

**AGREEMENT**

**BETWEEN**

**THE CITY OF FRISCO, TEXAS**

**AND**

**BEEMAN ARTWORKS, LLC**

**FOR**

**NORTHEAST COMMUNITY PARK – PHASE I – PUBLIC ART**

Made as of the 4 day of NOVEMBER, 2016:

Between City: **The City of Frisco, Texas**  
6101 Frisco Square Blvd.  
Frisco, Texas 75034  
Telephone: (972) 292-5000  
Facsimile: (972) 335-5559

and Artist: **Beeman Artworks, LLC**  
Pete Beeman, Representative  
2068 NW Lovejoy Street  
Portland, OR 97209  
Telephone: (971)-570-2168

for the following Project: **Northeast Community Park – Phase I Public Art**

THIS AGREEMENT ("Agreement") is made and entered by and between the City of Frisco, Texas, a home-rule municipality ("City"), and Beeman Artworks, LLC ("Artist"), to be effective from and after the date as provided above. City and Artist are at times each referred to herein as a "party" or collectively "parties".

WHEREAS, City desires to engage the services of Artist to create public artwork that will be installed in the location designated by City, in its sole discretion, as part of the Northeast Community Park – Phase I ("Project"); and

WHEREAS, Artist desires to render such services ("Services") for City on the terms and conditions provided herein.

**NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:**

That for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## ARTICLE 1 ARTIST'S SERVICES

- 1.1 **Employment of Artist** – City hereby agrees to retain Artist to perform the Services set forth herein in connection with the Project. Artist agrees to perform such Services in accordance with the terms and conditions of this Agreement.
- 1.2 **Scope of Services** – The parties agree that Artist shall perform the Services and deliverables that are set forth and described in the Scope of Services, attached hereto as **Exhibit A** and incorporated herein by reference for all purposes ("Scope of Services") and shall furnish all personnel, labor, equipment, supplies and all other items necessary to provide all of the Services and deliverables as specified by the terms and conditions of this Agreement. The parties understand and agree that deviations or modifications to the Scope of Services, in the form of written change orders, may be authorized from time to time by City ("Change Order(s)"). Artist shall not perform any "extra" work or additional services without a duly executed, written change order issued by the Frisco City Manager or authorized designee.
- 1.3 **Schedule of Work** – Artist agrees to commence work immediately upon execution of this Agreement and receipt of first payment, and to proceed diligently with said work to completion as described in the Completion Schedule/Project Billing/Project Budget, attached hereto as **Exhibit B** and incorporated herein by reference for all purposes.

## ARTICLE 2 THE CITY'S RESPONSIBILITIES

- 2.1 **Project Data** – City shall furnish required information that is reasonably requested by Artist and that City currently has in its possession at the time of Artist's request, as expeditiously as necessary for the orderly progress of the work, and Artist shall be entitled to rely upon the accuracy and completeness of the information furnished by City under this Article 2.1.
- 2.2 **City Project Manager** – When necessary in City's sole discretion, City shall designate a representative authorized to act on City's behalf with respect to the Project ("Project Manager"). City, the Project Manager and/or his or her authorized representative shall examine the documents submitted by Artist and shall render any required decisions pertaining thereto as soon as practical so as to avoid unreasonable delay in the progress of Artist's services. Artist understands and agrees that the Project Manager and his or her authorized representative are not authorized to issue verbal or written Change Orders for "extra" work or "claims" invoiced as "extra" work.

