

**ARLINGTON COUNTY, VIRGINIA
AGREEMENT NO. 674-14
AMENDMENT NUMBER 1**

This **Amendment Number 1** is made on **December 17, 2020** and amends **Agreement Number 674-14** dated **November 9, 2015** ("Main Agreement") between **Hood Design, LLC** ("Artist") and the **County Board of Arlington County, Virginia** ("County").

The County and the Contractor amend the called for under the Main Agreement as follows:

1. AMEND THE FIRST SENTENCE OF THE CONTRACT TERM PARAGRAPH 4 AS FOLLOWS:

4. CONTRACT TERM

The work required by this Agreement shall be completed no later than December 31, 2021, subject to any modifications, as provided for in the Contract Documents.

2. ADD THE FOLLOWING PARAGRAPH TO EXHIBIT A, SCOPE OF WORK:

D. DESIGN, DIMENSIONS, MATERIALS, INSTALLATION OF PUBLIC ART PIECE

The Artist shall fabricate the Public Art Piece to resemble the "FREED" design developed by the Artist and as illustrated in Exhibit E (Project Drawings, Images, Construction Notes and Specifications) (the "Design"). The Public Art Piece shall consist of stacked letters spelling "FREED" and clad with decorative aluminum panels which feature local place names and Adrinka symbols. The stacked letters which make up the sculpture frame shall be 2" x 16ga A-513 square tubing with a finish of hot-dipped galvanizing, epoxy-based primer and industrial urethane top coat (metallic gold). The primer and top coat must be compatible and made for aluminum panels. The decorative panels shall be laser cut 16ga 5052 aluminum sheets approximately 2' x 2' with a metallic gold finish using Tnemec paint or equivalent. The decorative panels shall be attached to the frame with high-strength adhesive and no exposed fasteners.

The Public Art Piece will be situated in Nauck Town Square, located at 2406 and 2412 South Shirlington Road, Arlington, Virginia, 22206, within the northern section of Nauck Town Square, slightly west of the stage. The Public Art Piece shall be installed by the Artist in the specific location designated in Exhibit E, and at a time specified by the County, as detailed in this Scope of Work.

1. GENERAL

- a. The Artist shall execute, fabricate and install the Public Art Piece in Nauck Town Square per approved site plans.
- b. The Artist shall perform all services and furnish all supplies, materials and/or equipment for the fabrication and installation of the Public Art Piece.
- c. The County will provide copies of existing designs, drawings, specifications, reports, and other existing relevant data, if any, that it determines are related to fabrication and installation of the Public Art Piece by the Artist.
- d. The Public Art Piece as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, and/or safety procedures at the Site.

- e. The Artist shall fabricate, transport and install the Public Art Piece in accordance with the Artist's County-approved written fabrication, delivery and installation schedule, which must be consistent with the General Contractor's schedule. The Artist shall confer with the Arlington County Project Officer and the General Contractor to ensure that their schedules are compatible.
- f. The Artist shall submit a recent résumé and Artwork statement specifically pertaining to the Public Art Piece before the County's final acceptance of the Public Art Piece.
- g. The County will provide and install a plaque on or near the Public Art Piece containing a credit to the Artist and a copyright notice substantially in the following form: "© Walter Hood, 20[year of completion]".
- h. The Artist shall be responsible for any damage to the existing site caused by Artist or Artist's subcontractor(s) during the installation of the Public Art Piece at no additional cost to the County.

