

**AGREEMENT FOR ACCEPTANCE OF ART
BETWEEN THE CITY OF CORPUS CHRISTI AND
SOUTH TEXAS ALLIANCE OF INDIGEOUS PEOPLE**

This agreement ("**Agreement**") is entered into by and between the City of Corpus Christi, Texas, a home-rule municipal corporation ("**City**"), acting through its duly authorized City Manager or the City Manager's designee ("**City Manager**") and South Texas Alliance of Indigenous People of 1929 Yale St, Corpus Christi, Texas ("**Alliance**").

WHEREAS, the South Texas Alliance of Indigenous People of Corpus Christi, operating under The Center for Progressive Studies, a 501(c)(3) non-profit organization, desires to commission a bronze sculpture commemorating the Native Americans in Corpus Christi, Texas,

NOW, THEREFORE, the City and Alliance, for and in consideration of the covenants and agreements set out in this Agreement, the sufficiency of which is hereby acknowledged, agree as follows:

Section 1. Contract Administrator. The City's contract administrator for this Agreement is the City's Director of Parks and Recreation ("**Director**").

Section 2. Artwork. The Alliance shall commission artist David McGary to provide professional services in designing, constructing, finishing, transporting, and installing a permanent work of art created in bronze which commemorates the Native Americans in Corpus Christi, and including a circular walking area around the statue, together known herein as the Artwork ("**Artwork**"). A representative design of the Artwork, including plans and specifications, is attached to this Agreement as **Exhibit A** and incorporated in this Agreement by reference. The City and Alliance acknowledge that Alliance's preliminary design for the **Artwork** has been reviewed and approved by the City's Arts and Cultural Commission and the Parks and Recreation Advisory Committee.

Section 3. Term of Agreement. The term of this agreement shall be for five (5) years firm commencing on _____, 2014, and ending _____, 2019.

Section 4. Compensation. The Alliance is responsible for all payments for the Artwork including construction, installation, repair and proper maintenance. The City has no obligation for the installation, repair or maintenance of the Artwork.

Section 5. Gift of Artwork. The Alliance will gift the Artwork to the City upon its completion and complete installation at Hans Suter Park.

Section 6. Location of Artwork. The exact location for Artwork installation at Hans Suter Park shall be determined by the Director ("**Project Premises**").

Section 7. Construction of the Artwork. The Alliance shall comply with all applicable City codes regarding construction and installation of the Artwork.

Section 8. Installation of the Artwork. Upon completion of the statue, the Alliance shall send notice to the Director at least forty-five days prior to the projected date of installation. The parties anticipated completion date of the Artwork is to be determined. Alliance shall not commence installation of the Artwork until all insurance is obtained as required by Risk Manager.

Alliance shall provide plans and specifications for installation of the Artwork. Alliance shall be contractually responsible for all completion costs associated with construction and installation of the Artwork. Alliance shall be contractually responsible for the physical installation of the Artwork and all completion costs associated with the installation of the Artwork at the Project Premises.

Section 9. Artwork Maintenance. Alliance shall remain responsible for Artwork maintenance and repair so long as Artwork is installed at City property.

Section 10. Taxes. Alliance is solely responsible for the payment of any and all taxes that may become due to any taxing authority, agency, or entity with respect to services provided by Alliance or with the Artwork that is the subject of this Agreement. This provision survives the expiration or earlier termination of this Agreement.

Section 11. Insurance. At least fourteen (14) days prior to delivery of the Artwork to City property, Alliance shall notify the City Risk Manager and obtain insurance as described in Exhibit B required by the City Director of Risk Manager.

Section 12. Independent Contractor; Lack of Contractual Authority.

- A. Alliance shall perform all work and services under this Agreement as an independent contractor and not as an agent, representative, or employee of the City.
- B. This Agreement does not establish Alliance as the agent or legal representative of the City for any purpose whatsoever, and Alliance is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of, or in the name of, the City or to bind the City in any manner whatsoever.

Section 13. Title; Copyright and License to Reproduce.

