

PROFESSIONAL SERVICES AGREEMENT
for
Design, Creation, Fabrication, and Installation of Public Art

The City of Lewisville, Texas (the “CITY”), hereby engages BOLIVAR BRONZE (the “ART-IST”) to perform professional services in connection with the design, fabrication and installation of public art for Wayne Ferguson Plaza (the “PROJECT”).

I. SCOPE OF WORK. The scope of work for the Project is described as follows:

A. Phase 1 – Plan of Work:

1. The Artist shall, in cooperation with appropriate representatives of the City, develop a plan of work for the Project.
2. This plan shall provide a set of target dates for completion of all phases of the design, fabrication and installation of the art piece.
3. The plan shall be approved by the City prior to the start of work.
4. The art piece shall reflect the proposal attached to this Agreement as Exhibit C. Any significant changes must be approved in advance by the City and the Ferguson family.

B. Phase 2 – Design Finalization:

1. Completed design of the artwork shall include drawings necessary to communicate the Artist’s intent, materials specifications, finish and maintenance recommendations, and proposed installation method, narrative description, budget, materials samples, and any other materials necessary to fully describe the Project as proposed.
2. The design finalization shall include a detailed written set of instructions for regular maintenance of the artwork.
3. The final design shall be approved by the City and by the Ferguson family.

C. Phase 3 – Material Fabrication of Artwork:

1. The Artist shall fabricate the artwork as presented in the final design approved by the City and the Ferguson family, and as outlined in the proposal (Exhibit C).
2. Any change, including design, color, size, material, and texture, to the artwork which deviates from the final design approved by the City must be approved in writing by the City before the change is made. The City understands that the artist may adjust layout, texture and final finishes of the pieces to maximize the beauty of the finished work. Changes that will not significantly alter the overall scale or character of the piece need not be approved in advance.

D. Phase 4 – Final Completion and Installation of the Artwork:

1. The Artist shall install the artwork at the approved site in accordance with the above referenced plan of work and the Project Schedule attached hereto as Exhibit B.
2. The date for installation shall be confirmed by both parties to this Agreement, in writing, no later than 30 days prior to installation.
3. The Artist shall ensure that the artwork is installed with appropriate permanent and anti-theft measures or devices to protect the artwork from undue wear or damage or loss.

E. Phase 5 – Project Documentation:

1. The artist shall assist with creating a project identification plaque for the artwork by providing the following information: the title of the artwork, the artist's name, and the year of completion. The City will design, purchase and install the plaque.
2. Within 30 days of final acceptance by the City of the completed and installed artwork, the Artist shall provide to the City the following:
 - a) a publication-ready JPEG of the artwork, with a minimum resolution of 350 dpi and a minimum size of 7 inches on the longest edge,
 - b) a JPEG of the artwork in situ at the work site,
 - c) a complete written description of the artwork,
 - d) written instructions for appropriate maintenance and preservation of the artwork, including a maintenance schedule, and
 - e) a comprehensive list of all materials used in the creation of the artwork (e.g., gauge and type of metal, adhesive materials, clay body and firing, etc.)

II. SPECIAL TERMS OF THIS AGREEMENT

A. Warranties.

1. Warranties of Title: The Artist represents and warrants that the artwork will be (a) solely the result of the artistic effort of the artist, (b) unique and original, except as otherwise disclosed in writing to City, (c) not a duplicate and not accepted for sale elsewhere unless disclosed and approved by City in writing, (d) not infringing upon any copyright, and (e) free and clear of any liens or claims from any source whatsoever.
2. Warranties of Quality and Condition: The Artist represents and warrants that (a) the Artist will execute and fabricate the artwork in a professional manner, (b) the artwork, as fabricated and installed, will be free of defects in material and workmanship, including any defects or qualities which cause or accelerate deterioration of the artwork, and (c) reasonable maintenance of the artwork will not substantially exceed those described in the maintenance instructions submitted by the Artist per this agreement.
3. The warranties described in sections II.A.1 and II.A.2 shall survive for a period of five (5) years after the final acceptance of the artwork by the City with the required periodic maintenance by the City according to directions provided by the Artist. The City shall

give written notice to the Artist of any breach of these warranties within 120 days of the breach during that period. The Artist shall, at the request of City and at no cost to City, cure reasonably and promptly the breach of any such warranty that is repairable by the Artist and which repair is consistent with accepted practices of professional conservation (including, for example, repair by means of restoration, refurbishing or re-creation of part or all of the artwork).