2. PROJECT COORDINATION

- a. The Artist shall use reasonable efforts to coordinate the sequencing and integration of the fabrication and installation of the Public Art Piece into the construction timeline of the General Contractor with approval of the installation date by the Arlington County Project Officer.
- b. The Artist shall confirm to the Arlington County Project Officer and the General Contractor the Public Art Piece foundation details and provide to the General Contractor a bolt pattern template or other agreed method when requested by the General Contractor.
- c. The Artist shall attend construction coordination meetings virtually with the County, the General Contractor, and other parties, as appropriate, to communicate about the fabrication and appropriate integration and installation of the Public Art Piece. The Artist will not travel to the site for Construction Administration and will credit Arlington County the \$2,700.00 that was originally budgeted for travel. This credit is reflected in Exhibit B Payment Schedule.
- d. The Artist must be available virtually during construction to both the Arlington County Project Officer and the General Contractor to address questions and resolve issues relating to the construction of components relating to the Public Art Piece's foundations, conduits, junction boxes, cabinets associated with electrical and data, and any other issues raised by the General Contractor. The Artist shall respond by phone or e-mail within two (2) business days of any inquiry.
- e. The General Contractor will build the Public Art Piece's foundations and drainage for the foundations and provide an electrical connection as shown on the revised plans, which the Artist has reviewed. The Artist and the Artist's subcontractor(s), shall coordinate with the General Contractor throughout the construction process. The General Contractor will provide all maintenance of traffic for the installation of the Public Art Piece and

coordinate all maintenance of traffic activities with the Artist during installation of the Public Art Piece, at no extra charge to the Artist. All other materials and services necessary for the installation of the Public Art Piece shall be furnished by the Artist.

3. FABRICATION OF THE PUBLIC ART PIECE

- a. The Artist shall provide to the County, within fourteen (14) calendar days of the issuance of the County's Notice to Proceed, a written fabrication, delivery and installation schedule. The Artist's schedule must use the milestones included in the Payment Schedule in Exhibit B, as amended.
- b. If the Artist fails to meet milestone deadlines without reasonable cause, as determined by the County, the County may retain a proportion of the amount that remains to be paid under this Agreement. The County may choose to extend the milestones at its discretion. The Artist shall submit to the County monthly reports documenting the progress of the Public Art Piece's fabrication, including photographs.
- c. The County or its designee shall have the right to review the Public Art Piece during its fabrication upon twenty-four (24) hours' notice. If the County determines that the Public Art Piece does not substantially conform to the Design, the County will notify the Artist in writing of the deficiencies, and the County, at its discretion, may withhold payments until the County is satisfied that the deficiency is corrected.
- d. The Artist shall notify the County in writing on the date when fabrication of the Public Art Piece is completed and on the date when the Public Art Piece is ready for shipment and installation at the Site. Such notifications shall be accompanied by photographic documentation of the completed Public Art Piece for inspection and approval.
- e. If the County does not approve the completed Public Art Piece because it does not substantially conform to the approved design, it will notify the Artist in writing. The Artist shall have ten (10) business days from the date of issuance of the County's notice of disapproval to submit for the County's approval a plan and schedule to make the necessary adjustments.

If the Artist disputes the County's determination that the Public Art Piece does not substantially conform, the Artist shall submit reasons in writing to the County within ten (10) business days. The County shall make reasonable efforts to resolve the dispute with the Artist; however, the final determination as to whether the Public Art Piece substantially conforms remains with the County. Any adjustments and corrections of deficiencies made by the Artist shall be at no additional expense to the County.

- f. The County will attempt to notify the Artist of any matters of which the County is aware that may delay installation of the Public Art Piece.

If an event occurs that impacts the Artist's fabrication or installation schedule, the Artist shall notify the County at least three (3) business days prior to such event, if known in advance, or immediately, if not known in advance.

If the delay resulted from the County's action or inaction, the County will be responsible for reasonable transportation and storage costs incurred by the Artist for the period between the date set forth for Public Art Piece installation and the date upon which the Site is sufficiently complete to permit installation.

If the Artist completes fabrication excessively in advance of the time provided in the project schedule, as determined by the County, the Artist shall be responsible for any resulting transportation and storage costs until the Site is complete and ready for installation.

- g. The County's inspection and approval of the fabricated Public Art Piece does not relieve the Artist from responsibility for providing a fully functioning installed Public Art Piece, as defined in the Contract Documents.

