

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

DEPARTMENT: Museums and Cultural Affairs

AGENDA DATE: October 9, 2012

CONTACT PERSON NAME AND PHONE NUMBER: Sean McGlynn, MCAD Director, 541-4896

DISTRICT(S) AFFECTED: District 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 Allbritton Lee, LLC, (artist) a Texas Limited Liability Corporation, for the design, fabrication and installation of an original piece of public art to be incorporated into the City's El Paso International Airport Consolidated Rental Car Facility Project, located at El Paso International Airport, 6701 Convair Road, El Paso, Texas, for an amount not to exceed Three Hundred Fifty Thousand and No/00 Dollars (\$350,000.00)

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 engage Allbritton Lee, LLC, (the "Artist") to design, fabricate and install an original piece of public art to be known as the EPIA Consolidated Rental Car Facility Public Art Project, to be incorporated into the City's El Paso International Airport Consolidated Rental Car Facility Project, located at the El Paso International Airport, 6701 Convair Road, El Paso County, Texas; Artist has been approved by the Public Art Committee and the Museums and Cultural Affairs Advisory Board as having the experience and expertise in outdoor public art and is qualified to provide the services required by the City.

PRIOR COUNCIL ACTION:

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

No

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?

62230-580160-PAP00590-3080
El Paso International Airport
Customer Facility Charge Fees (CFC)

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD: _____

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

Information copy to appropriate Deputy City Manager

RESOLUTION

WHEREAS, the City desires to engage Allbritton Lee, LLC, (the "Artist") to design, fabricate and install an original piece of public art to be known as the EPIA Consolidated Rental Car Facility Public Art Project, to be incorporated into the City's El Paso International Airport Consolidated Rental Car Facility Project, located at the El Paso International Airport, 6701 Convair Road, El Paso, El Paso County, Texas; and

WHEREAS, Artist has been approved by the Public Art Committee and the Museums and Cultural Affairs Advisory Board as having the experience and expertise in outdoor public art and is qualified to provide the services required by the City.

NOW THEREFORE, 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 and Allbritton Lee, LLC, a Texas Limited Liability Corporation, for the design, fabrication and installation of an original piece of public art to be incorporated into the City's El Paso International Airport Consolidated Rental Car Facility Project, located at El Paso International Airport, 6701 Convair Road, El Paso, Texas, for an amount not to exceed Three Hundred Fifty Thousand and No/00 Dollars (\$350,000.00).

ADOPTED THIS _____ **DAY OF** _____ **2012.**

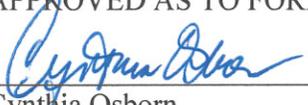
CITY OF EL PASO:

John F. Cook,
Mayor

ATTEST:

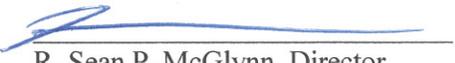
Richarda Duffy Momsen,
City Clerk

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT



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

STATE OF TEXAS)
)
COUNTY OF EL PASO)

SERVICE AGREEMENT

This Service Agreement, (the “Agreement”), is made this ____ day of _____, 2012, by and between the **CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, (the “City”) and **ALLBRITTON LEE, LLC** a Texas Limited Liability Corporation, (the “Artist”).

WHEREAS, the City desires to engage the Artist to design, fabricate and install an original piece of public art to be known as the EPIA Consolidated Rental Car Facility Public Art Project, (the “Artwork”) more specifically described in **Exhibit “A”**, said Artwork to be incorporated into the City’s El Paso International Airport Consolidated Rental Car Facility Project, (the “Project”), and located at the El Paso International Airport, 6701 Convair Road, El Paso, El Paso County, Texas (the “Site”); and

WHEREAS, Artist has been approved by the Public Art Committee (“PAC”) and the Museums and Cultural Affairs Advisory Board (“MCAAB”), as having the experience and expertise in outdoor public art and is qualified to provide the services required by the City.

NOW THEREFORE, and in consideration of the mutual promises contained in this Agreement and its attachments, the City and Artist agree as follows:

**ARTICLE I.
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 Allbritton Lee, LLC who possesses the skills to design, fabricate and install the Artwork.

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 shall 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 II.
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, fabrication and installation of an original piece of art which shall be incorporated into and become a part of the City's El Paso International Airport Consolidated Rental Car Facility construction project in accordance with the specified schedule and coordination with the Museums and Cultural Affairs Department ("MCAD"), the City's Engineering and Construction Management Department, the City's Design Consultant for the Project and the City's Contractor for the Project. 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 work with an Allied Artist, which is a local artist contracted and paid by the City of El Paso.
- 2.1.2 Artist shall determine the expression, design, dimensions and materials of the Artwork in coordination with the City's Design Consultant for the Project and pursuant to the design schedule set out in Design Consultant's Scope of Services which is attached hereto as **Exhibit "B"**. The Artwork is subject to review and acceptance by the City, by and through 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 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.
- 2.1.4 At the request of the City, Artist shall attend public information meetings with the general public, design coordination meetings with MCAD, Engineering and Construction Management Department and the City's Design Consultant for the Project and construction coordination meetings with MCAD, Engineering and Construction Management Department, and the City's Contractor for the Project, to communicate about the Artwork and to ensure appropriate integration and installation of the Artwork with the Project
- 2.1.5 Artist shall complete the fabrication of the Artwork as provided in Section 2.5 of this Agreement.
- 2.1.6 Artist shall secure any and all required licenses, permits and similar legal authorizations at Artist's expense as may be necessary for the installation of the Artwork at the Site.

