AGREEMENT

BETWEEN

THE CITY OF FRISCO, TEXAS (CITY)

AND

RAY KING STUDIO LT,LTD (ARTIST)

FOR

THE FABRICATION AND INSTALLATION OF THE PROPOSED "WAVE' (DR PEPPER ARENA PROJECT)) (PROJECT)

made as of the 2nd day of Oct in the Year 2009

BETWEEN the City:	The City of Frisco, Texas 6101 Frisco Square Boulevard, 5th floor Frisco, Texas 75034 Telephone 972-292-5116 Facsimile 972-292-5122
and the Artist(s):	Ray King dba Ray King Studio LT, LTD 835 N 3rd Street Philadelphia, PA 19123 Telephone (215) 627-5112 ray@rayking.nu
for the following Project:	Fabrication and Installation of the proposed "Wave" for (the "Dr Pepper Arena.)

The City and the Artist agree as set forth below.

THIS AGREEMENT is made and entered by and between the **City of Frisco, Texas**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and Ray King Studio LT, LTD,, hereinafter referred to as "Artist", to be effective from and after the date as provided herein, hereinafter referred to as the "Agreement".

WHEREAS, the City desires to engage the services of the Artist to fabricate and install the proposed "Wave" submitted for the Dr. Pepper Arena public art competition in August, 2009 , hereinafter referred to as the "Project"; and

WHEREAS, the Artist desires to render such services for the City upon 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, the parties hereto agree as follows:

ARTICLE 1
ARTIST'S SERVICES

1.1 **Employment of the Artist** - The City hereby agrees to retain the 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 such services as are set forth and described in Exhibit "A", which is attached hereto and incorporated herein by reference for all purposes. The parties understand and agree that deviations or modifications to the scope of services described in Exhibit "A", in the form of written change orders, may be authorized from time to time by the City.

1.3 **Schedule of Work** - The 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** - The City shall furnish required information, that it currently has in its possession, as expeditiously as necessary for the orderly progress of the work, and the Artist shall be entitled to rely upon the accuracy and completeness thereof.

2.2 **City Project Manager** - The City shall designate, when necessary, a representative authorized to act on the City's behalf with respect to the Project (the "Project Manager"). The City or such authorized representative shall examine the documents submitted by the Artist and shall render any required decisions pertaining thereto as soon as practical so as to avoid unreasonable delay in the progress of the Artist's services

ARTICLE 3
ARTIST'S COMPENSATION

3.1 **Compensation for Artist's Services** - As described in "Article 1, Artist's Services", compensation for this Project shall be Two Hundred Thirty Four Thousand Dollars and No cents ($234,000.00) ("Artist's Fee") and will cover 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 fifteen percent (15%) of the Artist's Fee, or Thirty Five Thousand One Hundred Dollars and No cents ($35,100.00)shall not be paid until the Artist has completed, delivered and installed, where applicable, all of the Artwork services and tasks described in Exhibits "A" and "B", attached hereto.

3.2 **Invoices** – No payment to the Artist shall be made until Artist tenders an invoice to the City. Payments are payable to the 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". 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, the Artist has the option upon written notice to the City, to suspend all work specified under this Agreement until the account is brought current. Continued performance and/or completion of work by the Artist under this Agreement shall resume upon the payment of the earned fees by the City.

3.3 **Failure to Pay** - Failure of the City to pay an invoice, for a reason other than cause, to the Artist within sixty (60) days from the date of the invoice shall grant the Artist the right, in

addition to any and all other rights provided, to, upon written notice to the City, refuse to render further services to the City and such act or acts shall not be deemed a breach of this Agreement. The City shall not be required to pay any invoice submitted by the Artist if the Artist breached any provision(s) herein.

3.4 **Adjusted Compensation** - If the Scope of the Project or if the Artist's services are materially changed, the amounts of the Artist's compensation shall be equitably adjusted as approved by City. Any additional amounts paid to the 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.

