

ARLINGTON COUNTY, VIRGINIA  
OFFICE OF THE PURCHASING AGENT  
2100 CLARENDON BOULEVARD, SUITE 500  
ARLINGTON, VA 22201

AGREEMENT NO. 674-14

This AGREEMENT (hereinafter "Agreement") is made on the date of its execution by the County, between Hood Design LLC, 3016 Filbert Street, Suite #2, Oakland CA 94608 (hereinafter "Artist"), a California Corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Artist, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Exhibit A (Scope of Work), and Exhibit B (Payment Schedule), Exhibit C (Transfer of Title and Bill of Sale). Collectively the Agreement and Exhibits A and B and C may be referred to as the "Contract Documents". Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Documents. In the event of a conflict between the terms of Exhibit A and Exhibit B, the terms of Exhibit A shall prevail.

The Contract Documents set forth the entire agreement between the County and the Artist. The County and the Artist agree that no employee, representative or agent of either of them has made any representation or promise with respect to the parties' agreement which is not contained in the Contract Documents, and that all terms and conditions with respect to the Contract Documents are expressly contained therein. The Contract Documents may be referred to as the "Contract".

2. SCOPE OF WORK

The Artist agrees to perform the design services, including professional design services, (hereinafter, the "Work") described in the Contract Documents in exchange for the consideration set forth in the Contract. The primary purpose of the Work is: a) design services to develop a Master Plan, and a Public Art Piece (as defined herein below), b) Design Development and creation of Construction Documents; c) review of Construction Documents; d) participation in requests for information when the County bids the construction of the Work; and e) construction administration all of which is further set forth in Exhibit A for the Nauck Town Square (the "Project") located at 2406 and 2412 South Shirlington Road, Arlington, Virginia, 22206, United States of America (hereinafter "Site"). Exhibit D is a survey of the Site.

The Contract Documents set forth the minimum work estimated by the County and the Artist to be necessary to complete the Work. It shall be the Artist's responsibility, at the Artist's sole cost and expense, to provide the specific materials and services set forth in the Contract Documents, and sufficient materials and services to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Artist's responsibility to manage the details and execution of the Work.

3. PROJECT OFFICER

The performance of the Artist required by this Agreement is subject to the review and approval of the County Project Officer, who shall be appointed by the Director of the Arlington County Department of Economic Development, or his or her designee. However, it shall be the responsibility of the Artist to manage the details of the execution and performance of his Work pursuant to this Contract.

4. CONTRACT TERM

The Work required by this Agreement shall be completed no later than one thousand eight hundred and twenty six (1826) calendar days after the commencement date given in a Notice to Proceed that will be issued by the County to the Artist, subject to any modifications, as provided for in the Contract Documents. The total time period from the date on which this Agreement is executed by the County until the date on which the one thousand eight hundred and twenty six (1826) day period concludes, subject to any modifications, shall be the Contract Term. The Artist agrees that the time for completion of the Work described in the Contract Documents shall govern unless specifically amended in writing by the County. The Work shall not be deemed complete until it is accepted by the Project Officer and otherwise accepted by the County as provided for herein (including after the Artist executes the form in Exhibit C.

The Scope of Work of this Agreement shall be fulfilled by the conclusion of the Contract Term, provided, however, that such time limit may be extended or otherwise modified by written agreement between the Artist and the County.

The County may, in its sole discretion, grant, upon written request by the Artist, a reasonable extension of time to the Artist in the event that there is a delay on the part of the County in performing its obligations pursuant to this Agreement or in completing the underlying Project.

5. CONTRACT AMOUNT

So long as the Artist meets the milestones set forth in Exhibit B, the County shall pay the Artist a fixed fee of one hundred and forty thousand dollars (\$140,000.00) (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. The Artist understands and agrees that no further compensation or reimbursement will be paid or provided by the County to the Artist in exchange for the Work. The total Contract Amount shall be paid to the Artist in accordance with the Payment paragraph of this Agreement, and in accordance with the schedule set forth in Exhibit B.

In the event that the Artist and the County mutually agree that an amendment to the Contract Amount may be necessary, then the Artist shall submit to the Project Officer a proposal, in writing, for such amendment. The County will, in its sole discretion, determine whether the proposal warrants an amendment to the Contract Amount. Any Contract Amount amendment shall be memorialized by the parties in writing.

