

AGREEMENT FOR PROFESSIONAL SERVICES

Project Name: Brooks Landing Phase II Public Improvements Project - Public Art

Project Scope: Design, Fabrication, Transportation and Installation of Public Art

Artist Name:

Agreement #:

Authorizing Ordinance No.:

ARTICLE I

Part 1	DESCRIPTION OF PROJECT
Part 2	DESCRIPTION OF PROFESSIONAL SERVICES
	Section 1.201 General
	Section 1.202 Basic Services
Part 3	CITY RESPONSIBILITIES
Part 4	FEE
Part 5	TERM
Part 6	TIME OF PERFORMANCE
Part 7	AUTHORIZED AGENT
Part 8	OWNERSHIP OF DOCUMENTS
Part 9	ARTWORK CHANGES
Part 10	ARTIST WARRANTEES
Part 11	OWNERSHIP OF ARTWORK
Part 12	ARTWORK DOCUMENTATION AND MAINTENANCE INSTRUCTIONS
Part 13	ACKNOWLEDGEMENT BY THE ARTIST

ARTICLE II

Part 1	ARTIST QUALIFICATIONS FOR DUTIES, COMPLIANCE AND PERMITS
Part 2	ARTIST LIABILITY
Part 3	GENERAL LIABILITY INSURANCE
Part 4	WORKER'S COMPENSATION
Part 5	COPYRIGHT OR PATENT INFRINGEMENT
Part 6	NO INDIVIDUAL LIABILITY
Part 7	LIVING WAGE REQUIREMENTS
Part 8	STATUS AS INDEPENDENT CONTRACTOR
Part 9	AUDIT
Part 10	PROHIBITION AGAINST ASSIGNMENT
Part 11	CONTRACT DEEMED EXECUTORY
Part 12	EXTENT OF AGREEMENT
Part 13	STATUS AS INDEPENDENT CONTRACTOR
Part 14	LAW
Part 15	NO WAIVER
Part 16	SEVERABILITY
Part 17	TERMINATION FOR DEFAULT
Part 18	DEATH OR INCAPACITY

SCHEDULE A – FEE SCHEDULE

SCHEDULE B – TIME SCHEDULE

APPENDIX A - STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

ATTACHMENT A – LOCATION PLAN

AGREEMENT

THIS AGREEMENT, entered into one the ____ day of _____, 2015, by and between the CITY OF ROCHESTER, a municipal corporation having its principal office located at CITY HALL, 30 Church Street, Rochester, New York, 14614, hereinafter referred to as the "City", and _____, hereinafter referred to as the "Artist".

WHEREAS, the City is undertaking the Brooks Landing Phase II Public Improvement Project and has received New York State Department of State, Title 11 State Environmental Protection Fund Local Waterfront Revitalization Program funding to construct certain public artwork elements as part of this project (the "Project"); and

WHEREAS, the City, desires to engage the Artist for design, fabrication, transportation and installation of a selected works of art ("Artwork") to be located _____, and

WHEREAS, the Artist is a recognized artist whose work and reputation make the Artist uniquely qualified to create the Artwork; and

WHEREAS, the Artist intends to subcontract with _____ to provide sculpture; and

WHEREAS, The Artist and the City wish to undertake the obligations expressed herein;

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions hereinafter set forth, the parties agree as follows:

ARTICLE I

ART. I Part 1 Project Description

A. General

The Brooks Landing Phase II Public Improvements Project is financed in part by the New York State Department of State (NYSDOS). The Project involves design and construction of public improvements to Genesee Valley Park and the adjacent City owned right-of-way. The Project provides for public art to be located on and within those portions of the public park lands of Genesee Valley Park and adjacent right-of-way.

B. Scope of Services

The Artist shall perform all services and furnish all supplies, materials and equipment as necessary for the design, fabrication, transportation and installation of the Artwork, including site restoration, in accordance with the phases set forth in Schedule A of this Agreement. Design of architectural or engineering features of the work shall be accomplished by professionals licensed to practice in New York State.

C. Description of Artwork

1. The Artwork shall consist of _____ entitled _____.

2. The Artwork shall be delivered to the site and installed by the Artist or its subcontractors, as approved by the City.
3. The Artwork shall include signage which credits the Artist, interprets and dates the Artwork and which credits the City of Rochester and the NYSDOS for commission of the Artwork.

D. Art Location

The art will be located at _____ within the project area.