B. Risk of Loss or Damage.

Risk of loss or damage to the artwork shall be borne by the Artist until title to the artwork passes to the City upon execution of an acceptance agreement by the City and the Artist. Until title passes to the City, the Artist shall take such measures as are necessary to protect the artwork from loss or damage, including carrying insurance to cover the risk of damage to the artwork.

C. Title to the Artwork.

Title to the artwork shall pass to the City after final completion and installation of the artwork and upon City signing and completing an acceptance agreement. If the City fails, within 30 days of final completion and installation of the artwork by the Artist, to execute a notice of acceptance agreement, or to notify the Artist of services that are unsatisfactory, title and ownership of the artwork will transfer from the Artist to the City.

D. Reproduction Rights

1. General

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. 101 et seq., and all other rights in and to the artwork, except ownership and possession and except as such rights are otherwise limited by this agreement. The Artist grants to the City and its successors an irrevocable license to make and use images of the artwork for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity, educational materials, and catalogues or other similar publications.

2. Artist Credit

All reproductions by the City shall credit the artist and include a copyright notice substantially in the following form: "© (Artist's name), installation date", and credit to the City as follows: "Funded through the Public Art Program of the City of Lewisville, Texas".

3. Artist Reproduction Credit.

The artist shall include on or in any image or other form of reproduction of the artwork initiated or authorized by the artist, a credit to the City in the following form: "Collection of the Public Art Program of the City of Lewisville, Texas."

E. Artist's Rights

1. General

In all matters pertaining to the artwork and its maintenance, including but not limited to the articles in this agreement, the provisions of the Visual Artists' Rights Act (VARA) shall apply, except that the City shall have the right to move or remove the artwork at the City's sole discretion.

2. Maintenance.

The City recognizes that maintenance of the artwork on a regular basis is essential to the integrity of the artwork. The City shall reasonably ensure that the artwork is properly maintained and protected in accordance with the requirements of this agreement. It is anticipated that the sculpture will be sealed with Incralac lacquer, and top coated with BWC bowling alley wax. This will provide a resilient finish that will withstand the weather and multiple cleanings. Anticipated maintenance may include: cleaning with plain water and soft plastic bristle brushes, with a PH neutral detergent used with the soft bristle brushes and then rinsed well, if necessary; refraining from using a pressure washer to clean the sculpture, but if it must be used, using a lower pressure and the softest spray available; waxing every year or two, to help maintain the patina and finish, on a warm dry day to minimize the possibility of trapping moisture. More specific maintenance instructions will be provided by the Artist as outlined in this Agreement.

3. Repairs and Restoration.

- a. The City shall have the right to determine, after consultation with a professional fine art conservator, when and if repairs and restorations to the artwork will be made. To the extent practicable, the artist, during the artist's lifetime, shall be given the opportunity to make or personally supervise significant repairs and restorations as recommended by a professional fine art conservator.
- b. If the repair or restoration is needed five years or more after payment under this agreement, the City and the artist shall agree in writing, prior to the commencement of any significant repairs or restoration, upon the artist's fee for such services, provided such funds to pay the fee are available, and provided that Texas laws, including but not limited to the procurement laws allow the City to contract with the artist for the artist's services.
- c. All repairs and restorations shall be made in accordance with accepted practices of professional fine art conservation.

F. Artist as Independent Contractor.

The Artist and his agents and employees are independent contractors performing services for the City and are not employees of the City. The Artist, the Artist's agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this agreement.

G. Subcontracting.

The Artist may subcontract portions of the services to be provided hereunder at the Artist's expense provided that said subcontracting shall not affect the design, appearance, intent or visual quality of the artwork as approved by the City and provided that such services shall be carried out under the personal supervision and expense of the Artist.

III. COMPENSATION

A. Compensation for the Scope of Work shall be \$90,000 paid as follows:

1. Phase 1: thirty thousand dollars (\$30,000.00) upon acceptance by the Ferguson family of a finished maquette of the Project.
2. Phase 2: thirty thousand dollars (\$30,000.00) upon completion and City acceptance of finished modeling of figure and all objects that are part of the Project.
3. Phase 3: thirty thousand dollars (\$30,000.00) once the finished sculpture is installed and accepted by all parties.

