

PROFESSIONAL SERVICES CONTRACT (ARTIST CONTRACT)

THIS CONTRACT, made and entered into effective the 18th day of November, 2015 (“Effective Date”), by and between the **CITY OF TACOMA**, a municipal corporation of the State of Washington (hereinafter referred to as the “CITY”), and **HORATIO H. LAW**, a sole proprietor, (hereinafter referred to as “ARTIST”);

In consideration of the mutual promises and obligations hereinafter set forth, the Parties hereto agree as follows:

1. Scope of Services/Work

- A. The ARTIST agrees to diligently and completely perform the services and/or deliverables related to the ARTWORK for the Lincoln District Revitalization as described in Exhibit A attached hereto and incorporated herein.

- B. Changes To Scope of Work. The CITY shall have the right to make changes within the general scope of services and/or deliverables, including but not limited to the addition and clarification of scope and deliverables for fabrication, upon mutual written execution by the Parties of an amendment to this Contract. If the changes will result in additional work effort by ARTIST, the CITY will agree to reasonably compensate the ARTIST for such additional effort up to the maximum amount specified herein.

2. Term

- A. All services shall be satisfactorily completed on or before December 31, 2016 and this Contract shall expire on said date unless mutually extended in writing by the Parties.

- B. Neither party shall be considered to be in default in the performance of this Contract to the extent such performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party and, in such event, the time for performance shall be extended for a period equal to any time lost as a result thereof. In the event ARTIST is unable to proceed due to a delay solely attributable to CITY, ARTIST shall advise CITY of such delay in writing as soon as is practicable.

3. Compensation and Payment

- A. The CITY shall compensate the ARTIST for the services and deliverables performed under this Contract in accordance with the milestones and payment schedules contained in Exhibit A.

- B. The total price to be paid by CITY for ARTIST’S full and complete performance of the Scope of Work hereunder shall not exceed \$210,000 without the written consent of the CITY. Said price shall be the total compensation for ARTIST’S performance hereunder including, but not limited to, all labor, materials, lighting, supplies, equipment, or rental use and associated transportation thereof, incidental expenses, subcontractor’s fees,

communications, work space rental and related utility costs, transportation of materials and the ARTWORK from studio to installation site, storage, sustenance, lodging, travel expenses, documentation, public report, and all taxes, licenses, fees and permits associated with and necessary for this project. Any changes in design or other modification must be in accordance with this total fee.

- C. The ARTIST shall submit invoices in a format comparable to the invoice attached hereto and identified as Exhibit B, for services completed and/or deliverables furnished. Upon CITY'S request, ARTIST shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables.
- D. Payment shall be made through the CITY'S ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice.
- E. The CITY may withhold payment to the ARTIST for any services or deliverables not performed as required hereunder until such time as the ARTIST modifies such services or deliverables to the satisfaction of the CITY.
- F. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.
- G. In the event the ARTIST incurs cost in excess of the sum authorized for service under this Contract, the ARTIST shall pay such excess from its own funds, and the CITY shall not be required to pay any part of such excess, and the ARTIST shall have no claim against the CITY on account thereof.

4. Independent Contractor Status

- A. The services and deliverables shall be furnished by the ARTIST as an independent Contractor, and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant. No payroll or employment taxes of any kind shall be withheld or paid by the CITY with respect to payments to ARTIST. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. By reason of ARTIST'S status as an independent Contractor hereunder, no workers' compensation insurance has been or will be obtained by the CITY on account of ARTIST. ARTIST may be required to provide the CITY proof of payment of these said taxes and benefits. If the CITY is assessed or deemed liable in any manner for those charges or taxes, the ARTIST agrees to hold the CITY harmless from those costs, including attorney's fees.
- B. The ARTIST shall provide at its sole expense all materials, office space, and other necessities to perform its duties under this Contract, unless otherwise specified in writing herein.

5. Professional Services Warranty

- A. The ARTIST warrants that all services performed pursuant to this Contract shall be generally suitable for the use to which CITY intends to use said services and deliverables as expressed in the Scope of Work as contained at Exhibit A and as Exhibit A may be amended or supplemented.

In the performance of services under this Contract, the ARTIST and its employees agree to exercise the degree of skill and care required by customarily accepted good practices and procedures followed by professionals/consultants rendering the same or similar type of service. All obligations and services of the ARTIST hereunder shall be performed diligently and completely according to such professional standards.