3.5 **Project Suspension** – If, for any reason, 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, the Artist's compensation shall be equitably adjusted as approved by the City. Any additional amounts paid to the 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** - The Project is the property of the City, and the Artist shall not make any duplicate work of the same or substantially similar size, nor shall the Artist grant permission to others to do so except with the written permission of the City. The City shall be entitled to copies of the plans and the maquette, which are prepared by the Artist in connection with the development and fabrication of the Project under this Agreement. The ownership of the artwork is transferred to the City upon full payment of Artwork described in Exhibits "A" and "B" attached hereto.

4.2 **Ownership of Copyright** - Artist shall retain the copyright to the Artwork. Artist shall take all steps, at his own expense, to protect the copyright of the Artwork.

4.3 **License to City** - The Artist irrevocably licenses the City, its employees, representatives, officers and agents, the right to make photographs, two dimensional reproductions, and adaptations of the work for educational, public relations, arts promotional 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. The City will make reasonable attempt to notify the Artist of all uses.

4.4 **Copyright Notice** – The 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 Ray King
or
© Ray King

4.5 **Representations and Warranties Regarding Copyright** – The 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
FABRICATION

5.1 **Specifications** – Artist will fabricate the Artwork, or cause it to be fabricated, in substantial conformity with the Design approved by City as set forth in Exhibit "A".

5.2 **Changes** – Any significant changes to the Artwork by either Artist or as requested by City will be approved in writing by the other party. For purposes of this Agreement, a "significant change" will mean any change, including but not limited to, a change in the scope, design, color, size, or material of the Artwork, which affects cost, installation, site preparation, maintenance and concept as represented in the Design described in Exhibit "A". If Artist wishes to make a significant change to the Artwork, he must request written approval from the City of the change in writing at the address provided in Section 14. City will provide a written response within thirty (30) calendar days.

5.3 **Review of the Artwork** – The City will be given access to the Artwork during reasonable business hours at Artist's or fabricator's studio by appointment in order to review the Artwork and Artist's or fabricator's progress with fabrication of the Artwork. Alternatively, the City requests and shall be given photographic documentation of Artist's progress to verify each stage that triggers payment pursuant to Section 3.1 above.

5.4 **Notification of Fabrication Completion** – Artist will notify the City in writing pursuant to Section 15 below when the Artwork is completed and ready for delivery. Designated representatives of the City will have the opportunity to inspect the Artwork for conformity with the design and structural requirements prior to delivery and to give written approval or disapproval of the Artwork for thirty (30) business days following notice from the Artist. As an alternative to the studio inspection, photographic documentation may be submitted to the City upon completion of the Artwork.

5.5 **Preparation of Site** –The City will provide Artist with the specifications and drawings for the specific area at the site where the Artwork is to be installed. Artist is responsible for obtaining and forwarding to City design drawings and calculations for the installation of the Artwork prepared by a professional structural engineer. The drawings will illustrate the Artwork's support system, including without limitation, connection to the base. The Landscape Architect will utilize these drawings and if, during installation, the Artwork is found to differ from the specifications noted in the drawings, it will be the Artist's responsibility to remedy the discrepancy and bring the Agreement into conformance with the drawings.

5.6 **Warranty of Craftsmanship** –The Artist warrants that the Artwork will be free of defects in workmanship and materials. In the event that any defects become apparent in the workmanship or materials within five (5) years of the execution of this Agreement, Artist will remedy any defects at Artist's sole cost and expense.

ARTICLE 6
STORAGE

6.1 **Storage Costs** – Artist will make all efforts to coordinate installation such that the Artwork will not need to be stored prior to installation. If the Artwork is to be installed within fourteen (14) days of its delivery date to the designated site, and is to be stored temporarily at a location at the site, the Artist is responsible for ensuring the safety of the Artwork until the permanent installation is completed. The Artist will be responsible for any and all costs associated with storing the Artwork, including but not limited to, the cost of transporting the Artwork to and from the storage facility, from the date mutually agreed upon in writing by the Artist and City for delivery to the site until the Artwork is permanently installed.