B. Invoicing Procedures

1. Invoices shall be submitted by cover letter from the Artist. The letter shall certify that the invoice properly represents work actually done. The City reserves the right to request additional justification prior to payment of any invoice. If satisfactory justification is not received, the City reserves the right to amend the invoice or to refuse to make payment without incurring penalty or interest.
2. The invoice shall be based on the work completed per each phase of work as set out in the Scope of Work outlined in Article I of this Agreement. Each phase payment shall constitute full and final payment for the services and materials required to complete that phase.
3. The City agrees to make prompt payments for all approved invoices and agrees to pay interest at the rate approved by law for approved invoices not paid within 30 days from the date of approval.

IV. INSURANCE. Until such time that title to the artwork passes to the City, the Artist shall maintain insurance coverage as outlined herein and in accordance with Exhibit A. Coverage shall remain in effect through final installation of the Project. All Certificates of Insurance shall be kept current and shall be forwarded to the Purchasing Division of the City by cover letter from the Artist. Insurance certificate must be received and approved prior to commencement of work. The Artist shall also review and forward certificates covering subcontractors, including sub-artists.

V. REUSE OF DOCUMENTS. All documents, including drawings and specifications prepared by the Artist pursuant to this agreement, are instruments of service in respect of the Project.

They are not intended or represented to be suitable for reuse without written verification or adaptation by the Artist for the specific purpose intended will be at City's sole risk and without liability or legal exposure to the Artist from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle the Artist to further compensation at rates to be agreed upon by the City and the Artist.

VI. OWNERSHIP OF DOCUMENTS. Original documents, plans, designs, reports and survey notes developed in connection with services performed hereunder belong to, and remain the property of the City, in consideration of which it is mutually agreed that the City will use them solely in connection with the Project, save with the express consent of the Artist. The Artist shall retain reproducible copies or electronic files of such documents for at least five (5) years and shall furnish copies to the City for reimbursable costs, if so requested.

VII. INDEMNIFICATION. THE ARTIST AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ARTIST'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY ARTIST, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT, EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE ARTIST AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE ARTIST'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

VIII. TIME OF COMPLETION. A general Project Schedule (Exhibit B) is hereby included in this agreement by reference. The City and the Artist agree to create a more specific plan of work for the Project as outlined in Section I.A of this Agreement. The Artist agrees to perform

the services in accordance with the agreed-to plan of work, to the extent over which the Artist has control.

IX. TERMINATION. This agreement may be terminated by the City without cause at any time prior to completion of the Artist's services, or by the Artist with cause, upon seven days written notice to the City at the address of record. Termination shall release each party from all obligations of this agreement, except those outlined in Paragraphs V, VI and VII above. Upon notice of termination, the Artist shall prepare and submit to the City a final invoice within 15 days detailing the satisfactorily completed work to date which has not been paid.

X. CONFIDENTIAL INFORMATION. To the extent allowed by law, the City will safeguard and keep from release any documents marked "proprietary" or information not generally available to the public. However, the City will, if required, comply with all requirements of the Texas Public Information Act with regard to any documents in its possession at the time of a request made under that Act.

XI. GOVERNING LAW AND VENUE. This Agreement is governed by the laws of the State of Texas. Exclusive venue for any dispute arising out of this Agreement is in Denton County, Texas.

XII. ARBITRATION. In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration.

XIII. PROTECTION OF RESIDENT WORKERS. The City actively supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Artist shall establish appropriate procedures and controls so no services under this agreement will be performed by any worker who is not legally eligible to perform such services or employment. The City reserves the right to audit the Artist's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services under this agreement. The audit will be at the City's expense.

XIV. IMMIGRATION REFORM AND CONTROL ACT (8 U.S.C. §1324a). The City supports the Immigration Reform and Control Act (IRCA) which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Artist shall submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that it has not been

CITY SECRETARY OFFICE
OFFICIAL FILE COPY

found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Artist shall ensure that its subcontractors submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that they have not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Artist and its subcontractors shall at all times during the term of this agreement comply with the requirements of IRCA and shall notify the City within fifteen (15) working days of receiving notice of a violation of IRCA. The City may terminate this agreement if the City determines that (a) the Artist or its subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if the Artist fails to ensure that its subcontractors submit the aforementioned declaration; or (c) the Artist or its subcontractors fail to timely notify the City of an IRCA violation.