- 2.1.7 Artist shall arrange the transportation and installation of the Artwork in consultation with MCAD, the Engineering and Construction Management Department and the City's Contractor for the Project. If Artist does not install the Artwork, Artist shall supervise and approve the installation.
- 2.1.8 Artist shall provide a list of all subcontractors along with a copy of the agreement between the Artist and each subcontractor, prior to each subcontractor commencing work on the Artwork. As described in Section 4.2.4, final payment from the City for the Artwork shall be contingent upon Artist providing to MCAD a copy of the release of lien from all subcontractors to ensure that full payment has been made by Artist to each subcontractor.
- 2.1.9 Artist shall provide photographic documentation of the Artwork upon completion of same as per Section 2.7.4.
- 2.1.10 Artist shall be available with reasonable advance notice for public meetings and ceremonies related to the Artwork.
- 2.1.11 Artist shall be responsible for compliance with all applicable laws and regulations, including but not limited to zoning or environmental regulations.
- 2.1.12 The Artist shall provide and install a plaque on or near the Artwork containing a credit to the Artist and in the following form: Artist's name, title of Artwork and date of installation. The plaque is subject to review and acceptance by MCAD.
- 2.1.13 Artist shall provide a warranty for the Artwork for one year from the date of final acceptance of the Artwork by the City.

2.2 City's Obligations

- 2.2.1 The City shall be responsible for providing Artist, at no expense to the Artist, copies of the design, drawings and reports for the Project as well as a list of permits as may be necessary for the installation of the Artwork at the Site.
- 2.2.2 The City shall inform Artist of any limitations to the Artwork, during any stage of its design, fabrication or installation at the Site, 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, including but not limited to, PAC, and for providing Artist written instructions for the materials required at such meetings.
- 2.2.4 The City shall be responsible for the construction and installation of any structural support, footing or base required for the installation of the Artwork.

2.3 Design

2.3.1 Concept/Schematic

- 2.3.1.1 Prior to and during the Design phase of the Artwork, Artist shall consult with representatives from the community and consider their input and concerns.
- 2.3.1.2 During the Design phase of the Artwork, Artist shall meet and coordinate with the City's Design Consultant for the Project. Artist shall follow the same schedule for the design of the Artwork as is required by the City's Design Consultant for the design of the Project, said schedule set forth in the Design Consultant's Scope of Services attached hereto as **Exhibit "B"**.
- 2.3.1.3. In accordance with Design Consultant's schedule for design of the Project, attached hereto as **Exhibit "B"**, Artist shall submit to MCAD for review and approval, a preliminary design, pre-final design and final design in the form of detailed color drawings, models, and/or other documents as are required to present a meaningful representation of the Artwork.
- 2.3.1.4 The Design shall include: the project name, a description of the method by which the Artwork is to be fabricated and installed; a description of any operational, maintenance and conservation 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 at the Site as necessary.
- 2.3.1.5 The Design shall provide sufficient detail to permit MCAD 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 "C"** of this Agreement.

2.3.2 Approval

- 2.3.2.1 Within 30 days after the Artist submits a preliminary design, pre-final design or final design, MCAD shall notify Artist whether it approves or disapproves of the Design. MCAD shall have discretion in approving outright or with conditions, or rejecting the Design. MCAD shall notify Artist of any revisions to the Design as 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 proper installation at the Site. If agreed upon by both parties, such revisions shall become a part of the accepted Design.

2.3.2.2 If MCAD disapproves of the Design, MCAD shall submit to Artist in writing the reasons for such disapproval. In such event, Artist shall submit a revised design (“Revised Design”) within 30 days after the MCAD has notified Artist of MCAD’s disapproval. Artist shall not be paid an additional fee for the Revised Design.

2.3.2.3 The Revised Design shall reflect changes made to address MCAD’s stated reasons for disapproval, as well as any adjustments in the budget or schedule that may be necessary. MCAD shall notify Artist in writing whether it approves or disapproves of the Revised Design within ten (10) days after Artist submits the Revised Design.

2.3.2.4 If Artist refuses to revise the Design pursuant to Section 2.3.2.2, or if Artist fails to adequately revise the Design in the judgment of MCAD, this Agreement shall terminate and the parties shall be under no further obligation to each other as of the date of such termination. The effective date of termination shall be the date MCAD submits its written disapproval of the Revised Design to Artist. MCAD shall submit to Artist a written termination notice with the disapproval. The termination notice shall advise Artist that this Agreement has been terminated pursuant to this Article. The termination notice shall 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 shall confirm that the Artist shall retain ownership of all Designs, revised Designs and renderings thereof submitted hereunder.

2.3.3 Final/Construction Documents

2.3.3.1 Within 30 days of MCAD’s acceptance of the final Design, Artist shall prepare structural drawings, a model or photographs detailing every physical feature of the construction of the Artwork and its integration with the Site, for review by the City’s Design Consultant for the Project to determine whether or not the Artist shall be required to retain a Structural Engineer. 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. If the Artwork is not associated with a City Construction Project, the Engineering and Construction Management Department shall review the Artist’s structural drawings to determine whether or not the Artist shall be required to retain a Structural Engineer.

2.3.3.2 When the City’s Design Consultant for the Project, or the Engineering and Construction Management Department determines that a structural engineer is necessary to certify the structural integrity of the Artwork, Artist shall present such drawings or materials to a qualified engineer, licensed by the State of Texas and paid for by Artist, for certification that the Artwork is of adequate

structural integrity and Artist shall provide MCAD with such certification, signed and stamped by the licensed engineer.

2.3.3.3 When determined necessary by MCAD, 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.

2.4 Budget, Construction Schedule and Progress Reports

2.4.1 Budget

2.4.1.1 Artist shall prepare a budget, which shall include all goods, services and materials, with such costs itemized ("the Budget"). The Budget shall be submitted to and approved by MCAD as part of the Design, and shall be consistent with the budget outline attached to this Agreement as **Exhibit "C"**. All costs, expenses of any kind and applicable taxes shall not exceed **THREE HUNDRED FIFTY THOUSAND FIVE HUNDRED AND NO/00 DOLLARS (\$350,000.00)**. Payment by City to Artist shall be pursuant to the payment schedule described in section 4.2 of this Agreement.

