



Contract Number: CT-FC-14*376
Effective Date: 4-15-14
Term Date: 3-31-18
Cost: \$99,000.-
Revenue: _____
Total: _____ NTE: _____
Action: 1-1-18
Renewal By: _____
Term: 3-31-18
Reviewed by: YH

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: 4/15/14

Regional Flood Control District Agenda

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

In accordance with Pima County Administrative Procedure 3-16, the Tucson Pima Arts Council has selected one (1) artist to design, fabricate and install public art to enhance the Pantano Wash River Park & Bank Protection: Craycroft to Tanque Verde Road project. The selected artist's is Creative Machines, Inc. The project is funded by the Regional Flood Control District tax levy. The Regional Flood Control District requests the Board of Directors approval to contract with the selected artist for \$99,000.

CONTRACT NUMBER (If applicable): CT 14*376

STAFF RECOMMENDATION(S): Staff recommends the approval of the artist's contract in order to enhance the Project and be in compliance with Board Policy C.3.3.

Ver. - 1
Vendor - 1
Pgs. 11

To: CoB - 4-2-14
Agenda - 4.15.14
(1)

CLERK OF BOARD USE ONLY: BOS MTG. _____

ITEM NO. _____

PIMA COUNTY COST: \$99,000 and/or REVENUE TO PIMA COUNTY: \$ 0

FUNDING SOURCE(S): RFCD Levy funding
(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

☐

YES

☒

NO

Board of Supervisors District:

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All

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IMPACT:

IF APPROVED: The Regional Flood Control District would work the artist, Tucson Pima Arts Council public art selection panel and surrounding neighborhoods to design and construct public art within the project limits.

IF DENIED: The Regional Flood Control District would not have an artist under contract to design and construct public art and would not be in compliance with Board Policy C.3.3.

DEPARTMENT NAME: Pima County Regional Flood Control District

DEPARTMENT DIRECTOR: Suzanne Shields, P.E.

Signature

PROJECT MANGER: Larry Robison, P.E., RFCD Engineering Division, (520) 724-4600

CONTACT PERSON: Larry Robison, RFCD

TELEPHONE NO.: (520) 724-4600

ARTICLE III - PAYMENT

In consideration of the services specified in this Contract, the DISTRICT agrees to pay ARTIST Ninety-nine Thousand Dollars (\$99,000.00). This amount shall be paid as provided in "EXHIBIT B: PAYMENT".

ARTICLE IV - INSURANCE

ARTIST shall obtain and maintain at its own expense, during the entire term of this Contract the following type(s) and amounts of insurance:

- a) Commercial General Liability in the amount of \$1,000,000.00 combined, single limit Bodily Injury and Property Damage. DISTRICT is to be named as an additional insured for all operations performed within the scope of the Agreement between DISTRICT and ARTIST. The coverage may be restricted to the period in which the ARTIST is performing work at the PROJECT site.
- b) Commercial or Business Automobile Liability will be waived if ARTIST agrees that, in consideration of the waiver of the Commercial Auto coverage, that travel will be limited to coming and going exclusively to and from the job site and/or meeting location, with no deviations. ARTIST agrees that failure to comply with this requirement indemnifies the DISTRICT against any bodily injury or property damage claims resulting from an accident.
- c) ARTIST is performing work as an independent contractor for DISTRICT. ARTIST shall provide DISTRICT with a completed Workers' Compensation Insurance Waiver Form prior to any work being performed by ARTIST.

ARTIST shall provide DISTRICT with current certificates of insurance. All certificates of insurance must provide for guaranteed thirty (30) days written notice of cancellation, non-renewal or material change.

ARTICLE V - INDEMNIFICATION

ARTIST shall indemnify, defend, and hold harmless DISTRICT, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising from, in connection with or caused by: (a) any personal injury or property damage caused, directly or indirectly, by any act or omission of ARTIST; or (b) any infringement of patent, copyright, trademark, trade secret or other proprietary right caused by ARTIST in connection with performance of this Contract.

ARTICLE VI - COMPLIANCE WITH LAWS

The ARTIST shall comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract shall be brought in a court of the State of Arizona in Pima County. Any changes in the governing laws, rules, and regulations during the terms of this Contract shall apply, but do not require an amendment.

