

THE STATE OF TEXAS §
§ PROFESSIONAL SERVICES AGREEMENT
COUNTY OF COLLIN §

This Agreement (“Agreement”) is made by and between Allbritton Lee LLC, a Texas limited liability company, dba RE:site (“Artist”) and City of Allen, Texas, (“City”) (collectively the City and the Artist referred to as the “Parties” or singularly as a “Party”), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, City desires to engage the services of Artist as an independent contractor and not as an employee to provide the services to design, fabricate and install an original artwork as set forth in **Exhibits “A” and “B”** (collectively the “Scope of Work”) in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, Artist desires to render professional services for City in accordance with the terms and conditions set forth in this Agreement;

NOW THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I
Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Approved Design” shall mean the Artist’s concept proposal recommended by the City Artist Selection Committee and as approved by City Council.

“Artist” shall mean Allbritton Lee, LLC, dba RE:site.

“Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“City” shall mean the City of Allen, a municipal corporation in the State of Texas.

“Contract Administrator” shall mean the City of Allen designated Project Manager.

“Contract Price” shall have the meaning assigned in Section 7.1 hereof.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Artist or any property or any business owned by Artist within the City.

“Notice to Proceed” shall mean a written notice issued by Contract Administrator directing the Artist to proceed with performance of the respective Scope of Work.

“Project” shall mean the final design, implementation, fabrication and installation of the Artwork as described in **Exhibits “A” and “B”**.

“Scope of Work” shall mean the design, fabrication, installation and delivery of the Work as set forth in **Exhibits “A” and “B”**.

“Site” shall mean the designated area at the Allen Event Center identified by City for the Art Work.

“Work” or “Artwork” shall mean the completed form of artwork, known as “Perpetual Flux”, created by Artist, including all activities undertaken to complete the performance of the Scope of Work for the Project, in conformity with the design of the Approved Design.

Article II

Term; Scope of Work

2.1 The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and continue until completion of the services by the Artist unless sooner terminated as provided herein.

2.2 Artist shall design, fabricate and install the Work and furnish all services as described in the Scope of Work.

2.3 City shall issue the Notice to Proceed to Artist prior to Artist initiating any work set out in the Scope of Work.

2.4 City shall be responsible for providing Artist, without cost, copies of surveys, soil reports and other relevant data related to the Site.

2.5 Artist shall provide progress reports and/or deliverables, as appropriate and as provided in the Scope of Work, to Contract Administrator, in a manner reasonably acceptable to the Contract Administrator.

Article III

Changes in Scope and Additional Work

3.1 Artist shall, whenever required during the term of this Agreement by the terms of this Agreement or at the request of the Contract Administrator, present to City in writing, drawing or other appropriate media for further review and approval, any “Significant Change” in the scope, design, color, size, material, utility and support requirements, texture, or location of the Work. For purposes of this agreement a “Significant Change” shall mean any change which affects the installation, scheduling, site preparation or maintenance of the Work, or the concept of the Work as represented in the Approved Design.

3.2 Upon receiving a Notice to Proceed from City, Artist shall perform the services set forth in the Scope of Work. Artist shall retain professional and artistic control of the services in the performance of this Agreement.

3.3 Notwithstanding the provision of Section 3.2, City may, at any time, request Artist in writing to: (1) revise portions of the services that the Artist has previously completed in a satisfactory manner; (2) delete portions of the Scope of Work which have yet to be performed; and (3) make other changes within the general Scope of Work to be performed under this Agreement. Any changes mutually agreed by the Parties shall be set forth in an amendment to this Agreement, specifying the agreed changes, including, but not limited to, a description of services, addition or reduction of budget, payment schedule and timetable. In the event Artist does not agree to any requested changes, the City shall be entitled, in City’s sole discretion, to terminate the Agreement entirely or with respect to the Scope of Work for the Art Work for which there is no such agreement, by written notice to the Artist, and neither Party shall thereafter be obligated to perform pursuant to this Agreement if terminated entirely or with respect to the Scope of Work for the Art Work for which the City has terminated. In the event of such termination by the City the Artist shall be entitled to reimbursement for reasonable expenses incurred for any Work completed to the reasonable satisfaction of the City prior to such termination.