- B. Warranty Against Defects. The ARTIST warrants that the ARTWORK is designed to last for a minimum of 30 years and guarantees the ARTWORK against any faulty material or workmanship and, at the CITY's option, shall remedy and/or pay for any loss or damage resulting there from that occurs or appears within a period of one (1) year after the date of Substantial Completion of the ARTWORK in accordance with Exhibit A and as verified by a Certificate of Substantial Completion as shown at Exhibit C. The CITY shall give written notice with reasonable promptness to the ARTIST regarding observed defects in the ARTWORK. Nothing contained herein or any action whatsoever by the CITY shall constitute an acceptance of work not done in accordance with the provisions of this Contract or relieve the ARTIST of liability or responsibility for faulty material or workmanship.
- C. Warranty of Title. The ARTIST represents and warrants that: (a) the ARTWORK is solely the result of the artistic effort of the ARTIST; (b) except as otherwise disclosed in writing to the CITY, the ARTWORK is unique and original and does not infringe upon any copyright; (c) the ARTWORK has not or a duplicate thereof, has not been accepted for sale elsewhere, and (d) is free from any and all claims, liens, and charges by any person or entity including but not limited to any employee or supplier. ARTIST shall be solely responsible for obtaining releases and/or licenses for the performance, display, reproduction, distribution, creation of derivative works, or other use of copyrighted materials. Should the ARTIST fail to obtain said releases and/or licenses, the ARTIST shall indemnify, defend, and hold harmless the CITY for any claim resulting there from.
- D. If the ARTIST intends to rely on information or data supplied by the CITY, other CITY Contractors or other generally reputable sources without independent verification, such intent shall be brought to the attention of the CITY.

6. Contract Administration and Right to Audit

- A. The **Tacoma Arts Administrator for the Community & Economic Development Department** for the CITY shall have primary responsibility for contract administration and approval of services to be performed by the ARTIST, and shall coordinate all communications between the ARTIST and the CITY.

- B. The ARTIST shall, at such times and in such form as the CITY may reasonably require, furnish the CITY with periodic status reports pertaining to the services undertaken pursuant to this Contract. Upon CITY’s request, the ARTIST shall make available to CITY all accounts, records, and documents related to the Scope of Work for CITY’s inspection, auditing, or evaluation during normal business hours as reasonably needed by CITY to assess performance, compliance, and/or quality assurance under this Contract. These may include but not be limited to photographs, drawings and review of work in progress.
- C. Personnel. If before, during, or after the timely of this Contract, the ARTIST has represented or represents to the CITY that certain personnel would or will be responsible for performing services pursuant to this Contract, then the ARTIST is obligated to ensure that said personnel perform said Contract services to the maximum extent permitted by law. This Contract provision shall only be waived by written authorization by the CITY, and on a case-by-case basis.

7. Records Retention

The ARTIST shall establish and maintain records in accordance with requirements prescribed by the CITY, with respect to all matters covered by this Contract. Except as otherwise authorized by the CITY, the ARTIST shall retain such records for a period of six (6) years after receipt of the final payment under this Contract or termination of this Contract.

8. Notices

- A. Except for routine operational communications, which may be delivered personally or transmitted by electronic mail or facsimile, all notices required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to the parties at the following addresses:

CITY	ARTIST
Amy McBride 747 Market Street, Room 900 Tacoma, WA 98402	Horatio Law 2033 SE Lincoln, Portland, OR 97214
Phone (253) 591-5192	(914) 471-6846
Facsimile (253) 591-5232	Facsimile – n/a
e-mail amcbride@cityoftacoma.org	horatiolaw@gmail.com

- B. The ARTIST agrees to notify the CITY of changes of Address and failure to do so, if such failure prevents the CITY from contacting the CONTRACTOR, shall be deemed a waiver of the ARTIST’s rights to notification as provided herein.

9. Termination and Suspension

- A. The CITY may terminate this Contract at any time, with or without cause, by giving ten (10) business days written notice to ARTIST. In the event of termination, all finished and unfinished work prepared by the ARTIST pursuant to this Contract shall be provided to the

CITY. In the event CITY terminates this Contract due to the CITY's own reasons and without cause due to the ARTIST'S actions or omissions, the CITY shall pay the ARTIST the amount due for actual work and services necessarily performed under this Contract up to the effective date of termination, not to exceed the total compensation set forth herein.

- B.** The CITY may suspend this Contract, at its sole discretion, upon seven (7) business days written notice to the ARTIST. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the ARTIST'S reasonable expenses and shall be subject to verification. The ARTIST shall resume performance of services under this Contract without delay when the suspension period ends.
- C.** Termination or suspension of this Contract by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against ARTIST relative to performance hereunder.