- A. Title to the Artwork will pass to the City upon final written acceptance from the City Director.
- B. In its contract with artist David McGary, Alliance shall ensure that the City is granted the right by the artist for an irrevocable license to graphically reproduce, through photography or otherwise, the image of the Artwork including, but not limited to, the Artwork proposal and all preliminary studies, and to authorize third parties to graphically reproduce, through photography or otherwise, any and all of the same as are desired by the City for any purpose deemed appropriate by the City Manager. The rights granted by this subsection survive the termination of this Agreement.

Section 14. Identification Label. The Alliance shall prepare, at its own expense, an identification label indicating Alliance's name, the Artist's name, the Artwork's title, and year of completion. This identification label will be placed near or adjacent to the Artwork whenever the Artwork is publicly displayed by the City.

Section 15. Warranties. Alliance shall ensure that the Artist warrants to the Alliance and the City that the Artwork shall be designed to last for 20 years or more.

Section 16. Risk of Loss. Alliance is responsible for risk of loss or damage regarding the Artwork until Alliance has completed installation of the Artwork and City Director has provided Alliance with City Director's final written acceptance of the Artwork.

Section 17. Indemnification. Alliance ("Indemnitor") shall fully indemnify, save, and hold harmless the City and its officers, employees, and agents (collectively, "Indemnitees") against any and all liability, damage, loss, claims, demands, and actions of any nature whatsoever on account of personal injury (including, without limitation on the foregoing, premises defects, workers' compensation, and death claims), property loss, or damage of any kind whatsoever, which may arise out of, be caused by, or be in any way connected with, either proximately or remotely, wholly or in part, the design, fabrication, installation, repair, restoration, maintenance or removal of the Artwork and any act or omission of the Indemnitor or of any agent or employee of Indemnitor pursuant to performance under the terms of this Agreement. The Indemnitor covenants and agrees that, if the Indemnitee is made a party to any litigation commenced by any party other than Indemnitor relating to this Agreement, Indemnitor shall, upon receipt of reasonable notice regarding commencement of litigation and at his/her own expense, investigate all these claims and demands, attend to their settlement or other disposition, defend Indemnitee in all actions based thereon with counsel satisfactory to the Indemnitee, and pay all charges of attorneys and all other costs and expenses of any kind arising from any said liability, damage, loss, claim, demand, or action. This provision survives the expiration or earlier termination of this Agreement.

Section 18. Collection Management. The City reserves the right to manage its collection of art, including the Artwork, for public purposes and, in doing so, may determine that it is necessary to relocate or remove the Artwork or modify the site in or on which it is located. This reservation of rights by the City survives the expiration of this Agreement.

Section 19. Force Majeure. No party to this Agreement will be liable for failures or delays in performance due to any cause beyond their control including, but not limited to, any failures or delays in performance caused by strikes, lock outs, fires, acts of God or the public enemy, common carrier, severe inclement weather, and riots or interference by civil or military authorities.

Section 20. Venue. All actions brought to enforce compliance with this Agreement must be brought in Nueces County, Texas, where this Agreement was executed and will be performed.

Section 21. Interpretation. This Agreement will be governed by and construed in accordance with the laws of the State of Texas.

Section 22. Notice.

- A. All notices, demands, requests, or replies provided for or permitted, under this Agreement by either party must be in writing and must be delivered by one of the following methods: (1) by personal delivery; (2) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; (3) by fax transmission.
- B. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective two (2) business days after deposit with the United States Postal Service. Notice by fax is deemed effective upon proof of delivery to the receiving party. All communications must only be made to the following:

IF TO CITY: City of Corpus Christi Attn: Director of Parks and Recreation 1201 Leopard; 3 rd Fl P.O. Box 9277 Corpus Christi, Texas 78469-9277 (361) 880-3461 (361) 880-3864 Fax @cclexas.com	IF TO ALLIANCE: South Texas Alliance of Indigenous People Attn: Larry Running Turtle Salazar President, S.T.A.I.P 1929 Yale St Corpus Christi, Texas 78416 (361) 563-5274
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- C. Either party may change the address to which notice is sent by using a method set out above. Alliance shall notify City of an address change within ten (10) days after the address is changed.

Section 23. Modification or Amendment. Modification or amendment of any of the terms of this Agreement is effective upon written authorization of each of the parties to this Agreement.

EXECUTED IN DUPLICATE, each of which will be considered an original, on this the ____ day of _____, 2014.