ART. I Part 2 Description of Professional Services

Section 1.201 General

- A. The Artists shall provide all Basic Services required for the Project:
- B. The Artist shall bear the risk of loss or damage to the Artwork and shall take such measures as necessary to protect the Artwork from loss or damage until installation of the Artwork at the site is completed, and the City has accepted the Artwork.
- C. Except as otherwise specified in this Agreement, the Artist shall furnish all equipment, materials and supplies required to carry out the provisions of this Agreement and to perform the services described herein. All such equipment, materials and supplies shall be of merchantable quality and fit for their purpose to the reasonable satisfaction of the City.
- D. The Artist shall develop and submit to the City an implementation plan and schedule for the orderly and timely completion of the requirements of this Agreement, which shall be made part of this agreement, as set for in Schedule B.
- E. The Artist shall be available to meet with the City and others designated by the City, periodically and as necessary to review the progress on the requirements of this Agreement, (the "Project Schedule") and to provide consultation.

The Artist shall, upon receipt of Notice to Proceed, or upon the commencement date specified in Part 5, hereof, whichever is earlier, perform in a professional and workmanlike manner to the reasonable satisfaction of the City, all services required below or reasonably required for the design, execution/fabrication, transportation to and installation of the Artwork in accordance with Schedule B, attached hereto.

A. Design Phase

The Artist shall:

1. Prepare design plans and specifications (the "Design") with a written narrative for review and approval by the City and others designated by the City, for fabrication, delivery and installation of the Artwork as specified by the Artist in _____ Proposal, dated _____ and revised in consultation with the City. The Design and written narrative shall detail a scaled design, artistic processes, and installation specifications. The Artist shall prepare structural shop drawings detailing every physical feature of the construction of the Artwork and its integration with the site. These drawings and supplementary documents shall indicate any issues involved in the construction, integration and maintenance of the Artwork, as well as any third party subcontractors needed to work on the project and the City shall have the right to request and check references for any subcontractors. The Design shall additionally include:
 - a. If there is welding required, detailing of welded connections including effective throat, weld areas, lengths, position, symbols and sizes.
 - b. Details related to materials, paints, pigments and anti-graffiti coatings or other needed measures against vandalism.
 - c. Details related to methods durability, including elevation from ground, balance, proximity to moisture, exposure to salt or UV.
 - d. Details related to maintenance needs including frequency of required cleaning, type of cleaning and propensity of materials to develop mold, rust or other damage over time.
 - e. Details related to site preparation. The details shall include, where applicable, wall preparation, materials for surface treatments or sculptures, and for any necessary materials for preparing the site.
 - f. Details related to installation safety. The details shall include the safety of the proposed installation methods, materials and equipment, the equipment being utilized and the duration of time on-site for both the Transportation/Delivery Phase and the Installation Phase.
 - g. Details related to clean-up and restoration of the site subsequent to installation.
 - h. Details related to the area that must be secure from pedestrian traffic during installation.
2. Ensure that the Artwork is durable, taking into consideration that the site is an unsecured public space that may be exposed to elements such as weather, wide temperature variation, and considerable movement of people and equipment. The Artist shall specifically consider the fact that the Site will experience severe winter weather conditions including snow, ice and high winds. The Artist must ensure that all maintenance requirements will be reasonable in terms of time and expense.

3. Attend design and construction coordination meetings with the City, general contractor, the City design Artist and other parties, as appropriate, to communicate about the Artwork and to ensure appropriate integration and installation of the Artwork.
4. Visit, examine, research and consider the site and surrounding area. If applicable, the Artist shall also consult with representatives of the community and consider their input and concerns. The Artist shall consider in any Design that the site will experience severe winter weather conditions including snow and ice load.
5. Ensure that the Artwork is durable, low maintenance, easy to clean and appropriate to the location. The Design shall be developed so that the Artwork does not constitute an "attractive nuisance", that normal public interaction and handling of the Artwork does not result in a special hazard to or from the work, including possible climbing hazard.
6. Secure any licenses, permits or other approvals, at the Artist's expense, as may be necessary for the installation and maintenance of the Artwork.
7. Provide five (5) hard copies and a digital file of the Design and the written narrative to the City for review and approval. As part of the Design, the Artist shall submit written certification from a Professional Engineer/Architect, licensed to practice in New York for design of structural, mechanical, electrical, civil or other engineering features of the Artwork.
8. Incorporate into Artwork any comments or directions resulting from City review of the design. Upon approval of the Design, including any changes requested by the City as described below, the Design shall become the Final Design and the Final Design and any revised Engineer/Architect certification, shall be provided to the City, in a form to be agreed to be determined by the City.