4. CHANGES TO DESIGN

- a. The Artist shall present to the County in writing for approval a request to make any changes to the Public Art Piece that are not in substantial conformity with the Design. A substantial non-conformity is any change in the scope, design, color, size, material, texture, or location on the Site of the Public Art Piece that affects installation, scheduling, Site preparation or maintenance of the Public Art Piece or the concept of the Public Art Piece as represented in the Design.

The Artist shall submit any such request to the Project Officer at least forty-five (45) business days prior to the date set for the conclusion of Site preparation in the General Contractor's schedule. The request must also include a detailed description of any additional costs that may be incurred or proposed changes to the Contract Amount.

- b. The County may reject any proposed changes or approve the changes and hold the Artist responsible for any additional costs.
- c. The County will notify the Artist of its decision in writing within ten (10) business days of Artist's request. Any such changes shall require a written amendment to the Agreement. If the County rejects the changes, the Artist shall continue to fabricate the Public Art Piece in conformity with the previously approved Design.
- d. The Artist shall be responsible for obtaining any required approvals and permits that are necessitated by the changes.
- e. If the County requests a redesign of the Artist's work after giving prior approvals, the County and the Artist will determine whether there is a need for any additional payments to the Artist. Any such additional payments shall require a written amendment to the Agreement.

5. DELIVERY AND INSTALLATION

- a. Prior to requesting authorization to transport and install the Public Art Piece, the Artist must provide the County with a list of all workers and/or subcontractors and equipment

to be used, along with the allowable hours of operation, based on the General Contractor's permit, and the scope of work to be performed on the Site. All additional workers or subcontractors must provide proof of insurance to the County prior to entering the Site. The Artist must supervise their subcontractors' work at the Site at all times throughout installation.

- b. Upon the County's approval of the fabricated Public Art Piece, the Artist shall deliver and install the Public Art Piece at the Site in accordance with the project schedule. The Artist must pay all costs, fees and taxes related to shipping, delivery or completion of work.
 - c. The Artist shall take reasonable measures to protect the integrity of the Public Art Piece, such as the application of a protective covering.
 - d. If the Public Art Piece is being assembled on-site, the Artist shall comply with Section 15 of Arlington County Code (Noise Control).
 - e. The Artist shall coordinate closely with the County and the General Contractor to ascertain that the Site is prepared to receive the Public Art Piece. The Artist shall notify the County of any adverse conditions at the Site that would affect or impede installation of the Public Art Piece. The Artist shall be responsible for the timely installation of the Public Art Piece. The Artist may not install the Public Art Piece until authorized to do so by the County Project Officer in writing.
 - f. The Artist shall be responsible for all expenses, labor, and equipment to make additional preparations to the Site for the installation of the Public Art Piece above and beyond the preparations contemplated by the Project Drawings.
 - g. The Artist shall repair any damages to the Site caused by the Artist or the Artist's subcontractor(s) that occur during installation of the Public Art Piece at no additional cost to the County and shall schedule any repairs with the Project Officer .
 - h. Within thirty (30) business days after installation of the Public Art Piece, the Artist shall furnish to the County on a USB drive the following photographs of the Public Art Piece as installed:
 - i. Hi resolution TIFFs or JPEGs of the Public Art Piece at three (3) different stages of fabrication
 - ii. Three (3) digital, 300 dpi, JPG or TIFF files.
- Files shall be labeled with the name of the Public Art Piece, the date the photograph was taken, and the viewpoint from which the photograph was taken.
- i. The Artist shall also furnish the County with a full written narrative description of the Public Art Piece when requested by the Project Officer and no later than eight (8) weeks prior to installation.
 - j. Within thirty (30) business days after the installation, the Artist shall provide the County with written instructions for the appropriate maintenance and preservation of the Public

Art Piece, along with product data sheets for any material or finish used. The Artist must ensure that all maintenance requirements are standard for materials used in terms of time and expense.

- k. The County will be responsible for the proper care and maintenance of the Public Art Piece.