ARTICLE VII - INDEPENDENT CONTRACTOR

The status of the ARTIST shall be that of an independent contractor. Neither ARTIST, nor ARTIST'S officers, agents, nor employees shall be considered an employee of DISTRICT or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. ARTIST shall be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract, and shall indemnify and hold DISTRICT harmless from any and all liability that

DISTRICT may incur because of ARTIST'S failure to pay such taxes. ARTIST shall be solely responsible for program development and operation.

ARTICLE VIII - SUBCONTRACTOR

ARTIST will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that ARTIST is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract shall create any obligation on the part of DISTRICT to pay or see to the payment of any money due any subcontractor, except as may be required by law.

ARTICLE IX - ASSIGNMENT

ARTIST shall not assign its rights to this Contract, in whole or in part, without prior written approval of the DISTRICT. Approval may be withheld at the sole discretion of the DISTRICT, provided that such approval shall not be unreasonably withheld.

ARTICLE X - NON-DISCRIMINATION

ARTIST agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 **including flow down of all provisions and requirements to any subcontractors**. Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf which is hereby incorporated into this contract as if set forth in full herein. During the performance of this contract, ARTIST shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

ARTICLE XI - AMERICANS WITH DISABILITIES ACT

ARTIST shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

ARTICLE XII - AUTHORITY TO CONTRACT

ARTIST warrants its right and power to enter into this Contract. If any court or administrative agency determines that DISTRICT does not have authority to enter into this Contract, DISTRICT shall not be liable to ARTIST or any third party by reason of such determination or by any reason of this Contract.

ARTICLE XIII - FULL AND COMPLETE PERFORMANCE

The failure of either party to insist on one or more instances upon the full and complete performance with any of the terms or conditions of this Contract to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of the sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.

ARTICLE XIV - CANCELLATION FOR CONFLICT OF INTEREST

This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into and made part of this Contract by reference.

ARTICLE XV - OWNERSHIP OF ARTWORK

- a. **Ability of DISTRICT to Alter ARTWORK.** The DISTRICT, having expended considerable public funds to commission the ARTWORK, intends to display the ARTWORK at the PROJECT site as originally created by ARTIST and to maintain the ARTWORK in good condition. Public artworks commissioned by the DISTRICT are sometimes integrated into the overall project, such that they become an integral, permanent and site-specific part of the project's or facility's structure, architecture or landscaped environment, and a modification or change in the project or facility would result in significant changes to the artwork. DISTRICT, however, must preserve complete flexibility to operate and manage DISTRICT property in the public's interest. Therefore, DISTRICT retains the right to alter, remove or destroy the ARTWORK in connection with any repair, maintenance, change or modification of the overall PROJECT or public facility, under the conditions set forth below.
- b. **Procedure in Event of Alteration.** If DISTRICT intends to take any action with respect to the PROJECT or the ARTWORK that would alter the ARTWORK, other than routine cleaning and maintenance, the following procedures shall apply:
- (1) **Notice.** If time permits, DISTRICT shall make reasonable good faith efforts to notify ARTIST at least 20 calendar days prior to authorizing any alteration of the ARTWORK, at the last phone number or address provided by ARTIST to the COUNTY. Where time does not permit notification prior to alteration of the ARTWORK – for example, in cases of public hazard, accident or unauthorized alteration – DISTRICT shall notify ARTIST within 30 calendar days after such alteration.
 - (2) **Consultation.** After receiving such notice, ARTIST shall consult with DISTRICT to determine whether the ARTWORK can be restored or relocated, and attempt to come to a mutually agreeable plan for disposition of the ARTWORK. Such consultation shall be without charge by ARTIST unless otherwise specifically agreed in writing. If DISTRICT intends to remove the ARTWORK, ARTIST shall consult regarding methods to minimize or repair any alteration to the ARTWORK caused by such removal and the potential costs of such removal.
 - (3) **Restoration.** If the ARTWORK is altered, with or without prior notice to ARTIST, and DISTRICT intends to maintain the ARTWORK on display, DISTRICT shall make a reasonable good faith effort to engage ARTIST in the restoration of the ARTWORK and to compensate ARTIST for ARTIST'S time and efforts at fair market value, which may be the subject of a future agreement between ARTIST and DISTRICT. However, DISTRICT has no obligation under this Agreement to restore the ARTWORK to its original condition, to compensate ARTIST for any restoration work, or to maintain the ARTWORK on display. If ARTIST fails or refuses to negotiate with DISTRICT in good faith with respect to any restoration, DISTRICT may contract with any other qualified art conservator or artist for such restoration. During ARTIST'S lifetime, DISTRICT shall make best efforts not to display or deaccession only a portion of the ARTWORK without ARTIST'S consent.
 - (4) **Removal by ARTIST.** If time permits, if DISTRICT intends to take an action that will destroy the ARTWORK, such as destruction of all or part of the PROJECT site, and DISTRICT determines that it will not remove and preserve the ARTWORK itself, DISTRICT shall allow ARTIST to remove the ARTWORK at ARTIST'S expense within 30 days of notice from the DISTRICT of the need to remove the ARTWORK, in which case title to the ARTWORK shall revert to ARTIST. If ARTIST fails to remove the ARTWORK within that 30 day period, DISTRICT may destroy the ARTWORK.
- c. **Remedies.** If DISTRICT breaches any of its obligations under this Section, ARTIST'S remedies shall be limited as follows: If DISTRICT inadvertently fails to provide a required prior notice of alteration; DISTRICT will provide notice as soon as it discovers the omission, and before alteration of the ARTWORK if that remains possible. If DISTRICT alters the ARTWORK without providing ARTIST a required prior notice of alteration, ARTIST shall be given the first right of refusal to