B. Design Approval:

In accordance with the Project Schedule, the City shall notify the Artist whether it approves or disapproves of the Design. If the City disapproves of the Design, the City will provide the Artist in writing the reasons for such disapproval. The City shall notify the Artist of any revisions to the Design that are necessary for the Artwork to comply with any applicable laws, ordinances and/or regulations or other reasons in the City's sole discretion, including, but not limited to, ensuring the physical integrity of the Artwork or its installation at the Site. If the Design changes are agreed upon by both parties, such revisions will become a part of the accepted Final Design and the Artist shall submit a revised Final Design in accordance with the Project Schedule. The Artist will not be paid and additional fee for the revised Final Design.

If the Artist refuses to revise the Design as requested by the City, this Agreement shall terminate and the parties shall be under no further obligation to each other. The date of such termination shall be the date the City submits to the Artist its written disapproval of the design and written termination notice. The termination notice shall notify the Artist that he/she is entitled to retain the compensation paid prior to the termination date and that he/she will be paid for work up to termination, and that the Parties are under no further obligation to each other, except as otherwise set for herein.

C. Fabrication Phase

The Artist shall:

1. Execute/fabricate the Artwork upon written approval by the City's Authorized Agent of the final design.
2. Take reasonable measures to protect or preserve the integrity of the Artwork through passivation, electro-polishing, or other means.
3. If the Artwork is being constructed on-site, the Artist shall avoid creating nuisance conditions arising out of the Artist's operations. Prior to requesting authorization to transport and install the Artwork, the Artist shall be required to provide the City with the list of all workers or subcontractors and equipment to be used along with the hours of operation and the scope of work to be performed on site. All additional workers or subcontractors must provide proof of insurance prior to entering the site.
4. Provide certification from an independent testing laboratory or engineer licensed to practice in New York State, acceptable to the City, verifying that the fabrication of the Artwork meets the quality standards identified in the shop drawings. The City shall have the right to but shall not be obligated to review the Artwork in person, at reasonable times during the fabrication thereof, upon a reasonable notice.
5. Provide photographs of the artwork as set forth in this agreement or requested by the City in a format to be agreed to between the parties, to allow the City to review the Artwork. Notify the City in writing when fabrication of the Artwork has been completed, and that the Artwork is ready for final inspection, delivery and installation at the Site.

D. Delivery/Installation Phase

The Artist shall:

1. Submit to the City, no less than 15 business days prior to the proposed delivery date, a final schedule and any changes to the plan for delivery and installation at the site.
2. Submit a list of all parties involved in the Deliver / Installation Phase, which shall include the contractor(s) on hire by the Artist and the name and address of each person who will be on site any time during the installation. Personal identification must be carried at all times.
3. Install the Artwork, including all site preparation and site restoration work in accordance with the approved Final Design.
4. Convey ownership to the City of Rochester upon completion and receipt of payment in full.
5. Upon installation of the Artwork, provide the City with a Maintenance and Conservation Manual, which shall include written instructions for the appropriate maintenance and preservation of the Artwork along with product data sheets for any material or finish used. The Manual shall include structural or architectural drawings of the Artwork showing how it is assembled, footings, foundations, mounting and connection points. It shall include a listing of all materials used, fabrication techniques, electronics specifications, light bulb types, paint specifications, recommended cleaning techniques and schedule, and any other information necessary to properly maintain and preserve the Artwork, as well as any special qualifications of maintenance personnel.

ART. I Part 3 City Responsibilities

The City Shall:

- A. Provide as complete information as is reasonably possible regarding its requirements for the Artwork.
- B. Assist the Artist by making available any information pertinent to the Artwork, including previous reports and any other data relevant to the design of the Artwork.
- C. Examine all studies, reports, sketches, estimates, drawings, specifications, proposals, the Design, Final Design and other documents presented to the City by the Artist for as not to delay the work of the Artist.
- D. In accordance with the Project Schedule and as set forth in Section 1.202A, above, notify the Artist whether it approves or disapproves the Design.
- E. Designate a representative (Authorized Agent) to act as liaison between the City and the Artist. The Authorized Agent will have the authority and responsibility to transmit instructions and to receive information with respect to the City policies and pertinent to the work covered by this Agreement, except as otherwise limited by Code or Charter of the City.
- F. Give written notice to the Artist where the City observes or otherwise becomes aware of any default in the Artist's performance hereunder or where the City does not concur with the design or other recommendations of the Artist.
- G. Assure the Artist can secure an area free of pedestrian traffic during installation consistent with the approved final design plans.
- H. Inspect the Artwork in accordance with the Project Schedule, prior to installation of the Artwork, to determine that the Artwork conforms to the final Design and give final approval for installation of the Artwork.