10. Taxes, Licenses and Permits

- A.** The ARTIST acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Contract, and the ARTIST agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law. If the CITY is assessed, made liable, or responsible in any manner for such charges or taxes, the ARTIST agrees to hold the CITY harmless from such costs, including attorney's fees.
- B.** In the event the ARTIST fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, then the ARTIST authorizes the CITY to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from the ARTIST's total compensation.
- C.** The ARTIST, at its expense, shall obtain and keep in force any and all necessary licenses and permits. The ARTIST shall obtain a business license as required by Tacoma Municipal Code Subtitle 6B.20 and shall pay business and occupation taxes as required by Tacoma Municipal Code Subtitle 6A.30.

11. Indemnification

- A.** The ARTIST shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject matter of this Contract; provided that this provision shall not apply to the extent that damage or injury results from the fault of the CITY, or its officers, agents, or employees. The term "fault" as used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may hereafter be amended.

- B.** The ARTIST specifically assumes potential liability for actions brought by the ARTIST'S own employees against the CITY and, solely for the purpose of this indemnification and defense, the ARTIST specifically waives any immunity under the state industrial insurance law, Title 51 RCW. THE ARTIST RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.
- C.** This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnification hereunder in favor of the CITY. This indemnification shall survive the termination of this Contract.

12. Risk of Loss & Insurance

A. During the course and performance of the services herein specified, CONTRACTOR will maintain the at least following insurance coverage:

1. Non-owned and hired Automobile liability and property damage -- \$1,000,000 single limit combined for bodily injury and property damage.
2. Commercial General Liability -- \$1,000,000 combined single limit

Certificates of the above insurance coverage shall be delivered, within ten (10) days, to the CITY by ARTIST'S insurance carrier or agent certifying the above insurance coverage items are in effect and will not be cancelled or materially changed without 30 days' written notice given to the CITY. The commercial general liability policy shall be on an occurrence basis and shall include an endorsement naming the CITY as an additional insured and stating that coverage under such policy is primary over and non-contributory with any insurance the CITY may maintain.

B. The responsibility for and risk of damage to or loss of the ARTWORK during fabrication and through installation shall be solely that of the ARTIST. The responsibility and risk shall transfer to the CITY and shall no longer be the responsibility of the ARTIST upon execution of the "Certificate of Substantial Completion."

13. Nondiscrimination

The ARTIST agrees to take all steps necessary to comply with all federal, state, and City laws and policies regarding non-discrimination and equal employment opportunities. The ARTIST shall not discriminate in any employment action because of race, religion, creed, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, veteran or military status, the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person. In the event of non-compliance by the ARTIST with any of the non-discrimination provisions of this Contract, the CITY shall be deemed to have cause to terminate this Contract, in whole or in part.

14. Conflict of Interest

No officer, employee or agent of the CITY, nor any member of the immediate family of any such officer, employee or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The ARTIST shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The ARTIST represents that the ARTIST presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Contract pertains which would conflict in any manner or degree with the performance of the ARTIST'S services and obligations hereunder. The ARTIST further covenants that, in performance of this Contract, no person having any such interest shall be employed. The ARTIST also agrees that its violation of the CITY'S Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of this Contract subjecting the Contract to termination.

15. Ownership of the Artwork and Rights in Data and Publications

- A. The ARTWORK created pursuant to this Contract shall become the property of the CITY upon execution of the "Certificate of Substantial Completion" attached hereto as Exhibit C and incorporated herein.
- B. Drawings, specifications, and models of the ARTWORK performed under this Contract or which relate to the ARTWORK, including all preliminary studies, shall become the property of the CITY upon execution of the "Certificate of Substantial Completion" or following termination of the Contract. In the event of termination prior to completion, the CITY shall have no right to fabricate, complete, and/or install the ARTWORK.
- C. The ARTIST, as author of the ARTWORK, shall retain the copyright to the ARTWORK, provided that the CITY are hereby granted an irrevocable license to graphically reproduce (through photography or otherwise) the image of the ARTWORK, and to authorize third parties to graphically reproduce as desired by the CITY for noncommercial education, public information, and other governmental purposes. The CITY will make every effort to acknowledge the ARTIST on each reproduction. The rights granted by this provision shall survive the expiration of this Contract.
- D. The CONTRACTOR shall be solely responsible for obtaining releases for the performance, display, recreation, or use of copyrighted materials.

16. Public Disclosure

- A. This Contract and documents provided to the CITY by ARTIST hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, the CITY may be required, upon request,

to disclose this Contract and documents related to it unless an exemption under the Public Records Act or other laws applies. In the event CITY receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, and ARTIST has complied with the requirements of sub-section B herein, CITY agrees to provide ARTIST ten (10) days written notice of impending release. Should legal action thereafter be initiated by ARTIST to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by ARTIST, including any damages, attorney's fees or costs awarded by reason of having opposed disclosure. CITY shall not be liable for any release where notice was provided and ARTIST took no action to oppose the release of information. Notice of any proposed release of information pursuant to Chapter 42.56 RCW, shall be provided to ARTIST according to the "Notices" provision herein.

