

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

DEPARTMENT: Museums and Cultural Affairs

AGENDA DATE: October 11, 2011

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

DISTRICT(S) AFFECTED: District 4

SUBJECT:

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

That the City Manager be authorized to sign a Service Agreement by and between the City of El Paso ("CITY") and Vicki Scuri, for the amount of \$180,000.00 to provide aesthetic improvements, including design and construction management and oversight of fabrication and installation of the portions of the project for the Loop 375 Northeast Project identified in the 2008 Comprehensive Mobility Plan, funded by 2010 Transportation Certificates of Obligation (TxDOT Match).

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?

Parties desire to jointly develop and impement various aesthetic improvements along the Loop 375 Northeast Project as identified within the 2008 Comprehensive Mobility Plan as project #3, which identifies the project limits from Dyer Street to approximately one mile west of US 54 on Transmountain.

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?

2010 Transportation Certificate of Obligation (TxDOT Match)

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

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

THAT the City Manager be authorized to sign a Service Agreement by and between the City of El Paso (“CITY”) and Vicki Scuri, for the amount of \$180,000.00 to provide aesthetic improvements, including design and construction management and oversight of fabrication and installation of the art portions of the project for the Loop 375 Northeast Project identified in the 2008 Comprehensive Mobility Plan, funded by 2010 Transportation Certificate of Obligations (TxDOT Match). (District 4)

ADOPTED this ____ day of _____, 2011.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Kristen L. Hamilton
Assistant City Attorney

Sean P. McGlynn, Director
Museums and Cultural Affairs Department

ARTICLE ONE
Contractual Relationship

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

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

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

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

ARTICLE TWO
Scope of Services

2.1 Artist's Obligations.

2.1.1 Artist shall perform all services and furnish all supplies, materials and/or equipment as necessary for the creation of a Design and to provide CM for the Loop Northeast Aesthetic 375 Project Artist will create the Design in accordance with the specified schedule and as more fully described in EXHIBIT "A" attached hereto and incorporated herein by reference. All work will be done in collaboration with the El Paso Museums and Cultural Affairs Department ("MCAD") and all parties identified by MCAD as reviewing parties. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.

2.1.2 Artist shall determine the expression, and design approach of each element of the design encompassed in the Design, subject to review and acceptance by the reviewing parties which may include, but not be limited TxDOT and any other parties identified by MCAD as set forth in this Agreement. All aspects of Artist's Services shall be coordinated with MCAD's Public Arts Coordinator.

2.1.3 Artist shall prepare the Design. The design concept in the Design shall include a conceptual approach for the Loop 375 Northeast Aesthetic Project including typical

pattern details for spans, piers and pier caps, pattern design work from conceptualization through final design, specifications and contract documents.

- 2.1.4 At the discretion of the City, acting through MCAD, Artist shall attend public information meetings with the general public, attend design and construction coordination meetings with TxDOT and other parties, as appropriate and identified by MCAD, to communicate about the Design and to ensure that the Design can be appropriately integrated and/or implemented.
- 2.1.5 Artist shall be available with reasonable advance notice for meetings, ceremonies and the like, as necessary.
- 2.1.6 Artist will work with TxDOT to ensure that the Design is in compliance with all applicable laws and regulations, including but not limited to zoning or environmental regulations.

2.2 City's Obligations.

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

2.3 Design.

2.3.1 Concept/Schematic Design

- 2.3.1.1 The Artist's fee proposal dated September 7, 2011 is attached hereto as Exhibit "A" and incorporated as if fully set forth herein. Upon MCAD's notice to proceed, Artist shall begin the Project Design, to include the Conceptual Design, Mapping & Documentation, Define Pattern Relief in 3D and Specifications/Coordination, and shall complete each milestone within the number of days stated on Exhibit "A," unless parties agree to alter the number of days. MCAD shall provide notice to Artist to proceed on each milestone listed on Exhibit "A".