ART. I Part 4 Fee

Section 1.401

A. General

1. The total fee payable to the Artist pursuant to this Agreement, including all costs and disbursements whatsoever, shall not exceed ____ dollars (\$_____).
2. The Artist shall submit requests for payment in order to receive payment as set forth in Schedule A. Justification for payment shall include acceptable documentation of the progress of the Artwork.
3. All travel is to be made at the expense of the Artist.

B. Computation

1. The City agrees to pay and the Artist agrees to accept as full payment for the work and service performed pursuant to this agreement, the affixed fee of \$_____ as set forth in Schedule A.
2. The City will not pay overtime costs arising from work on any part of this Agreement.
3. All travel is to be made at the expense of the Artist and is part of the Fee for Basic Services.

ART. I Part 5 Term

The services required of the Artist pursuant to this Agreement shall commence upon Notice to Proceed from the City's Authorized Agent and shall continue as set forth in Schedule B and shall terminate no later than December 31, 2015.

ART. I Part 6 Time of Performance

The above time limits may be extended only by mutual written agreement of the parties hereto. It is understood that it is the intention of the City to have the service performed under this Agreement carried out as expeditiously as possible.

ART. I Part 7 Authorized Agent

A. The City hereby designates the:

City Engineer
Third Floor – City Hall – 300B
30 Church Street
Rochester, New York 14614

for the receipt of all notices, demands, vouchers, orders, permissions, directions, and other communications pursuant to this Agreement, if dispatched by registered or certified mail, postage prepaid, or delivered personally to the Authorized Agent designated herein.

The City reserves the right to designate other or additional Authorized Agent upon written notice to the Artist.

ART. I Part 8 Ownership of Documents

The Artist will provide a copy of the scaled design drawings, digital files and other specifications prepared by the Artist under this Agreement, upon completion of the work required herein.

ART. I Part 9 Artwork Changes

- A. Material Changes Prior to Acceptance – Material changes may be made to the Artwork by the Artist prior to the City's acceptance of the Artwork (such as changes in the Artwork's material, color, size, relative scale as compared to the preliminary design that was most recently accepted or approved by the City, etc.) but only after the Artist has given written

notice of such desired change to the City's Authorized Agent and has received the written approval of the City for each such change.

- B. Relocation, Modification or Removal – The City reserves the right to manage its facilities and public sites for public purposes, and in doing so, may determine that it is necessary to relocate or remove the Artwork and/or modify the site in/on which it is located. The City will not relocate or remove the Artwork and/or substantially modify the site in/on which it is located without notifying the Artist of the proposed change.
- C. Deaccession – In the event the City decides to deaccession the Artwork, the Artist shall have the first right of refusal to purchase his or her work, providing it is not integrated into a larger piece or structure, and/or can be removed without destruction of the Artwork.
- D. Modification Subsequent to Acceptance – Except as provided herein, the City will not modify the Artwork without written authorization from the Artist regarding the proposed modification. The Artist will not unreasonably withhold such authorization. For purposes of this agreement, no modification of the Artwork that results from the passage of time or the inherent nature of the materials used in the Artwork shall constitute a modification for which the Artist may claim relief or any remedy from the City. In addition, no modification of the Artwork that is the result of conservation or of its public presentation (including but not limited to lighted and placement) shall constitute a modification that is prejudicial to the Artist's honor or reputation or for which the Artist may claim relief or any remedy from the City unless such modification is the direct result of gross negligence.
- E. Redevelopment – The action of the City in the exercise of its governmental powers (including but not limited to the issuing of any permit for the redevelopment of land or any structure thereon other than action by the City on the specific site of the Artwork) shall not constitute a modification of the Artwork for which the Artist may claim damages or any other form of relief from the City.

