

PUBLIC ART DESIGN AND COMMISSION AGREEMENT

THIS IS AN AGREEMENT BETWEEN:

City of McKinney, Texas, 222 N. Tennessee Street, McKinney, Texas 75069, +1 972 547 7500,
pgrimes@mckinneytexas.org (City)

AND

Guido van Helten Pty Ltd (EIN 98-1435006), 500 Robert Street N, Apt 704, St Paul, MN 55101, +1 719
480 0862, info@guidovanhelten.com (Artist)

RECITALS

- A. The City has indicated its desire for a project through communication with the Artist for the creation of a public artwork (the “Artwork”), a copy of which is attached to this agreement as Exhibit 1 (**Proposal Narrative & Quote**).
- B. Based on the information provided in the Proposal and after a site visit, the Artist will prepare a design for the public artwork, a copy of which will be provided to City in line with the schedule in this agreement and once submitted electronically will become Exhibit 4 (**Design**).
- C. The City wishes to commission the Artist to create and install the public artwork based on the Proposal Narrative & Quote.
- D. The Artist has agreed to produce, create and install the public artwork on the terms of this Agreement based on the Preliminary Design.

THE PARTIES AGREE AS FOLLOWS:

TIMEFRAMES

1. **Project Timeframes**

- 1.1. The City and the Artist agree to use their best efforts to complete all stages of the process of creation, amendment and installation of the design and the artwork that are the subject matter of this agreement (the **Public Artwork Project**) in accordance with the timeline set out in the Schedule or such other dates as the parties agree in writing (**Schedule**).

2. **Delay**

- 2.1. If there is a delay due to circumstances beyond the reasonable control of the parties, including but not limited to non-availability of necessary materials, shipping delays, labor strikes, public health crises, save and except known pandemics, or natural disasters, each party agrees to take all reasonable steps to perform their obligations hereunder as a consequence of that delay. Notwithstanding the foregoing, Artist shall not be excused from completion of the Public Artwork Project, save and except for City’s unilateral consent to a mutual rescission of this Agreement.

STAGE 1: DESIGN DEVELOPMENT

3. The Design

3.1. The City confirms and agrees that:

- a. the Proposal contains all relevant information relating to:
 - i the intended life and use of the public artwork;
 - ii the proposed site for the Artwork, the location of which is detailed in Exhibit 2 of this Agreement (**Site**), and the environment where the Artwork will be located, including any occupational health and safety and disability access considerations.
- b. the Design and related content or materials are confidential and are not to be made public in the media or otherwise unless written consent has been obtained from the Artist.

3.2. The Artist agrees to:

- a. develop an original design (the “**Design**”) for the Artwork based on the Proposal;
- b. create a detailed record of the Design in the form of a drawing or plan which includes clear information about:
 - i the scale and dimensions of the Artwork;
 - ii how the Artwork is intended to be situated in relation to the Site;
 - iii the suitability of the materials to be used and their durability given the proposed life, use and location of the Artwork as stated in the Proposal; and
 - iv any other issues identified including the intended use of the Artwork, any particular features of the Site, any occupational health and safety and disability access considerations, and any structural engineering requirements;
- c. deliver the Design to the City on or before the date specified in the Schedule.

3.3. Following receipt of the Design and within the time specified in the Schedule, the City must either:

- a. request changes to the Design in accordance with Section 4 of this agreement;
- b. accept the Design in accordance with Section 5 of this agreement; or
- c. reject the Design in accordance with Section 6 of this agreement.

4. Changes to the Design

4.1. The City may request a reasonable number of changes to the Design provided that the City:

- a. requests all such changes in a single written notice to the Artist specifying the changes (**Amendment Notice**) delivered to the Artist on or before the date specified in the Schedule;

- b. does not request any change to the Design that is substantially different from the Design as first submitted other than changes to the Design required in order to comply with occupational health and safety and disability access considerations, environmental or structural engineering requirements specified by the City;
 - c. does not request any major change to the proposed Site, overall surface, or placement of the Design; and
 - d. pays the Artist a fee for the production of any further Design produced by the Artist to address the changes in the Amendment Notice (**Amended Design**) as set out in Section 16.
- 4.2. Within five (5) calendar days of receiving the Amendment Notice, the Artist shall either:
- a. prepare an Amended Design and submit it to the City; or
 - b. notify the City that the Artist is not prepared to modify the Design and outline the reasons why.
- 4.3. Within five (5) calendar days of the Artist submitting an Amended Design, the City must either:
- a. accept the Amended Design in accordance with Section 5; or
 - b. reject the Further Amended Design in accordance with Section 6.
- 4.4. Within five (5) calendar days of the Artist notifying the City under Section 4.2b that the Artist is not prepared to make changes to the Design or the Amended Design, the City must:
- a. accept the Design or Amended Design by notifying the Artist in accordance with Section 5; or
 - b. reject the Design or the Amended Design in accordance with Section 6. If the Artist fails or refuses to modify the Design, the City may terminate this Agreement, and all fees due to be paid to the Artist including and not limited to those fees in the schedule, and any costs incurred by the Artist in preparation for installation as outlined in the quote (found in Exhibit 1) and with proper documentation prior to the termination date shall be retained by Artist.

5. **Acceptance of the Design**

- 5.1. The City may accept the Design or the Amended Design by notifying the Artist in writing.
- 5.2. The City is deemed to accept the Design or the Amended Design if the City does not, within the periods specified in this agreement, either:
- a. expressly accept the Design, the Amended Design or the Further Amended Design in accordance with this Section;
 - b. request changes to the Design, the Amended Design or the Further Amended Design in accordance with Section 4; or
 - c. reject the Design, the Amended Design or the Further Amended Design in accordance with Section 6.

- 5.3. By accepting the Design (or any Amended Design), the City agrees that the Design or Amended Design is suitable for the intended life of the Artwork and the environment where the Artwork will be located.

6. **Rejection of the Design**

- 6.1. The City may reject the Design or the Amended Design by notifying the Artist in writing.
- 6.2. Where the City rejects the Design, or the Amended Design the City shall pay the Artist the fee for design development specified in the Schedule (**Design Development Fee**) unless the Design or the Amended Design:
 - a. was delivered to the City more than ten (10) calendar days after the agreed upon due date; or
 - b. did not conform to, or was substantially different from, the Design except to the extent such differences were as a result of changes requested in an Amendment Notice or Further Amendment Notice.