- B.** If ARTIST provides the CITY with records that ARTIST considers confidential or proprietary, ARTIST must mark all applicable pages of said record(s) as "Confidential" or "Proprietary." If ARTIST fails to so mark record(s), then (1) the CITY, upon request, may release said record(s) without the need to satisfy the requirements of subsection A above; and (2) the ARTIST expressly waives its right to allege any kind of civil action or claim against the CITY pertaining to the release of said record(s).

17. Duty of Confidentiality

- A.** ARTIST acknowledges that unauthorized disclosure of information or documentation concerning the Scope of Work hereunder may cause substantial economic loss or harm to the CITY.
- B.** Except for disclosure of information and documents to ARTIST's employees, agents, or subcontractors who have a substantial need to know such information in connection with ARTIST's performance of obligations under this Contract, the ARTIST shall not without prior written authorization by the CITY allow the release, dissemination, distribution, sharing, or other publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this Contract.
- C.** The ARTIST shall inform its employees, agents, and subcontractors of the confidentiality obligations under this Contract and instruct them so as to ensure such obligations are met. If so requested by the CITY, the ARTIST further agrees to require all such individuals and entities performing services pursuant to this Contract to execute a Confidentiality and Non-Disclosure Agreement in a form acceptable to CITY.
- D.** This Section shall survive for six (6) years after the termination or expiration of this Contract.
- E.** ARTIST shall ensure that the text of this Section is included in each subcontractor's contract pertaining to the Scope of Services hereunder.

18. Dispute Resolution

In the event of a dispute pertaining to this Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the CITY'S right to terminate authorized by this Contract.

19. Miscellaneous Provisions

- A. Governing Law and Venue. Washington law shall govern the interpretation of this Contract. Pierce County shall be the venue of any mediation, arbitration or litigation arising out of this Contract.
- B. Assignment. The ARTIST shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Contract or for any of the compensation due hereunder without the prior written consent of the CITY.
- C. No Third Party Beneficiaries. This Contract shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.
- D. Waiver. A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.
- E. Severability and Survival. If any term, condition or provision of this Contract is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Contract, shall survive termination of this Contract.
- F. Entire Agreement. This Contract and the attached Exhibits, as modified herein, contain the entire agreement between the parties as to the services to be rendered hereunder. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Contract are superseded hereby. The Parties hereto mutually acknowledge, understand and agree that the terms and conditions set forth herein shall control and prevail over any conflicting terms and conditions stated in any attachments hereto.
- G. Modification. No modification or amendment of this Agreement shall be effective unless set forth in writing and signed by the Parties.

H. Authority to enter into this Contract. The undersigned ARTIST representative, by his/her signature below, represents and warrants that he/she is duly authorized to execute this legally binding Contract for and on behalf of ARTIST.

IN WITNESS WHEREOF the parties hereto have accepted and executed this Contract as of the Effective Date first written above.

CITY OF TACOMA

HORATIO H. LAW

T.C. Broadnax, City Manager

Printed Name: _____

Ricardo Noguera, Director
Community and Economic Development
Dept.

Title: _____

Address: _____

Approved:

City/State/Zip

Andrew Cherullo, Finance Director

Tax ID: _____

Approved as to Form:

Deputy City Attorney

Attest:

Doris Sorum, City Clerk

EXHIBIT "A"**SCOPE OF WORK & COMPENSATION****Scope of Work:**

The ARTIST shall develop a proposal for permanent public ARTWORK(S) that will act as gateways to the Lincoln Business District. In addition, the ARTIST shall work with the design team to identify opportunities to both incorporate artwork into the design and construction of the streetscape improvement project, and identify opportunities for artist interventions or artworks related to the project to be completed by local artists. The ARTIST shall conduct in-depth community engagement and research to inform both the permanent public artwork proposal and the work with the design team, as well as the larger neighborhood revitalization effort as appropriate. This contract has two different phases: Phase I: Community Engagement, Design Team Work, and Artwork Design; and Phase II: Public Art Fabrication, Installation, and Reporting. Upon successful completion of Phase I, the CITY shall amend the Contract to include the scope and compensation schedule for Phase II.

Phase I: Community Engagement, Research, and Design**A. Community Engagement**

The ARTIST shall develop and implement a community engagement strategy for the duration of the project. This community engagement work should be used to inform the ARTIST's work with the design team and the design of the permanent public ARTWORK(S). The ARTIST shall create a **Proposal for Community Engagement Strategy** that shall guide the community engagement work through the duration of the project. The **Proposal for Community Engagement Strategy** shall include a timeline with 4 milestones through the life of the project.