2.4.1.2 Calculation of the Budget shall 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 keep a log of Artist's project hours and shall retain all original receipts pertaining directly to the design, fabrication and installation of the Artwork.

2.4.1.4 If Artist incurs costs in excess of the amount listed in the budget, Artist shall pay such excess from Artist's own funds unless Artist previously obtained written approval from the City for such costs in advance of such expenditure. Without said prior approval for such costs from the City, Artist shall not be entitled to additional funds from the City.

2.4.1.5 Artist's financial records and other records related to the work required under this Agreement shall be made available by Artist in El Paso, Texas for inspection by the City upon the written request of the City. Artist shall retain said records, which shall be made available for inspection by the City, for a period of three (3) years from final acceptance of the Artwork by MCAD.

2.4.2 Schedule of Completion

2.4.2.1 Artist shall prepare and submit to MCAD a tentative schedule for the fabrication and installation of the Artwork, including a schedule for the submission of progress reports and inspections if any (the "Schedule").The

installation portion of the schedule shall be approved by the City's Contractor for the Project. MCAD shall approve the tentative schedule before it shall take effect. The schedule may be amended by written agreement of both parties. The schedule shall meet the criteria outlined in the schedule attached hereto as **Exhibit "D"**.

2.5 Fabrication Stage

- 2.5.1 Artist shall fabricate and install the Artwork in substantial conformity with the approved Design or the approved Revised Design. Artist may not deviate from the approved Design or Revised Design without written approval from MCAD.
- 2.5.2 Artist shall take reasonable measures to protect or preserve the integrity of the Artwork such as the application of protective or anti-graffiti coatings, unless waived by the City.
- 2.5.3 The City shall have the right to review the Artwork during the fabrication thereof upon verbal notice to Artist.
- 2.5.4 If MCAD, upon review of the Artwork, determines that the Artwork does not conform to the Design accepted by MCAD, MCAD shall be entitled to withhold subsequent payment installments until the Artwork is corrected and conforms to the Design that was accepted by MCAD. MCAD shall notify Artist in writing of the deficiencies and what payment installment or installments MCAD will withhold until the correction is completed and accepted by MCAD.
- 2.5.5 Within ten (10) days of the written deficiency notice described hereinabove, or during such timeframe as agreed upon by the parties, Artist shall promptly cure MCAD's objections and shall notify MCAD in writing of completion of the cure. MCAD shall promptly review the Artwork, and upon approval shall release the next payment installment that is due pursuant to Section 4.2 herein. If Artist disputes MCAD's determination that the Artwork does not conform, Artist shall promptly submit reasons in writing to MCAD within ten (10) days of the MCAD's prior notification to the contrary. MCAD shall make reasonable efforts to resolve the dispute with Artist in good faith. However, final determination as to whether Artist has complied with the terms of this Agreement shall remain with MCAD.
- 2.5.6 Artist shall notify MCAD in writing immediately once fabrication of the Artwork has been completed, and that the Artwork is ready for delivery and installation at the Site if the Artwork was fabricated off-site.
- 2.5.7 MCAD shall inspect the Artwork within ten (10) City workdays after receiving notification pursuant to Section 2.5.6 that the Artwork has been completed, to determine that the Artwork conforms to the approved Design and give final approval of the Artwork. MCAD shall not unreasonably withhold final approval of the fabricated Artwork. In the event that MCAD does withhold final approval, MCAD

shall submit the reasons for such disapproval in writing within ten (10) City workdays of examining the fabricated Artwork. Artist shall then have thirty (30) calendar days from the date of MCAD's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. Artist may submit photos as evidence that the necessary adjustments were made. Artist is responsible for any expenses incurred for modifications to the Artwork.

- 2.5.8 MCAD shall promptly notify Artist of any delays at the Site impacting installation of the Artwork. Artist shall be required to inspect the Site prior to the transportation and installation of the Artwork and shall notify MCAD of any adverse Site conditions that shall impact the installation of the Artwork which are in need of correction. Any additional storage fees incurred as a result of delays caused by the City, third parties or the Artist are the responsibility of the Artist. Artist shall be entitled to additional time to perform this Agreement due to delays caused by the City but shall not be entitled to additional compensation for such delays.

2.6 Changes to Design

- 2.6.1 Prior to the execution of any change in the approved design, Artist shall present proposed changes in writing to MCAD for further review and approval. Artist shall provide a detailed description of any significant changes in the artistic expression, design, dimensions and materials of the Artwork that is not in substantial conformity with the already approved Design. Such notice shall also include a detailed description of any additional costs that may be incurred or changes in the Budget. A significant change is any change that materially affects installation, scheduling, site preparation or maintenance.
- 2.6.2 If MCAD approves the changes, MCAD shall promptly notify Artist in writing. MCAD shall also make the required presentations to the PAAC and the CAAB. If MCAD disapproves of the changes, MCAD shall promptly notify Artist in writing and Artist shall continue to fabricate the Artwork in substantial conformity with the previously approved Design.

2.7 Installation

- 2.7.1 Upon MCAD's final approval of the fabricated Artwork as being in conformity with the Design, Artist shall deliver and install the completed Artwork to the Site in accordance with the schedule provided pursuant to Section 2.4. Transportation fees shall be paid by Artist.
- 2.7.2 Artist is responsible for timely installation of the Artwork. Artist shall confer and coordinate closely with MCAD, the Engineering and Construction Management Department and the City's Contractor for the Project to ensure timely coordination for installation of the Artwork. Artist shall coordinate with MCAD, the Engineering and Construction Management Department and the City's Contractor for the Project to ascertain that the Site is prepared to receive the Artwork. Artist shall notify MCAD

and the Engineering and Construction Management Department of any adverse conditions at the Site that would affect or impede the installation of the Artwork. Artist may not install the Artwork until authorized to do so by MCAD and the Construction and Engineering Department.