If, for reasons outside of the control of the Artist, the Artwork will not be able to be permanently installed within fourteen (14) days of its arrival date on site, as mutually agreed upon in writing by the Artist and City, and it is necessary to store the Artwork for more than fourteen (14) days prior to the permanent installation, the City must notify the Artist prior to delivery of the Artwork to the site. Storage of the Artwork will be at a location mutually agreed upon in writing by the Artist and City. Any and all costs associated with storing the Artwork, including but not limited to, the cost of transporting the Artwork from the storage facility, shall be apportioned between City and Artist as follows:

- first day (as mutually agreed upon in writing by Artist and City for delivery to the site) of storage through day 14—Artist
- day 15 until the date the Artwork is permanently installed--City

6.2 **Storage Requirements** -- If the City is providing on-site storage, the City will provide a locked storage facility to adequately, as solely determined by the City, contain the Artwork and the materials and supplies reasonably required by Artist for the permanent installation of the Artwork.

ARTICLE 7
APPROVAL OF ARTWORK

Approval of the artwork will occur at the following points, as noted in Exhibit B.

- The final design of the proposal will be approved by the Public Art Board.
- The full scale clay original sculpture will be inspected and approved by the City for conformity with the approved maquette. Any modifications to the shape and structure of the design must be requested at this point.
- Within ten (10) business days of the permanent installation of the Artwork, the City and Artist will schedule an installation inspection meeting at a mutually agreeable time, not to extend past ten (10) business days from the date the Artwork was permanently installed to determine whether it conforms with all of the requirements of this Agreement.

If the City desires any modifications to the Artwork or finds that any aspect of the Artwork is not in conformance with this Agreement, the City will notify Artist in writing within seven (7) business days of the inspection. Artist will have an opportunity to address and cure any defects, requests or concerns of the City within fifteen (15) days of the date of the City's notice provided pursuant to Article 7.

ARTICLE 8
INTEGRITY OF THE WORK

8.1 **Repairs and Maintenance** - The City undertakes to exercise reasonable care to protect, repair, and maintain the work. Artist agrees to cooperate with and advise the City in connection with any such non-routine maintenance, including, without limitation, damage by acts of God, vandalism, conservation and/or replacement of any portion of the Artwork to the extent that he or she is able to do so. Should the Artwork require repair or maintenance by the Artist not covered under Article 5.6, Artist will be compensated for time spent on maintenance and repairs.

During Artist's lifetime, the 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 the City to do so.

8.2 **Relocation of the Work** – To the extent that the Artwork is capable of being relocated, the City shall have the right to do so. If feasible, the City shall attempt to consult with the Artist concerning the relocation of the Artwork prior to any such relocation; however, the Artist's approval is not required for the relocation, if any. If the Artist is not pleased with such relocation, he or she shall have the right to renounce credit for the Artwork. If Artist renounces credit for his

Artwork, this would include, among other things, relinquishment and abandonment of the copyrights described herein.

8.3 **Credit** – The City agrees, at its own expense, to prepare and install at or near the Project a public notice, the form and exact location of which shall be solely determined by City, giving Artist credit for the creation of the Artwork.

ARTICLE 9
INSURANCE COVERAGE/HOLD HARMLESS AND RELEASE OF LIABILITY

Artist shall provide 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.

Artist represents that he/she does not maintain workers' compensation insurance; therefore, as partial consideration for the City entering into this Agreement, Artist agrees to **DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES FROM ANY AND ALL CLAIMS, DEMANDS, LIABILITIES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS OF DEFENSE) ARISING DIRECTLY OR INDIRECTLY OUT OF THE OPERATION OR PERFORMANCE OF ARTIST UNDER THIS AGREEMENT. THE CITY WILL NOT ACCEPT LIABILITY FOR INJURIES THAT ARE THE RESULT OF THE NEGLIGENCE OR MALFEASANCE OF ARTIST. SAID ARTIST AGREES TO ACCEPT LIABILITY FOR INJURIES TO HIMSELF/HERSELF OR OTHERS CAUSED BY HIS/HER OWN NEGLIGENCE OR MALFEASANCE. IN THIS CONNECTION, ARTIST AGREES TO INDEMNIFY THE CITY IN ACCORDANCE WITH ARTICLE 13 BELOW.**

All insurance and certificate(s) of insurance shall contain the following provisions:

1. Name the City, its officers, agents, representatives, and employees as additional insured's as to all applicable coverage with the exception of workers' compensation insurance.
2. Provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance.
3. Provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

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.