B. Design Team Work

The ARTIST shall work with the design team to affect the streetscape design of the project and identify opportunities for artwork to be incorporated into the design and construction of the project. To support this work, the ARTIST shall present an **Art Brief** to the design team that:

1. Identifies specific opportunities to incorporate artwork into the streetscape design and construction of the project
2. Identifies initial concepts and/or materials for permanent gateway features
3. Identifies specific opportunities for artist interventions or artworks related to the project, to be completed by local artists

Opportunities and concepts may be illustrated via a combination of text, reference imagery, drawings, site plans, and other appropriate methods. Once the **Art Brief** is presented, the ARTIST shall work with the design team to identify which opportunities are feasible within the larger project scope, budget, and timeline, and shall continue to develop proposals for items 1 and 2 listed above as part of the Artwork Design.

The ARTIST will be available to provide advice on implementing recommendations from the **Art Brief** for the duration of the project.

C. Artwork Design

The ARTIST shall produce preliminary and final design documents outlining the proposed permanent public ARTWORK(S) for the Lincoln District (both gateway and integrated). The **Preliminary Design Proposal** should include:

1. Concept(s)
2. Artwork location description (visual or written)
3. Materials under consideration
4. General fabrication methods
5. Possible protective finishes
6. Possible installation methods
7. Imagery (drawings, sketches, any visual representation)

Following review by the Tacoma Arts Administrator or designee, the **Preliminary Design Proposal** for the ARTWORK(S) shall be presented to the Design Review Committee.

The ARTIST shall work with the Tacoma Arts Administrator or designee to identify permit requirements for the ARTWORK(S).

After approval of **Preliminary Design Proposal**, ARTIST shall use feedback from the Design Review Committee to develop a complete and detailed **Final Design Proposal** detailing the proposed permanent public ARTWORK(S) for the Lincoln District (both gateway and integrated).

The ARTIST shall present it to the Tacoma Arts Administrator or designee. The **Final Design Proposal** should include:

1. A written narrative of the concept and imagery.
2. Scale renderings or maquette, labeled with dimensions, materials, and hardware.
3. A site map identifying the proposed placement of ARTWORK(S).
4. Proposed fabrication methods, and indication of whether the work will be fabricated by the ARTIST, a fabricator, or a combination (if a combination, include details about who will fabricate what).
5. Description of all materials and finishes.
6. Material samples and material data sheets where applicable.
7. Budget.
8. Timeline/schedule.
9. Anticipated routine maintenance (less than 5 years).
10. Anticipated special maintenance (every 5-20 years).
11. Artwork life expectancy.
12. Proposal for planned community engagement during the Contract for Commissioned Artwork, if applicable (this can be an update to the Proposal for Community Engagement Strategy).

The ARTIST shall present the **Final Design Proposal** to the Design Review Committee for approval. The ARTIST or designee shall present the final designs to the Tacoma Arts Commission for approval. The ARTIST shall be available to present designs to the Tacoma City Council if required.

The ARTIST may adjust the **Final Design Proposal** in response to feedback, if substantial revisions are deemed necessary. If the proposal is not accepted, ARTIST may rework and resubmit a revised design proposal for review by the Design Review Committee and Tacoma Arts Commission. Minor revisions shall be approved by the Tacoma Arts Administrator or designee.

Once **Final Design Proposal** has been approved by the Design Review Committee, the ARTIST shall obtain structural engineering stamped by an engineer licensed in Washington State to the Tacoma Arts Administrator or designee for review by the project team.

The CITY reserves the right to reject the ARTWORK proposal, based on feedback from the Tacoma Arts Commission and to not proceed to Phase II: Public Art Fabrication, Installation, and Reporting.

Upon approval of **Final Design Proposal**, the CITY shall amend the Contract to include the scope and compensation schedule for Phase II: Public Art Fabrication, Installation, and Reporting.

Phase II: Public Art Fabrication, Installation, and Reporting

A. Fabrication

1. The ARTIST shall fabricate the ARTWORK, as detailed in the Final Design Proposal and stamped structural engineering, to be kept on file by the CITY.
2. The ARTIST shall coordinate with the Design Team and the Tacoma Arts Administrator or designee to ensure to
3. The completion timeline will be determined by the Tacoma Arts Administrator or designee in consultation with the ARTIST.
4. Any change in scope, design, size, texture, color or materials of the proposed ARTWORK after final review acceptance or any change that will alter the ARTWORK as proposed shall require review and approval by the Tacoma Arts Administrator or designee.