restore the ARTWORK at the same location and DISTRICT shall make reasonable efforts to provide funding for the restoration. If DISTRICT funds cannot be made available after reasonable efforts are made to secure such funding, ARTIST may, but is not obligated to, restore the ARTWORK at ARTIST'S expense. If ARTIST elects not to restore the ARTWORK, DISTRICT may retain another artist or conservator to restore it, or may alter the ARTWORK in any manner, at DISTRICT'S sole discretion. If DISTRICT alters the ARTWORK without ARTIST'S consent in a manner that is prejudicial to ARTIST'S reputation, ARTIST'S retains the right to disclaim authorship of the ARTWORK in accordance with 17 U.S.C. §106A (a) (2).

- d. Third Parties. Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, successors or assigns of DISTRICT, ARTIST retains ARTIST'S moral rights in the ARTWORK, as established in the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)) or any other local, state, federal or international moral rights laws that protect the integrity of works of art. Accordingly, nothing herein shall prevent ARTIST from pursuing a claim for alteration of the ARTWORK against a third party who is not an officer, employee, agent, successor or assign of DISTRICT. DISTRICT has no obligation to pursue claims against third parties to remedy or prevent alteration of the ARTWORK. However, as owner of the ARTWORK, DISTRICT may pursue claims against third parties for damages or to restore the ARTWORK if the ARTWORK has been altered without DISTRICT'S authorization.

ARTICLE XVI - COPYRIGHT

- a. Copyright. Subject to usage rights and licenses granted to DISTRICT hereunder, ARTIST shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement. ARTIST'S copyright shall not extend to predominantly utilitarian aspects such as landscaping elements, furnishings, or other similar objects. If ARTIST is comprised of two or more individual persons, the individual persons shall be deemed joint authors of the ARTWORK.
- b. DISTRICT'S Intellectual Property License. ARTIST grants to DISTRICT and to DISTRICT'S agents, authorized contractors and assigns, an unlimited, non-exclusive and irrevocable license to do the following with respect to the ARTWORK, and any original works of authorship created under this Agreement, whether in whole or in part, in all media (including electronic and digital).

(1) Implementation, Use and Display. DISTRICT may use and display the ARTWORK.

(2) Reproduction and Distribution. DISTRICT may make and distribute, and authorize the making, display and distribution of, photographs and other 2-dimensional reproductions of the ARTWORK. DISTRICT may use such reproductions for any DISTRICT-related purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, and catalogues or similar publications. The license granted hereunder does not include the right to create 3-dimensional reproductions on items such as tote-bags, T-shirts, coffee mugs and similar merchandise. Such reproductions may only be created pursuant to separate license agreements with ARTIST.

(3) Public Records Requests. Any documents provided by ARTIST to DISTRICT are public records and DISTRICT may authorize third parties to review and reproduce such documents pursuant to public records laws.

