

AGREEMENT FOR COMMISSION OF PUBLIC ART WORK

AGREEMENT BETWEEN THE CITY OF AUSTIN AND JOHN A. YANCEY

This Agreement, entered into this 17th day of March, 1995, by and between the City of Austin, a municipal corporation, located in Travis County, Texas, (the "City") acting by and through its duly authorized City Manager or his designee and _____
JOHN A. YANCEY (the "Artist"), residing at 5006 Grover #B,
Austin, TX, 78756-2630.

WHEREAS, the City is implementing the Art in Public Places Program pursuant to Ordinance No. 850926-0, as amended (the "Ordinance"), by appropriating certain funds for the establishment of art works in public places and authorizing payments for the design, execution, fabrication, transportation, acquisition, installation and maintenance of works of art and the support of an artist selection process; and,

WHEREAS, the Public Art Fund for the AUSTIN CONVENTION CENTER
DEPARTMENT and its AUSTIN CONVENTION CENTER
 Facility (the "City Facility") has been allocated for the selection, purchase, and placement of a work of art at, in, or near said City Facility; and,

WHEREAS, the Artist was selected by the City through the Art in Public Places Program Guidelines (the "Guidelines") duly adopted through the Ordinance, as amended, and the Austin Arts Commission to design, execute, fabricate and install a two - dimensional work of art more particularly described as one broken ceramic mosaic mural that highlights Texas musical traditions (the "Work") in the designated public space located in, at, or near said City Facility, more particularly as the Austin Convention Center, 500 East Cesar Chavez Street, Austin, TX, 78701, described in Exhibit "A" hereto (the "Site"); and,

WHEREAS, the City and the Artist wish to set out the terms and conditions under which said Work shall be designed, executed, fabricated and installed in order to promote the integrity of the Artist's ideas and statements as represented by the Work;

NOW, THEREFORE, the City and Artist for and in consideration of the covenants and agreements hereinafter set forth, the sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE 1
SCOPE OF SERVICES

1.1. General.

- a. The Artist shall perform all services and furnish all supplies, materials, and equipment as necessary for the design, execution, fabrication, transportation and installation of the Work at the Site.
- b. The Artist shall determine the artistic expression, scope, design, color, size, material, texture, and location on Site of the Work, subject to review and acceptance by the City as set forth in this Agreement.
- c. The Artist shall install the Work on dates and at times mutually agreed upon by the Artist and the Austin Convention Center Department.

1.2. Proposal.

- a. City and Artist acknowledge the Artist's Proposal attached hereto as Exhibit "B" has been reviewed and approved by the Art in Public Places Panel and the Austin Arts Commission and approved by the City Manager as the basis for executing this Contract with the Artist.
- b. City and Artist agree that TWENTY-NINE THOUSAND SEVEN HUNDRED TWELVE DOLLARS AND NO CENTS (\$29,712), shall be full compensation to Artist for the completion of the Work as proposed, inclusive of design, execution, fabrication, transportation, installation, incidental costs and Artist's fees.

1.3. Structural Design Review.

- a. Within forty-five (45) days after the execution of this Agreement, the Artist shall prepare and submit to the City detailed working

drawings detailing the means of attaching the Work to the site, together with such other graphic material as may reasonably be requested by the City in order to permit the City to carry out structural design review and to certify compliance of the Work with applicable statutes and ordinances. These drawings must have an Engineer's or Architect's seal on work as required by the City. Upon request by the Artist, the City, the City Facility architect, engineer and/or project manager shall promptly furnish all information, materials, and assistance required by the Artist in connection with said submission to the extent such materials are available. The City, upon request, shall also provide correct scaled drawings of the site, if available.

b. The City may require the Artist to make such revision to the Proposal as are necessary for the Work to comply with applicable statutes, ordinances or regulations of any governmental regulatory agency having jurisdiction over the City Facility for reasons of safety and security.

c. The City may also request revisions to the Proposal for other practical, non-aesthetic, reasons.

d. The Artist's fee shall be equitably adjusted for any increase or decrease in the Artist cost of or time required for, performance of any services under this Agreement as a result of revisions made under this Section 1.3. Any claim of the Artist for adjustment under this paragraph must be asserted in writing within thirty (30) days after the date of the revision by the Artist.

e. Within thirty (30) days of its receipt of the Artist's submission pursuant to this Section 1.3, the City shall notify the Artist of its approval, or disapproval, of such submission and of all revision made in the Proposal as a result thereof. Revisions made pursuant to this Section 1.3 approved by the City became part of the Proposal.

f. If the aforementioned submission or any required revision are disapproved by the City, the Artist shall have fifteen (15) days to resubmit the materials in conformance with the City's requirement.

If resubmitted materials are not approved by the City at this point, this contract may be terminated at the City's option, with payment of up to 20% of the total project fee.