B. Installation

1. The ARTIST shall install the ARTWORK as detailed in the Final Design Proposal and stamped structural engineering, to be kept on file by the CITY.
2. The installation timeline will be determined by the Tacoma Arts Administrator or designee in consultation with the ARTIST. The ARTIST will arrange installation with the Tacoma Arts Administrator or designee to be sure that installation is minimally disruptive.
3. Any change in installation methods after final review acceptance or any change that will alter the ARTWORK installation as proposed shall require review and approval by the Tacoma Arts Administrator or designee.
3. Transportation of the pieces to and from the installation site is the responsibility of the ARTIST.

C. Reporting

1. To help facilitate the understanding of the works of art sited in public places, the ARTIST shall provide a completed "Public Report" to the Tacoma Arts Administrator in accordance with Exhibit "E" attached hereto and incorporated herein. This shall include the title of the piece, background information and description of the ARTWORK, and 2-5 professional photographs of the ARTWORK from different views that are suitable for publication.
2. Upon completion of the ARTWORK, the ARTIST will provide a current professional resume and a "Technical and Maintenance Record" in accordance with Exhibit "D", for the ARTWORK including recommended maintenance methods, materials specifications and vendors whose materials or services may be required in the future maintenance of the ARTWORK i.e. fabricators.
3. Upon completion of the ARTWORK, the ARTIST will provide photographs for artwork care and maintenance, including a photograph of the entire installed piece, photographs of each individual part, and photographs taken during fabrication. These photographs will be used for maintenance and collection care purposes.
4. Acknowledge the City of Tacoma Arts Commission as the funder for the ARTWORK in all public presentations and in written, printed, or electronic publication of information regarding the ARTWORK.

Obligations of the CITY:

- A. Proposals and decisions affecting the site (relevant to the ARTWORK(S)) or the ARTWORK(S) itself shall be promptly submitted to the ARTIST.
- B. It shall be the responsibility of the Tacoma Arts Administrator or designee to give the ARTIST access to information and to allow the ARTIST to inspect, at reasonable times and under reasonable conditions, any plans, publications, reports, statistics, studies, records, or other data or information (except information considered confidential by the CITY) prepared or owned by the CITY and necessary to the subject matter of the services to be furnished by the ARTIST under this Contract. The confidentiality of documents deemed to be confidential by the CITY and provided to the ARTIST shall be maintained by the ARTIST. All reports, documents, and other data furnished to the ARTIST by the CITY shall be returned to the CITY unless otherwise indicated.
- C. The Tacoma Arts Administrator or designee shall make a good faith effort to connect the ARTIST with local stakeholders and resources that may benefit the successful completion of the project.
- D. The Tacoma Arts Administrator or designee shall provide overall design coordination between the ARTIST, the CITY, and KPG Architects.
- E. The Tacoma Arts Administrator or designee shall be solely responsible for coordinating public information materials and activities related to the ARTWORK(S).

- F. The Tacoma Arts Administrator or designee shall coordinate a dedication ceremony.
- G. The Tacoma Arts Administrator or designee shall provide an identification plaque that lists the ARTIST'S name **Horatio Law**, the title of the piece as determined by the ARTIST, the year of completion, funding sources, copyright symbol, and other pertinent information deemed necessary by the CITY.
- H. The Tacoma Arts Administrator or designee shall maintain records of the ARTWORK within the Tacoma Arts Commission Municipal Art Collection.

Compensation:

The ARTIST shall be eligible for payment not to exceed (NTE) two hundred ten thousand dollars and zero cents (\$210,000) after the satisfactory performance of specified phases spelled out under the terms of this Contract identified below. The Tacoma Arts Administrator or designee shall verify the completed work for invoice approval.

Payment Stage I: Five percent (5%) NTE ten thousand five hundred dollars (\$10,500) upon receipt or completion of the following:

- An invoice describing the deliverables completed.
- Proof of general liability insurance policy in accordance with section 12 of the Contract.
- Proof of City of Tacoma business license.
- Preliminary meeting with the project team.
- Preliminary research, which could include one or more of the following: site visit(s), meeting(s) and/or conversations with stakeholders, meeting(s) with KPG Architects, review of documents related to the project, other research that will inform the project (could include cultural, social, physical, natural, historical, or other elements of the site).
- Coordination and communication
- Submission of **Proposal for Community Engagement Strategy**, including timeline with 4 milestones.

Payment Stage II: Five percent (5%) NTE ten thousand five hundred dollars (\$10,500) upon receipt or completion of the following:

- An invoice describing the deliverables completed.
- Completion of milestone 1 of community engagement, as described in the ARTIST'S **Proposal for Community Engagement Strategy**.
- Receipt of documentation of community engagement (photo, video, or written).
- Presentation of **Art Brief** to the Design Team.