Artist shall avoid creating nuisance conditions arising out of Artist's operations on Site. Prior to requesting authorization to transport and install the Artwork, Artist shall be required to provide MCAD and the City's Contractor for the Project a list of all workers or subcontractors and equipment to be used along with the hours of operation and the scope of work to be performed on the Site. All additional workers or subcontractors shall provide proof of insurance prior to entering the Site or shall be insured under the insurance required of Artist pursuant to this Agreement.

- 2.7.3 Artist shall be present on Site to supervise the installation of the Artwork. Artist shall not interfere with the City's periodic site visits to verify the percent completion.
- 2.7.4 Within fifteen (15) city workdays after installation of the Artwork, Artist shall furnish MCAD the following photographs of the Artwork as installed: A set of three digital, 300 dpi, JPG files, of the Artwork, provided to MCAD on a CD ROM. Photographs shall be labeled with the name of the Artwork, the date upon which the photograph was taken, and the viewpoint from which the photograph was taken. Artist shall also furnish MCAD with a full written narrative description of the Artwork.
- 2.7.5 Within fifteen (15) calendar days after completion of the installation of the Artwork, Artist shall also provide MCAD with written instructions for the appropriate maintenance and preservation of the Artwork along with product data sheets for any material or finish used. The Artwork shall be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Artist shall ensure that all maintenance requirements shall be reasonable in terms of time and expense. The City is responsible for the proper care and maintenance of the Artwork.

2.8 Approval and Acceptance

- 2.8.1 The Artist shall notify MCAD in writing when the Services have been completed in substantial conformity with the approved Design.
- 2.8.2 MCAD shall notify Artist of its final acceptance of the Artwork within thirty (30) calendar days after Artist submits written notice pursuant to Section 2.8.1 above. The effective date of final acceptance shall be the date MCAD submits written notice to Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that the City acknowledges completion of the Artwork in substantial conformity with the approved Design, and that the City confirms that all services as required by both parties to this Agreement have been completed. Title to the Artwork

passes to the City upon final acceptance by the City and final payment by the City to Artist.

- 2.8.3 If MCAD disputes that all the Services have been performed, MCAD shall notify Artist in writing of those services that Artist has failed to perform. MCAD's notice shall be given within thirty (30) calendar days after Artist submits written notice pursuant to Section 2.8.1 that Services have been completed. MCAD shall make reasonable efforts to resolve the dispute with Artist in good faith. However, final determination as to whether all Services have been performed shall remain with MCAD.
- 2.8.4 If Artist disputes MCAD's determination that not all Services have been performed, the Artist shall submit reasons in writing to MCAD within ten (10) calendar days of MCAD's prior notification to the contrary. MCAD shall make reasonable efforts to resolve the dispute with Artist in good faith. However, final determination as to whether all Services have been performed shall remain with MCAD.
- 2.8.5 Upon the resolution of any disputes that arise under paragraphs 2.8.3 and 2.8.4 of this section, MCAD shall notify Artist of its final acceptance of the Artwork pursuant to paragraph 2.8.2.
- 2.86 After final acceptance of the Artwork, Artist shall be available at such time(s) as may be mutually agreed upon by MCAD and Artist to attend any public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to the dedication of the Artwork.
- 2.8.6.1 During such public presentations by Artist, Artist shall acknowledge the City's role in funding the Artwork.
- 2.8.6.2 MCAD shall be responsible for coordinating public information materials and activities related to public presentations.

ARTICLE III. TERM AND TERMINATION

3.1 Term. The services called for by this Agreement shall begin upon the issuance of a Notice to Proceed from MCAD and shall continue through the completion of the construction of the Project, including any required extensions beyond the contract time for construction of the Project, as may be directed by the City. However, should the Artist's services be suspended for a period longer than one year, the City and Artist may renegotiate remaining fees due to changes in salaries or increased costs that may occur during the suspension period. The expected completion date for the Project is by the end of 2015.

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 shall be entitled to

compensation for Services completed and accepted by the City in accordance with the Payment Schedule as described in Article IV.

3.3 Termination by Mutual Consent. The parties may terminate the Agreement by mutual consent upon such terms as they may agree in writing. Artist shall be entitled to payment only for work completed and accepted by the City up to the time of termination by mutual consent.

3.4 Time of Performance– Force Majeure. The Services shall be undertaken and completed as appropriate to carry out the purposes of this Agreement. Except as otherwise provided, neither Artist nor the City shall 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 shall 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.

ARTICLE IV FEES AND EXPENSES

4.1 Fee. Artist agrees to perform the Services contemplated hereunder for a total fee not to exceed **THREE HUNDRED FIFTY THOUSAND FIVE HUNDRED AND NO/00 DOLLARS (\$350,000.00)**, payable to artist in accordance with the Payment Schedule described as follows.

4.2 Payment Schedule.

- 4.2.1 Within thirty (30) City working days of receipt by MCAD of an estimated statement from the Artist for the purchase of materials and supplies and for labor the City shall pay to Artist an amount not to exceed **SEVENTY THOUSAND AND NO/00 DOLLARS (\$70,000.00)**, representing 20% of the total cost of the project.
- 4.2.2 The City agrees to pay Artist an additional **ONE HUNDRED TWENTY TWO THOUSAND FIVE HUNDRED (\$122,500.00)**, which represents 35% of the total cost, within thirty (30) City working days of MCAD’s acceptance of the Artist’s completed Design or Revised Design.
- 4.2.3 The City agrees to pay Artist an additional **ONE HUNDRED FIVE THOUSAND AND NO/00 DOLLARS (\$105,000.00)**, which represents 30% of the total cost, within thirty (30) City working days of receipt by MCAD of an itemized statement from Artist for the completion of 50% of the fabrication of the Artwork, subject to MCAD’s acceptance of that percent completion of the Artwork and said Services.
- 4.2.4 The City agrees to pay Artist an additional **FIFTY TWO THOUSAND FIVE HUNDRED AND NO/00 DOLLARS (\$52,500.00)**, which represents 15% of the total cost, within thirty (30) City working days of receipt by MCAD of an itemized statement from Artist for the completion of 100% of the Services, including but not limited to, installation, and subject to a positive inspection and acceptance by MCAD of the

Artwork and said Services. In Addition, Artist shall provide MCAD with all releases of lien required in paragraph 2.1.8 of this Agreement before final payment is made under this paragraph.