STAGE 2: CREATION OF THE WORK

7. **The Artwork**

- 7.1. On or before the date set out in the Schedule, the Artist agrees to:
 - a. create the Artwork as described in, and in accordance with, the Design or the Amended Design accepted by the City;
 - b. provide the City with access to view the Artwork during installation.
- 7.2. As the Artwork is to be created on the Site, the City will arrange for the Artist and the Artist's employees and agents to have full and free access to those premises at all reasonable times for the purpose of producing the Artwork.
- 7.3. Within five (5) calendar days of receiving notification of the Artwork's completion under Section 7.1(b), the City must view the Artwork and either:
 - a. request changes to the Artwork in accordance with Section 8;
 - b. accept the Artwork in accordance with Section 9; or
 - c. reject the Artwork in accordance with Section 10.

8. **Changes to the Artwork**

- 8.1. The City may request up to two (2) reasonable changes to the Artwork provided that the City:
 - a. requests such changes in a single written notice specifying the changes (Artwork Amendment Notice) delivered to the Artist within the time specified in the Schedule;
 - b. acknowledges that the Artist has applied aesthetic skill and judgement in the creation of

the artwork and does not seek any changes based solely on artistic merits unless the Artwork is substantially different from the accepted Design or the Amended Design; and

- c. pays the Artist the fee (**Artwork Amendment Fee**) to undertake the requested changes as set out in Section 16.

8.2. Within ten (10) calendar days of receiving the Artwork Amendment Notice, the Artist shall either:

- a. begin work towards amending the Artwork to incorporate the changes requested by the City, notify the City that the changes have been completed and provide the City with access to view the amended Artwork; or
- b. notify the City that the Artist will not modify the Artwork.

8.3. Within ten (10) calendar days of receiving the notice in Section 8.2(b) above, the City must either:

- a. accept the Artwork in accordance with Section 9; or
- b. reject the Artwork in accordance with Section 10.

9. **Acceptance of the Artwork**

9.1. The City may accept the Artwork by notifying the Artist in writing within the time specified in Section 8.3.

9.2. The City is deemed to accept the Artwork if the City does not:

- a. expressly accept the Artwork in writing in accordance with Section 8.3 or 9.1;
- b. request changes to the Artwork in accordance with Section 8.1; or
- c. reject the Artwork in accordance with Section 10.

10. **Rejection of the Artwork**

10.1. The City may reject the Artwork by notifying the Artist in writing provided that:

- a. the Artwork is not produced in accordance with the Design or Amended Design accepted by the City;
- b. the City has requested changes to the Artwork under Section 8 in order to bring the Artwork into conformity with the accepted Design, Amended Design;
- c. the City has agreed to amend the Schedule to give the Artist a reasonable time to make those changes; and
- d. the Artist has not made the requested changes within the time specified.

STAGE 3: INSTALLATION OF THE WORK

11. The Site

- 11.1. A plan of the Site is attached to this agreement as Exhibit 2.
- 11.2. The City will ensure that the Site is adequately prepared for the creation and installation of the Artwork at the Site including but not limited to materials storage, access to water, ground clearing, surface cleaning, or other such requested preparations within the times specified in the Schedule.

12. Schedule and Additional Requests

- 12.1. The Artwork is to be installed in accordance with the Schedule in this Agreement;
- 12.2. The Artist may reject at any time:
 - a. all media, meetings, or additional requests by the City to the Artist outside of those agreed in writing prior to installation of the Artwork; or
 - b. any sponsorship demands or videography requests by the City and any sponsors associated with the project outside of those agreed to in writing prior to installation of the Artwork; and
 - c. the City will provide the artist with a list of all sponsors and expected visitors to the Site; and
- 12.3. Upon acceptance of this Agreement, the requests in Section 12.2(b) above and engagements to which the Artist has agreed, in writing, will become Exhibit 3 to this Agreement.

13. Maintenance manual

- 13.1. Within twenty (20) business days of the acceptance of the Artwork by the City and its installation on the Site, the Artist will provide the City with a written manual containing comprehensive instructions for the proper cleaning and maintenance of the Artwork (Manual).
- 13.2. The Manual will include:
 - a. a description of the materials used;
 - b. “as installed” drawings for the Artwork and all related equipment and services; and
- 13.3. The City will use best efforts to ensure that the Artwork is properly maintained and protected from damage in accordance with the Artist’s instructions in the Manual.

14. Defects liability

- 14.1. A defects liability period will extend for a period of twelve (12) months from the date of acceptance of the Artwork by the City.
- 14.2. Within one hundred twenty (120) days of receipt of written notice from the city, the Artist will rectify, without charge to the City, any latent defects in the Artwork that become apparent during this period.

14.3. This Section will not apply to damage or deterioration which results from fair wear and tear, the characteristics of the materials used to create the Artwork or the Site's environment.

14.4. The rights granted under this Section are in addition to any rights that a party may have at law.

ARTIST PAYMENTS

15. Commission Fees

15.1. The City agrees to pay the Artist the fees specified in the Schedule (**Commission Fee**):

- a. in instalments in accordance with the Schedule; and
- b. within thirty (30) calendar days of receiving the Artist's invoice.

16. Amendment Fees

16.1. Where the Artist produces an Amended Design or Further Amended Design pursuant to Section 4.2, the City must pay the Artist the fee specified in the Schedule (**Design Amendment Fee**) within thirty (30) calendar days of receiving the Artist's invoice.

16.2. Where the Artist amends the Artwork in response to an Artwork Amendment Notice, the City must pay the Artist the fee specified in the Schedule (Artwork Amendment Fee) within thirty (30) calendar days of receiving the Artist's invoice.

17. Substantial Variation

17.1. Where an Amendment Notice requests changes which:

- a. require the use of alternative materials or methods of construction, or the use of particular contractors or sub-contractors requested by the City; and
- b. are not necessary in order to comply with the Proposal and complying with such changes will result in an increase of more than 5% in the costs incurred by the Artist to create the Artwork, the Artist may request an amendment to the Commission Fee by written notice to the City accompanying the Amended Design and verification of costs described herein (**Notice of Variation**).