## ARTICLE 3

## ARTIST'S COMPENSATION

- 3.1 **Compensation for Artist's Services** – As described in “Article 1, Artist's Services”, of this Agreement, compensation for Artist's Services on this Project shall be **Ninety-nine Thousand and No/100 Dollars (\$99,000.00)** (“Artist's Fee”) which covers all Services to be rendered and materials to be provided in accordance with this Agreement. The Artist's Fee shall be paid in accordance with **Article 3** and the Completion Schedule/Project Billing/Project Budget as set forth in **Exhibit B**, attached hereto. The final 10 percent (10%) of the Artist's Fee, or **Nine Thousand Nine Hundred and No/100 Dollars (\$9,900.00)**, shall not be paid to Artist until Artist has completed, delivered and installed the artwork and completed all other Services and tasks described in **Exhibits A, B and C** to the City's satisfaction.
- 3.2 **Invoices** – No payment to Artist shall be made until Artist tenders an invoice to City. Payments are payable to Artist within thirty (30) days from the date of invoice as long as the invoice is mailed to City within three (3) days of the date of the invoice. Invoices are to be mailed to City immediately upon completion of each individual task listed in **Exhibit A** or **Exhibit B**. If any invoice remains outstanding and unpaid for more than sixty (60) days from the date of invoice, and Artist has fully performed its obligations as set forth herein, Artist has the option upon written notice to City, to suspend all work specified under this Agreement until the account is brought current. Continued performance and/or completion of work by Artist under this Agreement shall resume upon the payment of the earned fees by City.
- 3.3 **Failure to Pay** – Failure of City to pay an invoice, for a reason other than cause, within sixty (60) days from the date of the invoice shall grant Artist the right, in addition to any and all other rights provided, to, upon written notice to City, refuse to render further Services to City and such act or acts shall not be deemed a breach of this Agreement. City shall not be required to pay any invoice submitted by Artist if Artist breached any provision herein.
- 3.4 **Adjusted Compensation** – If the Scope of Services for the Project or if the Services are materially changed, the amounts of the Artist's Fee shall be equitably adjusted as approved by City in its sole discretion. Any additional amounts paid to Artist as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the Services are performed. Compensation may be increased but not decreased.
- 3.5 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Artist shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or

abandonment. In the event of such suspension or abandonment, Artist shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs and/or any other items prepared by Artist in connection with this Agreement prior to Artist receiving final payment. If the Project is resumed after being suspended for more than three (3) months, Artist's compensation shall be equitably adjusted as approved by City. Any additional amounts paid to Artist after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

#### **ARTICLE 4 OWNERSHIP AND COPYRIGHT**

- 4.1 **Ownership of Work** – Upon completion, the Project and artwork is the property of City, and Artist shall not make any duplicate works of the same or substantially similar size, nor shall Artist grant permission to others to do so except with the written permission of City. City shall be entitled to copies of the plans and the maquette sale, which are prepared by the Artist in connection with the development and fabrication of the artwork and Project under this Agreement. Ownership of the artwork is automatically transferred to and vested in City upon full payment of the Artist's Fee as set forth in Article 3.1 of this Agreement.
- 4.2 **Ownership of Copyright** – Artist shall retain the copyright to the artwork. Artist shall take all steps, at Artist's own expense, to protect the copyright of the artwork.
- 4.3 **License to City** – Artist irrevocably licenses City, its employees, representatives, officers and agents, the right to make photographs, two dimensional reproductions, and adaptations of the artwork for educational, public relations, arts promotional, image for promotion on web site and other non-commercial purposes. For the purposes of this Agreement, the following, among others, are deemed to be reproductions and/or adaptations for non-commercial purposes: reproduction in exhibition catalogues, websites, books, slides, photographs, postcards, posters, and calendars; in magazines, books, art and news sections of newspapers; in general books and magazines not primarily devoted to art but of an educational, historical or critical nature; slides, videos and film strips not intended for a mass audience, and television from stations operated for educational purposes or on programs for educational and news purposes from all stations.
- 4.4 **Copyright Notice** – City undertakes to use its reasonable efforts to include in any reproductions which it makes of the artwork a copyright notice in the following form:

Copyright Beeman Artworks, LLC  
or

- 4.5 **Representations and Warranties Regarding Copyright** – Artist represents and warrants that the artwork is an original creation of Artist's and will not infringe the copyright, trademark, or other intangible rights of any third party.

## **ARTICLE 5 INTEGRITY OF THE WORK**

- 5.1 **Repairs and Maintenance** – City undertakes to exercise reasonable care to protect, repair, and maintain the artwork. Artist agrees to cooperate with and advise City in connection with any such non-routine maintenance, including, without limitation, damage by acts of God, vandalism, and/or replacement of any portion of the artwork to the extent that Artist is able to do so. Should the artwork require repair or non-routine maintenance by Artist not covered under this Agreement, City agrees to seek services first from the Artist provided Artist and the City agree on Artist's compensation for time spent on said maintenance and/or repairs. If Artist does not perform the repair and/or non-routine maintenance as described herein, Artist shall recommend another competent and duly qualified artist to City to provide said Services.

During Artist's lifetime, City will not undertake any non-routine maintenance on the artwork without attempting to consult with the Artist or his or her authorized representative unless an emergency requires City to do so without notice.