ARTICLE V. INSURANCE AND INDEMNIFICATION

INSURANCE AND INDEMNIFICATION PROVISIONS. Artist agrees to provide the following as a condition of the Agreement:

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 One Million and No/100 Dollars (\$1,000,000.00) per person, and Two Million and No/100 Dollars (\$2,000,000.00) 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 Million and No/100Dollars (\$1,000,000.00) 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 Artist, 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 shall defend against all claims and lawsuits which arise and shall 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 shall be provided by the Artist until Artist files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, the City Attorney's Office, and MCAD. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City. Failure to keep the policy in full force and effect throughout the Term of this Agreement shall be grounds for cancellation of this Agreement.

5.2 INDEMNITY. As a condition of this Agreement, Artist or its insurer shall **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 shall 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 VI REPAIRS

6.1 Artist shall be given the right of first-refusal on repair contracts with fair-market remuneration, regardless of whether such repair contract is entered into during the term of the present Agreement or subsequent to this Agreement's termination, unless otherwise provided by the laws of the State of Texas.

ARTICLE SEVEN COPYRIGHT

7.1 The City shall have absolute, unrestricted rights incidental to its full ownership of the final artistic work to alter, change, modify, destroy, sell, 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. The Artist shall grant to the City a perpetual, irrevocable license to graphically depict or display the final artistic work for any non-commercial purpose whatsoever.

7.2 The City acknowledges that Artist is retaining the copyright and other intellectual property rights in and to the final design and the final artistic work itself. Artist shall be responsible for registering with the United States Register of Copyrights, a copyright in the Artwork in the Artist's

name, at Artist's expense. The City shall 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.

7.3 Artist agrees that it is selling, transferring and releasing to the City full and exclusive right to an original piece of art. Artist agrees to cease and desist from reproducing the Artwork or using the project name "EPIA Consolidated Rental Car Facility Public Art Project" for future commercial use. The City agrees that Artist may use the name "EPIA Consolidated Rental Car Facility Public Art Project" for historical reference and non-commercial purposes.

7.3.1 The non-commercial use of "EPIA Consolidated Rental Car Facility Public Art Project", including the name and reproduction of the images of the Artwork by Artist, shall 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 shall request the City's consent to use the "EPIA Consolidated Rental Car Facility Public Art Project" name and/or reproduce the images of the Assets.

7.3.2 The parties agree that the Artist may rename the Artwork during the term of this Agreement. Said name change shall occur in writing and be approved by both parties. A formal amendment to this Agreement shall not be necessary, but the City Clerk's Office shall have on file the agreed to name change. Should the name change from "EPIA Consolidated Rental Car Facility Public Art Project", all provisions of this Agreement related to the name "EPIA Consolidated Rental Car Facility Public Art Project" shall apply to the new project name, including but not limited to, this Article VII.

ARTICLE VIII. 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 shall not be obligated or liable hereunder to any person other than Artist.

8.3 Waiver/Modification of Agreement. No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless provided as a written amendment hereto signed and approved as provided herein. No evidence of any waiver or modification shall 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 shall 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 shall 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 shall 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

CITY: City of El Paso
Engineering and Construction Management Department
2 Civic Center Plaza, 4th Floor
El Paso, Texas 79901-1196

ARTIST: Allbritton Lee, LLC
3946 Roseland Street
Houston, TX 77006

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 shall 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 written consent of the other. Nothing herein shall 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 shall 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 warrants that he/she has the authority to do so and to bind the party for which he/she has 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 shall be bound by those terms.

8.15. Effective date. The Effective Date of this Agreement is the date signed by the City Manager.

WITNESSTHE FOLLOWING SIGNATURES:

CITY OF EL PASO

Joyce A. Wilson
City Manager

Date: _____

ARTIST:

Artist

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Cynthia Osborn
Assistant City Attorney

Sean P. McGlynn, Director
Museums and Cultural Affairs Department

Exhibit A

Artist shall determine the expression, design, dimensions and materials of the Artwork in coordination with the City's Design Consultant for the Project. Artist shall prepare the design concept and the corresponding budget described in Sections 2.3 and 2.4 of this Agreement

**EXHIBIT “B”
ARTIST’S DESIGN SCHEDULE**

**DESIGN CONSULTANT’S
PROJECT SCOPE**

TITLE: EPIA Consolidated Rental Car Facility

LOCATION: El Paso International Airport, El Paso, Texas

CONSTRUCTION BUDGET: \$30,000,000

INTRODUCTION:

The City of El Paso (the “City”) is requesting Qualifications from interested firms qualified to provide comprehensive professional architectural and engineering consulting services for the planning and design of a Consolidated Rental Car Facility and related infrastructure at the El Paso International Airport (the “Airport”).

BACKGROUND/PROJECT DESCRIPTION:

The City is proposing the development of a Consolidated Rental Car (“ConRAC”) Facility at the Airport in an area west of the Passenger Terminal. The ConRAC Facility will consist of a 3-level ready/return vehicle parking structure containing approximately 650-700 dedicated parking stalls; an at-grade quick-turnaround facility (“QTA”) consisting of vehicle fueling, cleaning and washing facilities; a facility for vehicle (minor) maintenance; and an overflow vehicle storage area as well as an area for loading and unloading vehicles. The preferred concept encompassing all these project elements has already been identified and approved by the City and the rental car industry (

The design shall meet Smart Growth design principles and Congress for the New Urbanism (CNU) guidelines, including pedestrian facilities.