ART. I Part 10 Artist Warrantees

- A. Warranty Against Defects – The artist warrants that the Artwork is designed to last for 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 therefrom that occurs or appears within a period of one (1) year after the date the City accepts the Artwork. The City shall give written notice with reasonable promptness to the Artist regarding observed defects in the artwork. Nothing contained herein nor any action whatsoever by the City shall constitute an acceptance of work not done in accordance with the provisions of this agreement or relieve the Artist of liability or responsibility for faulty material or workmanship.
- B. Warranty of Title – The Artist warrants and guarantees that, upon the City's acceptance of the Artwork from the Artist, the City shall acquire good title to the Artwork, and that the Artwork shall be free from any and all claims, liens, and charges by any person or entity, including but not limited to any employee or supplier.
- C. Address for Notices and Other Deliverables; Waiver of Artist's Rights Upon Failure to Provide Current Address to City – All notices, forms, reports, maintenance suggestions, and

other textual materials required by this agreement shall be in writing, and all such material, together with any other material to be delivered hereunder, shall be delivered or mailed to the respective addresses of the parties hereto. The Artist's failure to keep the City reasonably informed regarding the Artist's current address shall be deemed a waiver of the Artist's rights and opportunities under Article I Part 9 of this agreement.

All notices, requests, demands and other communications that are required or permitted to be given under this agreement shall be in writing and shall be deemed to have been duly given upon receipt when addressed as follows:

City Engineer / Department of Environmental Services
City Hall
30 Church Street, Room 300B
Rochester, NY 14614

ART. I Part 11 Ownership of the Artwork

- A. The City shall take ownership of the Artwork, upon satisfactory installation, receipt of Artwork Documentation and Maintenance Instructions under Article I Part 12 of this Agreement and payment in full to the Artist.
- B. Ownership shall entitle the City to an exclusive irrevocable royalty fee right to graphically reproduce (through photography or other two dimensional reproductions) the image of the Work, including, but not limited to the artwork proposal, and all preliminary drawings, models and maquettes thereof that have been photography or other two dimensional reproductions) any and all of the same, as desired by the City for promotion of the Erie Harbor for the benefit of the City of Rochester. On each such reproduction, the Artist shall be acknowledged; using designations provided by the Artist, to be the creator of the original artwork, thereof, provided that reproductions of any preliminary drawings, models and maquettes shall not be identified as or represented to be the finished Artwork.
- C. In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate three-dimensional reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the City. However, nothing shall prevent the Artist from creating future Artworks in the Artist's manner and style of artistic expression. Any reproduction of the artwork other than portfolio and marketing of the Artist's work in general by the Artist shall be subject to the written approval of the City for the purpose of ensuring that any such reproductions are not inappropriate and do not adversely reflect on the City or Erie Harbor and the South Wedge Neighborhood. Such approval shall not be unreasonably withheld.

ART. I Part 12 Artwork Documentation and Maintenance Instructions

The Artwork shall be accompanied by the following documentation, to be delivered to the City's Authorized Agent no later than 14 days after the completion of the installation:

- A. An "Artist's Public Report," that the City may use for public information purposes. The report shall provide interpretation for inspiration, intent and artistic process of the work.

- B. Two professional quality color photographs, in hard copy and pdf formats, of the entire work and each component of the work.
- C. Object Catalog information and instructions regarding maintenance required for the work.

ART. I Part 13 Acknowledgements by the Artist

The Artist shall acknowledge the City's and State's role in funding the work in all public presentations and written, printed or electronic publication of information regarding the Artwork.

ARTICLE II

ART. II Part 1 Artist's Qualifications for Duties, Compliance and Permits

- A. The Artist hereby agrees that it has, or will have, on its staff and will retain during the performance of this service under this Agreement, all appropriate professional personnel necessary to completely and accurately perform the work and services under this Agreement.
- B. This Artist further agrees that the design of architectural or engineering features of the work shall be accomplished by professionals licensed to practice in New York State.
- C. The Artist further agrees to ensure that its subcontractors, agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.
- D. The Artist further agrees to ensure that its subcontractors, agents or employees shall obtain permits as required by federal, state and local agencies for installation of the Artwork. City issued permits will be granted at no fee to the Artist or its subcontractors.