6. PAYMENT

The Artist will be paid according to the schedule in Exhibit B. The total amount paid for each task set forth in Exhibit B shall not exceed the

amount allocated for the task, regardless of the number of hours spent or the amount of expenses incurred by the Artist in the performance of that task. The number of the Purchase Order by which authority shipments have been made or services performed shall appear on all invoices. Invoices shall be submitted by the Artist to the County in duplicate.

7. RISK OF LOSS

Until such time as the Work is complete, the County has accepted the Public Art Piece, and the Artist has fully executed and delivered to the County the Transfer of Title and Bill of Sale document contained in this Contract, all risk of loss shall remain with the Artist.

8. NOTICE OF FINAL ACCEPTANCE

Final Acceptance of the Work required under this Contract shall be at the sole discretion of the County as set forth more fully in Exhibit A. Upon payment for 100 % of the approved Master Plan and again upon payment for 100% of the Design as set forth in Exhibit A, Scope of work, the Transfer of Title of the Master Plan and Design work (respectively for each), shall pass from the Artist to the County.

9. WARRANTIES

- A. The Artist hereby represents and warrants that the Work is solely the result of the artistic efforts of the Artist and any subcontractors whom the Artist engages, and further represents and warrants that:
- i. Except as otherwise disclosed in writing to the County, the Work is unique and original and does not infringe upon any copyright;
  - ii. The Work, or any duplicate thereof, has not been accepted for sale elsewhere; and
  - iii. The Work is free and clear of any liens from any source whatsoever.
- B. The Artist hereby represent and warrant, except if previously disclosed in writing to the County, that:
- i. The Work will be performed in a workmanlike manner;
  - ii. The Work will be free of defects in material and workmanship; and
  - iii. Maintenance of the Public Art Piece will 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 two (2) years from the date of issuance of the County's Notice of Final Acceptance. The County will provide the Artist written notice of any alleged breach of any warranty. The Artist shall then, at his sole cost and expense, cure any breach to the County's satisfaction within a reasonable time. In the event that the County is sued or threatened with litigation implicating such warranties, the Artist shall indemnify and hold harmless the County from any and all liability or expense arising from such suit or threatened litigation, including court costs and attorney's fees.
- D. Standard of Care

In the performance or furnishing of professional services hereunder, specifically, Structural Engineering, Lighting Design and any professional services necessary for Specialty Items (as defined hereinbelow), the Artist shall ensure that it and all its agents, employees and subcontractors exercise the degree of skill and care normally accepted by members of the same profession currently practicing under similar conditions in the same locality ("Customary Standard of Care"). The Artist shall ensure that the Work performed by it and all of its subcontractors shall be professionals licensed to work in the Commonwealth of Virginia and shall perform all Work pursuant to applicable federal, state and local law.

10. REPAIRS, MAINTENANCE AND RESTORATION

- A. The County recognizes that the maintenance of the Public Art Piece on a regular basis is essential to the integrity of the Work. The County therefore agrees to maintain and protect the Public Art Piece, taking into account any written instructions provided to the County by the Artist. The County will make reasonable efforts to protect the Work from vandalism and general wear and tear.
- B. The County shall have the right to determine, after consultation with a professional conservator, when and if repairs and restoration of the Public Art Piece will be made.
- C. If reasonably possible, the County will consult with the Artist, insofar as the Artist is still alive, prior to making any repairs or doing restoration work, provided that the Artist has apprised the County of any change of the Artist's address or contact information. If the parties decide to enter into an agreement regarding the work to be performed and a reasonable fee to be paid by the County to the Artist, the Artist will be provided the opportunity to make or supervise significant repairs and restorations of the Public Art Piece.
- D. Any and all repairs and restoration shall be made by qualified individuals in accordance with recognized principles of conservation.

11. REMOVAL AND REPOSITIONING OF THE PUBLIC ART PIECE FROM THE SITE;  
Nothing contained in this Agreement shall preclude any right of the County to remove the Public Art Piece from public display.

12. REPRODUCTION OF THE WORK

- A. The Artist shall credit the County in any public showing of the Work, as follows: "An original work owned and commissioned by Arlington County, Virginia".
- B. The County shall have the right to make two-dimensional reproductions of the Work, including the Public Art Piece. The County will obtain the written permission of the Artist prior to making any three-dimensional reproductions of the Work including the Public Art Piece.
- C. All reproductions of the Work, including the Public Art Piece that are made by the County will credit the Artist and contain a copyright notice substantially in the form: "© Walter Hood, 2016".