The consultant shall incorporate LEED design guidelines and the Project must be LEED Silver certified.

Delivery of the Project is expected to follow a design/bid/build methodology.

MINIMUM QUALIFICATIONS:

Interested firms must be capable of providing full and comprehensive services from planning through construction administration. Primary architectural/engineering firms with experience in designing consolidated rental car facilities are encouraged to participate. The A/E consultant team must have airport rental car facility planning and design experience related to rental car operations and recent consolidated rental car facility design experience including at least one project, with a minimum project cost of \$10 million, within the last five (5) years.

1.0 SCOPE OF SERVICES:

Consultant will evaluate previously prepared studies to support the proposed Project and will advance the definition of the Project through planning and design. Consultant will provide the Airport with a full range of professional services, including:

1.1 Programming/Facility Requirements/Concept:

Consultant must develop spatial and other requirements for the Project, including the project functions listed below. Consultant is required to review and validate the previously developed demand levels for the prescribed planning horizons.

- Ready/Return Area
- QTA Area
- Fueling Facilities/Common Fueling System
- Vehicle loading and unloading area
- Vehicle Storage
- Light Vehicle Maintenance Area
- Ground Access/Roadways
- Environmental Considerations
- Sustainability
- Utility Demand
- Accessibility
- Landscaping

In addition, consultant shall develop three (3) architectural/landscape concepts in conjunction with the City's artist for review and comment along with preliminary cost estimates. After receipt of comments from the City, consultant shall prepare one (1) final concept for approval.

1.2 Existing Conditions Investigation:

Consultant shall perform existing conditions investigations including but not limited to: geotechnical, utility coordination, drainage, and irrigation that are deemed necessary by the City's Engineering Department in order to complete the design and the project construction.

1.3 Design:

The design shall meet all City requirements for the Project and shall be performed in phases as presented in Section 5.0 Project Schedule, below.

The consultant shall comply with the City's Design Standards for Construction and Grading Ordinance.

The consultant shall perform design analysis to ensure public safety. All design analysis must comply with all applicable City, County, State, and Federal laws and regulations.

1.4 Bidding & Construction:

During the bidding process, the consultant shall assist the City with the following, including, but not limited to: determining bid period and date, responding to all questions from perspective bidders, attending a pre-bid conference, preparing addenda, evaluating bids, and providing recommendations concerning the acceptability of subcontractors. The bids shall be advertised a unit price contract and selection shall be a “low bid” selection.

During the construction phase, the consultant shall assist the City, on a time and materials basis, with the following, including but not limited to: attending progress meetings, responding to questions from the contractor, providing advice and recommendations to the City, performing site visits, reviewing contractor submittals, reviewing applications for payment, publishing a “punch list”, issuing a “Certificate of Substantial Completion”, and producing a set of reproducible (24”X36”) “as-built” drawings.

1.5 Soils Investigation:

Consultant shall provide a subsurface soil investigation study for the Project. Log boring information can be shown on construction documents with appropriate notes and disclaimers that will minimize change orders.

1.6 Project Cost Estimates:

Consultant shall develop comprehensive Project cost estimates for each phase of design (i.e. preliminary, pre-final, and final), including, but not limited to:

- Site development
- Buildings and structures
- Off-site infrastructure and utilities
- Tenant improvements/equipment

1.7 ADA Compliance and Requirements

The consultant’s team shall include an ADA sub-consultant certified to perform plan review and inspections for ADA, T.A.S, and Texas Department of Licensing and Regulation requirements.

1.8 Surveys

Consultant shall provide all topographic, horizontal surveys and boundary surveys.

1.9 Environmental Issues

The City will employ an independent consultant for any environmental studies required for the Project. The consultant shall not be responsible to provide asbestos, lead, mold, and other environmental surveys and/or studies. The consultant shall be responsible to coordinate its design

efforts with the City consultant responsible to prepare environmental studies.

1.10 Building Permits, Special Permits, and Other Land Use Permits

The consultant shall be responsible to comply with all local, state, and federal building codes. The consultant shall be responsible to obtain approval from the Engineering and Construction Management Department, Building Permits & Inspections Division before 100% construction documents are submitted for bid advertisement. It shall be the responsibility of the consultant to follow up and track the review and approval process with the Engineering and Construction Management Department Building Permits & Inspections Division.

1.11 Storm Water Pollution Prevention Plan

The consultant shall prepare and provide a storm water pollution prevention plan. The storm water pollution prevention plan shall be submitted to the City Development Services Department for review and approval.

1.12 Utility Coordination

Consultant shall be responsible to coordinate design efforts with all affected utility companies. The purpose is to minimize utility relocation without compromising design standards. The consultant shall be responsible to obtain all available horizontal and vertical information on utility lines, valves, covers, manholes, etc. from the different utility companies during the preliminary design phase. These existing utility structures shall be shown on the preliminary design plan submittal. The consultant shall meet with all affected utility companies to discuss the proposed project design. Based on these coordination meetings and correspondence that is sent between both the consultant and utility companies, the need and extent of relocation shall be determined. If a dispute arises, the consultant shall immediately set up a meeting between the City's Project Manager and the utility company to resolve the dispute. The consultant, on behalf of the City, shall request from all utility companies that they relocate all lines that conflict with new improvements. However, each utility company can request that the City include as part of the bid package the relocation of their utility lines provided that the utility company signs an agreement with the City and provides adequate funding. The consultant shall coordinate this effort with the utility companies and advise them of the City's policy to minimize pavement cuts on new development. All correspondence and meeting minutes shall be submitted to the City when each phase is due. Construction documents shall clearly show all existing and proposed utility lines and utility company contacts. All documents and coordination efforts by the consultant shall be completed by or before the final design phase due date. The consultant

shall submit all utility clearance letters from each of utility company by or before the Project is advertised for bid.