XV. ADA COMPLIANCE. All goods and services provided to the City must be compliant with the Americans with Disabilities Act (“ADA”) and all regulations promulgated pursuant to the ADA. The Artist will be required to certify compliance, if applicable.

XVI. SUCCESSORS AND ASSIGNS. The City and the Artist each binds itself and its partners, successors, executors, administrators and assigns in respect to all covenants of this agreement. Neither the City nor the Artist shall assign, sublet or transfer its interest in this agreement without the written consent of the other. Nothing herein shall be construed as giving any right or benefits hereunder to anyone other than the City and the Artist.

XVII. DISCLOSURE. Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the City must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the City. The conflict of interest questionnaire, which is available online at ethics.state.tx.us, must be filed with the City Secretary of the City of Lewisville no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City or submits to the City an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City. An updated conflict of interest questionnaire must be filed in with Chapter 176 of the Local Government Code.

Said person should consult with legal counsel if they have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the City to comply with the filing requirements of Chapter 176.

XVIII. TEXAS GOVERNMENT CODE CHAPTER 2270. Pursuant to Texas Government Code Chapter 2270, Contractor affirms that execution of this Agreement serves as written verification that Contractor: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the Agreement.

XIX. TEXAS GOVERNMENT CODE CHAPTER 2252. Pursuant to Texas Government Code Chapter 2252, Subchapter F, Contractor affirms, by entering into this Agreement, that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.

XX. CLOSURE. By signature below, the parties to this agreement hereby bind themselves to the terms stated herein, including all attachments referred to herein.

CITY OF LEWISVILLE, TEXAS

Approved by the Lewisville City
Council July 2, 2018

By:



Donna Barron, City Manager

Date:

7-3-18

By:



David Iles, Bolivar Bronze

Date:

7-5-18

Attest:



Julie Worster, City Secretary

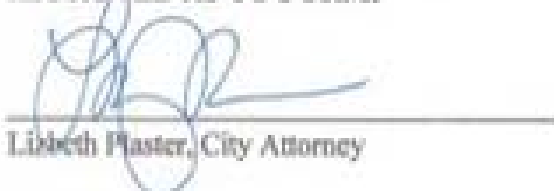
Attest:



CITY OF LEWISVILLE

151 West Church Street
Lewisville, Texas 75057

APPROVED AS TO FORM:



Lizabeth Plaster, City Attorney

EXHIBIT A

INSURANCE REQUIREMENTS PROFESSIONAL SERVICES PROJECTS/ARTISTS

Services for non-construction projects. Consultants or other professionals including: Accountants, Attorneys, Veterinarians, and Medical Doctors.

Vendor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representative, employees or subcontractors. The cost of such insurance shall be included in the Vendor's bid.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage "occurrence" form CG 00 01 (10 01). **"Claims Made" form is unacceptable except for professional liability.**
2. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
3. Automobile Liability - as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract. Coverage not required for delivery services.

B. MINIMUM LIMITS OF INSURANCE

Vendor shall maintain throughout contract limits not less than:

1. Commercial General Liability: \$500,000 per occurrence for bodily injury, personal injury and property damage. \$1,000,000 Aggregate Policy will include coverage for:
 - a. Premises - Operations
 - b. Broad Form Contractual Liability
 - c. Products and Completed Operations
 - d. Personal Injury
 - e. Broad Form Property Damage

NOTE: The aggregate loss limit applies to each project.

2. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability minimum limits of \$500,000 per injury, \$500,000 per occupational disease.

CITY SECRETARY OFFICE
OFFICIAL FILE COPY

3. Automobile Liability - \$500,000 Combined Single Limit. Limits can only be reduced if approved by the Risk Manager or designee.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retentions must be declared to and approved by the City.

D. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages

- a. The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insured" as respects liability arising out of activities performed by or on behalf of the vendor, products and completed operations of the vendor, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is an Insured" automatically provides liability coverage in favor of the City.
- b. The vendor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the vendor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, Boards and Commissions or volunteers.
- d. The vendor's insurance shall apply separately to each insured against whose claim is made or suit is brought, except to the limits of the insured's liability.

2. Worker's Compensation and Employer's Liability Coverage.

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the vendor for the City.

3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the City.