3.4 No services for which additional compensation will be charged shall be provided by Artist without the prior written authorization by the Contract Administrator.

3.5 Upon completion of the Design Phase (as defined in the Scope of Work), the City reserves the right to make such alterations as may be deemed necessary or advisable and to require such extra work as may be required for the proper completion of the Project. Any such changes will be set forth in a written amendment to this Agreement which will specify, in addition to the work done in connection with the change made, adjustments of contract time, if any, and the basis of any additional compensation for such Work, if any.

Article IV Responsibilities of Artist

4.1 Artist agrees that an essential element of this Agreement is the artistic skill and creativity. Artist shall not assign the creative or artistic portions of the Work to another party for the production of the Work without the prior written consent of City Manager, or designee.

4.2 Artist shall be responsible for providing the services described in the Scope of Work including, but not limited to, the quality and timely completion of the services. Artist shall be responsible for designing the Artwork so that it can be fabricated, delivered installed without exceeding the Contract Price. Artist shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in the Work.

4.3 In the event the services of Artist are integrated into, combined, or otherwise coordinated with services by third parties not within Artist's control, Artist shall not be responsible for such third party services. If any part of Artist's Work depends on proper execution or results upon the work of City or a third-party responsible to City, Artist shall, prior to proceeding with the Work, promptly report to City in writing any apparent discrepancies or other defects in such other work which renders it unsuitable for proper execution and results by Artist. Artist shall not be responsible for any liability or failure to fulfill the obligations of the Artist because of such discrepancies or defects, subject to written confirmation by the Contract Administrator and timely written notice provided by Artist. Failure of Artist to provide written notice to the Contract Administrator of a discrepancy or defect shall constitute an acceptance of City's or third-party's work as fit and proper for the execution, installation and delivery of the Work. Nothing in this section shall limit the responsibility of Artist to take all reasonable steps to coordinate the Work with the City and any third party responsible to the City relating to the Project.

4.4 Artist is responsible for the design, transportation, and inspection of the Artwork.

4.5 Artist shall, if and when working on the Site, cause and supervise such clean-up as may be reasonably necessary and as may be reasonably requested by City. At the close of Artist's work on the Site or City property, the Artist shall promptly remove any equipment and excess materials from the Site or City property.

4.6 City shall notify Artist of the operation, construction and maintenance schedules of the City and its contractors in and around the area where Artist's work is to be performed. Artist shall perform the services in a manner and time so as not to cause interference with any of the operations, construction, or maintenance of City or its contractors. Any conflict between the schedules of City and its contractors with the schedules of Artist shall be resolved by City.

Article V Responsibilities of City

5.1 City shall make available to Artist all public information it has available pertaining to the Project.

5.2 City shall perform in a timely manner each and every City activity as set forth in the Scope of Work. If delays occur when deliverables of Artist are dependent upon City's timeliness, Artist's schedule of performance shall be reasonably adjusted accordingly.

5.3 City shall:

- (a) Arrange for access to the Site so that Artist may enter upon the Site as required for Artist to perform the services under this Agreement;
- (b) Provide prompt written notice to Artist whenever City observes or otherwise becomes aware of any activity or event that affects the scope or timing of Artist's services; and
- (c) Coordinate appointments, meetings, and/or consultations as needed for Artist to fulfill the obligations under this Agreement.

Article VI Warranties/Standards

6.1 Artist warrants that: (a) the design for the Work and the Work being commissioned is the original product of Artist's own creative efforts; (b) that the Work is original; and (c) that Artist shall not sell or reproduce the Work or allow others to do so without the prior written consent of City.

6.2 Artist shall guarantee the Work to be free from faults of material and workmanship for a period of one (1) year after final acceptance of the Work by City. Artist shall install and deliver the Work to City free and clear of any liens.