1.4. Execution of the Work.

a. After written approval of the submission and revision made pursuant to Section 1.3, the Artist shall promptly furnish to the City a tentative schedule for completion of fabrication and installation of the Work, including a schedule for the submission of progress reports, if any. After written approval of the schedule by the City, the Artist shall fabricate, transport and install the Work in accordance with such schedule. Schedule changes may be accomplished by written agreement between the Artist and the City.

b. The City shall have the right to review the Work at reasonable times during its fabrication. The Artist shall submit to the City progress reports in accordance with the schedule provided for in Paragraph a. of this Section.

c. The Artist shall complete the fabrication and installation of the Work in substantial conformity with the Proposal, as detailed and revised under Section 1.2 hereof; provided, however, the Artist may present to the Art in Public Places Panel, and the Austin Arts Commission, in writing for further review and approval, any significant changes in the scope, design, color, size, material, or texture of the Work not permitted by or not in substantial conformity with the Proposal, as detailed and revised under Section 1.2 hereof. A significant change shall be determined by the Art in Public Places Panel and the Art in Public Places Coordinator in light of the concept and cost of the Work as represented in the Proposal.

1.5. Delivery and Installation.

a. The Artist shall notify the City in writing when fabrication of the Work is completed and is ready for its delivery and installation at the Site.

b. The Artist shall deliver and install the completed Work at the Site in compliance with the schedule approved pursuant to Section 1.4; provided, however, that delivery and installation activities may not commence until written permission is delivered to the Artist by the City. It is the intent of the parties hereto that the Artist shall incur no liability for delay in the event the City's permission to commence delivery and installation does not conform with the schedule approved pursuant to Section 1.4. See Section 3.2.

c. The City shall be responsible for all reasonable expenses, labor and equipment to prepare the Site for the installation of the Work.

d. Prior to installation of the Work, the Artist shall provide to the City written instructions for appropriate maintenance and preservation of the Work by finalizing the maintenance guidelines offered with the Proposal.

1.6. Post-installation.

a. Within thirty (30) days after the installation of the Work, the Artist shall furnish the City with the following photographs of the Work as installed:

(i) Two (2) sets of three (3) 35mm color slides of the completed Work; and,

(ii) Two (2) sets of three (3) different 8" x 10" glossy black and white prints and negatives of the completed Work.

b. At the City's expense, the Artist shall be available at such time or times as may be agreed between the City and the Artist to attend any inauguration or presentation ceremonies relating to the transfer of the Work to the City. The City shall use its best efforts to arrange for publicity for the completed Work in such art publications and otherwise as may be determined between the City and the Artist as soon as practicable following installation.

1.7. Final Acceptance.

a. The Artist shall advise the City in writing when all services required prior to those described in Section 1.5 (b) have been completed in substantial conformity with the proposal, as revised under Section 1.3. Included in such notice from the Artist shall be an affidavit certifying that all bills relating to services or supplies used in the performance of this Agreement have been paid.

b. The City shall notify the Artist in writing of its final acceptance of the Work.

c. Final acceptance shall be effective as of the earlier to occur of (1) the date of the City's notification of final acceptance; or, (2) the 35th day after the Artist has sent the written notice to the City required under Section 1.7(a) unless the City, upon receipt of such notice and prior to the expiration of the 35-day period, gives the Artist written notice specifying and describing the services which have not been completed.

1.8. Risk of Loss

The risk of loss or damage to the Work shall be borne by the Artist prior to final acceptance, and the Artist shall take such measures as are necessary to protect the Work from loss or damage until final acceptance, including but not limited to the purchase of property loss insurance; except that the risk of loss or damage shall be borne by the City prior to final acceptance during such periods of time as the partially or wholly completed Work is in the custody, control or supervision of the City or its agents for the purposes of moving, storing, or performing any other ancillary services to the Work.

1.9. Title.

Title to the Work shall pass to the City upon final acceptance.

ARTICLE 2
COMPENSATION AND PAYMENT SCHEDULE

2.1. Fixed Fee.

The City shall pay the Artist a fixed fee of TWENTY-NINE THOUSAND SEVEN HUNDRED TWELVE DOLLARS AND NO CENTS (\$29,712), which shall constitute full compensation for all services and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in the following installments, expressed as percentages (or portions) of such fixed fee, each installment to represent full and final, non-refundable payment for all services and materials provided prior to the due date thereof:

a. Fifteen percent (15%) upon execution of this Agreement, recognizing the the Artist has already invested time and expense in preliminary design coordination with the City and its consultants.

b. Thirty-five percent (35%) within ten (10) days after the City notifies the Artist of its approval of the submission of detailed working drawings required under Section 1.3.

c. Forty percent (40%) within ten (10) days after the City notifies the Artist to commence installation of the fabricated Work at the Site and receipt by City of such documentation it may require concerning payment of services and supplies rendered to Artist. See Section 1.7 (a).

d. Ten percent (10%) within thirty-five (35) days after final acceptance; provided, however, that the final installment shall not be tendered prior to the expiration of thirty (30) days after final acceptance.