13. ADDITIONAL SERVICES

The Artist shall not be compensated for any goods or services provided except those stated in Exhibit A and included in the Contract Amount, unless those goods or services are covered by a written amendment to this Agreement signed by the County and the Artist, and a County Purchase Order is issued covering the expected cost of such services and materials.

14. REIMBURSABLE EXPENSES

The Artist and the County agree that the Artist shall receive no payment beyond the Contract Amount. The Artist agrees that all of his time, labor, materials, equipment, travel, accommodations and other out-of-pocket costs related to the Work shall be covered by the County's payment of the Contract Amount. The total amount paid by the County for project-related expenses shall not exceed the amounts shown in Exhibit B.

15. NOT-TO-EXCEED PROJECT COSTS

The Artist shall create and provide to the County detailed construction drawings and specifications that will be sufficient for the County to construct based on a fixed construction cost. The total amount to construct the entirety of Nauck Town Square will not exceed 3.14M. The total budgeted amount for the Public Art Piece will range from \$50,000-\$75,000. These amounts shall be referred to as the Not-to-Exceed Project Costs, and, as needed, the Artist shall redesign the project and provide revised Construction Documents for a revised Schematic Design and specifications at no additional cost to the County that fall within the Not-to-Exceed Project Cost.

The Artists' final cost estimate shall be commensurate with the level of design approved by the County. The Artist shall submit a cost estimate with each phase submittal. If any such cost estimate indicated a potential problem with regard to the County's construction budget, the Artist shall notify the County and shall work with the County to redefine the design concepts of space utilization, building efficiencies, materials of construction, etc., so that the estimated cost of construction does not exceed the budget. Substantial changes in the project scope, such as those which affect the area or function of the proposed facility must be justified by the Artist and approved by the County's Project officer.

16. ARLINGTON COUNTY BUSINESS LICENSES

The Artist agrees that he will comply with the provisions of Chapter 11 ("Licenses") of the Arlington County Code.

17. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

18. ADJUSTMENTS FOR CHANGE IN SCOPE

The County may order changes in the Work within the general Scope of Work consisting of additions, deletions or other revisions. No claim may be made by the Artist that the scope of the project or of the

Artist's services has been changed requiring adjustments to the amount of compensation due the Artist unless such adjustments have been made by a written amendment to the Contract signed by the County and the Artist. If the Artist believes that any particular work is not within the scope of the project or is a material change or otherwise will call for more compensation to the Artist, the Artist must immediately notify the Project Officer in writing of this belief. Within ten (10) days after any change or event which the Artist believes calls for more compensation, the Artist must provide to the Project Officer a proposal which sets forth the amount of additional compensation claimed, together with the basis therefore and documentation supporting the claimed amount. The Artist will not be compensated for performing any work unless a proposal complying with this paragraph has been submitted in the time specified, a written amendment has been signed by the County and the Artist, and a County purchase order is issued for the cost of the services to be provided pursuant to the amendment. If the Project Officer believes that the work is within the scope of the Contract, the Artist shall complete the work at no additional cost to County.

19. NON-APPROPRIATION

All funds for payments by the County pursuant to this Contract are subject to the availability of an annual appropriation by the County for this purpose. In the event of non-appropriation of funds by the County for the goods or services required by this Contract or substitutes for such goods or services which are substantially similar to the goods or services required by this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Artist on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated by this Contract beyond the date of termination.

20. RELEASE AND REQUEST FOR FINAL PAYMENT

Upon completion of the project and before final payment, the Artist will submit to the Project Officer a signed copy of the Arlington County Release and Request for Final Payment form as follows:

**RELEASE AND REQUEST FOR FINAL PAYMENT**

CONTRACT NUMBER: \_\_\_\_\_ ARTIST NAME: \_\_\_\_\_

FINAL PAYMENT AMOUNT: \_\_\_\_\_

The Artist hereby requests final payment in the amount indicated in the above-referenced Contract. The Artist agrees that his acceptance of final payment releases and forever discharges the County Board of Arlington County, Virginia, and its officers, employees, servants and agents from any and all actions, claims,

demands and liability, of whatever nature, now existing or which may hereafter arise as a result of or in connection with the above-referenced Contract.