6.3 Artist shall faithfully perform the services set forth in this Agreement in accordance with standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform work of a similar nature to the Work described in this Agreement.

Article VII Compensation and Time of Performance

7.1 City shall pay, and Artist shall accept, as full and complete payment for the Work entitled "Perpetual Flux", and the services related thereto, the fixed sum of Three Hundred Thousand Dollars (\$300,000.00) (the "Contract Price").

7.2 City shall pay the Contract Price to the Artist in installments in accordance with the Payment Schedule set forth in **Exhibit "B"**.

7.3 Artist shall notify Contract Administrator in writing when the respective Work is complete in all respects, installed and ready for inspection by the City. The Contract Administrator shall promptly make, or cause to be made, a final inspection of the respective

Work. When the Work is complete in accordance with terms of this Agreement and the Artist has fully satisfied the terms of this Agreement, the City shall, following acceptance of the Work, promptly issue a final Certificate for Payment certifying that the respective Work is complete and that Artist is entitled to the remainder of the unpaid Contract Price for the respective Work, less any amount withheld pursuant to this Agreement.

7.4 Any costs or expenses incurred by Artist in excess of the Contract Price shall be the sole responsibility of Artist.

7.5 Artist shall for a period of one year after City acceptance of the respective Work maintain copies of all receipts and records relating to the costs incurred by the Artist in the performance of the services under this Agreement. City shall have a right, upon ten (10) days prior written notice to the Artist, to inspect and copy the Artist records and receipts regarding the costs incurred by the Artist in the performance of the services under this Agreement.

7.6 In the event City determines at any time, prior to City acceptance of any of the Work, that the Work or any portion of thereof, does not meet the requirements of the Scope of Work, the City may upon written notice to the Artist withhold any payments due to Artist under the Schedule of Payments and/or the remainder of the respective Contract Price. Artist shall within thirty (30) days after receipt of such written notice take action to correct such deficiency. Artist shall timely comply with the requirements of the Scope of Work to the reasonable satisfaction of the City prior to any further payments being made hereunder.

7.7 The services required of Artist under this Agreement shall be completed in accordance with the schedule for completion of the Work as set forth in the Scope of Work, provided that such time limits may be extended or otherwise modified by written agreement between the Parties by an amendment to this Agreement.

7.8 Artist shall bear any transportation and storage costs resulting from the completion of the Work prior to the time provided in the schedule for installation of the Work.

Article VIII Artist's Rights

8.1 City shall, at its expense, prepare and install at appropriate locations, after consultation with Artist, a plaque or sign identifying Artist, the title of the Work and the year of completion, and any other information mutually agreed by the Parties and shall reasonably maintain such sign or plaque in a good state of repair, reasonable wear and tear excepted.

8.2 City recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. City shall, following acceptance of the Artwork, cause the Work to be properly maintained and protected, taking into account the recommendations of the Artist.

8.3 City agrees that it shall not commit or authorize the intentional commission of any physical defacement, mutilation, alteration, destruction, damage, modification, or change to the Work without first conferring with Artist and taking reasonable measures to obtain the prior

written approval of Artist to the proposed modification. If any alteration or damage occurs, the Artist shall have the right to disclaim authorship of the Work.

8.4 City, in its sole discretion, shall have the right to remove or relocate the Work after making a good faith effort to notify the Artist thereof.

8.5 City shall have the right to determine, after consultation with a professional conservator, when and if repairs and restorations to the Work shall be made. In the event that City makes repairs or restorations not reviewed and approved by Artist, Artist shall have the right to disclaim authorship of the Work and have the Artist's name and association with the Work removed.

8.6 All repairs and restorations, whether performed by Artist or City, or by third-parties responsible to Artist or City, shall be made in accordance with professionally recognized principles of conservation of Artwork.

8.7 The Parties agree that this Agreement supersedes and replaces any rights the Artist may have under the Visual Artists' Rights Act to the extent that any portion of this Agreement is in direct conflict with those rights. The Parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.