2.2. Sales Taxes.

The City is a tax exempt organization and no state or local sales taxes or federal excise taxes shall be due upon the Work. The City shall supply Artist with the "Texas Sales Tax and Local Sales Tax Exemption Certificate for Contractors", in substantially the same form as that attached hereto and incorporated herein as Exhibit "C". The City shall supply the Artist the "Texas Sales Tax and Local Sales Tax Exemption Certificate for Suppliers", in substantially the same form as that attached hereto and incorporated herein as Exhibit "C", for use by Artist in acquiring materials and supplied for the Work. The City shall also

Handwritten notes and calculations on the right side of the page:

15%
\$4,456.80 4.12.95
35%
\$10,399.20 8.24.95
40%
\$11,884.80 3.15.96
10%
\$2,971.20 7.29.96
Total: \$29,712.00

supply Artist with a "Federal Excise Tax Exemption Certificate", in substantially the same form as that attached hereto and incorporated herein as Exhibit "C".

2.3. Artist's Expenses.

The Artist shall be responsible for the payments of all mailings or shipping charges, including insurance, on submissions to the City, the costs of transporting the Work to the Site and the costs of all travel by the Artist, except as otherwise provided, and the labor costs for Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

ARTICLE 3
TIME OF PERFORMANCE

3.1. Duration.

The services to be required of the Artist set forth in Article 1 shall be completed in accordance with the schedule for completion of the Work as proposed by the Artist and approved by the City pursuant to Section 1.4 (a); provided, however, such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2. Construction Delays.

If, in accordance with Section 1.5, after the Artist notifies the City that the Work is ready for installation and the City does not notify the Artist that installation may commence within the time specified in the approved schedule, because of the status of construction at the Site precluding reasonable installation of the Work, the City shall promptly reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the City is prepared for installation of the Work, as determined by the City.

3.3. Early Completion of Artist Services.

The Artist shall bear any transportation and storage charges incurred from the completion of his services prior to the time provided in the schedule for installation.

3.4. Time Extensions: Force Majeure.

The City or the Artist, as appropriate, shall grant a reasonable extension of time to the other party in the event that there is a delay on the part of the City or Artist in performing its

obligation under this Agreement or if conditions beyond the parties' control or Acts of God, flood, riot, civil insurrection, labor strikes, or orders of local or federal government render timely performance of the parties' services impossible or unexpectedly burdensome. The party suffering the impossibility or burdensome conditions must inform the other in writing within the ten (10) days of the onset of such performance delay, specifying the reasons therefore. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control shall not be considered a breach of this Agreement; provided, however, that such obligations shall be suspended only for the duration of such conditions. Nothing therein shall create an obligation on the party suffering from labor difficulties to negotiate or otherwise settle the matters giving rise to the labor difficulties in any particular time frame.

ARTICLE 4 WARRANTIES

4.1. Warranties of Title.

The Artist represents and warrants that:

- a. The Work is solely the result of the artistic effort of the Artist;
- b. Except as otherwise disclosed in writing to the City, the Work is unique and original and does not infringe upon any copyright;
- c. The Work, or a duplicate thereof, has not been accepted for sale elsewhere; and,
- d. The Work is free and clear of any liens from any source whatever.

4.2. Warranties of Quality and Conditions.

The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with submission of the Proposal pursuant to Section 1.2, that:

a. The execution and fabrication of the Work will be performed in a workmanlike manner;

b. The Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Work;

c. Reasonable maintenance of the Work will not require procedures substantially in excess of those described in the final maintenance recommendations to the submitted by the Artist to the City under Section 1.5.

The warranties described in this Section 4.2 shall survive for a period of one (1) year after final acceptance of the Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards, including but not limited to, cure by means of repair or refabrication of the Work, or any portion thereof.

ARTICLE 5 INSURANCE

5.1. General.

a. The Artist shall carry any required statutory Workers' Compensation Insurance, Employers' Liability Insurance in the amount of at least ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000). The Artist shall also carry General Liability Insurance in the amount of at least ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000) with the City named as an additional insured with respect to this coverage to insure against loss or damage to the Work during fabrication and installation. A certificate of Insurance shall be filed with the Contract Administrator prior to commencement of fabrication of the Work. See Section 1.9.

The certificate of insurance for the General Liability coverage required herein shall provide that the coverage shall not be cancelled or reduced, restricted, or limited until thirty (30) days after the City has received written notice by return receipt of registered or certified mail.

Except as provided in Section 1.8 hereof, the risk of damage to or loss of the Work during fabrication and installation, but prior to final acceptance by the City, shall be solely that of Artist. This risk shall transfer to the City and shall no longer be the responsibility of the Artist upon final acceptance of the Work.

5.2. Performance Bonds.

The Artist shall not be required by the City to post any performance bonds or similar undertakings, and any requirement of any other authority for performance bonds shall be the responsibility of the City.