17.2. The Notice of Variation must specify the basis for the increased costs and provide reasons and verification of costs to support the Artist's original proposal as consistent with the Proposal.

17.3. Within ten (10) business days of receipt of the Notice of Variation, the City shall either:

- a. Agree to vary the Commission Fee as stated in the Notice of Variation or as otherwise agreed with the Artist;
- b. Withdraw the Amendment Notice and accept the previous Design or Amended Design; or
- c. Reject the Design or Amended Design in accordance with Section 6 and terminate the agreement under Section 4.

18. Death or incapacity of the Artist

In the event of the Artist's death or incapacity rendering the Artist unable to complete the Artwork, the City may elect to complete the Artwork in accordance with all applicable laws and all payments made up to the point of death or incapacity will be retained by the Artist or the Artist's estate and all work performed to date of death or incapacity will be compensated. The incomplete Artwork and any materials paid for by City will become the property of the City upon payment to compensate Artist or Artist's estate for all work performed to the date of incapacity or death. The artist or artist's estate will nominate an individual who is at least 18 years of age and has demonstrated capacity to complete the commission or agency who could complete the work and provide this nomination in writing to City of McKinney staff.

19. Interest

The City will pay interest on any overdue payment in accordance with the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code.

20. Sales Tax

Artist acknowledges that the City is a tax-exempt municipal corporation, and no state or local sales taxes or federal excise taxes will apply to this agreement.

INTELLECTUAL PROPERTY

21. Title and copyright

21.1. The Artist warrants that the Design and the Artwork:

- a. are the Artist's original works;
- b. do not to the best of the Artist's knowledge infringe upon the copyright or trademark of any third party; and
- c. are unique works of the Artist developed exclusively for the commission under this agreement.

21.2. Title in the Artwork will only transfer to the City after:

- a. the City has accepted the Artwork;
- b. the Artwork has been completed; and
- c. all payments due to the Artist under this agreement have been made.

21.3. The Artist's final design and all other work product (including the final Artwork under this Agreement) shall become the property of the City upon final acceptance, without restriction on future use, except as provided below. The Artist may retain copyright and other intellectual property rights in and to the final design and the final Artwork. By execution of this Agreement, the Artist grants to the City a perpetual, irrevocable license to graphically depict or display the final Artwork for any non-commercial purpose whatsoever in any medium or forum, including but not limited to the internet; for purposes of this limitation, any graphic depiction or display of the final Artwork intended to promote or benefit the City, its public services or its public purposes, regardless of whether or not a fee is charged to the

public, or whether revenue is otherwise received by the City, shall be deemed a non-commercial purpose.

- 21.4. The parties agree that the Artist is the owner of the copyright in the Proposal, the Design, any Amended Design and the Artwork and all other materials created by the Artist under, or in relation to, this Agreement.
- 21.5. If the City engages another artist or craftsperson to complete the Artwork under Section 18.2(b) and the creative contribution of that artist or craftsperson to the final Artwork is such that they are entitled under the *Visual Artists Rights Act* to joint ownership in the copyright in the Artwork with the Artist or the Artist's estate, then the Artist or the Artist's estate may demand the removal of any notice displayed with the Artwork, which identifies the Artist with the Artwork.

22. Attribution

Subject to Sections 0, 23.4 and 0, the City may permanently display a notice in a reasonably prominent position near the installed Artwork, which identifies the Artist and the Artwork as follows and with the below conditions on the notice and must be approved by the Artist prior to fabrication and installation near the Artwork:

Guido van Helten, Year of Completion
Mural commissioned by City of McKinney, Texas

- a. the notice may not obstruct the Artwork in any way, unless approved by the Artist with written consent prior to installation of the notice; and
- b. the notice may not contain any logos, sponsors, or other information more than the details noted above unless approved by the Artist with prior written consent to fabrication of the notice;

23. Repairs and restoration

- 23.1. The City will give the Artist, by written notice to the Artist, right of first refusal to perform any repairs or restoration to the Artwork. This option will lapse if the Artist does not accept such repair and restoration duties within ten (10) business days after receiving the City's notice.
- 23.2. The City will pay the Artist a fee for repairs and restoration Artwork undertaken by the Artist at standard commercial rates current at the time of the restoration.
- 23.3. The City agrees to cover the costs associated with any equipment or accommodation needed in order to complete the restoration which will be in addition to the Artist's rate as outlined in clause 23.2.
- 23.4. The Artist reserves the right to demand the removal of any notice displayed with the Artwork, which identifies the Artist with the Artwork if the Artist does not perform the Artwork's repairs or restoration.

24. Alteration and deaccessioning of the Artwork

- 24.1. The City may destroy, remove or otherwise deaccession the Artwork if:
 - a. it is damaged or deteriorated beyond reasonable repair or conservation or it is no longer consistent with the City's public art master plan for the Site; and

- b. the City complies with the procedures set out in the *Visual Artists Rights Act*.^{24.2} The City will not alter or modify the Artwork in any way whatsoever without the Artist's prior written consent provided that where such alterations or modifications are required for the proper maintenance of the Artwork, or by law to comply with occupational health and safety standards, such consent will not be unreasonably withheld.
- 24.3 If the City intends to destroy, remove or otherwise deaccession the Artwork, it must give the Artist written notification at least ninety (90) days prior to the expected date of destruction, removal, or deaccession.
 - 24.4 If the City alters, modifies or relocates the Artwork, the City will comply with the procedures set out in the *Visual Artists Rights Act*, and upon written request by the Artist, remove any notice displayed with the Artwork which identifies the Artist with the Artwork. The remedy under this Section is in addition to any other remedies available to the Artist.
 - 24.5 If the City sells the Artwork to a third party during the term of the Artist's copyright in respect of the Artwork, the City agrees to pay the Artist or the Artist's estate a resale royalty:
 - a. in accordance with the Section 17 U.S.C. 101 of the *Copyright Act* or the applicable artists' resale royalty scheme in effect under U.S. law at the time of such sale; or
 - b. if U.S. law does not provide for such a royalty at the time of sale, in an amount of 5% of the sale price exclusive of tax up to a maximum amount of \$25,000.00.