- 5.2 **Relocation of the Artwork** – To the extent that the artwork is capable of being relocated, City shall have the right to do so in its sole discretion. If feasible, as solely determined by City, City shall attempt to consult with Artist concerning the relocation of the artwork prior to any such relocation; provided, however, that the Artist's approval is not required for the relocation, if any. If Artist is not pleased with such relocation, Artist shall have the right to renounce credit for the artwork, as Artist's sole remedy. If Artist renounces credit for her artwork, this would include, among other things, relinquishment and abandonment of the copyright described herein.
- 5.3 **Credit** – City agrees, at its own expense, to prepare and install at or near the Project a public notice giving Artist credit for the creation of the artwork.

## **ARTICLE 6 INSURANCE COVERAGE**

- 6.1 **Required Insurance** – Artist shall, at Artist's sole cost and expense, procure and maintain the types and amounts of insurance set forth herein for and during all aspects and phases of this Project. Artist shall be required to provide and maintain general liability insurance with a minimum

of One Million and No/100 Dollars (\$1,000,000.00) per occurrence and Two Million and No/100 Dollars (\$2,000,000.00) aggregate. In addition, Artist shall procure and maintain insurance for loss (including theft, fire and damage) and employee health and disability insurance, as well as any statutorily required workers' compensation insurance. All insurance and certificate(s) of insurance shall contain the following provisions:

1. Name City, its officers, agents, representatives, and employees as additional insureds as to all applicable coverage with the exception of workers' compensation insurance.
  2. Provide for at least thirty (30) days prior written notice to City for cancellation, non-renewal, or material change of the insurance.
  3. Provide for a waiver of subrogation against City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.
- 6.2 **Insurance company qualification** – All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.
- 6.3 **Certificate of insurance** – A certificate of insurance and endorsement(s) evidencing the required insurance shall be submitted to City no later than the date of the execution of this Agreement. If this Agreement is renewed or extended by City, a certificate of insurance and endorsement(s) shall also be provided to City prior to the date the Agreement is renewed or extended.

## **ARTICLE 7 AUDITS AND RECORDS/PROHIBITED INTEREST**

Artist agrees that at any time during normal business hours and as often as City may deem necessary, Artist shall make available to representatives of City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of four (4) years from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

Artist agrees that Artist is aware of the prohibited interest requirement of the City Charter and will abide by the same. Further, Artist shall execute the Affidavit attached hereto as **Exhibit D** and incorporated herein by reference for all purposes. Artist understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

Artist agrees that Artist is further aware of the vendor disclosure requirements set forth in Chapter 176, LOC. GOV'T CODE, as amended, and will abide by the same. In this connection, Artist shall execute the Conflict of Interest Questionnaire, Form CIQ, attached hereto as **Exhibit E** and incorporated herein for all purposes.

## **ARTICLE 8 TERMINATION OF AGREEMENT/REMEDIES**

- 8.1 **Artist Default** – Failure or refusal of the Artist to perform any act herein required, unless mutually agreed to in writing by City and Artist, shall constitute a default. In the event of a default, in addition to any other remedy available to City, this Agreement may be terminated by City upon ten (10) days written notice. Such act does not waive any other legal remedies available to the City. Should termination occur due to Artist default, Artist will refund any payments received. In the event of any termination under this article, Artist shall deliver to City all work, entirely or partially completed.
- 8.2 **Conditions for Termination of Agreement Other than Artist's Default** – If City deems, in its sole discretion, that the Project or artwork design is inappropriate or unworkable, or if the deadlines specified herein are not met, in whole or in part, because of Artist's actions and/or omissions, or if cost estimates indicate that the Project cannot be completed within the Project budget, City retains the right to terminate this Agreement and is released from the obligation to complete fabrication and installation of the Artist's design concept for the Project. In the event of any termination under this article, Artist shall deliver to City all work, entirely or partially completed.

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

## **ARTICLE 9 DISPUTE RESOLUTION/MEDIATION**

In addition to all remedies at law, the parties may resolve/mediate any controversy, claim or dispute arising out of or relating to the interpretation or performance of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator.