6. APPROVAL AND ACCEPTANCE OF PUBLIC ART PIECE ONLY

- a. After the installation of the Public Art Piece has been completed, the Artist shall submit a written notice of installation to the County.
- b. The County Project Officer will conduct a site visit to verify complete and acceptable installation within two (2) business days from the notice of installation.
- c. If the County agrees that the Artist has completed all required work, the County will notify the Artist of its final acceptance of the installed Public Art Piece within fifteen (15) business days after the site visit.
- d. If the County disputes that the Artist has completed all required work, the County will notify the Artist in writing of those services that the Artist has failed to perform and any deficiencies in the work within fifteen (15) business days after the site visit. The Artist must perform the services and correct any deficiencies within ten (10) business days of County's notification, or a reasonable time determined by the County Project Officer.

If the Artist disputes the County's determination that the work is not complete, the Artist must submit its reasons in writing to the County within ten (10) business days of the County's notification. The County will make reasonable efforts to resolve the dispute with the Artist; however, the final determination as to whether all services have been performed remains with the County.

- e. Upon the resolution of any disputes that arise between the County and the Artist, the County will notify the Artist of the County's Final Acceptance of the Public Art Piece. Final Acceptance means that the County acknowledges completion of the Public Art Piece in substantial conformity with the approved Design and agrees that the Artist has completed all of its responsibilities under the Contract.
- f. The date of Final Acceptance will be the date on which the County provides by email written Notice of Acceptance to the Artist. If the County fails to notify the Artist of its Acceptance or rejection within the fifteen (15) business-day period after the site visit, the Public Art Piece shall be deemed to be finally accepted.
- g. Upon Final Acceptance of the Public Art Piece by the County, the Public Art Piece shall be deemed to be in the custody of the County.
- h. Title to the Public Art Piece shall pass to the County upon Final Acceptance and payment by the County, at which time the Artist will deliver of a fully-executed Transfer of Title and Bill of Sale (Attachment C to the Agreement) to the County.

- i. After Final Acceptance of the Public Art Piece, the Artist shall attend, virtually or in person, up to two (2) public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to the dedication of the Public Art Piece, as required by the County.
 - i. The County will notify the Artist at least twenty-one (21) calendar days in advance of any event at which the Artist is required to appear. The County will reimburse the Artist for the costs of travel, if any, in addition to the lump sum specified in Attachment B of this Agreement.
 - ii. During such public presentations, the Artist shall acknowledge the County's role in funding the Public Art Piece.
 - iii. The County shall be solely responsible for coordinating materials and activities related to public presentations.

The requirements of this Section i. shall survive the conclusion of the Contract Term.

7. WARRANTIES

- a. The Artist hereby represents and warrants that the Artwork is and will be solely the result of the artistic efforts of the Artist and further represents and warrants that:
 - i. Except as otherwise disclosed in writing to the County, the Artwork is unique and original and does not infringe upon any copyright.
 - ii. The Artwork, or any duplicate thereof, has not been accepted for sale elsewhere.
 - iii. The Artwork is free and clear of any liens from any source whatsoever.
- b. The Artist hereby represents and warrants that:
 - i. The execution and fabrication of the Artwork shall be performed in a workmanlike manner.
 - ii. The Artwork, as fabricated and installed, shall be free of defects in material and workmanship.
 - iii. Except if otherwise disclosed in writing and agreed to by the County, reasonable maintenance of the Artwork shall not require procedures in excess of those described in the maintenance recommendation submitted by the Artist to the County as a condition precedent to the issuance by the County of the Notice of Final Acceptance.
- c. The warranties described in this section shall survive for a period of five (5) years from the date of issuance of the Notice of Final Acceptance. The County will provide the Artist reasonable written notice of any observed alleged breach of any warranty. The Artist shall then, at his own sole cost and expense, cure the breach to the County's satisfaction within a reasonable time, consistent with professional conservation standards of repair and re-fabrication. In the event that the County is sued or threatened with litigation as a result of Artist's breach of the warranties described in this section, the Artist shall indemnify and hold harmless the County from any and all liability or expense arising from such suit or threatened litigation.