- c. Publicity. DISTRICT shall have the right to use ARTIST'S name, likeness, and biographical information, in connection with the display or reproduction and distribution of the ARTWORK including all advertising and promotional materials regarding DISTRICT. ARTIST shall be reasonably available to attend any inauguration or presentation ceremonies relating to the public dedication of the ARTWORK.

ARTICLE XVII - WARRANTY

ARTIST warrants that the ARTWORK is an original production of ARTIST'S own creative efforts, that upon delivery the ARTWORK shall be free of all liens, claims and encumbrances of any sort, and that the ARTWORK is unique and will not be physically reproduced by ARTIST for sale or display elsewhere without the express written permission of DISTRICT.

ARTIST shall warranty the work to be free from defects in material and workmanship for a period of two years from date of Final Acceptance by Owner. Warranty does not cover damage from theft, fire, vandalism or acts of God. Should defects develop within the warranty period as a result of poor material and/or workmanship, ARTIST shall repair or replace all work to the satisfaction of DISTRICT without cost to DISTRICT.

ARTICLE XVIII-TERMINATION

DISTRICT reserves the right to terminate this Contract at any time and without cause by serving upon ARTIST 30 days advance written notice of such intent to terminate. In the event of such termination, the DISTRICT'S only obligation to ARTIST shall be payment for services rendered prior to the date of termination.

This Contract may be terminated at any time without advance notice and without further obligation to the DISTRICT when the ARTIST is found to be in default of any provision of this Contract.

Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining DISTRICT or other public entity obligations under this Contract. In the event of such termination, DISTRICT shall have no further obligation to ARTIST, other than to pay for services rendered prior to termination.

ARTICLE XIX - NOTICE

Any notice required or permitted to be given under this Contract shall be in writing and shall be served by personal delivery or by certified mail upon the other party as follows:

Pima County Regional Flood Control District	Artist
Suzanne Shields, Director and Chief Engineer Pima County Regional Flood Control District 97 E. Congress 3 rd floor Tucson, AZ 85701 (520) 724-4600	Joe O'Connell, President & Owner Creative Machines, Inc. 3113 E. Columbia St. Tucson, AZ 95714 520-294-0939 jb@jbpublicart.com

ARTICLE XX - NON-EXCLUSIVE CONTRACT

ARTIST understands that this Contract is nonexclusive and is for the sole convenience of DISTRICT. DISTRICT reserves the right to obtain like services from other sources for any reason.

ARTICLE XXI - REMEDIES

Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

ARTICLE XXII- SEVERABILITY

Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

ARTICLE XXIII - BOOKS AND RECORDS

ARTIST shall keep and maintain proper and complete books, records and accounts, which shall be open at all reasonable times for inspection and audit by duly authorized representatives of DISTRICT.

In addition, ARTIST shall retain all records relating to this contract at least 5 years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

ARTICLE XXIV - LEGAL ARIZONA WORKERS ACT COMPLIANCE

ARTIST hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to ARTIST'S employment of its employees, and with the requirements of A.R. S. § 23-214 (A) (together of "State and Federal Immigration Laws"). ARTIST shall further ensure that each subcontractor who performs any work for ARTIST under this contract likewise complies with the State and Federal Immigrations Laws.

DISTRICT shall have the right at any time to inspect the books and records of ARTIST and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of ARTIST'S or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of the Contract subjecting ARTIST to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, ARTIST shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, (subject to DISTRICT approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

ARTIST shall advise each subcontractor of DISTRICT'S rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"SUBCONTRACTOR hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to SUBCONTRACTOR'S employees, and with all federal immigration laws applicable to SUBCONTRACTOR'S employees, and with the requirements of A.R. S. § 23-214 (A). SUBCONTRACTOR further agrees that DISTRICT may inspect the SUBCONTRACTOR'S books and records to ensure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR will be deemed to be a material breach of this contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of ARTIST. In the event that remedial action under this Article results in delay to one of more tasks on the critical path of ARTIST'S approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which ARTIST shall be entitled to an extension of time, but not costs.

ARTICLE XXV- SCRUTINIZED BUSINESS OPERATIONS

Pursuant to A.R.S. §§ 35-391.06 and 393.06, CONSULTANT hereby certifies that it does not have scrutinized business operations in Iran or Sudan. The submission of a false certification by CONSULTANT may result in action up to and including termination of this contract.