The Artist certifies that all of the debts for labor, materials, and equipment incurred in connection with the above referenced Contract have been fully paid.

AUTHORIZED SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

21. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

The Contract shall remain in force for the Contract Term and until the County determines that all requirements and conditions have been met and the County has accepted the Work, and thereafter until the Artist has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, the County shall have the right to terminate this Contract sooner if the Artist is in breach or default or has failed to perform satisfactorily the Work required, as determined by the County in its discretion.

If the County determines that the Artist has failed to perform satisfactorily, then the County will give the Artist written notice of such failure(s) and the opportunity to cure such failure(s) at least fifteen (15) days before termination of the Contract may occur ("Cure Period"). If the Artist fails to cure within the Cure Period or as otherwise specified in the notice, the Contract is terminated for the Artist's failure to provide satisfactory Contract performance. Upon such termination, the Artist may apply for compensation for Contract services satisfactorily performed by the Artist and allocable to the Contract and accepted by the County prior to such termination unless otherwise barred by the Contract ("Termination Costs"). Such request for Termination Costs, with all supporting documentation, must be submitted to the County Project Officer within fifteen (15) days after expiration of the Cure Period. The County may accept or reject, in whole or in part and in its sole discretion, the application for Termination Costs and notify the Artist of same within a reasonable time thereafter.

If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from the County to the Artist (unless the County in its discretion provides for an opportunity to cure) and the Artist will not be entitled to termination costs.

Upon any termination pursuant to this section, the Artist shall be liable to the County for all costs incurred by the County after the effective date of termination, including costs required to be expended by the County to complete the Work covered by the Contract, including costs of delay in completing the project or the cost of repairing or correcting any unsatisfactory or non-compliant work. Such costs shall be either subtracted from any amount due the Artist or shall be promptly paid by the Artist upon demand by the County. Additionally,

and notwithstanding any provision in this Contract to the contrary, the Artist is liable to the County (and the County shall be entitled to recover) all damages to which the County is entitled by this Contract or by law, including, but not limited to, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by the County to the Artist pursuant to the Contract, and all attorney's fees and costs incurred by the County to enforce any provision of this Contract.

Except as otherwise directed by the County, the Artist shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

In the event that any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction, then such termination shall be deemed to have been a termination for the convenience of the County.

22. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The Artist's performance of Work under this Contract may be terminated by the Arlington County Purchasing Agent in whole or in part whenever the Purchasing Agent shall determine that such termination is in the County's best interest. Any such termination shall be effected by the delivery to the Artist of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the Artist's Work under this Contract is terminated and the date upon which such termination becomes effective.

After receipt of a notice of termination and except as otherwise directed the Artist shall stop all work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the Work not terminated; immediately transfer all documentation and paperwork for terminated work to the County; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

If the County terminates the Contract for its convenience and not due to any failure or delay on the part of the Artist, then the County shall pay for any documented work performed and materials costs incurred by the Artist pursuant to this Contract up until the termination date.

23. COUNTY EMPLOYEES

No employee of Arlington County, Virginia, shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

24. EMPLOYMENT DISCRIMINATION BY ARTIST PROHIBITED

During the performance of this Contract, the Artist agrees as follows:



- A. The Artist will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by Virginia law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Artist. The Artist agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - B. The Artist, in all solicitations or advertisements for employees placed by or on behalf of the Artist, will state that such Artist is an Equal Opportunity Employer.
  - C. Notices, advertisements and solicitations placed in accordance with any Virginia or federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
  - D. The Artist will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.
  - E. The Artist will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
25. DRUG-FREE WORKPLACE TO BE MAINTAINED BY ARTIST  
During the performance of this Contract, the Artist agrees to (i) provide a drug-free workplace for the Artist's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance, including marijuana, is prohibited in the Artist's workplace, and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Artist that the Artist maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a Site for the performance of work done in connection with this Contract.

26. INDEMNIFICATION

The Artist covenants to save, defend, hold harmless, and indemnify the County Board of Arlington County, Virginia, and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County" for purposes of this section) from and against any and all claims made by third parties or by the County for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges liability, demands or exposure, however

caused, resulting from, arising out of, or any way connected with the Artist's acts or omissions, or breach of the applicable professional standard of care in the performance or nonperformance of its work called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If after notice by the County the Artist fails or refuses to save, defend, hold harmless and/or indemnify the County, the Artist shall be liable for and reimburse the County for any and all expenses, including but not limited to, reasonable attorney's fees incurred and settlements or payments made.