4. Professional Liability and/or Errors and Omissions

"Claims made" policy is acceptable coverage which must be maintained during the course of the project and up to two (2) years after completion and acceptance of the project by the City. Artist can comply with this requirement by providing the City with proof of such coverage for the project engineer.

E. ACCEPTABILITY OF INSURERS

The City prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than **A-:VI, or, A or better** by Standard and Poors. Professional Liability carriers will need to be approved by the Risk Manager.

F. VERIFICATION OF COVERAGE

Contractor shall furnish the City with certificates of insurance affecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance similar to the ACCORD form are acceptable. City will not accept Memorandums of Insurance or Binders as proof of insurance. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

G. HOLD HARMLESS AND INDEMNIFICATION

THE CONSULTANT/CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONSULTANT'S/CONTRACTOR'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LI- ABLE ACT OR OMISSION OR INTENTIONAL TORT, INTELLECTUAL PROPERTY IN- FRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY, CONSULTANT/CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCON- TRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE IN- DEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONSULTANT/CONTRACTOR AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CONSULTANT'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

H. PROOF OF INSURANCE

Contractor is required to submit proof of insurance on a form acceptable to the City of Lewisville. Certificates of Insurance similar to the ACCORD form are acceptable. City will not accept Memorandums of Insurance or Binders as proof of insurance. City, at its own discretion, may require a copy of any policy presented to the City.

EXHIBIT B

PROJECT SCHEDULE

1. Design and creation of a ¼ scale maquette. This will take approximately one month, and will require the family committee to make a studio visit at least once for approval.
2. An invoice will be submitted for the first payment as outlined in III Compensation, and we will start the modeling process. This stage will require multiple visits from the family to make sure the representation of Mr. Ferguson is accurate. This stage will also include the modeling of the various objects associated with the sculpture. This stage of the project should take four months.
3. The second payment will be invoiced after the family and city committee approve the finished modeling. The next stage will be the mold making stage of the project, and should take between four and six weeks. There should be no need for committee input during this stage.
4. The next stage will be the wax work, investment, and casting of the silicon bronze. The cast components will then be welded chased and finished to the committee's satisfaction. We may request the committee to come out at various times to approve the progress. This stage should take six to seven months.
5. The final stage will be the installation, which will require us to mount the sculpture in the designated space, using stainless steel all thread and Metalset epoxy. The unfinished sculpture will be transported to the site to check for proper fit during the welding stage. After the finished sculpture is installed and approved, the final payment will be invoiced. The installation should be accomplished in two days.
6. We operate an open studio, so committee members are welcome to visit to see the progress during this project.

EXHIBIT C

ARTIST'S PROPOSAL

WAYNE FERGUSON PLAZA SCULPTURE PROPOSAL

"Society grows great when old men plant trees whose shade they know they shall never sit in." - Anonymous Greek Proverb

BACKGROUND

Father, successful businessman, and cowboy, **Wayne Ferguson** was a relentless advocate of all things Lewisville, and his influence continues to guide the city. As a resident for close to forty years, he served on the city council, the board of trustees for the local hospital, and as Mayor of the city. His love of Lewisville extended into multiple city projects, most notably in an interest in the preservation and improvement of the Old Town section of the city, where a beautiful park and plaza now carries his name. As an outdoorsman, he had a deep respect for nature, hunting, and horseback riding - often conducting business via cell phone on horseback. As a father and husband, he instilled values of kindness and good humor that carry on with his children and grandchildren.

A man of great ambition, rooted in traditional values, **Wayne Ferguson's** broader vision for the city that he loved and led could best be summarized by an ancient Greek proverb: "Society grows great when old men plant trees whose shade they know they shall never sit in."

SCULPTURE

In the shade of redbud trees, **Wayne Ferguson** sits contentedly studying a map of the Plaza built in his name, pausing to smile slyly and glance towards visitors entering the park. A moment caught in bronze, he is dressed casually in blue jeans wearing his favorite cowboy boots, hat, snakeskin belt and buckle. Holding the map, on his hands are rings worn throughout his life - a school ring and a ring with stones from his mother. To his right, a stack of rolled maps sit waiting to be read. To his left rests a collection of personal items: a saddle blanket and chaps, a favorite pair of spurs, and an old buck knife he crafted himself.