Payment Stage III: Ten percent (10%) NTE twenty one thousand dollars (\$21,000) upon receipt or completion of the following:

- An invoice describing the deliverables completed.
- Presentation of **Preliminary Design Proposal** to the Design Review Committee and the Tacoma Arts Administrator for review.
- Completion of milestone 2 of design phase community engagement, as described in the ARTIST'S **Proposal for Community Engagement Strategy**.

- Receipt of documentation of community engagement (photo, video, or written).

Payment Stage IV: Thirty percent (30%) NTE sixty three thousand dollars (\$63,000) upon receipt or completion of the following:

- Presentation of **Final Design Proposal** to the Design Review Committee and the Tacoma Arts Administrator (or designee) for review.
- Stamped structural engineering.
- Model releases and/or permissions for copyrighted material incorporated into artwork (if applicable).
- Submission of necessary permits.
- Approval of **Final Design Proposal** by the Tacoma Arts Commission.
- Completion of milestone 3 of design phase community engagement, as described in the ARTIST's **Proposal for Community Engagement Strategy**.
- Receipt of documentation of community engagement (photo, video, or written).

Payment Stage V: Twenty percent (20%) NTE forty two thousand dollars (\$42,000) upon receipt or completion of the following:

- An invoice describing the deliverables completed.
- Approval of necessary permits for ARTWORK.
- 50% completion of ARTWORK as reviewed and determined by the Tacoma Arts Administrator or designee either through photographs or via studio visit.

Payment Stage VI: Twenty percent (20%) NTE forty two thousand dollars (\$42,000) upon receipt or completion of the following:

- An invoice describing the deliverables completed.
- Installation of ARTWORK.
- Receipt of the "Certificate of Substantial Completion" from the CITY (Exhibit "C").

Payment Stage VII: Ten percent (10%) NTE twenty one thousand dollars (\$21,000) upon receipt or completion of the following:

- An invoice describing the deliverables completed.
- Completed "Public Report" (Exhibit "E")
- Completed "Technical and Maintenance Record" (Exhibit "D")
- Current professional resume.
- 5-10 professional images of ARTWORK from different angles suitable for publication.
- Photographs for artwork care and maintenance, including a photograph of the entire installed piece, photographs of each individual part, and photographs taken during fabrication. These photographs will be used for maintenance and collection care purposes.
- Participation in Public Art Dedication (to be coordinated by CITY).
- Completion of milestone 4 of design phase community engagement, as described in the ARTIST's **Proposal for Community Engagement Strategy**.
- Receipt of documentation of community engagement (photo, video, or written).

EXHIBIT "B"

INVOICE

This form is intended to illustrate the information the City of Tacoma needs to process Contract payments. The City of Tacoma prefers that CONTRACTOR use its own standard business invoice forms so long as they include the following information. CONTRACTORS who do not have a standard business invoice form may use this form as their invoice. Your cooperation in providing the information we are requesting will ensure prompt processing of your payments.

I HEREBY REQUEST PAYMENT FOR THE FOLLOWING ITEMIZED SERVICES AND/OR PRODUCT DELIVERABLES:

Services (Describe):

Deliverables (Describe):

AS PER CONTRACT No.: _____ **AMOUNT DUE :** _____

I HEREBY CERTIFY THAT THIS BILL IS CORRECT AND JUST AND THAT PAYMENT FOR THE SERVICES AND/OR DELIVERABLES IDENTIFIED HAS NOT BEEN RECEIVED.

BY: _____ **DATE SIGNED:** _____
SIGNATURE:

TITLE: _____

ORGANIZATION NAME: _____

FEDERAL TAX ID No. or SS No.: _____

TELEPHONE NUMBER: _____

PLEASE REMIT PAYMENT TO: (Name and Address of Contractor)

I Attest and Certify that all Services and/or Deliverables identified in this Invoice have been performed and/or supplied.

Contract Administrator Signature

City Dept./Division: Community & Economic Development/Arts
Contact Name: Amy McBride
Phone: 253-591-5192
Fax: 253-591-5232

Professional Services Contract
City of Tacoma and Horatio H. Law
Form Date: 01/02/2014

EXHIBIT "C"

CERTIFICATE OF SUBSTANTIAL COMPLETION

Artist Information

Artist _____

Address _____

Street

City

State

Zip Code

Project Information

Title of Artwork _____

Date Executed _____

Site of Object (Not applicable for portable works) _____

Congratulations on completing your public art project for _____ (site).