27. COUNTY PURCHASE ORDER REQUIREMENT

County purchases of goods in excess of \$5,000.00 per transaction and purchases of services over \$500 per transaction are authorized only if a County Purchase Order is issued in advance of the transaction, indicating that the ordering agency has sufficient funds available to pay for the purchase. A purchase order will be issued for any purchase if the vendor requires a purchase order for its records. The County will not be liable for payment for any purchases of goods over \$5,000.00 per transaction or purchases of services over \$500 per transaction made by its employees without appropriate purchase authorization issued by the County Purchasing Agent. Contractors providing goods or services without a signed County Purchase Order do so at their own risk and must satisfy themselves that the ordering person or agency is authorized to purchase goods or services in the name of the County. The Artist must direct questions regarding this requirement to the County Purchasing Agent at 703-228-3410.

28. FAILURE TO DELIVER

In case of failure by the Artist to deliver goods or services in accordance with the Contract Documents, the County, after oral or written notice, may procure the same or similar goods or services from other sources and the Artist shall be liable for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the County may have pursuant to this Contract or pursuant to law. The County shall be entitled to offset such costs against any sums owed by the County to the Artist.

29. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County, Virginia, Purchasing Resolution, as well as any state or federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act, and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended. The Artist certifies that his offer was made without collusion or fraud and that he has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor and that he has not conferred on any public employee having official responsibility for this purchase any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

30. FORCE MAJEURE

The Artist shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a strike, fire, riot, rebellion, act of terrorism, or other force majeure, beyond the control of the Artist that makes performance impossible or illegal, unless otherwise specified in the Contract. Weather conditions considered normal for the area and time of year do not constitute a Force Majeure condition.

The County shall not be held responsible for failure to perform the duties and responsibilities imposed by the Contract if such failure is due to a strike, fire, riot, rebellion, act of terrorism, or other force majeure, beyond the control of the County that makes performance impossible or illegal, unless otherwise specified in the Contract.

31. ASSIGNMENT

The Artist shall not assign, transfer, convey, sublet, delegate, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of the County.

32. APPLICABLE LAW; FORUM SELECTION

This Contract, the Work performed hereunder, and any dispute regarding them shall be governed in all respects by the laws of the Commonwealth of Virginia and the United States of America, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws theory or doctrine. Any legal action relating to this Contract or the subject matter hereof must be brought in the Circuit Court of Arlington County, Virginia, or in the United States District Court of the Eastern District of Virginia, Alexandria Division, and in no other court or jurisdiction. In performing the Work under this Contract, the Artist shall comply with applicable federal, state, and local laws, ordinances and regulations.

33. IMMIGRATION REFORM AND CONTROL ACT OF 1986

The Artist certifies that he does not, and will not during the performance of the Contract, employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

34. ANTITRUST

By entering into this Contract, the Artist conveys, sells, assigns and transfers to the County all rights, title, and interest in and to all causes of action the Artist may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods or services purchased or acquired by the County under said Contract.

35. RELATION TO COUNTY

The Artist will be legally considered as an independent contractor and neither the Artist nor his employees will, under any circumstances, be considered employees, servants or agents of the County. The County will not be legally responsible for any negligence or other wrongdoing

by the Artist, his employees, servants or agents. The County will not withhold payments to the Artist for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Artist. Further, the County will not provide to the Artist any insurance coverage or other benefits, including workers' compensation, normally provided by the County for its employees.

36. ARLINGTON COUNTY PURCHASING RESOLUTION

The Contract is governed by the applicable provisions of the Arlington County Purchasing Resolution. The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Purchasing Resolution, is fifteen (15) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, incorporated herein by reference, and available upon request from the Office of the Purchasing Agent.

37. ARBITRATION

It is expressly agreed by the Artist and the County that nothing under the Contract shall be subject to arbitration, and any references to arbitration are expressly deleted from the Contract.

38. PATENTS AND ROYALTIES

The Artist covenants to save, defend, hold harmless, and indemnify the County, and all of its officers, officials, departments, agencies, agents, and employees (collectively the "County" for the purposes of this section) from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by the County. If the Artist uses any design, device, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Amount includes all royalties or costs arising from the use of such design, device, or materials in any way involved with the Work.