8. EXTENSION OF TIME

If performance of this Agreement is extended, delayed or disrupted due to circumstances beyond the reasonable control of the Artist, the Contract Amount may be equitably adjusted in consideration of any resulting additional costs to the Artist. Any such adjustment shall require a written amendment to the Agreement.

3. AMEND THE FIRST SENTENCE OF PARAGRPH 5, CONTRACT AMOUNT AS FOLLOWS:

So long as the Artist meets the milestones set forth in Exhibit B, the County shall pay the Artist a fixed fee of Two Hundred Seventy-Seven Thousand Three Hundred Dollars (\$277,300) (hereinafter "Contract Amount"), which shall constitute full compensation for all services and materials to be performed and furnished by the Artist pursuant to this Contract.

4. AMEND EXHIBIT B, PAYMENT SCHEDULE AS FOLLOWS:

Revise the existing payment schedule as follows:

Completion of Construction Administration The Artist shall review the project Site through photographs and video conferencing to review the progress and quality of the work. Upon completion of the construction administration, the County will review and approve this invoice.	Payment 5 24,300.00
TOTAL PAYMENTS	\$137,300.00

Add the following to the payment schedule:

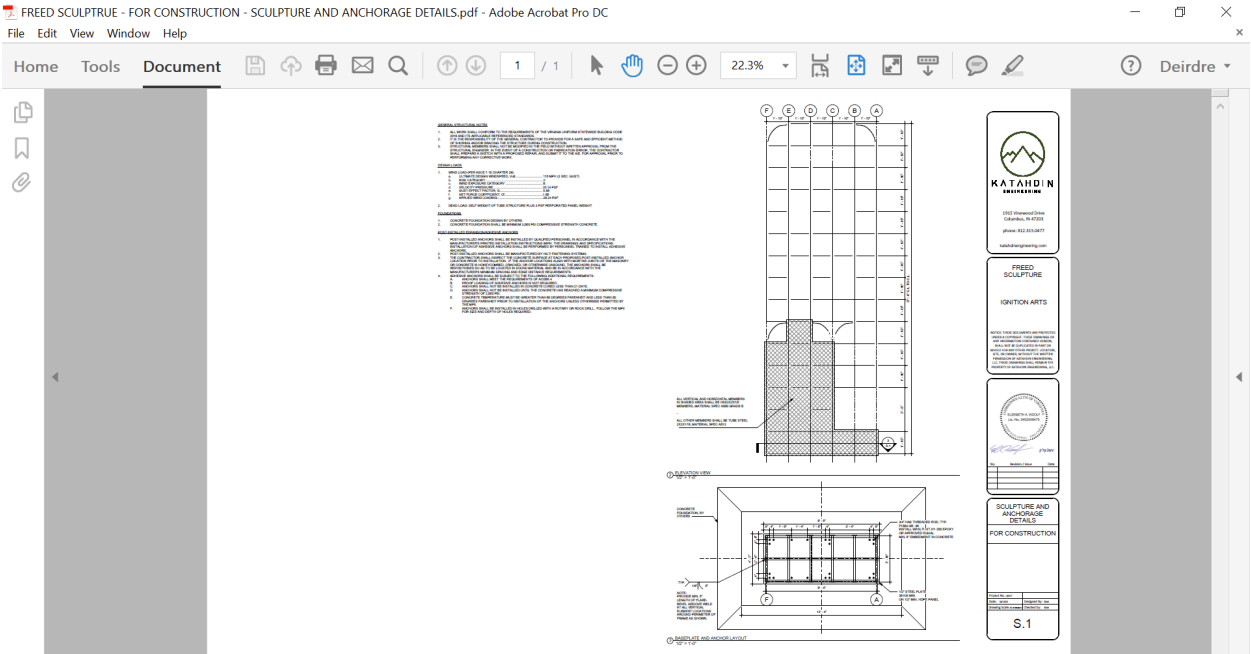
ACTIVITY	PAYMENT DUE
Upon meeting the following conditions: <ul style="list-style-type: none"> - Artist develops a fabrication and installation schedule coordinated with the General Contractor; <u>and</u> - Artist submits a Public Art Piece fabrication and installation schedule that is acceptable to the County. 	Payment No. 1 \$70,000
Upon meeting the following conditions: <ul style="list-style-type: none"> - Artist completes 50% fabrication of the Public Art Piece and sends digital photography to the County demonstrating that fabrication is 50% completed; <u>and</u> - Artist sends template for foundation details to the General Contractor. 	Payment No. 2 \$30,000
Upon meeting the following condition: <ul style="list-style-type: none"> - Project Officer issues a written Acceptance of the fabrication to the Contractor. 	Payment No. 3 \$30,000
Upon meeting the following conditions: <ul style="list-style-type: none"> - Artist installs the Artwork on the Site; <u>and</u> - Project Officer conducts a site visit to verify complete and acceptable installation; <u>and</u> - County issues a written Final Notice of Acceptance of the installation; <u>and</u> - Artist submits final Artwork documentation to the County; <u>and</u> 	Payment No. 4 \$10,000