## **ARTICLE 10 INDEMNITY**

**ARTIST SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND**

AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), CLAIMS FOR PATENT, TRADEMARK AND/OR COPYRIGHT INFRINGEMENT AND/OR ANY OTHER INTELLECTUAL PROPERTY AND/OR PROPRIETARY CLAIM, LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF ARTIST, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FROM WHOM ARTIST IS LEGALLY RESPONSIBLE, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT AND/OR ARISING OUT OF GOODS AND/OR SERVICES PROVIDED BY ARTIST PURSUANT TO THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (HEREINAFTER "CLAIMS"). ARTIST IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) IS SOLELY NEGLIGENT FOR THE CLAIMS (THE "JUDGMENT"), THEN ARTIST IS NOT REQUIRED TO DEFEND OR INDEMNIFY CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT AS BEING SOLELY CAUSED BY CITY. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, TO CONSULTANT WITHIN SIXTY (60) DAYS OF THE DATE OF THE JUDGMENT.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY ARTIST IN FULFILLING ARTIST'S OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF ARTIST'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF ARTIST'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. ARTIST SHALL RETAIN CITY APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF ARTIST FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND ARTIST SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

**ARTICLE 11  
NOTICES**

Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing the same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested; facsimile; electronic mail, with documentation evidencing the addressee's receipt thereof; or by delivering the same in person to such party a via hand-delivery service, or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to City, addressed to it at:

**Becky Deo**  
City Public Art Coordinator  
City of Frisco  
6101 Frisco Square Blvd.  
Frisco, Texas 75034

With a copy to:

**Abernathy, Roeder, Boyd & Hullett, P.C.**  
Attention: Ryan D. Pittman  
1700 Redbud Blvd., Suite 300  
McKinney, Texas 75069  
Telephone: (214) 544-4000  
Facsimile: (214) 544-4054  
Email: [rpittman@abernathy-law.com](mailto:rpittman@abernathy-law.com)

If to Artist, addressed to:

**Beeman Artworks, LLC**  
Pete Beeman, Representative  
2068 NW Lovejoy Street  
Portland, OR 97209

**ARTICLE 12  
MISCELLANEOUS**

- 12.1 **Complete Agreement** – This Agreement, including the exhibits hereto labeled "A" through "E", all of which are incorporated herein for all purposes, constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. To the extent that any provision

of this Agreement should conflict with the provisions of an exhibit, the provisions of this Agreement shall prevail.

- 12.2 **Assignment and Subletting** – Artist agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of City. Artist further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve Artist of its full obligations to City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Artist, and there shall be no third party billing.
- 12.3 **Attorney's Fees** – If either party files any action or brings any proceeding against the other arising from this Agreement, then as between City and Artist, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.
- 12.4 **Successors and Assigns** – City and Artist, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.
- 12.5 **Savings/Severability** - In the event a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained herein.
- 12.6 **Venue** – This entire Agreement is performable in Collin County, Texas and the venue for any action related directly or indirectly, to this Agreement or in any manner connected therewith shall be Collin County, Texas, and this Agreement shall be construed under the laws of the State of Texas.
- 12.7 **Execution/Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 12.8 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is

signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date thereof.

- 12.9 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.
- 12.10 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 12.11 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.
- 12.12 **Immunity** – It is expressly understood and agreed that, in the execution and performance of this Agreement, City has not waived, nor shall be deemed to have waived, any immunity, governmental, sovereign and/or official, or defense that is available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth in this Agreement.
- 12.13 **Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 12.14 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 12.15 **No Third Party Beneficiaries** – Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 12.16 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 herein is conspicuous and the parties have read and understood the same.
- 12.17 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of the City's 2016-2017 fiscal year. City will give Artist sixty days (60) notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no

liability for payment of any money for services performed after the end of City's 2016-2017 fiscal year unless and until such funds are budgeted.

12.18 **Reference to Artist** – When referring to “Artist,” this Agreement shall refer to and be binding upon Artist, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Artist is legally responsible.

12.19 **Reference to City** – When referring to “City,” this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives, employees and/or any other authorized third parties for whom City is legally responsible.

12.20 **Death of Artist** – In the event the Artist dies or becomes incapacitated during the term of this Agreement, the fabrication, delivery, and installation of the artwork shall be completed generally consistent with the Artist's design, conception, and plans by an artist/fabricator of the City's choice.

**IN WITNESS WHEREOF**, the parties have executed this Agreement and caused this Agreement to be effective on the date set forth in the introductory clause of this Agreement.