ARTICLE 6
REPRODUCTION RIGHTS

6.1. General.

The Artist retains all reproduction rights under the Copyright Act of 1975, 17 U.S.C. §§ 101 et. seq., and all other rights in and to the Work except as such rights are limited by this Section 6. In view of the intention that the Work in its final dimension shall be unique, the Artist shall not make any additional exact duplicate, two-dimensional reproductions of the final Work, nor shall the Artist grant permission to others to do so except with the prior written permission of the City. The Artist grants to the City and it assigns an irrevocable license to make two-dimensional reproductions of the Work for any municipal purpose, including but not limited to reproductions used in advertising, brochures, stationery, media publicity, and catalogues or other similar publications.

6.2. Notice.

All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: "© Artist's name, date of completion."

6.3. Credit to City.

The Artist shall use his best efforts to give a credit reading substantially, "an original Work owned and commissioned by the City of Austin" in any public showing of reproductions of the Work which are under the Artist's control.

ARTICLE 7
ARTIST'S RIGHTS

7.1. Identification.

The City shall, at its expense, prepare and install at the Site, pursuant to the written instructions and subsequent approval of the Artist, which approval shall not be unreasonably withheld, a plaque identifying the Artist, the title of the Work, and the year of completion. The City shall maintain the notice in good repair against the ravages of time, vandalism, and the elements.

7.2. Maintenance.

The City recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. The City shall reasonably assure that the Work is properly maintained and protected, taking into account the maintenance instructions provided by Artist in accordance with Section 1.5, and shall reasonably protect and maintain the Work against the ravages of time, vandalism, and the elements.

7.3. Repairs and Restoration.

a. As provided in the Guidelines, the City shall have the right to determine, when and if repairs and restorations to the Work will be made. During the Artist's lifetime and to the extent practicable, the City shall give the Artist the right to approve all repairs and restorations; provided, however, the Artist shall not unreasonably withhold approval for any repair or restoration of the Work. If the Artist unreasonably fails to approve any repair or restoration, the City shall have the right to make such repair or restoration. To the extent practicable, the Artist, during the Artist's lifetime, shall be given the opportunity to make or personally supervise significant repairs and restorations and shall be paid a reasonable fee for any such services, provided that the City and the Artist shall agree in writing, prior to commencement of any significant repairs and restorations, upon the Artist's

fee for such services. If an agreement as to a reasonable fee cannot be reached between the parties, it shall be determined as provided in the Guidelines. Should the Artist fail to agree to make or supervise the repairs and restorations, the City shall have the right to solicit bids and award contracts for the services to other qualified professionals.

b. All repairs and restorations shall be made in accordance with recognized principles of conservation.

c. When emergency repairs are necessary in order to prevent the loss of or further damage to the Work, such repairs shall be undertaken or arranged by City without advance notice to Artist, and such repairs shall not be deemed to constitute artistic alteration.

7.4. Alteration of the Work or of the Site.

a. The City agrees that it will not intentionally destroy, damage, alter, modify or change the Work without the prior written approval of the Artist, which approval shall not be unreasonably withheld.

b. The City shall notify the Artist of any proposed alteration of the Site that would affect the intended character and appearance of the Work and shall consult with the Artist in the planning and execution of any such alteration and shall make a reasonable effort to maintain the integrity of the Work.

c. In the event the Work is substantially damaged or artistically altered in a substantial manner, City shall no longer represent the Work to be the Work of Artist if Artist gives written notice to the City that it is the position of the Artist to deny authorship on the ground stated in this paragraph.

d. Nothing in this Section 7.4 shall preclude any right of the City of move the Work or remove it from public display.

If the City shall at any time decide to dispose of the Work by means other than sale or trade, it shall by notice to the Artist offer the Artist a

reasonable opportunity to recover the Work at no cost to the Artist except for an obligation of the Artist to indemnify and reimburse the City for the amount by which the cost to the City of such recovery exceeds the costs to the City of the proposed destruction.

7.5. Permanent Record.

The City shall maintain on permanent file a record of this Agreement and of the location and disposition of the Work.

7.6. Artist's Address.

The Artist shall notify the City of changes in this address. The failure to do so, if such failure prevents the City from locating the Artist, shall be deemed a waiver by the Artist of the right subsequently to enforce these provisions of Article 7 that require the express approval of the Artist. Notwithstanding this provision, the City shall make every reasonable effort to locate the Artist when matters arise relating to the Artist's rights.

7.7. Surviving Covenants.

The covenants and obligations set forth in this Article 7 shall not survive the death or legal incapacity of the Artist.

7.8. Additional Rights and Remedies.

Nothing contained in this Article 7 shall be construed as a limitation on such other rights and remedies available to the Artist under the law which may now or in the future be applicable.

ARTICLE 8

ARTIST AS AN INDEPENDENT CONTRACTOR

The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or employee of the City. The Artist shall not be supervised by any employee or official of the City nor shall the Artist exercise supervision over an employee or official of the City.

ARTICLE 9
SUBCONTRACTING

The Artist may subcontract portions of the services to be provided hereunder at the Artist's expense, provided that said subcontracting shall not affect the design, appearance or visual quality of the Work and shall be carried out under the personal supervision of the Artist.