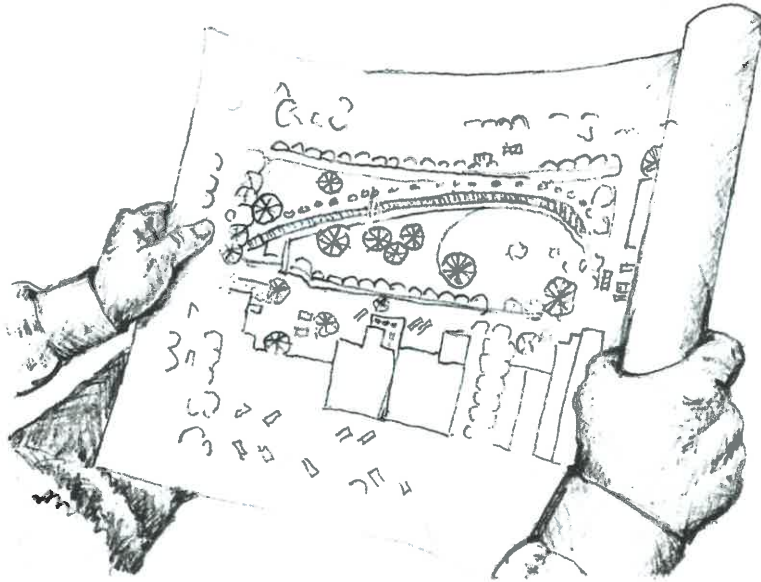
INTENT

This sculpture functions as a permanent symbol of the values and interests of the good man represented. The sitting figure is approachable and resonates a humility and accessibility in tune with the qualities many admired in **Wayne**. By combining an accurate rendering of the subject with personal items, the sculpture carries an emotional weight; allowing personal details to act as symbols of larger ideas. The saddle blanket, chaps, spurs and a hand-made knife represent horsemanship and the outdoors. The rolled maps and drawings are indicative of Texas land, development, and urban revitalization, while the rings hold ties to love of community, education, and family.

With this sculpture our intent is to give visitors to **Wayne Ferguson Plaza** a greater understanding of the park's namesake by creating an accessible, humble, and permanent landmark that reflects the humanity of a great leader, good friend, and loving father and husband.



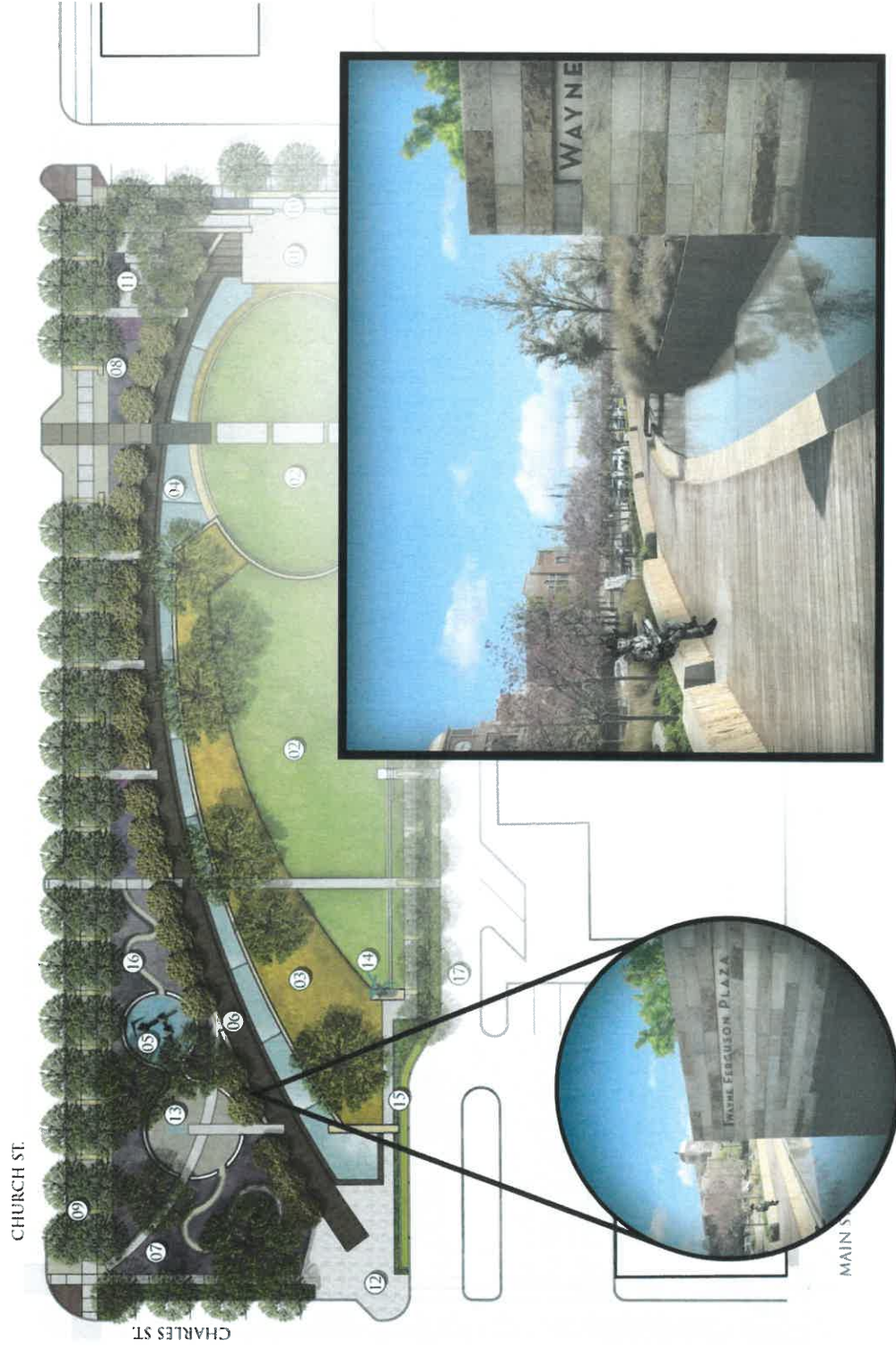
"In the shade of redbud trees, **Wayne Ferguson** sits contentedly studying a map of the plaza built in his name, pausing to smile slyly and glance towards visitors entering the park..."