Article IX Copyrights

9.1 Artist shall retain all copyrights and all other rights in and to the Artwork created under this Agreement, provided that Artist hereby grants to City an irrevocable license to display the Artwork and to graphically depict the Artwork for any non-commercial purpose whatsoever. For the purposes of this limitation, the graphic depiction of the Artwork on materials designed to promote City shall be deemed to be a non-commercial use. City shall not be responsible for any third-party infringement of Artist's copyright.

9.2 If, for any reason, the Approved Design is not implemented, all rights to the proposed Artwork shall be retained by Artist.

9.3 Artist agrees that the work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the State of Texas and the United States. Artist hereby represents and warrants that the Work does not, and Artist has not and will not, utilize any protected patent, trademark or copyright in performance under this Agreement unless and until Artist has obtained proper permission and all releases and other necessary documents. If Artist specifies any material, equipment, process or procedure which is protected, Artist shall disclose such patents, trademarks and copyrights in the construction drawings and technical specifications, such listing to be appended to this Agreement and shall be incorporated by this reference.

9.4 ARTIST AGREES TO RELEASE, INDEMNIFY, DEFEND AND SAVE HARMLESS CITY, ITS OFFICERS AND EMPLOYEES FROM AND AGAINST ALL

LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS CAUSED BY OR RESULTING FROM THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT BY ARTIST INCLUDING AND ANY CLAIM THAT THE SERVICES OF ARTIST AND/OR THE WORK INFRINGES UPON ANY PATENT, TRADEMARK OR COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY.

INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO THE CONSULTANT'S LIABILITY.

THE OBLIGATIONS OF ARTIST UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY ARTIST UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

Article X Termination

10.1 This Agreement terminates on the acceptance of the Artwork by the City, and may be terminated upon any one or more of the following:

- (a) by mutual written agreement of the Parties;
- (b) upon written notice by either Party, if the other Party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) upon written notice by City, if any Impositions owed to the City or the State of Texas by Artist shall have become delinquent (provided, however, Artist retains the right to timely and properly protest and contest any such taxes or Impositions); or
- (d) upon written notice by City, if Artist suffers an event of Bankruptcy or Insolvency.

10.2 In the event that this Agreement is terminated by City for an uncured breach of this Agreement by the Artist, the Artist shall promptly reimburse City for payments of the Contract Price made under this Agreement prior to the date of such termination by City.

10.3 Title to the respective Artwork shall pass to the City upon the City's written final acceptance and payment for the respective Artwork. Artist shall as a condition of the final payment of the respective Contract Price for the respective Artwork provide City with a Bill of Sale substantially in the form set forth in **Exhibit "C"** (the "Bill of Sale").

Article XI Insurance

11.1 Artist shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to Artist's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage with a \$2,000,000 aggregate; policy of automobile liability insurance covering any vehicles owned and/or operated by Artist, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000 combined single limit and aggregate for bodily injury and property damage, artist will secure "transit coverage" under the automobile policy to cover the value of the Work if damage should occur while in transit; and (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Artist's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00.

11.2 All insurance shall be endorsed to contain the following provisions: (1) name City, its officers, 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 City for cancellation or non-renewal of the insurance or material change of the insurance; (3) provide for a waiver of subrogation on all policies in favor of the City.

11.3 The Artist shall provide written notice to City of any non-renewal or cancellation or material change of the insurance required herein.

11.4 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.

11.5 Copies of the policy endorsements and the certificate(s) of insurance evidencing the required insurance shall be submitted to the City prior to commencement of services by the Artist and upon written notice by City.

Article XII Indemnification

CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF ARTIST PURSUANT TO THIS AGREEMENT. ARTIST HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS THE "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY. ARTIST AGREES TO DEFEND, INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS

OF INVESTIGATION) AND ACTIONS BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE NEGLIGENCE, OR INTENTIONAL ACTS OR OMISSIONS OF THE ARTIST IN THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY ACT OR OMISSION ON THE PART OF ARTIST, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO SOLE NEGLIGENCE OF CITY).