ARTICLE 10
TERMINATION

10.1. Gratuities.

The City may cancel this Agreement if it is found that gratuities in the form of entertainment, gifts or otherwise were offered or given by the Artist or any agent or representative to any City official or employee with a view toward securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to this performance of this Agreement. In the event this Agreement is cancelled by the City, pursuant to this Section 10.1, the City shall be entitled, in addition to any other rights and remedies, to recovered from the Artist a sum equal in amount to the cost incurred by the Artist in providing such gratuities.

10.2. Termination for Cause.

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of the intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If it is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted for prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Work shall pass to the City, and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the

City for damaged sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damaged due the City from the Artist is determined.

10.3. Termination for Convenience.

a. The services to be performed under this Agreement may be terminated by either party, subject to written notice submitted thirty (30) days before termination, provided that attempts to reconcile the reason for termination have been undertaken but failed. The notice shall specify whether the termination is for convenience or cause.

b. If the termination is for the convenience of the City, the Artist shall have the right to an equitable adjustment in the fee (without allowance for anticipated profit on unperformed services), in which event the City shall have the right at its discretion to possession and transfer of title to the sketches, designs and models already prepared and submitted or presented for submission to the City by the Artist under this Agreement prior to the date of termination, provided that no right to fabricate or execute the Work shall pass to the City.

c. If termination is for the convenience of the Artist, the Artist shall remit to the City a sum equal to all payments (if any) made to the Artist pursuant to this Agreement prior to termination.

10.4. Survival of Agreement.

This Agreement shall not survive the death, physical or legal incapacity of Artist.

ARTICLE 11

CONTRACT ADMINISTRATOR

The Contract Administrator for this Agreement shall be the Art in Public Places Coordinator and the Director of the Austin Parks and Recreation Department. Whenever this Agreement requires any notice to be given to or by the City, or any determination or action to be made by the City, the Art in Public Places Coordinator and the Director of the Austin Parks and Recreation Department shall represent and act for the City after receiving the proper

authority from the Austin Arts Commission, City Council and City Manager, as appropriate.

ARTICLE 12
EQUAL OPPORTUNITY

a. The Artist shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Artist shall take affirmative action to ensure that employees are treated during employment, without regard to their race, color, religion, sex and national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion, transfer, recruitment or pay or other forms of compensations, and selection for training, including apprenticeship. The Artist agree to post in conspicuous places, available to employees and applications for employment, notices to be provided by the City setting forth the provision of this nondiscrimination clause.

b. The Artist shall in all solicitation or advertisements for employment placed on or on behalf of the Artist, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin.

c. The Artist shall furnish all information and reports requested by the City of Austin, and shall permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with such rules and regulations.

d. In the event of the Artist's noncompliance with the nondiscrimination clauses of this Agreement, this Agreement may be cancelled, terminated, or suspended in whole or in part, and the Artist may be debarred from further agreements with the City of Austin.

ARTICLE 13
MISCELLANEOUS

13.1. Compliance.

The Artist shall be required to comply with Federal, State and City statutes, ordinances and regulations application to the performance of the Artist services under this Agreement.

13.2. Entire Agreement.

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

13.3. Amendments.

No alteration, change, modification or amendment of the terms of this Agreement shall be valid or effective unless made in writing and signed by both parties hereto and approved by appropriate action of the City.

13.4. Waiver.

No waiver of performance by either party shall be construed as or operate as a waiver of any subsequent default of any terms, covenants, and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

13.5. Governing Law and Venue.

This Agreement, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any litigation arising from this Agreement shall be in Austin, Travis County, Texas.

13.6. Heirs and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the City and the Artist and their respective heirs, personal representatives, successors and permitted assigns.

ARTICLE 14

NOTICES

All notices, requests, demands, and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1. CITY OF AUSTIN: Director, Austin Parks and Recreation Department
City of Austin
P. O. Box 1088
Austin, TX 78767

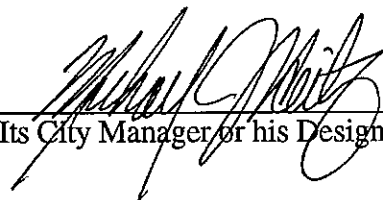
Copies to: Art in Public Places Coordinator
Austin Parks and Recreation Department
City of Austin
P. O. Box 1088
Austin, TX 78767

City Attorney's Office
P. O. Box 1088
Austin, TX 78767
ATTN: Art in Public Places Attorney

2. ARTIST John A. Yancey
5006 Grover #B
Austin, TX 78756-2630


IN WITNESS HEREOF, the parties hereto have executed this Agreement on this day and year first written above.

CITY OF AUSTIN

By: 
Its City Manager or his Designee

MICHAEL J. NEITZ
Printed Name

ARTIST


John A. YANCEY

Printed Name

APPROVED AS TO FORM:


Assistant City Attorney

Application Guidelines (cont.)