ART. II Part 2 Artist's Liability

The Artist hereby agrees to indemnify and save harmless the City of Rochester and the State of New York against any and all liability, loss, damage, suit, charge, attorney's fees and expenses of whatever kind or nature which the City may directly or indirectly incur, or be required to pay by reason or in consequence of the carrying out of any of the provisions or requirements of this contract, where such loss or expense is incurred directly or indirectly by the City, its employees, subcontractors or agents, as a result of the negligent act or omission, breach or fault of the Artist, its employees, agents or subcontractors. If a claim or action is brought against the City and for which the Artist may be responsible hereunder in whole or in part, then it shall be notified and shall be required to handle or pay for the handling of the defense of such matter.

ART. II Part 3 General Liability Insurance Professional Liability Insurance

The Artist shall obtain at its own expense general liability insurance in the amount of at least One Million Dollars, for protection against claims of personal injury, including death, or damage to property, arising out of the Project. Said insurance shall be issued by a reputable

insurance company, authorized to do business in the State of New York. Said insurance shall also name the City of Rochester and New York State as an insured. The insurance shall stipulate that, in the event of cancellation or modification the insurer shall provide the City with at least ten (10) days written notice of such cancellation or modification. In no event shall such liability insurance exclude from coverage any municipal operations or municipal property related to this Agreement.

ART. II Part 4 Workers' Compensation

The Artist shall require all the Artist's subcontractors to keep insured, during the life of this Agreement, its own employees as well as all employees of said subcontractors as are required to be insured under the provisions of the workers' Compensation Law of the State of New York or the state of the Artist's residence, whichever may apply. The Artist shall provide proof to the City, duly subscribed by an insurance carrier, that such worker's Compensation coverage has been secured.

ART. II Part 5 Copyright or Patent Infringement

The Artist shall defend actions or claims charging infringement of any copyright or patent by reason of the use or adoption of any designs, drawings or specifications supplied by him, and he shall hold harmless the City from loss or damage resulting therefrom, providing, however, that the City within then (10) days after receipt of any notice of infringement or of summons in any action thereof shall have forwarded the same to the Artist in writing.

ART. II Part 6 No Individual Liability

Nothing contained in the Agreement shall be construed as creating any personal liability on the part of any officer or agent of the City or the State.

ART. II Part 7 Living Wage Requirements

A. Applicability of Living Wage Requirements

This section shall apply and the Artist shall comply with the requirements of Section 8A-18 of the Municipal Code of the City of Rochester, known as the "Rochester Living Wage Ordinance", in the event that payments by the City to the Artist under this Agreement shall equal or exceed fifty thousand (\$50,000) during a period of one year. If this Agreement is amended to increase the amount payable hereunder to equal or exceed more than fifty thousand dollars (\$50,000) during a period of one year, then any such amendment shall be subject to Section 8A-18.

B. Compliance

The Artist shall pay no less than a Living Wage to any part-time or full-time Covered Employee, as that term is defined in Section 8A-18B, who directly expends his or her time on this Agreement, for the time said person actually spends on this Agreement. Living Wage, as set forth in this Agreement, shall be the hourly amount set forth in Section 8A-18(C)(2), and any adjustments thereto which shall be made on July 1 of each year and shall be available in the Office of the City Clerk, and on the City website, www.Cityofrochester.gov. The Artist shall also comply with all other provisions of Section

8A-18, including but not limited to all reporting, posting and notification requirements and shall be subject to any compliance, sanction and enforcement provisions set forth therein.

C. Exemption

This section shall not apply to any of Artist's employees who are compensated in accordance with the terms of a collective bargaining Agreement

ART. II Part 8 Status as Independent Contractor

The Artist, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself in a manner consistent with such status, that it will neither hold itself nor its employees out as, nor claim to be an officer or employee of the City or the State by reason hereof, and that it and its employees will not by reason hereof, make any claim, demand or application for any right or privilege applicable to an officer or employee of the City or State, including but not limited to Worker's Compensation coverage, unemployment insurance benefits, social security coverage, and retirement membership or credit.

ART. II Part 9 Audit

The Artist agrees that the City and State shall, until the expiration of three (3) years after final payment, have access to and the right to examine any directly pertinent books, documents, papers and records of the Artist and of any of the subcontractors engaged in the performance of and involving transactions related to this Agreement or any subcontracts.

ART. II Part 10 Prohibition Against Assignment

The Artist is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement or any of its contents, or of any right, title or interest therein, or of the power to execute this Agreement, to any other person or corporation without the previous consent, in writing, of the City.

ART. II Part 11 Contract Deemed Executory

The Artist specifically agrees that this Agreement shall be deemed executory only to the extent of the monies available for the purpose of the Agreement and that no liability shall be incurred by the City or State beyond the monies available for the said purpose.