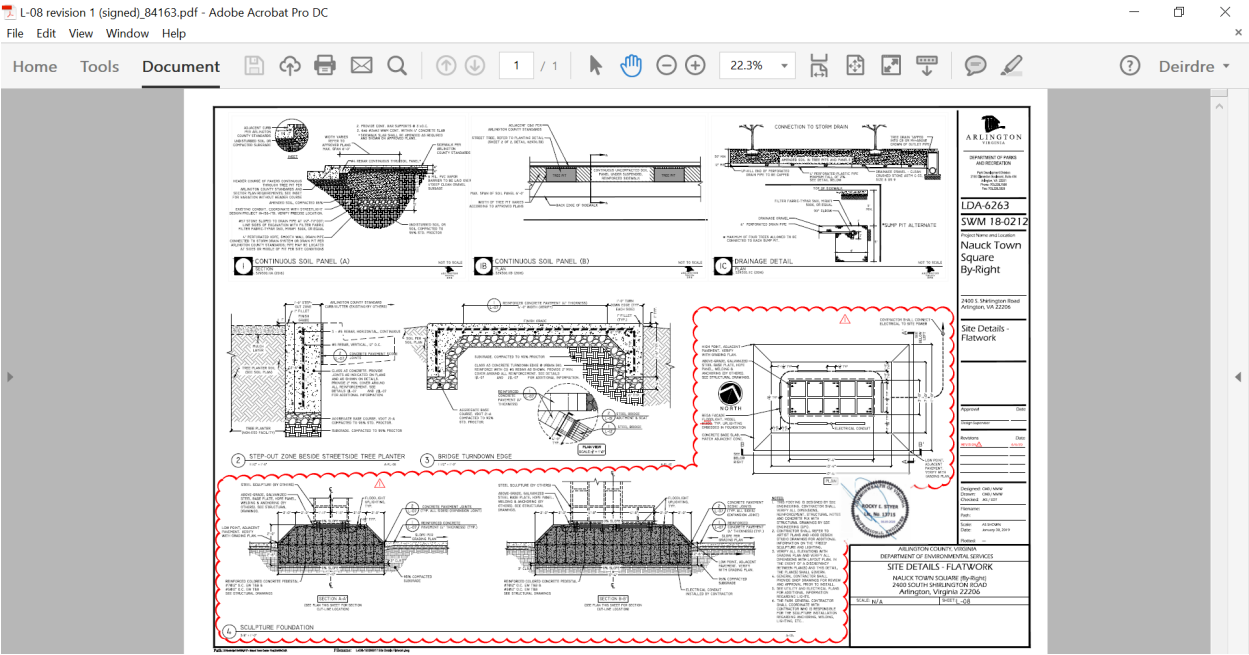
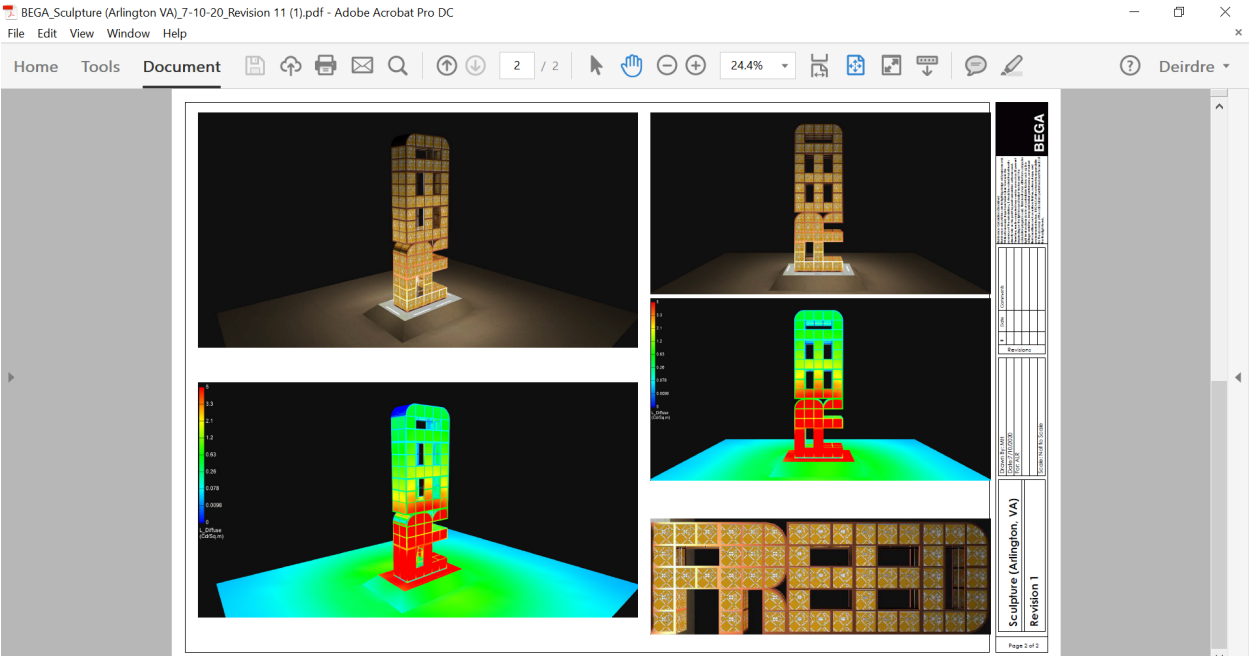
- All remaining Contract requirements are completed, including submission of a maintenance manual and transfer of ownership of the Artwork to the County.	
TOTAL PAYMENT	\$140,000

5. **ADD EXHIBIT E, PROJECT DRAWINGS, IMAGES, CONSTRUCTION NOTES, AND SPECIFICATIONS TO THE MAIN AGREEMENT AS FOLLOWS:**

Exhibit E (Project Drawings, Images, Construction Notes and Specifications)

The Public Art Piece shall consist of one sculpture that shall generally resemble the piece in the illustrations below.





All other terms and conditions of the Main Agreement remain in effect.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

HOOD DESIGN, LLC

AUTHORIZED DocuSigned by:
SIGNATURE: Kaylin Schreiber
2513E5602A3A4DE...

NAME: KAYLIN SCHREIBER
TITLE: PROCUREMENT OFFICER

DATE: 1/6/2021

AUTHORIZED DocuSigned by:
SIGNATURE: Walter Hood
A5F2B0B0EF7E405...

NAME AND walter Hood
TITLE: creative director

DATE: 1/5/2021