the results of a sunlight/shadow study showing the time of day each building is lit and for how long throughout the year. There is ample sunlight for the project and often one artwork will receive sun when the other does not (with some overlapping).*

\*

At night, the glass on the library and museum facades is illuminated by lights powered by solar panels mounted on the roof.

## TREE OF DREAMS (EL ARBOL DE SUEÑOS)

Signature landmark sculptures identify processional gateways and strengthen the connection of walkway entrances, pathways and the theater/museum corridor along El Paso Street. They are designed to withstand El Paso weather conditions, including dust storms.

Flanking the walkway steps and ramp between the library and museum, Tree of Dreams frames a processional gateway between the two buildings. Colored glass vanes, wind bells and milagro icons suspended from stainless steel 'trees' generate a colorful, kinetic and musical experience when traversing the walkway.

Linked to other light projections on the facades, colored glass vanes cast colorful reflections on the paving while the wind bells chime a musical ambiance.

In collaboration with Roberto Salas (the El Paso artist who created the milagro 'sol' at Cleveland Square Park), we will develop a new language of contemporary icons based on themes of solar

energy, ecology, and natural resources. Icons are fabricated of laser cut stainless steel attached with marine grade stainless steel cable.

## **SCIENCE & MUSIC PLAZA (CHESS GARDEN)**

Components include:

The **BOOMERANG BENCH** is based on aeronautical forms (referring to flight and aviary gliding) and fabricated of stainless steel pipe and stainless perforated plate.

**CHESS TABLES & SEATS:** Fabricated of colored glass block with solar lights, concrete and chess board inlay

**STAR SPHERE:** Celestial globe depicting constellations over El Paso, Texas. Lit by utility light with 20,000 hour duty rating. Timer activated to turn on at night. Bulb is easily changed every 2-3 years. *Stainless steel*

## **GREEN SCHEME**

### **VINES FOR TRELLISES, WALLS & GREEN SCREENS**

There is a critical need for shade at the Square, but it will be some years before the existing trees offer sufficient shelter from the sun.

Fast-growing deciduous and evergreen vines provide substantial shade, visual screening, seasonal color and bloom within 2-3 years.

Green walls, green screens and trellises block undesirable views and enclose spaces to create garden rooms. Vines growing on trellises screen views of the parking lot and street behind the museum and enclose the Desert and Science Gardens.

Reading circle trellises frame a dramatic entry to the library and shade the seating areas. Climbing vines transform building facades into green walls with seasonal blooms and color changes. Some vines require trellis supports and others cling directly to walls without damaging building facades.

Adding more native plants and local stone to the landscaping intensifies and reinforces the Square's garden-like environment. In collaboration with a local landscape architect, we will develop a planting scheme for a lush green oasis throughout the Square. Open lawn spaces will be preserved to accommodate large public events.

Etched labels identifying botanical and common names in English and Spanish acquaint the public with native plant life.

- Vine selection developed in consultation with Cheryl Garing at the El Paso Desert Botanical Garden

Crossvine - *Bignonia capreolata*  
Virginia creeper - *Parthenocissus quinquefolia*  
Star Jasmine - *Trachelospermum jasminoides*  
Cat's Claw - *Macfadyena unguis-cati*  
Queens Wreath or Miquelito or Coralvine - *Antigonon leptopus*  
Primrose Jasmine.- *Jasminum mesnyi*  
Yellow Lady Banks Rose - *Rosa banksiae* 'Lutea'

## **SOLAR ENERGY**

**SOLAR LIGHT WANDS** are organic reed forms marking the entrances to the park. Fabricated from rolled and formed powder coated steel, they are tipped with solar 'buds' that glow at night. With a slightly different design, the length and tip of the wands could be a computerized LED system that changes color slowly throughout the evening.

**SOLAR TILES OR A GRID OF PROGRAMABLE LEDS** are attached to the facade of the existing entry sign. Glowing and changing color at night, they and the SOLAR LIGHT WANDS welcome evening park visitors. As an alternate, the sign could be a computerized LED system that gradually changes color throughout the night.

**SOLAR PANELS** mounted on the roof and on the sign will supply the electricity for the evening lights for the SOLAR PROJECTIONS on the Library and Museum, LIGHT WANDS and SOLAR SIGN.

If economically feasible, the existing plaza lights and landscape lights will be changed to commercially available solar models making the entire park 100% solar powered. They are covered by warranty and meet local and state lighting standards.