LIABILITY AND INSURANCE

25. Risk of loss or damage

- 25.1. As the Artwork is to be created on the Site, the City will bear the risk of loss of, or damage to, the Artwork until installation is complete and will take out and maintain insurance against loss or damage during that period.
- 25.2. The City will bear the risk of loss of, or damage to, the Artwork after installation and will take out and maintain insurance against loss or damage for the period until title to the Artwork passes to the City under Section 21.2.

26. Workers Compensation

- 26.1. The Artist will be responsible for maintaining worker's compensation insurance in relation to any work or other act associated with the performance of this agreement carried out by the Artist, the Artist's employees or its agents.

27. General Liability

- 27.1. The Artist will be responsible for maintaining general liability insurance coverage in relation to any work or other act associated with the performance of this agreement carried out on the Artist's premises or on the premises of the Artist's employees.
- 27.2. The City will be responsible for maintaining general liability insurance coverage in relation to any work or other act associated with the performance of this agreement carried out on the City's premises (including the Site) or on the premises of the City's employees or agents or otherwise in connection with the Artwork following installation.

28. Insurance policies

- 28.1. During the term of this agreement, the Artist must name the City as Additional Insured and provide the City with current certificates of coverages for all required policies of insurance.
- 28.2. All premiums necessary to maintain current insurance coverages are to be paid by the Artist at least seven (7) days before the expiration of such coverages.
- 28.3. The City may do all things necessary to effect or maintain such insurance coverage if the Artist fails to maintain insurance as required under this agreement. This Section is not intended to create any obligation on the City to do so, unless otherwise required by this agreement.
- 28.4. Any moneys expended by the City for that purpose are repayable by the Artist upon demand, or, may be deducted by the City from any monies payable to the Artist.
- 28.5. The maintenance of insurance as required under this agreement shall not in any way limit the responsibilities and obligations of the Artist.

29. Indemnity

- 29.1. To the extent allowed by applicable Texas law, the City will indemnify and hold harmless the Artist against all losses, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of or in relation to City's sole or concurrent negligence which results in any injury, death, loss or damage suffered by any third party during the production and installation of the Artwork on the City's premises (including the Site) or on the premises of the City's employees or agents, or which arise for any reason following delivery or installation of the Artwork. This indemnity does not extend to losses, liabilities, costs and expenses caused by latent defects in the manufacturing, construction or building of the Artwork which posed a serious risk to persons or property.
- 29.2. The Artist will indemnify the City against all losses, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of or in relation to any breach of the Artist's warranty in clause 21.1.

TERMINATION

30. Termination

- 30.1. The Artist may terminate this agreement upon City's receipt of Artist's written notice and right to cure and upon City's failure to cure within ten (10) calendar days, if the City:
 - a. is more than thirty (30) calendar days late in making any payment under Sections 15, 16 or 17; or
 - b. is in breach of Sections 5.2, 8.1, 11.2, 12, 15, 16, 17, 19, 20, 21 or 22 and has failed to remedy the breach within 15 business days of receiving written notice of the breach.
- 30.2. If a delay under Section 2 has extended more than 10 weeks, either party may terminate this agreement by ten (10) business days written notice to the other party.
- 30.3. This agreement shall automatically terminate:

- a. if the City becomes insolvent, is declared bankrupt, has a liquidator appointed or goes into administration, voluntary or otherwise;
 - b. following rejection of the Design under Section 6; or
 - c. following rejection of the Artwork under Section 10.
- 30.4 In the event of termination under Section 30.1, 30.2, 30.3.1, or 30.3.2, the Artist will be entitled to receive and retain payment of
- a. all instalments of the Commission Fee due in the period up to the date of termination; and
 - b. if the Artwork has not been completed, the amount of any reasonable expenses incurred by the Artist in relation to the Artwork as at the date of termination which are not covered by instalments of the Commission Fee already due to the Artist.
- 30.5 In the event of termination under Section, 30.1, 30.2, 30.3a, or 30.3b, any rights of copyright licensed to, or conferred on the City under Section 21 shall cease immediately.
- 30.6 In the event of termination by City under Section 30.3.3, the Artist will reimburse to the City all amounts paid to the Artist under this agreement other than the Design Development Fee and any Design Amendment Fees or Artwork Amendment Fees.
- 30.7 In the event that termination under clause 0 occurs after acceptance of the Design, the City may either:
- a. seek reimbursement from the Artist of the instalments of the Commission Fee already paid less the amount of the Design Development Fee, in which case the Artist has the sole right to complete, exhibit, sell and otherwise deal with the Preliminary Design, the Design and the Artwork; or
 - b. where the Artwork is substantially completed, pay the Artist the amounts specified in clauses 30.4.1 and 30.4.2 in which case, the City will own the Artwork in the condition in which the Artwork then stands and may engage other artists or crafts persons to complete the Artwork in accordance with the Design.
- 30.8 Subject to clause 30.3.0, if this agreement is terminated under clause 30.3.0 or at any stage prior to acceptance of the Artwork, the Artist will:
- a. retain title to, and copyright in, the Proposal, the Design and the Artwork, and
 - b. have sole right to complete, exhibit and sell the Proposal, the Design and the Artwork.

31. Disputes

- 31.1. If a dispute or disagreement (Dispute) arises between the parties in connection with this agreement:
- a. one party must notify the other party in writing about the Dispute (Notice of Dispute); and
 - b. no party may start any litigation or arbitration in relation to the Dispute until the parties have complied with this Section.

- 31.2. The parties shall meet within fourteen (14) calendar days after receipt of the Notice of Dispute and hold good faith discussions to attempt to resolve the Dispute.
- 31.3. If the Dispute is not resolved within twenty-eight (28) calendar days after receipt of the Notice of Dispute, the parties agree to submit the Dispute to mediation with involvement from the Texas Accountants and Lawyers for the Arts. (TALA)
- 31.4. If the parties are not able to agree to a mediator, a third-party knowledgeable in art and creative law shall appoint a mediator.
- 31.5. The parties must continue to perform their respective obligations under this agreement despite the existence of a Dispute.
- 31.6. Nothing in this Section 31 will impact on either party's rights to terminate under any Section of this agreement.