Certificate of insurance: A certificate of insurance evidencing the required insurance shall be submitted no later than the date of the execution of this Agreement. If this Agreement is renewed or extended by the City, a certificate of insurance shall also be provided to the City prior to the date the Agreement is renewed or extended.

ARTICLE 10
AUDITS AND RECORDS/PROHIBITED INTEREST/VENDOR DISCLOSURE

The Artist agrees that by appointment, which shall not be withheld, delayed, or denied by Artist, during reasonable business hours and as often as City may deem necessary, Artist shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the 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.

The Artist agrees that it is aware of the prohibited interest requirement of the City Charter, which is repeated on the Affidavit, and will abide by the same. Further, a lawful representative of Artist shall execute the Affidavit attached hereto as Exhibit "C" 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.

The Artist agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, Local Government Code, as amended, and will abide by the same. In this connection, a lawful representative of the Artist shall execute the Conflict of Interest Questionnaire, Form CIQ, attached hereto as Exhibit "D" and incorporated herein for all purposes.

ARTICLE 11
TERMINATION OF AGREEMENT/REMEDIES

11.1 **Artist Default** – Failure or refusal of the Artist to perform any act herein required, unless mutually agreed to in writing by the City and the Artist shall constitute a default. In the event of a default, in addition to any other remedy available to the City, this Agreement may be terminated by the City upon ten (10) day written notice. Such notice does not waive any other legal remedies available to the City. Should termination occur due to artist default, Artist will refund any payments received.

11.2 **Conditions for Termination of Agreement Other than Artist's Default** – If the City deems, in its sole discretion, the Project design is inappropriate or unworkable for the site, or if the deadlines specified herein are not met due, in whole or in part, to the Artist's actions and/or omissions, or if cost estimates indicate that the Project cannot be completed within the Project budget, the City retains the right to terminate this Agreement and is released from the obligation to enter into fabrication and installation of the Artist's design concept for the Project.

In the event of any termination, Artist shall deliver to City all work, entirely or partially completed.

The Artist shall receive as compensation, full payment for services satisfactorily, as solely determined by the City, performed as outlined in Exhibit "B", as applicable, to the date of the termination notice received. The City shall make this final payment within thirty (30) days of notifying the Artist.

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 12
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 13
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), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), TO THE EXTENT CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL WRONGFUL 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"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN ARTIST AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE ARTIST, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. 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 THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE

CLAIMS, IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (THE "JUDGMENT"), THEN ARTIST IS NOT REQUIRED TO INDEMNIFY OR DEFEND THE CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO THE CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY, OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE ARTIST FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY ARTIST THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT, OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, TO ARTIST WITHIN SIXTY (60) DAYS OF THE DATE OF THE JUDGMENT (THE "REIMBURSEMENT ALLOCATION").

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY ARTIST IN FULFILLING ITS 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.

THE RIGHTS AND OBLIGATIONS CREATED BY THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE 14
PROTECTION AGAINST CLAIMS OF SUBCONTRACTORS, LABORERS, MATERIAL MEN, AND FURNISHERS OF MACHINERY, EQUIPMENT AND SUPPLIES

THE ARTIST AGREES THAT IT WILL INDEMNIFY AND HOLD THE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF THE LAWFUL DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIAL MEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, AND ALL SUPPLIES INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. PRIOR TO THE PAYMENT OF ANY COMPENSATION TO THE ARTIST, THE ARTIST SHALL DELIVER TO THE CITY A LIST OF ALL SUBCONTRACTORS, LABORERS, OR SUPPLIERS THAT WERE USED TO PERFORM ANY WORK UNDER THIS AGREEMENT. THE ARTIST SHALL FURNISH SATISFACTORY