WITHOUT LIMITING THE FOREGOING AND TO THE FULLEST EXTENT PERMITTED BY LAW, ARTIST HEREBY INDEMNIFIES AND HOLDS HARMLESS THE CITY FROM AND AGAINST ALL DAMAGES, LOSSES, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, INCURRED BY CITY IN CONNECTION WITH ANY ACTION AGAINST CITY FOR PERSONAL INJURY AT THE SITE OF ANY EMPLOYEE, CONTRACTOR, OR SUBCONTRACTOR OF THE ARTIST OR ANY CONSULTANTS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, BROUGHT BY SUCH INJURED PARTY OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM"), EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OF THE CITY OR CITY. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. ARTIST SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS PARAGRAPH.

Article XIII Miscellaneous

13.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

13.2 Assignment. Artist may not assign this Agreement in whole or in part without the prior written consent of City. In the event of an assignment by Artist to which City has consented, the assignee shall agree in writing with City to personally assume, perform, and be bound by all the covenants and obligations contained in this Agreement.

13.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

13.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to conflict of law rules; exclusive venue for any action concerning this Agreement

shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

13.5 **Amendments.** This Agreement may be amended by the mutual written agreement of the Parties. The City Manager or designee shall be authorized to approve and execute any amendments to the Agreement.

13.6 **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

13.7 **Independent Contractor.** It is understood and agreed by and between the Parties that Artist in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Artist pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of City. Artist shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement. There is no intended third party beneficiary to this agreement.

13.8 **Subcontractors.** In the event Artist requires the service of any subcontractors or other professionals in connection with services or activities covered by this Agreement the Artist shall directly pay any such subcontractor or professional and shall require such subcontractors and/or professional to provide and maintain the insurance required herein.

13.9 **Right-of-Access.** City will furnish right-of-access on the Site for Artist to perform the required assessments, or other necessary investigations. Artist will take reasonable precautions to minimize damage to the Site in the performance of such assessments and investigations.

13.10 **Notice.** Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:

Eric Ellwanger, City Manager
City of Allen, Texas
305 Century Parkway
Allen, Texas 75013
214-509-4118 Fax

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager
& Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201
214-965-0010 Fax

If intended for Artist:

Allbritton Lee LLC. dba RE:site
Attn: Shane Allbritton & Norman Lee
5615 Briarbend Drive
Houston, Texas 77096
832-594-1797 Phone

13.11 **Counterparts.** This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

13.12 **Exhibits.** The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

13.13 **Audits and Records.** Artist agrees that during the term hereof, City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of Artist's records relating to the services provided pursuant to this Agreement for a period of one year following the date of acceptance of the work by City or date of termination if sooner.

13.14 **Survival of Obligations.** Any of the representations and obligations of the Parties, as well as any rights and benefits of the Parties pertaining to a period of time following the termination of this Agreement shall survive termination.

13.15 **Time.** Both Parties recognize that time is of the essence in the performance of the provisions of this Agreement.

13.16 **Authority to Execute.** The undersigned represent and warrant they are each duly authorized by the Parties to execute this Agreement.

[signature page to follow]

EXECUTED this ____ day of _____, 2019.

CITY OF ALLEN, TEXAS

By: _____
Eric Ellwanger, City Manager

Attest:

By: _____
Shelley B. George, City Secretary


Approved as to Form:

By: _____
Peter G. Smith, City Attorney

EXECUTED this _1st_ day of __October_____, 2019.