39. COPYRIGHT

Notwithstanding any provision of this Contract to the contrary, the Artist retains all rights under the Copyright Act of 1976, 17 USC §§ 101 et seq., and all other rights in and to the design proposal and the Artwork except ownership and possession, except as such rights are limited by this section. In view of the intention that the Work in its final form shall be unique, the Artist shall not make any additional duplicate, three-dimensional reproductions of the final Work, nor shall the Artist grant permission for others to do so except with the written permission of the County or its assignee. Title to the Work shall pass to the County upon the County's written final acceptance of Work. The Artist grants the County an irrevocable, non-exclusive license to make two-dimensional or three-dimensional reproductions of the Work for non-commercial purposes. For purposes of this Agreement, the following shall be deemed to be reproductions for non-commercial purposes: reproductions in exhibition catalogues, books, slides, photographs in art magazines, art books, and art and news sections of newspapers; in general books and magazines not primarily devoted to art but of an

educational, historical or critical nature; slides and film, video, or digital pieces not intended for a mass audience, and television from stations operated for educational purposes or on programs for educational purposes from all stations. Since the Work will be located in a public space, its incidental appearance or use in images, videos, or films of events using said space shall not be considered commercial use. The Artist warrants to the County that the Artist has full copyright vis-à-vis the Work. The Artist indemnifies and holds harmless the County from and against any liability, including the costs of claims, demands, threatened litigation or actual litigation, including damages and the County's and the Artist's attorneys' fees, arising out of any allegation or claim by any individual, institution or other entity claiming full or partial title to, or intellectual property right, including copyright, in any or all of the Work or any reproduction thereof, arising under the laws of the United States of America, international law, treaty or convention, the Commonwealth of Virginia, or common law.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as part of this Contract is prohibited unless such subcontractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Artist for work related to Work pursuant to this Contract.

All reproductions of the Work that are made by the County will credit the Artist and contain a copyright notice substantially in the form: "©Hood Design, 2016".

40. OWNERSHIP AND RETURN OF RECORDS

This Contract confers no ownership rights to the Artist nor any rights or interests to use or disclose the County's data or inputs. The Artist agrees that all drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic, and all documents generated by the Artist or its subcontractors as a result of the County's request for services under this contract, are the exclusive property of the County ("Record" or "Records"), and all such Records shall be provided to and/or returned to County upon completion, termination, or cancellation of the Contract. The Artist shall not use, willingly or allow, or cause such materials to be used for any other purpose other than performance of all obligations under the Contract without the written consent of the County. Additionally, the Artist agrees that the Records are confidential records and neither the Records nor their contents shall be released by the Artist, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the Project Officer or his or her designee. The Artist agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Officer or his or her designee for response. At the County's request, the Artist shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at the County's request, shall destroy all computer records created as a result of the County's request for services pursuant to this Contract.

The Artist agrees to include the provisions of this section as part of any contract or agreement that Artist enters into with consultants,

subcontractors or third parties for work related to Work pursuant to this Contract.

No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section of the Contract.

41. INSURANCE REQUIREMENTS

The Artist shall provide to the County Purchasing Agent a Certificate of Insurance indicating that the Artist has in force the coverage below prior to the start of any Work under this Contract and upon any contract extension. The Artist agrees to maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides, and acceptable to the County. The minimum insurance coverage shall be:

- A. Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- B. Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Artists, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.
- C. Business Automobile Liability - \$1,000,000 Combined Single Limit (Owned, non-owned and hired).
- D. The Artist shall carry Errors and Omissions or Professional Liability insurance which will pay for injuries arising out of errors or omissions in the rendering, or failure to render services or perform Work under the contract, in the amount of \$1,000,000.
- E. Additional Insured - Arlington County, and its officers, elected and appointed officials, employees, and agents shall be named as an additional insureds on all policies except Workers Compensation and Auto and Professional Liability; and evidence of the Additional Insured endorsement shall be typed on the certificate. General Liability
- F. Cancellation - If there is a material change or reduction in coverage the Artist shall notify the Purchasing Agent immediately upon Artist's notification from the insurer. It is the Artist's responsibility to notify the County upon receipt of a notice indicating that the policy will not be renewed or will be materially changed. Any policy on which the Artist has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of this Contract, and the County notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance

throughout the Contract Term is grounds for termination of the Contract.