Three-dimensional work may be represented by 2 slides. All slides must be 35mm format in 2" x 2" mounts (no glass slides) for carousel projection. Slides must be placed in a 9" x 11" clear plastic file sheet. Please number all slides in order of priority (only Slides 1-5 may be shown during the first round). Label each slide with artist's name, title of work, date completed, media, dimensions and location (if public art), and indicate the top of the slide. Please do not send original slides. Remember, slides submitted for this competition shall become part of the Art in Public Places Visual Arts Slide Registry. *Good quality slides are extremely important.*

3. Slide List, numbered to correspond with slides, including artist's name, title of work, date completed, media, dimensions, and location (if public art).

4. Resume, including 3 professional and/or personal references.

5. Letter of Intent (maximum 2 typed, double-spaced pages), describing:

- Concept
- Media
- Dimensions
- Maintenance requirements
- Site preference (a, b, c, or d)
- Budget requirement (including materials, fabrication, labor, transportation, liability insurance, installation, engineered drawings and artist's fee)
- Timeline for completion

Please do not submit drawings or maquettes at this time.

Street Address:

City of Austin-PARD
Art in Public Places-ACC
Dougherty Arts Center
1110 Barton Springs Road, Suite 203
Austin, Texas 78704

Mailing Address:

City of Austin-PARD
Art in Public Places-ACC
P. O. Box 1088
Austin, Texas 78767

Questions may be directed to
Martha Peters, Art in Public Places
Coordinator, 512/397-1455.

The Selection Process

Stage One - The Selection Panel and Advisors will consider all complete applications received by the deadline. The Selection Panel may choose to view each applicant's first 5 slides during the first round. Additional slides may be viewed during subsequent rounds. The Selection Panel may recommend up to 10 finalists to participate in Stage Two.

Checklist

- ☐ Slide Registry Form
- ☐ Slides
- ☐ Slide List
- ☐ Resume
- ☐ Letter of Intent

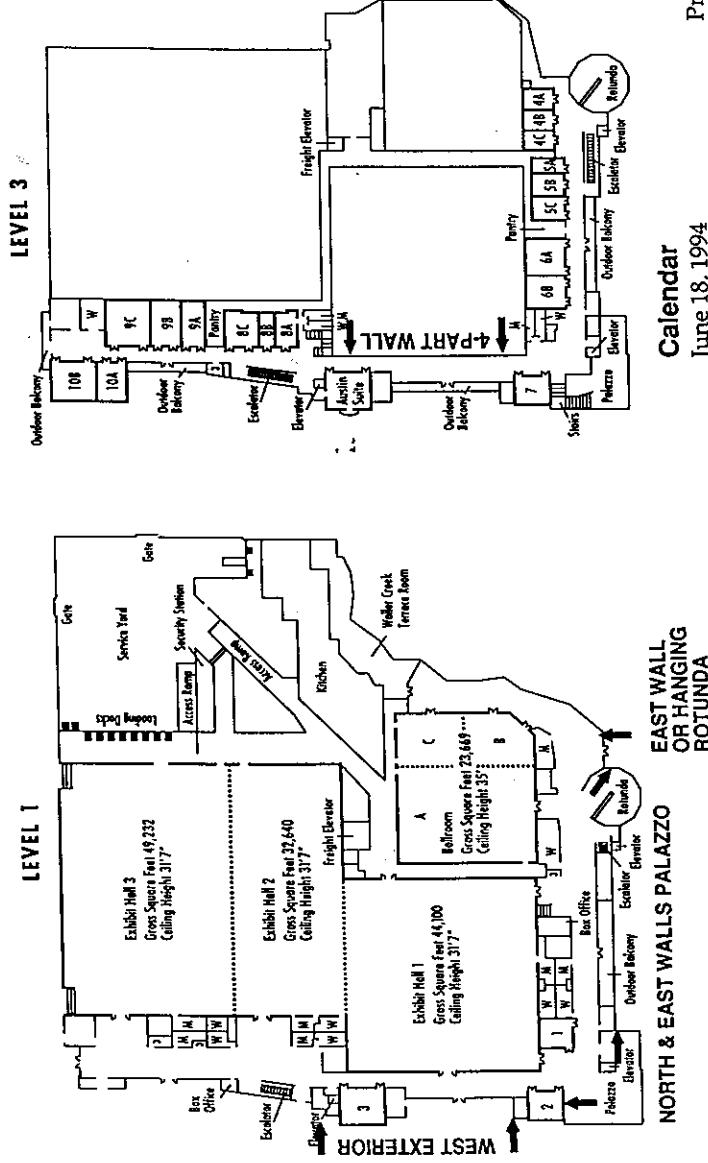
Deadline

Monday, August 22, 1994, 5 p.m.

Art

in Public Places Commissions

AUSTIN CONVENTION CENTER



Stage Two - Finalists (or their designated representative) shall be required to attend a pre-proposal meeting and will have approximately 10 weeks to prepare a final proposal, including narrative description, scale drawing(s) and/or maquette(s), material samples, budget detail, and timeline for art fabrication and installation.