The ARTWORK created under this contract has been reviewed by the Tacoma Arts Administrator and found to be completed in substantial conformity. Substantial Completion is the stage in the progress of the work when the work is sufficiently complete in accordance with the Contract documents so that the CITY is conveyed, transferred, and granted legal title to the ARTWORK and the city shall assume care, custody and control of the work. The date of Substantial Completion of the ARTWORK designated below is the date of issuance established by this certificate, which is also the date of commencement of applicable warranties required by Contract documents.

A list of items to be completed is attached hereto. Completion of such items in accordance with the Contract documents will be the date of final payment.

The CITY accepts the ARTWORK as substantially complete and assumes full possession at _____(time) on _____ (date).

Department Representative

Date

Tacoma Arts Administrator

Date

EXHIBIT "D"

**TACMAC CONSERVATION
TECHNICAL AND MAINTENANCE RECORD - INTEGRATED SITE WORK**

Technical information is required for future maintenance and repairs. This information is kept in your permanent archive record. Please type or print clearly and make your responses complete and thorough.

This Box For TACMAC Use Only. TACMAC No. _____ Contract No. _____	
Program/Project Name _____	Contract Amount _____
Collection Subset _____	Fund Source _____

General Information For Signage and Labeling Purposes

Artist _____
Last First Middle

Name as it appears on contract (If different from above) _____
Last First Middle

Collaborating Artists/Project Partners (Include firm name)

Date Executed _____

Title of Work _____

Location of Integrated Site Work (Name and address of building/facility) _____

Location and Description of Signature Marks (Copyright mark if it occurs) _____

Medium or Material _____

Dimensions and Weight (To the best of your ability, describe relevant sizes, square footage, dimensions, and weights. For complex works or sequential/multiples installation, use the

Welding or Joining Materials and Method – Including bolt and pin type & size, etc. Attach product technical data sheets and material safety data sheets (MSDS) for adhesives and plastics

Construction Method – Attach architect, landscape architect, engineer, and fabrication specification drawings. Describe the construction method and process

Material Surface Finish – Sanding grit, tool pattern, paint color & type, glaze, gold leaf, chemical patina color & brand name, powder coat, water repellent, sealer, and anti-graffiti coating, etc. Attach product technical data sheets and material safety data sheets (MSDS) for chemical components such as glass, patina, sealers, etc.

Foundation/Installation Structure – Include material, bolt and pin type & size, adhesives, anchor grout brand name, etc. Attach any relevant drawings and engineering reviews

This Box For TACMAC Use Only.

Foundation Structure of Site – Floor, wall, or ceiling construction design to which work is attached (i.e. concrete, sub-floor, drywall, wood, or metal studs, etc.)

Integrated Site – Cautions regarding site conditions, water sprinkler systems, direct sunlight, heat, traffic pattern, special events, public safety, etc.

Not applicable

Maintenance Recommendations and Cautions Regarding Care of Integrated Site Work by Facility Personnel – What is your visual intention for the site over time in regard to natural aging of materials and surfaces (i.e. soil, moss, shiny, dull, etc.) Be very specific about brand names of cleaning agents, method, and schedule for cleaning.

Can the piece be power washed? No Yes (if yes, state psi, method, and skill level required to perform the work)

Artist's Site Intention – If the site is altered in the future, please describe the visual relationships that would be important to maintain the integral intention of your work

Fabricators and Subcontractors – List all fabricators and makers other than artist. Include name, address, phone, and scope of work

Additional Information Relevant to Work

Artist's Signature _____ Date _____

EXHIBIT "E"

PUBLIC REPORT FOR ARTWORK

This information is kept in your permanent archive record. Please type or print clearly and make your responses complete and thorough.

This Box For TACMAC Use Only. TACMAC No. _____ Contract No. _____	
Program/Project Name _____	Contract Amount _____
Collection Subset _____	Fund Source _____

General Information

Artist _____
Last First Middle

Name as it appears on contract (If different from above) _____
Last First Middle

Collaborating Artists _____

Date Executed _____

Title of Artwork _____

Site of Object (Not applicable for portable works) _____

INFORMATION FOR PUBLIC RECORD

Please provide any background information related to the creation of this piece including people who were consulted in the design or creation of the work, the historical significance of the piece, community process, etc.

IDENTIFICATION PLAQUE
DETAIL INFORMATION FOR USE ON IDENTIFICATION PLAQUE

The identification plaque for the artwork will be in the following format:

City of Tacoma
Tacoma Arts Commission Municipal Art Program
Title
Artist Name
Year
Interpretation of Piece

This piece is funded by 1% of capital construction costs for the [name of facility]

Please provide the following information for use on the plaque:

Title of the piece as it should appear on the plaque

Artist name as it should appear on the plaque

Year of Completion

Interpretation of the piece as you would like it to appear on the plaque (we reserve the right to edit

text as necessary)

Artist's Signature _____ Date _____