EVIDENCE TO THE CITY IN WRITING THAT ALL OBLIGATIONS OF THE NATURE DESIGNATED ABOVE HAVE BEEN PAID, DISCHARGED OR WAIVED. IF THE ARTIST FAILS TO DO SO, THEN THE CITY MAY EITHER PAY DIRECTLY ANY UNPAID BILLS, FOR WHICH THE CITY HAS WRITTEN NOTICE, OR WITHHOLD FROM THE ARTIST'S UNPAID COMPENSATION A SUM OF MONEY DEEMED REASONABLY SUFFICIENT TO LIQUIDATE ANY AND ALL SUCH LAWFUL CLAIMS UNTIL SATISFACTORY EVIDENCE IS FURNISHED THAT ALL LIABILITIES HAVE BEEN FULLY DISCHARGED, WHEREUPON PAYMENTS TO THE ARTIST SHALL BE RESUMED IN FULL, IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT; BUT IN NO EVENT SHALL THE PROVISIONS OF THIS PARAGRAPH BE CONSTRUED TO IMPOSED ANY OBLIGATION UPON THE CITY BY THE ARTIST. IF THE CITY CHOOSES TO PAY DIRECTLY ANY UNPAID BILLS, THE CITY MAY EITHER WITHHOLD THIS AMOUNT FROM THE ARTIST'S UNPAID COMPENSATION OR PURSUE REIMBURSEMENT FROM THE ARTIST.

ARTICLE 14
NOTICES

Artist agrees that all notices or communications to City permitted or required under this Agreement shall be delivered to City at the following addresses:

Richard Oldham
Public Art Manager
City of Frisco
6101 Frisco Square Boulevard, 5th floor
Frisco, Texas 75034

City agrees that all notices or communication to Artist permitted or required under this Agreement shall be delivered to Artist at the following address:

Ray King
835 N 3rd Street
Philadelphia, PA 19123

Any notice provided for under the terms of this Agreement by either party to the other shall be in writing and may be effected by registered or certified mail, return receipt requested.

All notices or communication required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is postmarked by the sending party. Each party may change the address to which notice may be sent to that party by giving notice of such change to the other party in accordance with the provisions of this Agreement.

ARTICLE 15
MISCELLANEOUS

15.1 **Complete Agreement** - This Agreement, including the exhibits hereto labeled "A" through "D", 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.

15.2 **Assignment and Subletting** - The Artist agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The 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 the Artist of its full obligations to the 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.

15.3 **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.

15.4 **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.

15.5 **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.

15.6 **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.

15.7 **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.

15.8 **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.

15.9 **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.

15.10 **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.

15.11 **Sovereign Immunity** – The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

15.12 **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.

15.13 **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.

15.14 **Death/Incapacitation 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 pursuant to the Artist's design, conception, and plans by DEBBIE KING .(Persons name and address)

15.15 **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.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest day as reflected by the signatures below.

Effective Date: _____

CITY	**ARTIST**
The City of Frisco, Texas	**Ray King Studio LT,LTD**
By: _____ George Purefoy	By: _____ Ray King (President)
Title: City Manager	Title: Artist

Approved as to Form:

By:_____
Abernathy, Roeder, Boyd & Joplin, P.C.
Courtney A. Kuykendall, City Attorney

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 2nd DAY OF October, 2009.

_____
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

STATE OF Penna §
§
COUNTY OF Phila §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 2nd DAY OF October, 2009.

Maureen E Dill
NOTARY PUBLIC IN AND FOR THE STATE OF Penna

NOTARIAL SEAL
MAUREEN E DILL
Notary Public
PHILADELPHIA CITY, PHILADELPHIA COUNTY
My Commission Expires May 19, 2011

EXHIBIT "A"
SCOPE OF SERVICES

AGREEMENT BETWEEN THE CITY OF FRISCO, TEXAS (CITY) AND RAY KING (ARTIST)

FOR THE FABRICATION AND INSTALLATION OF THE PROPOSED "WAVE" FOR THE DR PEPPER ARENA (PROJECT)

Project Description

"Wave" is a light responsive sculpture suspended from the building structure's steel beams, comprised of vertical 1/16th stainless steel cables strung with more than ten thousand laminated glass elements. The 2" square facets will be arranged along the upper promenade to interact with sunlight and illuminated at night as visitors walk though the space, the experience of the glass and colors will dynamically change.

The glass elements will be laminated with dichroic film coating that change color—from yellow/gold to blue—depending on the orientation of the viewer and will reflect light into the surrounding space. The glass elements will be uniform in size, but the dichroic film and the modulation of density will create the sensation of motion.