- G. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Artist must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Artist's receipt of final payment.
- H. Contract Identification - The insurance certificate shall state this Contract's number and title.

The Artist must disclose the amount of any deductible or self-insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies required herein, if any. The County reserves the right to request additional information to determine if the Artist has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, the County may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure protection for the County.

The Artist shall require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation insurance in the same form and manner as specified for the Artist. The Artist shall furnish subcontractors' certificates of insurance to the County immediately upon request by the County.

No acceptance or approval of any insurance by the County shall be construed as relieving or excusing the Artist from any liability or obligation imposed upon the Artist by the provisions of the Contract Documents.

The Artist shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Artist assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

The Artist shall be as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, the Artist may satisfy its obligations under this section by means of self-insurance for all or any part of the insurance required, provided that the Artist can demonstrate financial capacity and the alternative coverages are

submitted to and acceptable to the County. The Artist must also provide its most recent actuarial report and provide a copy of its self-insurance resolution to determine the adequacy of the insurance funding.

42. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County pursuant to this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to the County at law or in equity.

43. AMENDMENTS

This Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Artist and the County.

44. SEVERABILITY

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

45. NOTICES

All notices and other communications hereunder shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

**TO ARTIST:**

Hood Design, LLC3016 Filbert Street, Suite #2  
Oakland, CA 94608

**TO COUNTY:**

Arlington County  
2100 Clarendon Boulevard, Ste. 500  
Arlington, Virginia 22201

**WITH A COPY TO:**

Kathy von Bredow, RLA  
Arlington County DPR - Park Development Division  
2100 Clarendon Blvd  
Arlington, VA 22201

Deirdre Ehlen, Public Art Project Manager  
Arlington County, Virginia  
1100 North Glebe Road  
Arlington, Virginia 22201

Chikwe C. Njoku  
Arlington County CPHD - Neighborhood Services  
2100 Clarendon Blvd  
Arlington, VA 22201



In the event of any party's change of address, that party shall promptly notify the other party of its new address for the purposes of this section.

46. NO WAIVER OF SOVEREIGN IMMUNITY

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the County pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the County. The Artist and the County intend for this provision to be read as broadly as possible.

47. NO WAIVER

No provision of this Contract or breach of any provision of this Contract will be deemed waived by either party unless the party against whom such provision or breach is claimed has agreed in writing (by both email and hard copy) to such waiver. Any waiver shall not be a waiver of any other provision of this Contract. One party's acceptance of another party's performance after that performance became due shall not constitute the accepting party's waiver of the breach or failure to timely perform unless the accepting party expressly indicates otherwise in writing (by both email and hard copy).

48. SURVIVAL OF TERMS

In addition to sections in this Contract which specifically state that the term or paragraph survives the expiration or termination of this Contract, the following sections, if included in this Contract, also survive: WARRANTIES; REPAIRS, MAINTENANCE AND RESTORATION; REMOVAL AND REPOSITIONING OF THE ARTWORK FROM THE SITE;; REPRODUCTION OF THE ARTWORK; RELEASE AND REQUEST FOR FINAL PAYMENT; INDEMNIFICATION; ASSIGNMENT; RELATION TO COUNTY; APPLICABLE LAW, FORUM SELECTION; ANTITRUST; ARLINGTON COUNTY PURCHASING RESOLUTION; ARBITRATION; COPYRIGHT; and PATENTS AND ROYALTIES.

If a court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable, the remainder of this Contract shall not be affected by such finding, and every remaining provision of this Contract shall remain and be valid and enforceable to the fullest extent permitted by law. If any provision of this Contract is capable of more than one construction, meaning or interpretation, and such constructions, meanings or interpretations would have the effect of rendering the provision valid under one interpretation and invalid under another, then such provision shall have the construction, meaning or interpretation that renders it valid and enforceable.

49. HEADINGS

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading refers.