ARTIST:

ALLBRITTON LEE LLC
dba RE:SITE

By:  _____
Shane Allbritton

By:  _____
Norman Lee

EXHIBIT “A” Scope of Work – Allen Event Center Artwork

The following is a detailed description of each phase of work within the Scope of Work:

Final Design/Construction Documents:

- (a) Artist’s Concept Proposal, as approved by City Council, shall constitute the Approved Design, for which Final Design/Construction Documents shall be created.
- (b) Artist shall prepare structural drawings detailing every physical feature of the construction of the Work and its integration with the Site. These drawings and supplementary documents shall indicate any issues involved in the construction, integration and maintenance of the Work, as well as any third party subcontractors needed to work on the project.
- (c) Where appropriate, the Artist shall present such drawings to a qualified engineer, licensed by the State Texas and paid by the Artist, for certification that the Work will be of adequate structural integrity and the Artist shall provide the City with such certification, signed and stamped by the licensed engineer.
- (d) Artist shall present the Final Design to a qualified conservator, who will make recommendations on the maintenance of the Work. The Artist shall provide a written copy of the conservator’s recommendations to the City.
- (e) Artist shall provide a detailed narrative Description of the Artwork with explicit detail regarding the overall form or design, scale, dimensions, color, and surface treatment of the Artwork.
- (f) Artist shall prepare a budget, which shall include all goods, services and materials, with such costs itemized. Calculation of the budget shall take into consideration the possible inflation of service and material costs between the Effective Date and the anticipated completion date.
- (g) Artist shall prepare a schedule for the fabrication and installation of the Artwork to be approved by the City. The Schedule may be amended by written agreement of the Parties.

Fabrication:

- a) Upon approval of the Final Design/Construction Documents and receipt of Notice to Proceed, the Artist shall fabricate and install the Work in substantial conformity with the Approved Design. The Artist may not deviate from the Approved Design without prior written approval of the City.
- (b) Artist shall take reasonable measures to protect or preserve the integrity of the Work such as the application of protective or anti-graffiti coatings, if applicable, unless the City disapproves otherwise in writing.
- (c) If the Work is being constructed on-site, the Artist shall coordinate with the City and with the design and construction team; and shall avoid creating nuisance conditions arising out of the Artist’s operations.

- (d) City shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice. Upon the written request of City, Artist shall provide clear photographic documentation of the progress of fabrication of the Work.
- (e) Artist shall notify the City in writing when fabrication of the Work has been completed, and that the Work is ready for delivery and installation at the Site if the Artwork was fabricated off-site. Artist shall also provide the City with clear photographic documentation of the completed Work.
- (f) Prior to requesting authorization to transport and install the Work, Artist shall provide City with a written list of all workers or subcontractors and equipment to be required for the transport and installation together with the hours of operation and the scope of work to be performed on the Site. Artist's contractors shall be required to provide and maintain the same insurance as Artist during periods when such contractors are on the Site and performing work. Artist's contractors shall provide City certificates of insurance and copies of the required insurance endorsements prior to entering the Site.
- (g) City shall promptly notify the Artist of any delays, if such delays are caused by the City, impacting installation of the Artwork. Any additional storage fees incurred as a result of such delays are the responsibility of the City.
- (h) Artist shall be required to inspect the Site prior to the transportation and installation of the Work and shall notify the City of any adverse Site conditions that will impact the installation of the Artwork which are in need of correction.

Installation:

- (a) Upon the City approval of the fabricated Work, as being in conformity with the Approved Design, the Artist shall deliver and install the completed Work to the Site in accordance with the agreed schedule.
- (b) Artist will coordinate closely with City to ascertain that the Site is prepared to receive the Work. Artist must notify City in writing of any adverse conditions at the Site that would affect or impede the installation of the Work. Artist is responsible for timely installation of the Work. Artist will confer and coordinate with City to ensure timely coordination with City's construction team. Site access procedures will be identified in coordination with the development of the Work design and installation schedule. Artist shall not install the Work until authorized to do so in writing by the City.
- (c) Artist shall supervise the installation of the Work.
- (d) Upon written acceptance of the installation and the Work by the City and delivery of a Bill of Sale, the Work shall be deemed to be the property of the City. (e) Prior to installation of the Work, the Artist shall provide the City with written instructions for the appropriate maintenance and preservation of the Work together with product data sheets for any material or finish used. The Work must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable interaction of people. Artist must ensure that all maintenance requirements will be reasonable in terms of time and expense. The City is responsible for the proper care and maintenance of the Work after written acceptance of the installation and acceptance of the Work
- (f) After final acceptance of the Work, the Artist shall, at the Artist sole cost, be available at such time(s) as may be mutually agreed by the Parties to attend any public meetings and

community outreach functions, as well as any inauguration or presentation ceremonies relating to the dedication of the Work. City shall be solely responsible for coordinating public information materials and activities related to public presentations.