ATTEST:

CITY OF CORPUS CHRISTI

Rebecca Huerta
City Secretary

Ron Olson
City Manager

APPROVED AS TO LEGAL FORM May 14 2014

Buck Brice
~~Douglas K. DeFratus~~ Buck Brice
Assistant City Attorney
for City Attorney

South Texas Alliance of Indigenous People

By: Larry Salazar

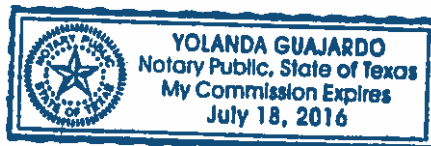
Printed Title: President S.T.A.I.P.

Date: 3/14/14

STATE OF TEXAS
COUNTY OF NUECES

This instrument was acknowledged before me on March 14, 2014, by Larry Salazar, as the S.T.A.I.P. (title) for the South Texas Alliance of Indigenous People, a non-profit (type of organization), on behalf of said organization.

Yolanda Guajardo
Notary Public, State of Texas
07-18-2016
My Commission Expires



Seal:
Yolanda Guajardo
Notary's Printed Name

Center for Progressive Studies and Culture, Inc.

By: *Adil Conde*

Printed Title: *Vice President*

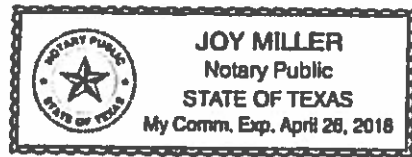
Date: *4/29/14*

STATE OF TEXAS
COUNTY OF NUECES

This instrument was acknowledged before me on *April 29*, 2014, by _____, as the *Vice President* (title) for the Center for Progressive Studies and Culture, Inc. a *501(c)3* (type of organization), on behalf of said organization.

[Signature]
Notary Public, State of Texas
4/26/2018
My Commission Expires

Seal:



Joy Miller
Notary's Printed Name

LIST OF ATTACHED EXHIBITS

Exhibit A: Representative Design for Artwork

EXHIBIT A



Artist: David McGary
Sculpture: Bronze, 9 - 10 feet
Location: Hans & Pat Suter Wildlife Refuge

EXHIBIT B

INSURANCE REQUIREMENTS

I. CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor shall not commence work under this agreement until all insurance required herein has been obtained and approved by the City's Risk Manager or designee. Contractor must not allow any subcontractor to commence work until all similar insurance required of the subcontractor has been so obtained.
- B. Contractor shall furnish to the Risk Manager or designee two (2) copies of Certificates of Insurance, with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the Risk Manager or designee. The City must be named as an additional insured for the General Liability policy, and a waiver of subrogation is required on all applicable policies.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-Day Notice of Cancellation required on all certificates of insurance by policy endorsement(s)	Bodily injury and Property Damage Per Occurrence / aggregate
Commercial General Liability including: 1. Broad Form 2. Premises – Operations 3. Products/Completed Operations Hazard 4. Contractual Liability 5. Broad Form Property Damage 6. Independent Contractors 7. Underground Hazard (if applicable)	\$500,000 Per Occurrence
BUSINESS AUTOMOBILE LIABILITY 1. Owned 2. Hired & Non-owned	\$500,000 Combined Single Limit
WORKERS' COMPENSATION	WHICH COMPLIES WITH THE TEXAS WORKERS' COMPENSATION ACT AND PARAGRAPH II OF THIS EXHIBIT.
EMPLOYER'S LIABILITY	\$500,000 / \$500,000 / \$500,000
INSTALLATION FLOATER	Coverage shall be in the amount of the appraised value of Artwork. Coverage shall cover transportation of Artwork From point of origin thru installation and acceptance of City of Corpus Christi, Parks and Recreation Director.

- C. In the event of accidents of any kind related to this project, Contractor shall furnish the Risk Manager with copies of all reports of such accidents within ten (10) days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Contractor must obtain workers' compensation coverage through a licensed insurance company in accordance with Texas law. The contract for coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The coverage provided must be in amounts sufficient to assure that all workers' compensation obligations incurred will be promptly met.
- B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized

and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.

- C. The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City. Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Management
P.O. Box 9277
Corpus Christi, TX 78469-9277
(361) 826-4555- Fax #

- D. Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:
- Name the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this agreement.
- H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.