ARTICLE XXVII - ENTIRE AGREEMENT

This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior contemporaneous agreements and understandings, oral or written, are hereby

superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written amendment signed by the parties.

IN WITNESS WHEREOF, the parties have affixed their signatures to this Contract on the dates written below.

**PIMA COUNTY REGIONAL FLOOD
CONTROL DISTRICT:**

Chair, Board of Directors

Date: _____

ARTISTS:



Joe O'Connell, Artist & President
Creative Machines, Inc.


Date: March 10, 2014

ATTEST

Clerk of Board

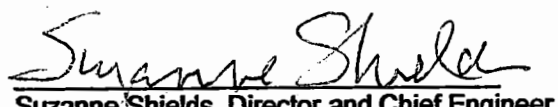
Date: _____

APPROVED AS TO FORM:



Deputy Pima County Attorney

APPROVED AS TO CONTENT:



Suzanne Shields, Director and Chief Engineer
Pima County Regional Flood Control District

EXHIBIT 'A'

SCOPE OF WORK

Artist Services for Pantano Wash Bank Protection and River Park: Craycroft Road to Tanque Verde Road

During the term of this Agreement, Creative Machines, Inc., (ARTIST) shall perform professional services for Pima County Regional Flood Control District (DISTRICT) in connection with the above referenced project. This scoping document shall be used to plan, conduct, and complete the ARTIST work on the project.

I. Background

- A. The Regional Flood Control District proposes a 2.0 mile project on the west bank of the Pantano Wash to provide for bank protection where warranted, a maintenance road, river park pathway and river park between Craycroft Road and Tanque Verde Road. The project will connect with existing bank protection and river parks on the Rillito River and Pantano Wash. Flood Control District Tax Levy Funds will be utilized to commission the artists.
- B. This contract specifies that the ARTIST shall design ARTWORK (the "ARTWORK") for the **Pantano Wash Bank Protection and River Park: Craycroft Road to Tanque Verde Road** (the "PROJECT").

II. Design Phase

- A. ARTIST shall meet with the project manager and design team to develop the scope of ARTWORK, review opportunities and constraints, and identify appropriate areas as possible sites for ARTWORK.
- B. Artist shall initially prepare one or more concept designs showing ARTIST's idea(s) for the ARTWORK, and shall submit these concepts to DISTRICT staff and project team for review.
- C. In developing the design of ARTWORK, ARTIST shall work cooperatively with design team members, District staff, and the local community.
- D. Once preliminary concepts have been reviewed and accepted by the DISTRICT, ARTIST shall participate in up to six (6) public meetings for the purpose of presenting the design of the proposed ARTWORK to the public and neighborhoods.
- E. ARTIST will respond within a reasonable amount of time to the project team's requests for written decisions or determinations, pertaining to the project, so as not to delay the project.
- F. ARTIST will give prompt written notice to the DISTRICT whenever the ARTIST becomes aware of an event, occurrence, condition or circumstance, which may substantially affect the project or the project team's performance.
- G. ARTIST, working collaboratively with the Project Design Team, will prepare conceptual, preliminary and final drawings, specifications, and materials samples, and shall submit these to DISTRICT and TPAC for review and approval including review by Risk Management. Where applicable, ARTIST shall provide drawings with sufficient detail to install ARTWORK using standard construction methods. Where applicable, ARTIST shall coordinate with The Project Team to prepare and finalize designs and specifications that Design Engineer may include in the design plans.
- H. ARTIST shall complete 100% design of the ARTWORK by April 1, 2015. By that time, ARTIST shall prepare a list of art elements with corresponding budget, the projected allocation of responsibilities and activities related to design, production and installation of the elements, and a timeline. This list, once accepted by the Project Manager, shall become part of this agreement.

The list shall include milestones for payment during fabrication, production and installation of the determined art elements.