“Holding a map of the plaza built in his name...”



“To his left rests a collection of personal items: a saddle blanket and chaps, a favorite pair of spurs, and an old buck knife he crafted himself...”



“In the shade of redbud trees, **Wayne Ferguson** sits contentedly studying a map of the Plaza built in his name, pausing to smile slyly and glance towards visitors entering the park...” The sculpture of **Wayne Ferguson** sits securely on a stone bench roughly 30 feet away from the **WAYNE FERGUSON PLAZA** title wall.

PROCESS AND TIMELINE

Creating a bronze sculpture is a complex task with multiple stages and processes. The overall time frame will take eight to twelve months after initial approval of proposal. Below is a very basic description of the timeline for creating the sculpture of **Wayne Ferguson**.

MAQUETTE

Upon approval of the sculpture proposal, a detailed maquette will be created of the entire form. After family approval of the maquette, and as a courtesy to city and family, the small maquette will then be cast in bronze for display in the Medical City Lewisville's grand display case and ultimately donated to the Ferguson family.

MODELING

Prior to casting the small sculpture in bronze, the maquette will be scanned and enlarged into a basic full-scale foam form. This form will then be covered in clay for final rendering and detailing. After final family approval of the finished sculpture in clay, the bronze fabrication process will begin.

CASTING

To create the sculpture in bronze, molds will be taken of the clay figure and associated objects. These molds will be used to cast wax versions of all the sections and elements of the sculpture. These waxes will then be sprued and invested. The invested wax molds will then be burned out, and bronze will be poured into the molds. The bronze elements will then be cleaned, welded and chased to recreate the original clay sculpture. With the form complete in bronze, a patina will be applied to the surface, and the entire sculpture will be waxed per family approval.

INSTALLATION

The final sculpture will be safely and securely installed based on recommendations by the artist and based on an appropriate schedule for all parties involved. Installation diagrams and procedures will be provided to the city and family as the project develops.

COST ESTIMATE AND PAYMENT SCHEDULE

The total cost of the project will be **\$90,000.00**.

We request this total to be paid in three installments of **\$30,000.00**. One third of the total cost upon approval of finished maquette by family members, second payment upon completion and acceptance of finished modeling of figure and all objects, and final payment due after finished sculpture is installed and accepted by all parties.

David Iles

Bolivar Bronze

(940) 390-9959

bolivarbronze@gmail.com

bolivarbronze.com

CITY SECRETARY OFFICE
OFFICIAL FILE COPY