**CITY:**

**City of Frisco, Texas**  
a home-rule municipality

By: \_\_\_\_\_  
George Purefoy, City Manager

**ARTIST:**

**Beeman Artworks, LLC**

By:   
\_\_\_\_\_  
Beeman Artworks, LLC  
Pete Beeman, Representative

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Abernathy, Roeder, Boyd & Hullett, PC  
Ryan D. Pittman, City Attorneys

STATE OF TEXAS           §  
   §  
COUNTY OF COLLIN       §

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THIS STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR STATE OF TEXAS

STATE OF Oregon       §  
   §  
COUNTY OF Multnomah §

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THIS STATE OF OREGON, ON THIS DAY PERSONALLY APPEARED **PETE BEEMAN** KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 5 DAY OF NOVEMBER, 2016.



Diana Tran  
\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR STATE OF OREGON

**EXHIBIT A  
SCOPE OF SERVICES**

**NORTHEAST COMMUNITY PARK – PHASE I PUBLIC ART DESIGN  
NARRATIVE**

**Project Description:**

For the Northeast Community Park – Phase I, Beeman Artworks, LLC, will perform the following tasks:

- A) Develop public art proposal for the Project to be presented to appropriate City staff and the Public Art Board for their review and approval by the timeline outlined in **Exhibit B** and consistent with the design narrative in **Exhibit C**. This proposal will include:
- a narrative description of the artwork, with detail regarding the overall form or design, scale, dimensions, colors and surface treatment of the Artwork;
  - a detailed budget and an installation timeline and installation methods;
  - a description of the proposed location of the artwork at the site and any site preparations that may be required by City;
  - a description of the method by which the artwork is to be fabricated and installed; and
  - a description of any maintenance and conservation requirements for the artwork.

The proposal will complement the design of the Project and will be safe for children and adults. Artist will take all prudent measures to minimize negative effects of metal and the heat generated from the sun, and the artwork will be constructed of durable materials.

- B) Upon City approval of the proposal the Artist shall prepare detailed drawings and supplementary documents, indicating 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. Should engineering be required for a freestanding art element, Artist will be responsible for the cost. Where appropriate, or as otherwise requested by City, Artist shall present drawings stamped by an engineer, licensed by the State of Texas and paid by Artist, for certification that the artwork will be of adequate structural integrity.
- C) Artist shall fabricate and install the artwork in substantial conformity with the approved design. Any changes in the concept must be approved by City. It is the responsibility of Artist to coordinate with City Public Art Coordinator, City

Senior Park Planner, Landscape Architect, and Contractor to ensure that the site is prepared to receive the Artwork.

- D) Upon completion of the installation and clean-up of the site, City Public Art Coordinator and City Senior Park Planner will inspect the work and give notice of acceptance. Within thirty (30) days after the installation of the Artwork, the Artist will furnish the City with a high resolution JPEG of the Artwork with a minimum of 350 dpi (dot per inch) resolution. Artist will prepare a maintenance worksheet including a comprehensive list of all materials used in the creation of the Artwork (ex: gauge and type of metal, adhesive materials, clay body and firing, etc.) and a comprehensive list of all vendors used to provide said materials, and submit it to City. Artist is encouraged to participate in dedication events to be coordinated by City.

**EXHIBIT B  
COMPLETION SCHEDULE/PROJECT BILLING/PROJECT BUDGET  
NORTHEAST COMMUNITY PARK – PHASE I**

**Completion Schedule and Project Billing:**

Timeframes are contingent upon the Northeast Community Park – Phase I Project Schedule.

<b>TASK</b>	<b>DESCRIPTION</b>	<b>PAYMENT</b>	<b>PROJECTED TIMEFRAME</b>
1	Upon execution of agreement and notice to proceed.	\$19,800.00	November 2016
2	City receipt of insurance documentation. Travel to site, meeting with staff and Public Art Board, concept design. Proposed product presented to and approved by Public Art Board. Payment for purchase of materials, engineering and fabrication.	\$39,600.00	February 2017
3	Documentation, acceptable to City, that fabrication is fifty percent (50%) complete.	\$19,800.00 (20% of Budget)	March 2017
4	Documentation, acceptable to City, that fabrication is one hundred percent (100%) complete.	\$9,900.00 (10% of Budget)	May 2017
5	Completion of installation, acceptance and documentation of art.	\$9,900.00	May 2017

**EXHIBIT C**  
**NORTHEAST COMMUNITY PARK – PHASE I PUBLIC ART DESIGN**  
**NARRATIVE**

**Construction Narrative:**

For the Northeast Community Park – Phase I, Beeman Artworks, LLC, shall incorporate the following construction attributes into the Public Art:

- All polishing and finish work required for the metal upon installation.
- Showcase lighting (if needed).
- Include all footings and foundation, mounting and hardware.
- All installation procedures and setup for unveiling.