Finalists shall present their proposals, in person, to the Selection Panel and Advisors on Friday, December 2, 1994. The Selection Panel may recommend commissioning art for one, two, three, or all four sites. Finalists who complete all of the requirements of Stage Two will receive a \$500 proposal fee. All proposal materials, including drawings and maquettes, shall become property of the City of Austin.

Calendar

June 18, 1994
August 22, 1994
September 20, 1994
October 1, 1994
December 2, 1994
December 20, 1994
Spring/Summer, 1995

Project Information Meeting
Deadline for Stage One
Finalists are notified

Pre-Proposal Meeting for Finalists
Presentation of Final Proposals
Artists awarded commissions are notified
Estimated installation

EXHIBIT "A"

Narrative Proposal

The State of Texas historically has been, and continues to be a center of dynamic inter-cultural interaction and multi-cultural evolution. It is this rich diversity and the unique accomplishments and forms it has spawned that will inform the conceptual framework for the murals described in the following proposal.

This proposed project focuses on two thematic areas that are representative of all the peoples of Texas, and metaphoric for the dynamic possibilities of a multi-cultural society. The first mural focuses on the dynamism and history of Texas' economic development. The second mural focuses on the vibrant and varied traditions and history of Texas music.

The first mural, featuring the economic history of Texas, is proposed for the Palazzo grand staircase (Site B). As viewers ascend the great staircase, the physical act of stair climbing coincides with the historic fact of Texas' ascension as a strong and viable economic force in the world. From farming, ranching and oil, to the diverse manufacturing industries and the invention of the first silicon microchip in 1959, the metaphoric and actual objects, forms and symbols associated with these events are an exhilarating resource for the development of formal design elements. The first mural would be trapezoidal with possible angular variations and will measure 12' (h.) x 18' (w.).

The second mural would highlight the Texas musical traditions of Tex-Mex, conjunto, country and western, blues, rhythm and blues, Cajun and Zydeco. This mural is proposed for the Palazzo (Site B). The energy of music and culture will inspire the visual force of the mural and provide a lively and celebratory presence in the large entrance area. The second mural would be an angularized shape

providing visual movement on the rectangular wall and will measure 12' (h) x 20' (w.).

The proposed media for both murals is the broken ceramic mosaic technique. In this technique, rectangular commercial tiles are broken to produce irregular shapes to be further tailored to execute the design. The grout used to finish the work provides a unifying effect to the improvisational flair of the irregularly shaped and sized tiles.

Among the advantages of this technique are its permanence and low maintenance requirements. It is recommended that the mural tiles be lightly polished annually. Further, it is advised that the tiles and grout be inspected every five years. Restoration or re-grouting may be required every forty to fifty years.

Timeline: The execution of both murals would be completed twelve months from commission.

The installation process for the broken ceramic mosaic murals is complex and time consuming. Both murals are to be installed directly onto the two main Palazzo walls. The first stage involves attaching a temporary wooden frame that matches the dimension and measurements of the mural to the wall; within this frame installers lay a "brown coat" or preliminary layer of cement.

At this time, the murals have been disassembled into approximate one square-foot pieces, coded for installation and attached to individual board surfaces for transport. At the site, according to the installation chart, each small section is laid into place and positioned on a bed of wet cement.

Once the pieces have set, the transparent contact paper that held the tile formation in place is removed and "bull-nose" trim is attached to finish the edges. On the last day of installation, the mural is grouted, cleaned and polished.

Time line for Completion

January 15, 1995	<ul style="list-style-type: none">• order tiles• secure and occupy workspace• build working platforms
January 31, 1995	<ul style="list-style-type: none">• transfer design to full-scale
February 1, 1995	<ul style="list-style-type: none">• receive tiles and equipment• preparation and organization of tiles
February 8, 1995	
February 9, 1995	<ul style="list-style-type: none">• begin simultaneous execution of both murals
May 30, 1995	
June 1, 1995	<ul style="list-style-type: none">• Fifty percent completion
June 2, 1995	
November 15, 1995	<ul style="list-style-type: none">• Completion of both murals

John A. Yancey
Assistant Professor
The University of Texas at Austin
November 28, 1994



TEXAS SALES AND USE TAX EXEMPTION CERTIFICATE

Name of purchaser, firm or agency <u>City of Austin</u>	
Address (Street & number, P.O. Box or Route number) <u>P.O. Box 1088</u> City, State, ZIP code <u>Austin, Tx 78767</u>	Phone (Area code and number) <u>512-499-2000</u>

I, the purchaser named above, claim an exemption from payment of sales and use taxes for the purchase of taxable items described below or on the attached order or invoice form:

Seller: _____

Street address: _____ City, State, ZIP code: _____

Description of items to be purchased or on the attached order or invoice:

Purchaser claims this exemption for the following reason:

Texas Tax Code Sec. 151.309, Sec. 151.310; Texas Civil Statutes, Article 342-908 (b)(5)
states that any county, city, special district or other political subdivision of
State of Texas is exempt under the law and not required to request and prove exempt
status.