1.13 Design Guidelines

The consultant shall develop Design Guidelines to be used in the Preliminary Design, Pre-Final Design, Final Design, and Construction Documents Phases of the Project. Design Guidelines must address, and not be limited to:

- Design objectives
- Site considerations
- Building systems
- Sustainable design
- Codes/Ordinances and other regulations
- Security

1.15 Traffic and Pedestrian Control Plan

The consultant shall be responsible to prepare traffic and pedestrian control plans for City owned right of way. The consultant shall provide and produce any special specifications that shall specify general requirements for the traffic and pedestrian control plan. A requirement shall be that traffic and pedestrian control plan shall comply with national, state, and local codes and approval from the City Department of Transportation Traffic Engineering Division is required.

1.16 Construction Sequencing Plan

The consultant shall be responsible to prepare a construction sequencing plan and include it for review with all design phase submittals.

1.17 Construction Schedule

The consultant shall meet with City's Project Manager and Construction Manager to determine the construction schedule for each phase, order of work, and which phases will be carried out concurrently. The meeting shall be held after pre-final plans are submitted, but before Final Design Notice to Proceed is issued. The information will allow consultant to prepare a cost estimate at the final design phase submittal.

1.18 Public Art Program

Consultant shall participate in the City's (separate) selection process for an artist in accordance with the City's Public Art Program guidelines for the Facility. The Consultant's team for this RFQ shall not include an artist. The consultant shall incorporate the selected artist into the design team to enable the corroboration and incorporation of artwork into the project design.

2.0 PRODUCTS REQUIRED:

2.1 Drawings:

A. Report: Concept/Program/Design Guidelines

During the report phase, the consultant shall provide a various timelines the programming requirements, Design Guidelines and Architectural Concepts as required above. All documents shall be provided in pdf format plus full rendering of the selected concept from 3 different points of view in 24x36 prints.

B. Preliminary Design:

Upon the completion of the preliminary design phase, the consultant shall submit ten (10) copies of the preliminary design documents and cost estimates for approval. If the City does not approve the preliminary design documents, the consultant shall furnish five (5) copies of the resubmitted design documents.

C. Pre-Final Design:

Upon the completion of pre-final design phase, the consultant shall submit ten (10) copies of the pre-final design phase documents and cost estimates. If the City does not approve the pre-final design documents, the consultant shall submit five (5) copies of the resubmitted pre-final design documents. Additionally, the designer should submit three (3) copies of the specifications and three (3) copies of the design analysis.

D. Final Design:

Upon the completion of final design phase, the consultant shall submit ten (10) copies of final design documents, specifications and cost estimates to the City for review. After the review, the consultant shall submit to the City three (3) copies of the final revised design documents and specifications for final check. Upon the approval of the final design documents, the consultant shall furnish thirty (30) copies of the final design documents and specifications for bidding to the City.

2.2 Specifications:

All specifications must include type of materials listed in the construction drawings, placement method and quality control and quality assurance testing. The specification shall correlate with unit price format. All specifications must comply with established specification standards and formats.

2.3 Cost Estimates:

The consultant shall develop and submit construction cost estimates from time to time including during each phase of design (i.e. preliminary, pre-final, and final). Consultant's final construction cost estimate is expected to be within ten percent (10%) of the bid for base bid item expected from the lowest responsible bidder. The final estimate shall take into account

all labor costs based on the current City of El Paso prevailing wage rates as adopted by the City Council.

2.4 Design Analysis:

Design analysis shall include all engineering calculations for review by the City, governmental authorities who may have jurisdiction over each construction contract, and public utilities.

2.5 Reproduction

The City will provide a Purchase Order for the reproduction of all submittals. The consultant shall be responsible to coordinate all printing for the different phases and for code review requirements. For bidding, consultant shall be responsible for coordinating the printing of the El Paso Water Utilities improvements and include them in construction drawing bidding sets.

2.6 Bidding

The consultant shall be responsible to answer all questions presented by bidders, attend the pre-bid conference, participate in low bid process procurement, evaluate bidders, provide bid analysis, provide bid recommendation, and be present during City Council meetings to answer questions about the City's bid recommendation. The consultant shall be responsible to prepare bid addendums.

2.7 Construction Observation Services

These services will be procured and rendered on a time and materials basis. The following are some of the construction services that may be required from the consultant: Be present to answer questions at the pre-construction meeting; review, reject and/or approve submittals and shop drawings; provide written answers to requests for information (RFI's); review and sign off on change orders; perform site visits and provide written observation reports to the City; participate on the punch list walk through; assure that the ADA sub-consultant performs inspections by or before punch list walk through; sign-off on construction closeout documents. Consultant will not provide inspection services. The consultant shall provide hard copies, and electronic format CDs (in both CAD and PDF file formats) of the as-built plans, which include specifications and all attachments.

3.0 GENERAL REQUIREMENTS AND CRITERIA:

3.1 Design must meet all applicable City Codes and Ordinances.

3.2 Design must comply with Engineering & Construction Management Department Guidelines.

3.3 Design must comply with all local, state and federal laws and regulations, including, but not limited to the Americans with Disabilities Act.

3.4 The consultant shall submit all redlines to the City when plan submittals are due.

4.0 OTHER CONSIDERATIONS:

4.1 Work to be coordinated with the Airport, Engineering & Construction Management Department, City Department of Transportation's Streets Operations Division and Traffic Engineering Division, Mass Transit Department (Sun Metro), City Information Technology Department, Texas Department of Transportation (TXDOT), El Paso Water Utilities (EPWU), El Paso Water District and all affected stakeholders.

4.2 Design shall follow City of El Paso Information Technology Department requirements for computer and telephone systems, if applicable.