The sculpture is comprised of durable materials: stainless steel and laminated glass that require little maintenance. Routine cleaning will consist of periodic dusting with electrostatic duster. The sculptures will be suspended at least 14"6" above the upper concourse.

To fabricate and install the proposed "Wave" for the Dr. Pepper Arena project, artist Ray King will perform the following tasks:

A) Following a site visit, submit final schematic drawings of the proposal, based upon submitted maquette/presentation to City staff and the Public Art Board for their review and approval within sixty (60) days of the receipt of this agreement. These drawings will include:

- Detailed information of every physical feature of the construction of the Artwork and its integration with the site with any proposed changes to the previously submitted concept highlighted. (Final Design).
- A description of 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.
- A final project budget breakdown not to exceed Two Hundred Thirty-Four Thousand and No cents ($234,000.00).
- An installation timeline.

B) Following formal approval of the Public Art Board, the Artist shall submit drawings stamped by an engineer, licensed by the State of Texas and paid for by the Artist, for certification that the Artwork, foundation, and its connection will be structurally sound.

C) The Artist shall fabricate and install the Artwork in substantial conformity with the approved design. Any significant changes in the concept, as defined in Article 5.2, must be approved by the City. It is the responsibility of the Artist to coordinate with the City, the Project Landscape Architect, and Contractor to ensure that the site is prepared to receive the Artwork.

D) Upon completion of the permanent installation and clean-up of the site, the City project manager will inspect the work and give notice of acceptance, as provided in this Agreement. The Artist will complete the City's maintenance worksheet and submit it to the City within ten (10) days of City's final acceptance of the Artwork.

EXHIBIT "B"
COMPLETION SCHEDULE/PROJECT BILLING/PROJECT BUDGET

AGREEMENT BETWEEN THE CITY OF FRISCO, TEXAS (CITY)
AND RAY KING (ARTIST)

FOR THE FABRICATION AND INSTALLATION OF THE PROPOSED "WAVE" FOR THE DR PEPPER ARENA PROJECT (PROJECT)

Completion Schedule and Project Billing

TASK	DESCRIPTION	PAYMENT	TIMELINE
1	Execution of Agreement and Notice to Proceed. Insurance documentation sent to City.	49,725.00	October 2009
2	Submit final design and budget breakdown for approval to City Staff and Public Art Board. Stamped engineer drawings submitted.	49,725.00	January 2010
3	Documentation acceptable to the city, that fabrication is 50% Complete ,	49,725.00	April 2010
4	Documentation acceptable to the city the fabrication is complete.	49,725.00	August 2010
5	Final acceptance by project manager, Final installation, submit maintenance worksheets, dedication.	35,100.00	September 2010
TOTAL		$234,000.00	

EXHIBIT "C"
AFFIDAVIT

THE STATE OF PA §
§
COUNTY OF Phila §

I, RAY KING, 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);

NO Ownership of 10% or more of the voting shares of the business entity.

NO Ownership of $2,500.00 or more of the fair market value of the business entity.

NO Funds received from the business entity exceed 10% of my income for the previous year.

NO Real property is involved and I have an equitable or legal ownership with a fair market value of at least $2,500.00.

NO None of the above.

NO 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.

NO 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 2nd day of OCTOBER, 2009.

Signature of Official/Title PRES., RAY KING STUDIO, LTD.

BEFORE ME, the undersigned authority, this day personally appeared Ray King 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 2nd day of October, 2009

Maureen E. Dill
Notary Public in and for the State of Penna
My commission expires: May 19, 2011

NOTARIAL SEAL
MAUREEN E DILL
Notary Public
PHILADELPHIA CITY, PHILADELPHIA COUNTY
My Commission Expires May 19, 2011

EXHIBIT "D"

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor or other person doing business with local governmental entity

FORM CIQ
Page 2

5 **Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is YES.)**

This section, item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or business relationship. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire?

☐ Yes ☒ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity?

☐ Yes ☒ No

C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes ☒ No

D. Describe each affiliation or business relationship.

6 **Describe any other affiliation or business relationship that might cause a conflict of interest.**

7

Signature of person doing business with the governmental entity

2 OCT 2009
Date

Amended 01/13/2006