- I. The Project Manager will provide ARTIST with the following coordination support:
 1. Assisting and cooperating with ARTIST in completing the Scope of Services in a timely and effective manner; including assisting ARTIST with preparation of budgets, visual materials for public meetings; documenting ARTWORK into the construction documents, if needed. If ARTWORK is incorporated into PROJECT plan documents, the Design Engineer and all its sub-consultants may provide engineering services at their discretion. Unless otherwise agreed, ARTIST is responsible to obtain, coordinate and document engineering requirements, including securing necessary permits, seals and signed engineering documents as requested by Project Manager that are beyond the scope of the project design team.
 2. Designating a representative who shall have authority to transmit instructions, receive information and enunciate Engineer's policies and decisions.
 3. Arranging required meetings and presentations with assistance from TPAC.
 4. Making available to ARTIST existing information, which the Project Manager may assist and be pertinent to the Scope of Services described herein.
 5. Responding within a reasonable time to ARTIST requests for written decisions or determinations, pertaining to the Scope of Services, so as not to delay the services of the ARTIST.
 6. Giving prompt written notice to ARTIST whenever the Engineer becomes aware of an event, occurrence, condition or circumstance, which may substantially affect ARTIST performance of the Scope of Services under this Agreement.

III. Fabrication and Installation Phase

- A. ARTIST must receive written approval of the Final Design of the ARTWORK before proceeding with the Fabrication and Installation phases of this Contract.
- B. If applicable, ARTIST will attend a minimum of two (2) meetings in person or by phone to review construction plans and specifications, and a minimum of two (2) meetings in person for field reviews.
- C. ARTIST shall make any necessary modifications or revisions to the ARTWORK as requested by the DISTRICT for a proper and structurally sound installation.
- D. If ARTIST fabricates and installs any portion of the ARTWORK himself, ARTIST is responsible for transporting ARTWORK to the site but shall coordinate with the Project Manager.
- E. ARTIST shall complete Fabrication, Delivery and Installation of ARTWORK by March 31st, 2018.
- F. ARTIST shall fabricate and install a plaque on or near the ARTWORK stating the title, ARTIST name, date, and other details as determined by the ARTIST and DISTRICT, subject to approval by the Tucson Pima Arts Council and DISTRICT prior to installation.
- G. When ARTWORK is completed, ARTIST shall provide in writing to the Tucson Pima Arts Council and the DISTRICT a recommended maintenance protocol and schedule describing the media and techniques used to produce and install the ARTWORK; the frequency of maintenance; materials and methods to be used; and an estimate of the costs of maintenance and preservation of the ARTWORK.
- H. When ARTWORK is completed, ARTIST shall provide a minimum of (6) digital images and (6) 8" x 10" color prints of the completed and installed ARTWORK to the Tucson Pima Arts Council and DISTRICT.

EXHIBIT 'B'

PAYMENT

Artist Services for Pantano Wash Bank Protection and River Park: Craycroft Road to Tanque Verde Road

- A. In consideration of the performance and service described in the Scope of Services, DISTRICT shall pay ARTIST the estimated amounts as set forth below and ARTIST shall charge DISTRICT only in accordance with those same amounts. Total payment for services provided during the term of this Contract shall be \$99,000.00**
- B. During the design phase, ARTIST will be paid for design services including those of ARTIST sub-consultants. ARTIST may submit invoices for payment to DISTRICT monthly subsequent to ARTIST's submission and DISTRICT's acceptance of documentation that accurately defines progress towards completion of tasks, and the ARTIST'S estimate of the percentage of the task that is completed at the date of the submission.**
- C. ARTIST and DISTRICT shall agree upon a payment schedule that estimates the percentage of the task and ARTWORK that is completed for each invoice submission. Drawings, maquettes, plans and photographs can provide evidence of such progress and will accompany itemized invoice submissions.**
- D. It is estimated that that no more than 30% of the total contract or twenty-nine thousand and seven hundred dollars (29,700.00) will be expended during the design phase. Allowable costs include design time, travel expenses, materials for models/presentations, and labor associated with initial design.**
- E. The remaining fund, estimated to be 70% of the total contract or sixty-nine thousand three hundred dollars (\$69,300.00) will be expended on ARTWORK materials, fabrication, transportation and installation, as well as costs for permits, taxes and insurance. [ARTIST will submit itemized invoices for materials and services based upon the mutually agreed upon schedule and list of expected art elements provided at the 100% design milestone. With authorization from the Project Manager, balance of funds may be expended during the construction phase not to exceed the total term of this Contract of \$99,000.**