2.3.2 Approval

- 2.3.2.1 Within a reasonable time after the Artist submits the completed Design as discussed on Exhibit "A" for review by the require parties, MCAD shall notify Artist whether it approves or disapproves of the Design. The reviewing parties will have discretion in approving outright or with conditions, or rejecting the Design. The City, through MCAD, shall notify Artist of any revisions to the Design that are necessary for the Design to comply with any

applicable laws, ordinances and/or regulations and other reasons including, but not limited to, ensuring the physical integrity of the Design. If agreed upon by both parties, such revisions will become a part of the accepted Artwork.

2.3.2.2 If the reviewing parties disapprove of or require revisions to the 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 Design Document”) within 30 days after the MCAD has notified Artist of the reviewing parties’ disapproval or requested revisions. Artist will not be paid an additional fee for the Revised Design.

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

2.3.2.4 If Artist refuses to revise the Artwork pursuant to Section 2.3.2.2, or if Artist fails to adequately revise the Artwork in the judgment of the reviewing Parties, this Agreement will terminate and the parties will be under no further obligation to each other as of the date of such termination. The effective date of termination will be the date the City, acting through MCAD, submits its written disapproval of the Revised Design to Artist. MCAD shall submit to Artist a written termination notice with the disapproval. The termination notice must advise Artist that this Agreement has been terminated pursuant to this Article. The termination notice will notify Artist that Artist is entitled to retain the compensation paid prior to the termination date, and that the Parties are under no further obligation to each other. The termination notice will confirm that the City will retain ownership of the Design, the revised Design and renderings thereof submitted hereunder.

2.4 Oversight of Fabrication and Construction Management. Artist shall provide oversight, supervision and guidance during fabrication and installation of all aspects of the integration of the artwork into the Loop 375 Northeast Aesthetic Project as further outlined on Exhibit “A.”

ARTICLE THREE Term and Termination

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

3.2 Unilateral Termination. The City may unilaterally terminate the Agreement with or without cause at any time, such termination effective immediately upon written notice to Artist as

provided herein. In the event the City terminates this Agreement, Artist will be entitled to compensation for services in accordance with the Payment Schedule as described below in Article 4, with the understanding that the final 25% of the contract price may be withheld unless 100% completion of the Conceptual Design is provided by Artist and is accepted by the City. Should the City unilaterally terminate this Agreement, the City will retain the Conceptual 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 up to ONE HUNDRED EIGHTY THOUSAND, AND NO/100 DOLLARS (\$180,000.00). Artist shall be paid on an hourly basis at the rate of \$135.00 per hour as billed via monthly invoices from Artist detailing work done towards each milestone more fully described in Exhibit “A” attached hereto and fully incorporated by reference. Payments will be made in accordance with the City’s policies and procedures regarding payment. Of this amount, Artist may be reimbursed for up to \$10,000.00 for travel expenses by submitting receipts for such, to include airfare, rental car, hotel, parking and meals.

ARTICLE FIVE Insurance and Indemnification Provisions

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

property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one accident or other cause.

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

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

ARTICLE SEVEN

Copyright

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

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

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

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 Conceptual Design, through any activities of the City or any third party.

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: Vicki Scuri
16218 39th Avenue NE
Lake Forest Park, Washington 98155

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

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.

(Signatures appear on the following page)

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.

SIGNED this _____ day of _____, 2011.

CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Kristen L. Hamilton
Assistant City Attorney

APPROVED AS TO CONTENT:

Sean P. McGlynn, Director
Museums and Cultural Affairs Department

ARTIST: VICKI SCURI:

By: _____
Printed Name: _____
Title: _____

EXHIBIT "A"



Vicki Scuri
Interdisciplinary Design & Public Art Specialist

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

vickiscuri.com

vicki@vickiscuri.com

September 7, 2011

To: Sean McGlynn, Pat Dalbin

Re: Scope of Work for I375 Loop (Scope of Work for Project 1)

Project 375 NE Project 3: 1 Mile West of 54 to Dyer: BID in April 2011

Fee Proposal: \$180,000.00 (Includes Design & CM Estimate during Fabrication & Construction)

Hourly Rate: 135.00

Project 1: 180,000.00*

Contingency: 20,000.00

Deliverables:

January 16, 2012/Milestone 1: Pattern Key & Units Defined in 3D;

Specifications*(2): 50,000.00

March 1, 2012/Milestone 2: Pattern Maps for Prioritized Interchanges: 30,000.00

April 15, 2012/Milestone 3: Pattern Maps for all Remaining Interchanges 25,000.00

May 15, 2012/Milestone 4: 100% Complete: 6,500.00

Travel Allowance for Design: 10,000.00

***(2) If needed, we will accelerate the mold fabrication process in advance of completing the pattern mapping, to facilitate the completion of the master molds and liners for the project.**

I. Scope of Work Includes:

Conceptualizing a pattern design for formliners that reflects the site and community of the Trans Mountain Area (Project 1); creating pattern work for MSE walls as well as precast panels for soil nail and tie back walls. Work includes typical pattern details for spans, piers and pier caps: pattern layouts to be determined. The pattern system will include up to 8 pattern units. All wall types (MSE and Precast) will be addressed by rotating the units to the specific grid for the specified wall type. Scope includes the pattern design work from conceptualization through final design, specifications and Contract Documents. Artist will supply electronic files to TXDOT for inclusion in the Contract Document Set. Artist will provide oversight and participate in the Construction Management and Fabrication Process for all custom work designed by the Artist.)

Note: The Artist Team will work with TXDOT West Area Office on any potential changes during fabrication and/or the installation process.

TXDOT will supply the base drawings (with the pattern grid) for all architectural elevations and plans for the Artist's pattern work. Artist will pattern map and define all relief for Project. TXDOT will incorporate the Artist's work into the Contract Documents and provide a professional stamp for sealing the Documents. The work will become part of the As-Built package. Shop drawings will maintain the existing pattern grid, but will also reference and document the Artist's pattern work for review and approval by TXDOT and the Artist.

I. Project I Design - Contract Documents: Estimated Hours/Fee:
Design & Documentation: 900hrs: 121,500.00
CM Management: 58,500.00
Sub-total: 180,000.00

A. Conceptual Design - Final Pattern Design: 450 (150 hrs. per phase: concept/design dev/final)

i. develop theme and pattern system for application for four interchange locations:

- 193,276 sq. ft. MSE walls
- 6,924 sq. ft. Soil Nail Walls: Precast Panels
- 50,604 sq. ft. Tie Back: Precast Panels
- Piers (pattern design and color TBD/coordinated with

TXDOT)

- Pier Caps (pattern design and color TBD/coordinated with

TXDOT)

- Spans (pattern design and color TBD/coordinated with

TXDOT)

B. Mapping & Documentation: 330

- i. provide pattern key and pattern templates
- ii. provide pattern maps for all elements: pictorial and numeric code

C. Define Pattern Relief in 3D for Contract Documents to illustrate concept:

80

- i. provide 3D visualizations for all pattern units: up to eight units

D. Specifications: 40

- i. provide specifications for formliners and define project milestones

II. Construction CM: \$58,500.00 (Estimate/based on hourly & receipt)

A. Artist Aesthetic Oversight for Formliner Fabrication & Prototype Pours: TBD

Assume up to 8 Trips:

- i. Scope will be based on the final work accepted for implementation
- ii. Estimate based on previous work:
 - a) Shop Drawing Review
 - b) Supervision and Participation at formliner manufacturer's facility
 - c) On-going digital reviews of prototype & milestone pours
 - d) Coordination & Participation as needed

- e) Travel to cutting specialist facility for on-site work: 2 trips
(prototype development for cutting techniques and master mold cutting)
- f) Travel to formliner facility for on-site work: 2 trips
(prototype development and master mold fabrication run)
- g) Travel to project site as requested 4 trips (travel is billed at half-time)

V. GRAND TOTAL for Design & CM Services: \$180,000.00*

Contingency: \$20,000.00

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

*(2) Note: If needed we may accelerate the master mold fabrication process in advance of completing the entire pattern mapping process. This will allow the Contractor to begin purchasing liner sooner, if necessary. The schedule may be modified to complete this CM task, out-of-phase.