32. **General provisions**

- 32.1. The parties acknowledge that the Artist is an independent contractor and that nothing in this agreement creates any relationship of partnership or employment between the parties.
- 32.2. A notice required to be given under this agreement may be emailed, delivered by hand, or sent by pre-paid post to the address of the party indicated at the top of this agreement with the preference being by email. Notices are taken to have been served when received, or if by pre-paid post, within five (5) calendar days of having been sent, whichever occurs first.
- 32.3. Subject to Section 21, 22 and 23, neither party may assign, subcontract, novate or otherwise divest this agreement or any of the rights or obligations under this agreement without the other party's prior written consent. This consent must not be unreasonably withheld.
- 32.4. Subject to clause 32.6, this agreement is the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to this subject matter is replaced by this agreement and has no further effect.
- 32.5. Nothing in this agreement transfers or excludes any applicable cultural rights in favour of North American Indigenous people that may be implemented under the law.
- 32.6. This agreement may only be modified by a written amendment signed by the parties.
- 32.7. Invalidity of any Section of this agreement will not affect the validity on any other Section except to the extent made necessary by the invalidity.
- 32.8. This agreement is governed by the law of the State of Texas. The parties submit to the jurisdiction of the courts of that State and any court competent to hear appeals from those courts.
- 32.9. A person signing this agreement on behalf of a party to the agreement warrants, by that signing, that they have all the necessary authority from that party to sign this agreement on their behalf.
- 32.10. The following rules of interpretation apply to this agreement unless the context requires otherwise:

- a. headings are for convenience only and do not affect interpretation;
- b. the singular includes the plural and conversely;
- c. a reference to an agreement or document is to that agreement or document as amended in accordance with clause 32.6.

EXECUTED AS AN AGREEMENT

Signed by the Artist:

Signature:

Name:

Date:

Signed on behalf of the City:

Signature:

Name:

Position:

Date:

EXHIBIT 1: THE PROPOSAL NARRATIVE & QUOTE

Project Proposal and Quote Attached here

EXHIBIT 2: SITE

Images and background information attached of the site located at
201 E. Virginia Street, McKinney, TX 75069

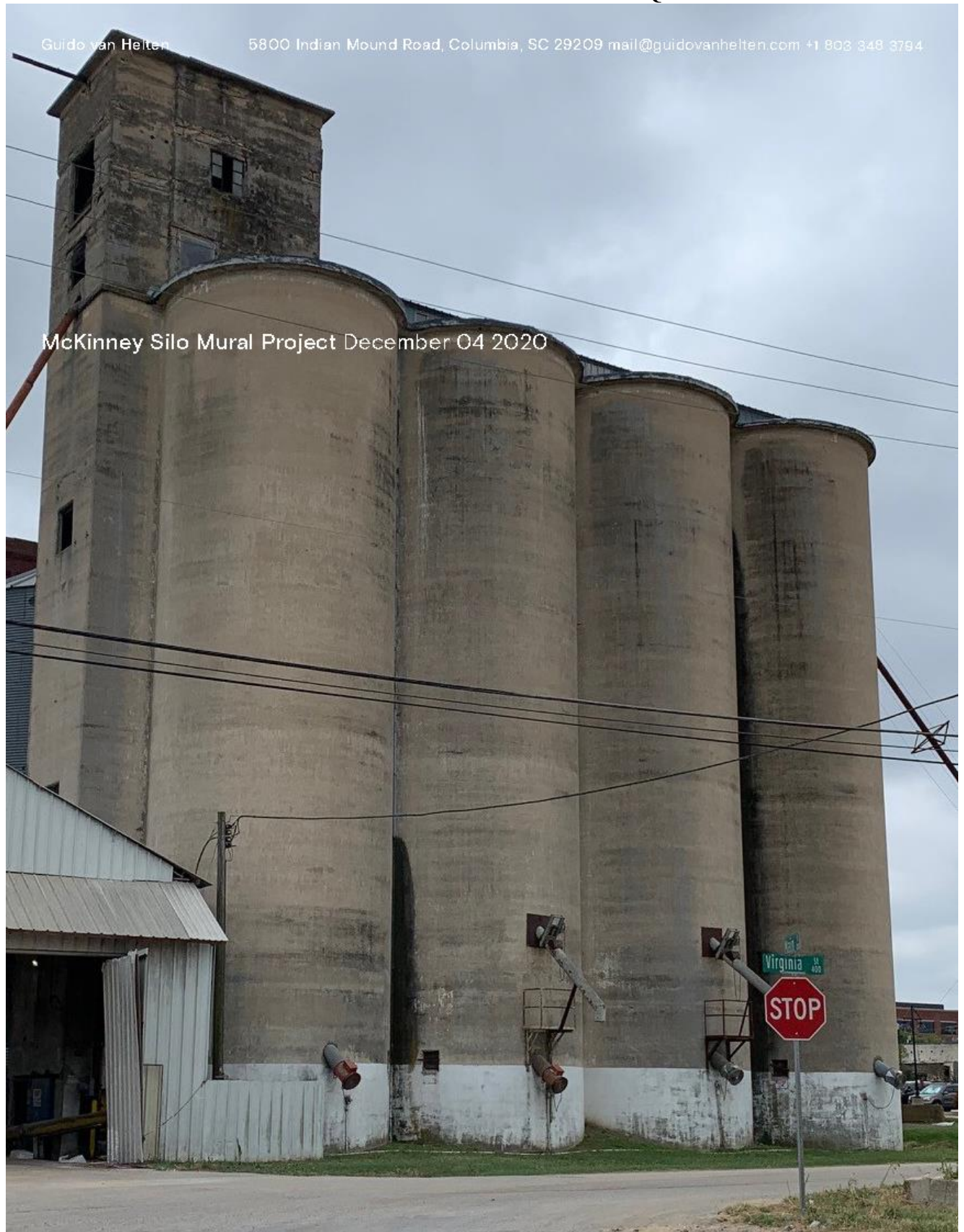
EXHIBIT 3: ADDITIONAL OBLIGATIONS

EXHIBIT 4: DESIGN

[ATTACH A COPY OF THE FINALISED DESIGN SUBMITTED BY THE ARTIST TO THE
CITY]

EXHIBIT 5: SCHEDULE OF FEES

EXHIBIT 1: THE PROPOSAL NARRATIVE & QUOTE



McKinney Silo Mural Project Introduction

This proposal contains information about the artist, initial project information, and an indicative quote for the installation of a large-scale mural in McKinney, Texas as part of the artist's ongoing *Monuments* project throughout the US.