ART. II Part 12 Extent of Agreement

This Agreement constitutes the entire and integrated Agreement between and among the parties hereto and supersedes any and all prior negotiations, agreements and conditions, whether written or oral. Any modification or amendment to this Agreement shall be void unless it is in writing and subscribed by the party to be charged or by the party's authorized agent.

ART. II Part 13 Status as Independent Contractor

The Artist, as an independent contractor, covenants and agrees to conduct the work under this Agreement consistent with such status. The Artist shall neither pretend nor claim to be an officer or employee of the City or State, including but not limited to Workers' Compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

ART. II Part 14 Law

This Agreement shall be governed by and under the laws of the State of New York. In the event that a dispute arises between the parties, venue for the resolution of such dispute shall be the County of Monroe, New York.

ART. II Part 15 No Waiver

In the event that the terms and conditions of this Agreement are not strictly enforced by the City, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent the City from enforcing each and every term of this Agreement thereafter.

ART. II Part 16 Severability

If any provision of this Agreement is held invalid by a court of law, the remainder of this agreement shall not be affected thereby if such remainder would then continue to conform to the laws of the State of New York.

ART. II Part 17 Termination for Default

The performance of work under this Agreement may be terminated by the City in accordance with this clause in whole, or in part, whenever the Artist shall default in the performance of this Agreement in accordance with its terms. Upon termination, the City may take over the work to be performed and complete the same by contract or otherwise, and the Artist shall be liable to the City for any excess cost occasioned thereby. The total fee payable to the Artist under this Agreement upon such termination shall be such proportionate part of the total fee as the value of the work satisfactorily completed and delivered to the City bears to the value of the work contemplated by this Agreement – less any costs incurred by the City due to the default of the Artist.

ART. II Part 18 DEATH OR INCAPACITY

If the Artist becomes unable to complete this Agreement due to death or incapacity, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the Artist for the purpose of Part 17. However, nothing in this Article shall obligate the City to accept the Artwork.

- a. In the event of incapacity, the Artist shall assign the Artist's obligations and services under this contract to another artist provided that the City, in the City's sole discretion, approves of the new artist. Alternatively, the City may elect to terminate this Agreement. The Artist shall retain all rights under Part 9.
- b. In the event of death, this Agreement shall terminate effective the date of death. The Artist's heirs shall retain all rights under Article I Part 9 and Article II Part 18. The Artist's executor shall deliver to the City the Artwork in whatever form or degree of completion it may be at the time, including all drawings and plans for the Artwork. Title to the Artwork shall then transfer to the City. Artwork shall not be represented to be the completed Artwork of the Artist unless the City is otherwise directed by the Artist's estate.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

THE CITY OF ROCHESTER

ARTISTS

By: _____
Lovely A. Warren , Mayor

By: _____
Name: _____
Tax Identification # _____

STATE OF NEW YORK]
COUNTY OF MONROE]
CITY OF ROCHESTER] ss:

On the _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared Lovely A. Warren, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual executed the instrument by the authority of City Ordinance No. 2013-327.

Notary Public Commission expires __/__/__

STATE OF NEW YORK]
COUNTY OF MONROE]
CITY OF ROCHESTER] ss:

On this _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public Commission expires: __/__/__

**Brooks Landing Phase II Public Improvements
Public Art**

AGREEMENT NO:

SCHEDULE A – FEE SCHEDULE

1. BASIC SERVICES

Design Phase		
Final Plans	50%	\$ _____
Execution/Fabrication		
50% complete	15%	\$ _____
Delivery	15%	\$ _____
Installation	10%	\$ _____
<u>Final Acceptance by the City</u>	<u>10%</u>	<u>\$ _____</u>
Total		\$ _____

SCHEDULE B – TIME SCHEDULE

PHASE	Days From Notice to Proceed
Design Phase	___ Days
Execution / Fabrication	___ Days
Installation	by no later than _____

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensee, licensee, licensor, lessor or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent in writing of the State and any attempt to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificate of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 353 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$50,000 (State Finance Law Section 162.6(a)).

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 230-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 230 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work;

or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 230-e or Section 230 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 230-f of the Labor Law and Section 135-b of the State Finance Law, if this contract exceeds \$2,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any subcontractor named or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rescinded forthwith and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (22NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purpose of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any moneys due and owing to the State for any other reasons including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as