5.0 PROJECT SCHEDULE:

Report Phase: 45 Calendar Days

Preliminary Design Phase: 75 calendar days

Pre-Final Design Phase: 90 calendar days

Final Design Phase: 90 calendar days

EXHIBIT "C"

EPIA CONSOLIDATED RENTAL CAR FACILITY PUBLIC ART PROJECT BUDGET OUTLINE

Basic Items to Include in a Public Art Commission Budget

1. Artist's fee - a value assigned to the idea and design
2. Labor
 - * artist's time (research, travel, meetings, community involvement activities, fabrication, installation, educational programming, documentation, etc.)
 - * assistants/other labor for research, model making, fabrication, etc.
3. Consultants/Other People-Related Costs
 - * structural engineer, other specialists like electrical engineers, lighting designers or plumbers
 - * architects/landscape architects
 - * historians, sociologists, urban anthropologists, etc.
 - * lawyer
 - * photographer
 - * fabricator
4. Travel
 - * airfare or automobile mileage
 - * car rental
 - * hotels
 - * meals
 - * other
5. Transportation
 - * shipping of materials to fabrication site
 - * shipping of work to installation site
6. Materials
 7. Site Preparation (may be covered through the commissioning body, pay attention to contract)
 - * cleanup/removal
 - * electrical or irrigation preparation
 - * site survey (could include test drilling, GPS mapping, electronic detection)
 - * grading/landscaping
8. Installation Needs/Equipment
 - * rental of lifts, scaffolding, special equipment/materials etc.
 - * truck rental
 - * traffic barriers/off-duty police
 - * storage rental
 - * permits
 - * lighting
9. Office/Studio Expenses
 - * rental, phone/fax/, utilities, supplies
10. Insurance

- * loss/theft/damage coverage to protect the supplies and fabricated parts prior to shipping
- * loss/theft/damage coverage during shipping (Inland Marine)
- * general liability for self, subcontractors and assistants
- * workers' compensation for assistants
- * automobile and any special insurance riders

11. Contingency (10-20%)

12. Maintenance/repair costs until transfer of ownership takes place (per contract)

TOTAL BUDGET

Not to exceed \$350,000.00

EXHIBIT “D”

SCHEDULE

Artist shall perform work according to the following schedule:

Artist shall not commence Artist’s Services until this Agreement is fully executed and City issues a notice to proceed with work.

-Design Phase – In coordination with City’s Design Consultant for the Project and pursuant to the design schedule set forth in Design Consultant’s Scope of Services which is attached as Exhibit “B”.

-Construction Documents – 30 days after receiving notification of the MCAD’s approval of the Design and MCAD's notice to proceed to Final Design and Construction Documents.

-Fabrication – 60 days after receiving MCAD’s approval of the Final Design and MCAD's notice to proceed to Fabrication.

-Delivery and Installation - 30 days after receiving MCAD’s final approval of the fabricated Artwork, as being in conformity with the approved Design.

Consolidated Rental Car Facility Public Art Project

City of El Paso Museums and Cultural Affairs Dept.
Public Art Program

**NORMAN LEE
SHANE ALLBRITTON**

Houston, TX

Wall of Honor | American Quarter Horse Hall of Fame and Museum



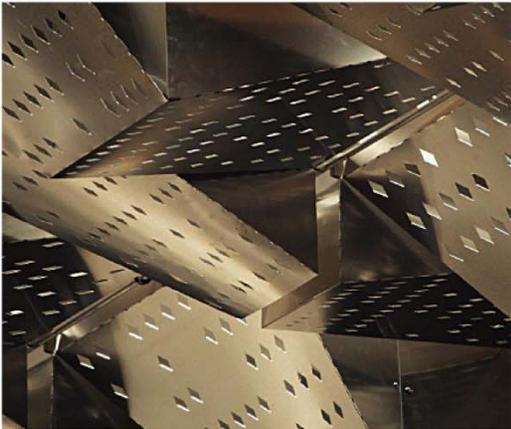
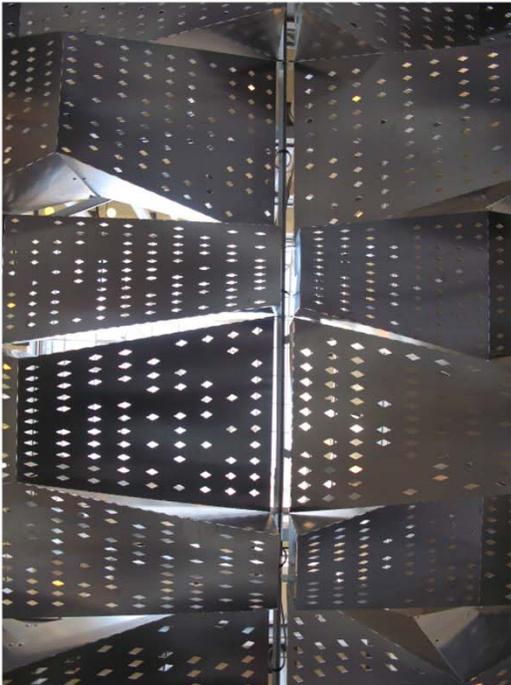
Memory Cloud | Texas A&M University Memorial Student Center Sculpture (in progress)



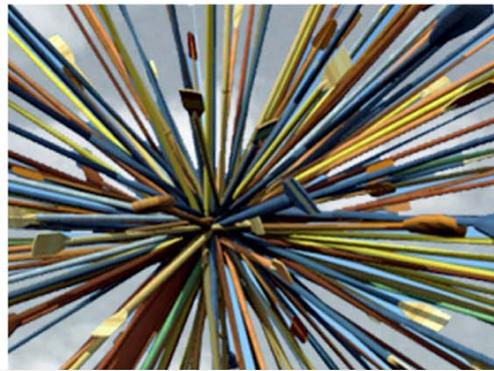
Time in Motion | Hobby Airport (in progress)



Ceiling Cloud | University of Houston Architecture School Ceiling Installation



Oarburst | Waterside Drive Gateway Sculpture Finalist



Votives in Suspension | World Trade Center Memorial Finalist