Site Specific

With a focus on regional and industrial communities and their inherent architecture, van Helten has experience creating murals across the world. These murals reference and build upon local meanings which involve people and their connections to place.

Documentary

Van Helten's work relies on a documentary-style approach utilising photography, collecting oral histories, sharing culture, and public engagement to represent the unique character of the place and its regional identity.

Celebration

The multimedia projects are created collaboratively and inclusively with local people utilising the mural location as the centrepiece. The artist creates a distinct, site-specific, and evocative artwork to act as a symbol of local pride.

This proposal was created and is current as of December 2020.

For questions regarding this proposal or the information contained therein please contact: Margot Strasburger, mail@guidovanhelten.com 803 348 3794

McKinney Silo Mural Project Artist Information

Bio

Guido van Helten (b. 1986) is an Australian-born visual artist and photographer. He is an internationally recognised multimedia artist creating contemporary street art throughout the world. This is underpinned by his exploration of community and identity generated through the lens of photography and the creation of large-scale mural installations.

Born in Canberra and growing up in inner-city Melbourne Australia, the artist was influenced at a young age by traditional graffiti movements leading to an early introduction to aerosol. After graduating with a Bachelor of Visual Arts majoring in Printmaking at Southern Cross University, Guido began the development of his contemporary work now closely aligned with the movement of large-scale muralism across the world. His work has developed out of his keen interests in travel, photography, architecture and learning about cultures in connection with their landscapes. These interests and his ability to work on large-scale projects have spurred commissions across the world throughout Europe, Scandanavia, the Middle East, the United States and Australia. Receiving attention for his work in regional communities around Australia, Guido was nominated for the Sir John Sulman prize at the Art Gallery of NSW in 2016 for his work in the regional community of Brim, Victoria.

Artist Statement

Since 2013, my practice has evolved into an exploration of identity in connection with our urban environment inspired by an interest in architectural sociology. Through this, I approach mural projects using photography and community engagement to uncover the human stories that are site-specific in nature and connections to place.



Working in Brim, Victoria, Australia Round 3 Productions, 2015

3

McKinney Silo Mural Project Concept

Design

The design will be approached using a collaborative development strategy with local community guidance.

Selected representative organizations from McKinney will be engaged. These will include manufacturing businesses, schools, and suggested community based programs. Ideas for the large-scale mural will be developed through a photographic engagement strategy where concept and a photographic series are developed. These outcomes will aim to document the character of the town and form into a mural design that focuses on people, place and culture specific to McKinney, Texas.

Themes

- Cultural heritage
- Regional, community-focused identity
- Representative imagery of diversity

Consultation

Potential Collaborative Partners:

- Collin County History Museum
- Heard-Craig Centre for the Arts
- McKinney Community Development Corporation
- Collin County Black Chamber of Commerce
- Collin County Hispanic Chamber of Commerce
- UNIDOS
- McKinney Independent School District



Views of the McKinney Silos photos courtesy of Amy Rosenthal and Kaci Lyford, December 2020

McKinney Silo Mural Project Community Engagement

Participation and Connection

After preliminary research, the project will begin on the ground in McKinney with documentation of and engagement with community organisations. These interactions will influence the final design celebrating aspects of the town culminating in cultural documentation and a large-scale mural artwork painted at the silos.

The photographs and stories collected will inform a design representative of the place *as it is now* including:

- history
- industry
- vibrancy and
- the social fabric of the area.

Photography and consultation are at the core of the artist's approach to creating murals and the design will transform an industrial monument in the centre of town into an artistic statement and unique landmark commemorating the values and identifiers of McKinney.

With that in mind, there are a number of extra elements that could be a part of the overall project with the artist available to share his knowledge in photography, mural-making, and oral history collection.

Some examples of past community events include:

- Photography workshops - secondary and tertiary levels in the US and Australia
- Lectures/Talks at universities
- Creative movement + Connecting Art and Sport - workshop introduced in rural Australian community
- Murals + Public Art basics - workshops with primary school aged kids in the US and Australia
- Meet and Greets - informal discussions with the artist



1



2



4



3



5

1. Movement workshop in outback Queensland Mitch Fong, 2019 2. Mural workshop at Coonalpyn Primary School - South Australia Guido van Helten, 2017 3. Informal photography workshop at Hutterite community - South Dakota 2018 4. With Tribal leader Dave Brave Heart at Mahkato Wacipi Education Day Sarah Hughes, 2019 5. Movement workshop in outback Queensland Mitch Fong, 2019

McKinney Silo Mural Project Community Engagement



Mahkato Wacipi Education Day at Land of Memories Park Sarah Hughes, 2019

McKinney Silo Mural Project *Monuments* series

McKinney as part of *Monuments* Mural Project

Ideally situated north of Dallas, south of Oklahoma City, and only a drive away from Fort Smith, AR surrounded by major US highways 75 and 380, McKinney has potential as the location of a prominent arts and cultural draw in Texas.

This project will connect to the ongoing series created by Guido van Helten and collectively titled *Monuments* which focuses on large-scale murals, storytelling, and photography. Incorporating small to mid-sized rural areas, these works showcase the 'small town values' of the regional United States.

The works generate interest from the contemporary public art movement and its audience in larger metro areas; and they garner attention due to their prominence, scale, craftsmanship, and detail. What makes the project especially unique is the underpinning element of the artist's community engagement.

By creating a pathway of large-scale, socially-focused artworks, *Monuments* links these regional communities through their industrial architecture making them tourism opportunities. As the project continues to grow through projects and works, it will become ever more driveable and discoverable by fans and ephemeral viewers alike.