Schedule for Completion of Services (which time periods shall commence from Notice to Proceed):

Design/Engineering – 3 months

Working Drawings/Documentation – 2 months

Fabrication – 6 months

Shipping/Installation/Assembly – 1 month

Total – 12 months

Artwork Description

Entitled Perpetual Flux, our artwork features a continually changing, suspended kinetic artwork composed of sculptural elements. Each sculptural element is composed of dichroic acrylic mounted on to an aluminum framework, suspended by two computer-controlled winches attached to a ceiling beam. At night, the sculpture is lit.

**EXHIBIT “B” Payment Schedule –
Allen Event Center Artwork**

City shall pay the Artist a fixed fee of Three Hundred Thousand (\$300,000), which shall constitute full and complete compensation for all the services performed and materials furnished by the Artist under this Agreement. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and materials provided prior to payment thereof:

- (a) \$60,000 (20%) upon the execution of this Agreement, recognizing that Artist will invest time and expense in preparing the Final Design;
- (b) \$60,000 (20%) upon City’s notification to the Artist of its approval of the Final Design and issuance of a Notice to Proceed with Fabrication and Installation;
- (c) \$90,000 (30%) Upon initiation of Fabrication
- (c) \$60,000 (20%) within 30 days after Artist notifies the City that the Work’s fabrication is 50% complete and provides photographic or other reasonable documentation as requested by the City;
- (d) \$30,000 (10%) Completion of Installation and final acceptance of work within 30 days after final acceptance of the Work by the City.

**EXHIBIT “C”
PUBLIC ART BILL OF SALE**

STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF DALLAS §

That _____ and _____ (collectively “Artist”) whose address is _____ in consideration of the payment of _____ Dollars (\$_____), (“the Contract Price”) the receipt and sufficiency of which is hereby acknowledged, does hereby sell and transfer to City of Allen, Texas (“City”), of 305 Century Parkway, Allen, Texas, 75013, its successors and assigns, the following described art work located in Dallas County, Texas:

That certain work of art titled “Perpetual Flux” (“the Artwork”) a picture of which is attached hereto as **Exhibit “A”**, and incorporated herein by reference.

Artist warrants that it is the lawful owner in every respect of the Artwork and that the Artwork is free and clear of liens, security agreements, encumbrances, claims, demands, and charges of every kind whatsoever. For the above consideration, Artist further assigns, transfers, and conveys to City all of Artist’s right, title, and interest in any and all copyrights of and related to the Artwork, including, but not limited to, all rights to reproduce copies and likenesses of the Artwork in any form or media, and the right to grant licenses to third parties for reproduction copies and likenesses of the Artwork in any form or media.

Artist binds Artist, and Artist’s heirs, successors and assigns, to warrant and defend the title to the Artwork to City, its successors and assigns, forever against every person lawfully claiming the described property or any part of it.

This Bill of Sale is subject to the following special conditions:

- a. The Contract Price is to be net of any costs;
- b. There are no brokers or commissions involved in this transaction; and
- c. There are no closing costs involved in this transaction;

This Bill of Sale shall be effective on the later of the date of payment of the Contract Price to the Artist or the date of execution of the Bill of Sale by the Artist.

IN WITNESS WHEREOF, this Bill of Sale is executed by the Artist and City on the _____ day of _____, 2019.

ARTIST:

By _____
Shane Allbritton

By _____
Norman Lee

CITY OF ALLEN, TEXAS

BY: _____

Name: _____

Title: _____