BECAUSE THE HISTORY MUSEUM GLASS WAS OMITTED FROM THE BUDGET, THE ARTISTS WILL REVIEW THE ITEMS BELOW AS POSSIBLE AREAS TO DEVELOP

## **DESERT GARDEN**

Visitors explore interaction while communicating through **TELEPHONE TUBES** interconnected underground in pairs. They hear the sound of their voices affected by the resonant frequency of the tubes when they whisper, sing or speak through the open ends. *Powder-coated steel*

**TURTLE DRUM:** based the Aztec instrument Ayotl (drum made from a turtle shell). This is a hemisphere with vibrating tongues similar to a log drum. Its form refers to the turtle common to Native American mythology. *Powder-coated steel*

Additional:

## **MUSIC PLAZA**

## **LASER CUT PAPEL PICADO STEEL FENCE PANELS**

The existing fence serves as an armature for colorful laser cut panels referencing papel picado designs

The **BOOMERANG BENCH** is based on aeronautical forms (referring to flight and aviary gliding) and fabricated of stainless steel pipe and stainless perforated plate.

**SLAPPED PIPES** are activated both by the public and by the wind. They consist of a radial configuration of vertical pipes tuned to a 2-octave five-note (pentatonic scale). When the open ends of the pipes are slapped with beach sandals or the flat of the hand, percussive tones of the scale are produced. The resonant frequency of the pipes can also be heard by listening at the open ends. Each pipe has a different harmonic frequency.

*Stainless steel*

**PARABOLIC BENCH:** In the acoustic space between two parabolic dishes, sounds are focused, reflected and then stopped with a wave of the hand. Participants discover principles of sound reflection when they hear their voices amplified between the two dishes. Available with a trapezoidal base or parabolic bench. *Stainless steel and concrete*

**TELEPHONE TUBES** interconnected underground in pairs. They hear the sound of their voices affected by the resonant frequency of the tubes when they whisper, sing or speak through the open ends. *Powder-coated steel*

**WORLD MAP:** Park visitors locate El Paso on a map and visit neighboring countries by strolling from continent to continent

**MOON PHASES FROM MIRRORED GLASS DISCS:** located on the museum wall facing the library

## **ARTISTS COMMENTS**

We realized from our site visit and meeting with the stakeholders that we could treat the entire park as the site for our artwork which allowed us to take a comprehensive approach to our design. We considered the programming activities for the park....the need for open green space to accommodate large special events, festivals and film projections....its strategic location as a green oasis in the cultural hub of downtown El Paso and the front yard of the history museum and library.

The square should be an inviting green destination where the community, families and visitors to the city are drawn again and again because the space is always changing: dynamic and engaging both day and night, a visual magnet to those who view it from the street and those who enter it. We envision an interactive space where visitors to the Square can enjoy a picnic, relax in the

shade, explore solar projections, play a game of chess or make music together in a verdant garden environment.

As members of New York City community gardens for over 20 years we've experienced the magnetic draw and aesthetic pleasure derived by visitors to lush green inner city spaces...and the effect they have on social interaction.

To define a sense of place specific to this park we propose to celebrate El Paso's nickname of Sun City by creating a Sun Garden - Jardin del Sol - a place for experiencing solar phenomena in the midst of a green oasis and a place to celebrate El Paso's cultural identity.

We wanted to provide 'tools' or vehicles for perceiving the sun's movement and reflective properties of light during the day, harvest its energy to illuminate the park at night and reveal its power to sustain nature.

Large expanses of blank beige building facades are opportunities to transform them into green walls and extend the green space vertically.

Vigorous and fast growing vines such as Virginia Creeper and Crossvine will cover the facades quickly by clinging to the surface. Virginia creeper is a vine native to the Americas, as is Crossvine, which has showy fragrant blooms in spring and summer.

Green screens and trellises block undesirable views and enclose spaces to create garden rooms. Fast-growing deciduous and evergreen vines provide substantial shade, visual screening, seasonal color and bloom within 2-3 years.

There is a critical need for shade at the Square, but it will be some years before the existing trees offer sufficient shelter from the sun. Reading circle trellises frame a dramatic entry to the library and shade the seating areas.

We heard at our meeting with the stakeholders that there was a great interest in playing chess at the library. Outdoor chess tables serve double duty for picnic or study.

**EXHIBIT "D"**

**BUDGET OUTLINE**

Artist's Fee (including all services under this contract)	_____
Consultation Fees (engineers, etc.)	_____
Materials, Supplies, and Fabrication	_____
Insurance	_____
Travel	_____
Transportation of Artwork	_____
Installation (labor, equipment rental, permits, landscaping, etc)	_____
Administrative Expenses (telephone, etc)	_____
Photographic Documentation (a CD file of the completed work)	_____
Plaque with attribution	_____
Pricing Contingency	_____
Other Expenses	_____

**TOTAL BUDGET      \$500,000.00**