I understand that I will be liable for payment of sales or use taxes which may become due for failure to comply with the provisions of the Tax Code: Limited Sales, Excise, and Use Tax Act, Municipal Sales and Use Tax Act, Sales and Use Taxes for Special Purpose Taxing Authorities, County Sales and Use Tax Act, County Health Services Sales and Use Tax and the Texas Health and Safety Code: Special Provisions Relating to Hospital Districts, Emergency Services Districts, and Emergency Services Districts in counties with a population of 125,000 or less.

I understand that it is a misdemeanor to give an exemption certificate to the seller for taxable items which I know, at the time of purchase, will be used in a manner other than that expressed in this certificate and that upon conviction may be fined not more than \$500 per offense.

sign here Purchaser <u>Betty Dunkerley</u>	Title <u>Director</u>	Date <u>8-30-91</u>
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Betty Dunkerley, CPA, Director, Financial Services Department

Note: This certificate cannot be issued for the purchase, lease or rental of a motor vehicle.

THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID

Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

This certificate should be furnished to the supplier. Do not send the completed certificate to the Comptroller of Public Accounts.

FEDERAL EXCISE TAX EXEMPTION CERTIFICATE

(FOR USE BY STATE AND LOCAL GOVERNMENTS IN COMPLIANCE WITH SECTION 4221(a)(4) OF THE INTERNAL REVENUE CODE)

_____, 19____
(DATE)


I HEREBY CERTIFY THAT I AM DIRECTOR OF FINANCIAL SERVICES DEPARTMENT OF THE CITY OF AUSTIN, TEXAS AND THAT I AM AUTHORIZED TO EXECUTE THIS CERTIFICATE; AND THAT ALL ORDERS PLACED BY THE PURCHASER FOR THE PERIOD COMMENCING _____
(DATE)

AND ENDING _____
DATE (PERIOD NOT TO EXCEED 12 CALENDAR QUARTERS)

ARE, OR WILL BE, PURCHASED FROM _____
(NAME OF COMPANY)

FOR THE EXCLUSIVE USE OF THE CITY OF AUSTIN.

I UNDERSTAND THAT THE EXEMPTION FROM TAX IN THE CASE OF SALES OF ARTICLES UNDER THIS EXEMPTION CERTIFICATE TO A STATE, ETC., IS LIMITED TO THE SALE OF ARTICLES PURCHASED FOR ITS EXCLUSIVE USE. I UNDERSTAND THAT THE FRAUDULENT USE OF THIS CERTIFICATE FOR THE PURPOSE OF SECURING THIS EXEMPTION WILL SUBJECT ME AND ALL PARTIES MAKING SUCH FRAUDULENT USE OF THIS CERTIFICATE TO A FINE OF NOT MORE THAN \$10,000, OR TO IMPRISONMENT FOR NOT MORE THAN 5 YEARS, OR BOTH, TOGETHER WITH THE COSTS OF PROSECUTION.



VIRGINIA RUTLEDGE, DIRECTOR
FINANCIAL SERVICES DEPARTMENT
CITY OF AUSTIN
P. O. BOX 1088
AUSTIN, TEXAS 78767-8445

EXHIBIT "C"

TEXAS SALES TAX AND LOCAL SALES TAX EXEMPTION CERTIFICATE FOR SUPPLIERS

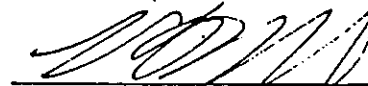
THE UNDERSIGNED HEREBY CLAIMS AN EXEMPTION FROM PAYMENT OF TAXES UNDER CHAPTER 151 OF THE LIMITED SALES, EXCISE AND USE TAX ACT, AND ARTICLE 1066(C), ENTITLED LOCAL SALES AND USE TAX ACT, REVISED CIVIL STATUTES OF TEXAS, FOR THE TANGIBLE PERSONAL PROPERTY PURCHASED ON EACH UNSHIPED ORDER HERETOFORE GIVEN YOU AND ON EACH ORDER THAT WE SHALL HEREAFTER GIVE YOU, UNLESS SUCH ORDER OTHERWISE SPECIFIES, FOR THE REASON THAT THE PURCHASER IS A CITY DULY ORGANIZED AND EXISTING UNDER THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS.

THE PURCHASER WILL BE LIABLE FOR PAYMENT OF THE LIMITED SALES AND USE TAX IF THE PURCHASER USES THE TANGIBLE PERSONAL PROPERTY IN SOME OTHER MANNER OR FOR SOME OTHER USE THAN THE REASON LISTED ABOVE, AND SHALL PAY THE TAX BASED ON THE PRICE PAID FOR THE TANGIBLE PERSONAL PROPERTY.

EXECUTED THIS THE _____ DAY OF _____, 19____

CITY OF AUSTIN, TEXAS

BY



VIRGINIA RUTLEDGE, DIRECTOR
FINANCIAL SERVICES DEPARTMENT
P. O. BOX 1088
AUSTIN, TEXAS 78767

PURCHASE ORDER/CONTRACT NUMBER

1-74-6000085-8
Exemption Number

EXHIBIT "C"