The final mural outcome will form a visual backdrop to further development of the Historic McKinney strategy, bringing activation to the town's revitalisation of the town centre while honouring the industrial past and bringing cultural future to the forefront through public art.



Monuments (from top): Fort Dodge, IA, Faulkton, SD, and Fort Smith, AR Guido van Helten, 2016 - 2018

McKinney Silo Mural Project Site Location

Site Address

401 E Virginia St, McKinney, TX 75069

Mural placement will be configured during design process.

This location offers opportunity for viewing on both directions of Sante Fe Avenue. Most prominently the site offers a main viewing direction from central downtown.



Eastern Face McKinney, TX, 2020

McKinney Silo Mural Project Quote

December 04, 2020
Quote 202012

McKinney Silo Mural Project
ATTN: Amy Rosenthal
E arosenthal@mckinneytexas.org T +1 972 547 2652

Guido van Helten Pty Ltd
EIN 98-1435006
5800 Indian Mound Road, Columbia, SC 29209
E mail@guidovanhelten.com T +1 803 348 3794

Item	Amount	Price
Design + Community Development	2 weeks includes tbd lecture/ workshop element	\$ 10,500
Artist Fee		\$ 235,000
Accommodation	2 Months (\$100/night)	\$ 6,000
Equipment Rental	2 Month Rental (Maximum)	\$ 27,350
Materials	Keim paints	\$ 16,500
Travel Allowance		\$ 3,500
		Sub Total \$ 298,850
		Sales Tax (if applicable) to be determined
		Total \$ 298,850

Disclaimer. This quote is in local currency and will remain valid for 180 days from the date stated in this document. Please note that the quote can change based on the type of project decided upon and it does not include cleaning fees, on-site storage, and access to water which are to be arranged by the commissioner in coordination with the artist or artist's team prior to the start of installation.

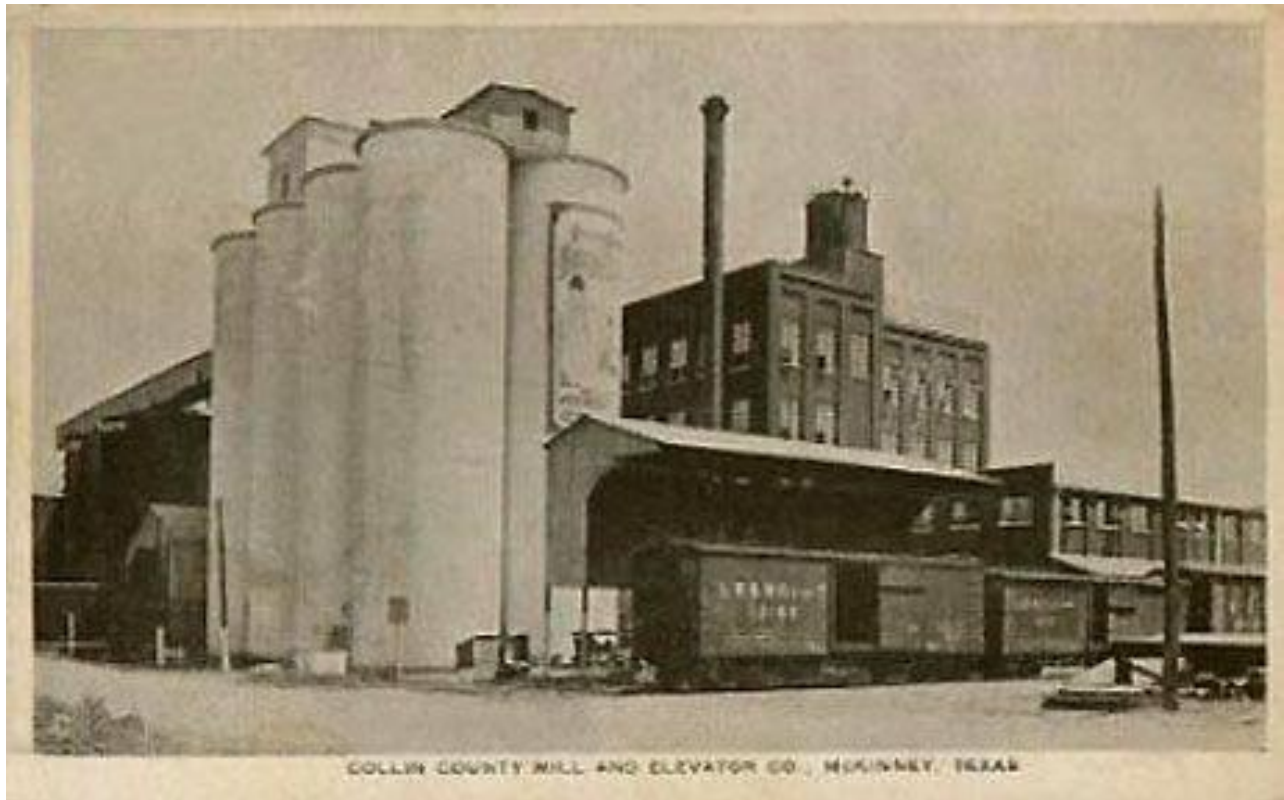
9

EXHIBIT 2: SITE

Located at 201 E. Virginia Street, McKinney, Texas

- 1914 - Millhouse built
- 1915 – Opens - White Billows Flour – Burrus Mills Inc
- 1927 - Grain elevators (concrete silos) - At peak, 1200 barrels produced daily – plant operated around the clock
- 1936 - Closed due to overproduction - Opens temporarily at other times to aid Burrus mills with ‘catching up’ – functions primarily as feed mill until 1970’s
- 2000 - Burrus Mills Inc (Zumwalt) sells Kidwell
- 2015 – replat with East State Hwy 5 (Martinek) – listed as owner of silos
- 2019 - Martinek to City of McKinney
- August 2020 – McKinney Grain empties silos

Historic Photo:



National Register Link: <https://atlas.thc.texas.gov/Details/2087001685/print>





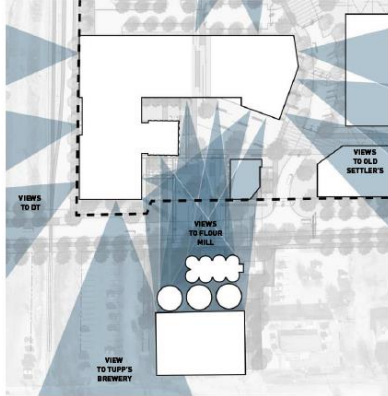
Silos Interaction with future Municipal Community Complex

MCKINNEY CITY HALL CONCEPT DIAGRAMS



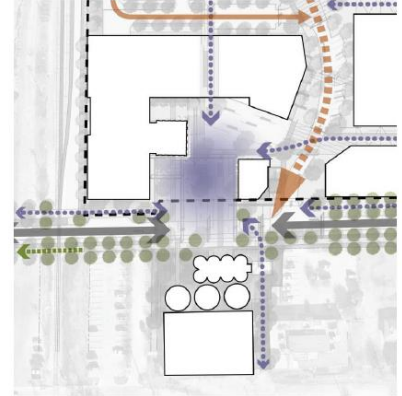
CELEBRATE HISTORY

LEVERAGE THE EXISTING HISTORIC AGRIBUSINESS STRUCTURES AROUND THE SITE TO CREATE AN EXPERIENCE AND BUILDING UNIQUE TO MCKINNEY.



VIEW

A CITY-WIDE VIEW CONNECTING VISUALLY TO DOWNTOWN, TO THE EAST SIDE (OLD SETTLERS PARK), AND SOUTH TO TUPPS BREWERY, OFFERING A VARIETY OF EXPERIENCES THAT ARE WELCOMING, ENJOYABLE, AND INTUITIVE.



CONNECTION

THE CITY HALL IS THE PUBLIC INTERFACE, A WELCOME CENTER AND PLACE OF GATHERING. APPROACHABLE BY MULTIPLE FORMS OF TRANSPORTATION.

LEVEL 6 PROGRAMMING STUDIES

KEY	
	COUNCIL CHAMBER
	AMENITY
	PUBLIC
	GATHERING
	ADMIN DEPARTMENTS
	PUBLIC DEPARTMENTS
	SUPPORT
	BOH

PRECEDENTS

EXHIBIT 3: ADDITIONAL OBLIGATIONS

McKinney Silo Project Media and Event Requests:

City of McKinney, Video Production: 1-2 interviews to develop in-house videos to show the process and impact to the community.

- Videographer is to be approved by the Artist or Artist's team prior to contracting for this project

Local media interviews with:

- The Dallas Morning News
- Art & Seek, KERA, Public Radio
- D Magazine
- Texas Monthly
- Glasstire.com
- Artsandculturetx.com/
- Community Impact
- McKinney Courier Gazette
- WFAA – Channel 8
- NBC 5
- CBS 11
- FOX 4 News

Event participation

- Sponsor/Donor Reception – Spring 2022
- Community celebration at end of project – TBD

EXHIBIT 4: DESIGN

EXHIBIT 5 – TIMELINE & SCHEDULE OF FEES

The Site: 406 E. Virginia Street, McKinney, Texas, 75069

Commission Fee: \$298,850.00 (excluding any applicable Sales Tax, Design Amendment Fees, Artwork Amendment Fees and additional fees payable under Section 17)

Design Amendment Fee: \$1,000.00
 Artwork Amendment Fee: \$3,500.00

Schedule:

Project Schedule	Due date for Completion	Commission Fee
Execution of Agreement	November 2021	\$14,942.50 or approximately 5% of the total commission fee payable upon execution of this Agreement
Community Consultation	Proposed start, 2021/early 2022	
Preparation of the Site prior to installation (Section 11.2)	To be determined in accordance with the requests of the Artist upon Site inspection and will be paid for by the City	This aspect is not to be covered in the Commission Fee but is to be managed by the City
Stage 1: Delivery of Design and Start of Install (Section 3.2)	Stage 1 – After community consultation and prior to installation, inclusive of design fee Approximately late spring 2022	Design Delivery Fee of \$119,540 or approximately 40% of the total commission payable upon acceptance or rejection, as the case may be.
Changes to the Design (Section 4)	To be requested within 5 calendar days of the delivery of the Design	Design Amendment Fee of \$1,000.00, payable upon issue of the Amendment Notice as the case may be.
Acceptance/Rejection of Design (Section 3.3)	Within 5 calendar days of the delivery of the Design or Amended Design, whichever is later	
Stage 2: Installation of the Artwork, two parts (Section 7)	Stage 2 – Approximately June – August 2022 Part 1: payment at mid-way point of installation, approx. July 2022 Part 2: at install completion, approx. August 2022	1: \$37,356.25 or approximately 12.5% of the remainder of the total Commission Fee payable upon notice from the artist’s team of a halfway point in the installation process 2: \$37,356.25 or approximately 12.5% of the remainder of the total Commission Fee, payable within

		thirty (30) calendar days of receiving notification of the Artwork's completion
Media and Publicity during Installation	Agreed to in writing before scheduled installation	Media and Publicity fee of \$200.00, payable for any requested occurrence further than the agreed requests in Exhibit 3
Changes to the Artwork (Section 8)	To be requested within 5 calendar days of the Artist's notification of the Artwork's completion under Section 8.1(a)	Artwork Amendment Fee \$3,500.00
Acceptance of Artwork (Section 3.3)	Within 10 calendar days of the Artist's notification of the Artwork's completion under Section 5 or Section 8.2 whichever is later	\$74,712.50 or approximately 25% of the remainder of the total Commission Fee, payable upon acceptance
Stage 3: Delivery of Artwork Manual (Section 13)	Stage 3 – At conclusion of installation, approximately August/September 2022	\$14,942.50 or approximately 5% of the remainder of the total Commission Fee, payable within thirty (30) calendar days of delivery of the Manual
TOTAL:		\$298,850.00

The Artist's Agents/Subcontractors:

Name: Margot Lane Strasburger

Scope of authority: Artist Assistant, Cultural Consultant

City's Agents/Subcontractors:

Name: Amy Rosenthal

Scope of authority: Liaison