**Design Narrative:**

For the Northeast Community Park – Phase I, Beeman Artworks, LLC, shall incorporate the following design attributes into the Public Art:

- Child friendly.
- Constructed of durable materials.
- Of scale and quality that imparts an enduring symbol reflective of City and the site.

EXHIBIT D  
AFFIDAVIT

EXHIBIT D  
AFFIDAVIT

THE STATE OF OREGON §  
COUNTY OF MULTNOMAH

I, PETER BEEMAN, Artist, make this affidavit and hereby on oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be peculiarly affected by the work or decision on the project (check all that apply);

- Ownership of ten percent (10%) or more of the voting shares of the business entity.
- Ownership of Two Thousand Five Hundred and No/100 Dollars (\$2,500) or more of the fair market value of the business entity.
- Funds received from the business entity exceed 10% of my income for the previous year.
- Real property is involved and I have an equitable or legal ownership with a fair market value of at least Two Thousand Five Hundred and No/100 Dollars (\$2,500).
- None of the above.
- A relative of mine has substantial interest in the business entity or property that would be affected by my decision of the public body of which I am a member.
- Other: \_\_\_\_\_

Upon the filing of this affidavit with the City of Frisco, Texas, I affirm that no relative of mine, in the first degree by consanguinity or affinity as defined in Chapter 573 of the Texas Government Code, is a member of the public body which took action on the agreement.

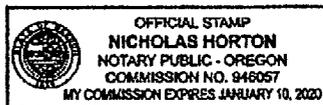
Signed this 19 day of JULY, 2016.

Peter Beeman OWNER  
Signature of Official/Title

BEFORE ME, the undersigned authority, this day personally appeared Peter Beeman and on oath stated that the facts hereinabove stated are true to the best of his/her knowledge or belief.

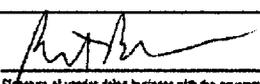
Sworn to and subscribed before me on this 19th day of July, 2016.

Nicholas Horton  
Notary Public in and for  
The State of Oregon  
My commission expires: 1/10/2020



# EXHIBIT E CONFLICT OF INTEREST QUESTIONNAIRE

## EXHIBIT E CONFLICT OF INTEREST QUESTIONNAIRE

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b> For vendor doing business with local governmental entity		<b>FORM CIQ</b>				
<p>This questionnaire reflects changes made to the law by H.B. 29, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: center; padding: 2px;">OFFICE USE ONLY</th> </tr> </thead> <tbody> <tr> <td style="width: 50%; padding: 2px;">Date Received</td> <td style="width: 50%;"></td> </tr> </tbody> </table>		OFFICE USE ONLY		Date Received	
OFFICE USE ONLY						
Date Received						
<p>1) Name of vendor who has a business relationship with local governmental entity.</p> <p style="font-size: 1.2em; margin-left: 20px;"><u>PETER BEEMAN</u></p>						
<p>2) <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire.</p> <p style="font-size: 0.8em; margin-left: 20px;">(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>						
<p>3) Name of local government officer about whom the information in this section is being disclosed.</p> <p style="text-align: center; font-size: 1.2em; margin-left: 20px;"><u>NONE</u></p> <p style="text-align: center; font-size: 0.8em; margin-left: 20px;">Name of Officer</p> <p style="font-size: 0.8em; margin-left: 20px;">This section (item 3 including subparts A, B, C, &amp; D) must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="margin-left: 40px;"> <input type="checkbox"/> Yes      <input checked="" type="checkbox"/> No                 </p> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <p style="margin-left: 40px;"> <input type="checkbox"/> Yes      <input checked="" type="checkbox"/> No                 </p> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more?</p> <p style="margin-left: 40px;"> <input type="checkbox"/> Yes      <input checked="" type="checkbox"/> No                 </p> <p>D. Describe each employment or business and family relationship with the local government officer named in this section.</p>						
<p>4) <u></u></p> <p style="font-size: 0.8em; margin-left: 20px;">Signature of vendor doing business with the governmental entity</p>		<p style="font-size: 1.2em; margin-left: 20px;"><u>JULY 18 2016</u></p> <p style="font-size: 0.8em; margin-left: 20px;">Date</p>				

Adopted 8/7/2015