50. USE OF THE ENGLISH LANGUAGE

The parties covenant and agree that this Contract is in the English language and that they will sign this Contract in the English language. The parties covenant and agree that the English language alone shall be used for the interpretation of this Contract.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA

HOOD DESIGN, LLC

TAXPAYER  
ID (EIN): 27 3850024

AUTHORIZED  
SIGNATURE: 

NAME: MICHAEL BEVIS  
TITLE: PURCHASING AGENT

DATE: 11/5/15

AUTHORIZED  
SIGNATURE: 

NAME: WALTER J. HOOD, JR.  
TITLE: PRINCIPAL AND FOUNDER

DATE: 21 October 2015

AGREEMENT NO. 674-14

EXHIBIT A  
SCOPE OF WORK  
Hood Design LLC

A. DEFINITIONS

1. Artist - As used in this Agreement, "Artist" means Hood Design LLC.
2. CADD - Acronym for Computer Aided Drafting Design
3. Concept - An overall project vision which includes goals and objectives that is developed through community engagement and Site research. This engagement and Site research will inform the design process.
4. County Staff - The employees of Arlington County.
5. CSI Master Format - A standard for organizing specifications and other written information for commercial and institutional building projects. Master Format is a product of the Construction Specifications Institute (CSI) and provides a master list of Divisions, and Section numbers with associated titles within each Division, to organize information about a project's construction requirements and associated activities.
6. Construction Administration - Review of the progress and quality of the construction to ensure it is in keeping with Artist intent.
7. Construction Documents (CDs) - Comprises legal, procedural and construction information that includes, but is not limited to, drawings, plans, specifications and details associated with a construction project. CDs describe, in detail, the components of the project that need to be fabricated and assembled in order for the project to be built. Construction Documents must be prepared by, and signed and stamped by, the applicable professional engineer licensed in the Commonwealth of Virginia.
8. Design Development (DD) -Design Development tasks build on the approved Master Plan to reach a level of completeness that demonstrate the project can be built. The design is overlaid with more detailed information obtained from an array of multidisciplinary consultants and team members. Throughout DD, it is important to evaluate how systems, material selection, and detailing reflect the approved Master Plan. The Artist works out detailed coordination issues, while enhancing the project, so that major revisions are not needed during construction documentation (CDs).
9. Public Art Piece - A discreet object or treatment to the existing Site that could include but is not limited to sculpture, pathways, bench, railing, gazebo, etc. The Public Art Piece that will be an elementary expression, that could be temporary or permanent in nature or an initial gesture which will be further developed in the execution of the final design concept.
10. Master Plan - Final deliverable of the preferred concept which includes the Public Art Piece for the Site, which reflects the rich

social and cultural history of Nauck into the design of a new dynamic public space.

12. Site - Nauck Town Square located at 2406 and 2412 South Shirlington Road, Arlington, Virginia, 22206, United States of America

13. Specialty Items - Design and develop site elements and construction details and specifications that may require custom or non-standard fabrication. These elements may include but are not limited to sculpture, pathways, site furnishings, railings, walls, gazebo, structures and lighting. The Artist shall identify these elements during the Master Plan phase and develop layout plan, construction details and specifications accordingly.

**B. PRINCIPAL RESPONSIBILITIES OF THE ARTIST**

1. Prior to executing the Contract, the Artist shall consult with the County regarding the overall budget for the project to include construction budget for the Site.
2. The Artist agrees to develop design concepts for the Site that do not exceed the County's construction budget for the Site.
3. The Work will be subject to the approval of the County's Project Officer. The schedule of Work shall be consistent with the activities set forth in Exhibit B and those activities shall be milestones.
4. The Artist shall perform all design services and furnish all supplies, materials and/or equipment for the Work in accordance with the specified schedule. Design services shall be performed in a professional manner and in strict compliance with all terms and conditions of the Contract.
5. The Artist will transfer ownership to the County of the approved Master Plan, including the Public Art Piece upon payment of the invoice referencing this in Schedule B.
6. The Artist will transfer ownership to the County of the final approved Design upon payment of the invoice referencing this Task in Schedule B.
7. The Artist shall participate in meetings with the general public and County staff and attend design and construction coordination meetings with County staff and other parties, as appropriate, to communicate about the execution of the Work, and appropriate integration and/or installation of the Public Art Piece and Master Plan as developed the project as developed and approved at the Site. The Artist shall be available in person in Arlington County, with reasonable advance notice, for meetings, ceremonies and the like, as necessary, at the sole discretion of the County. The costs related to such availability are included in the Contract Amount. Whether the Artist must attend such meetings in person or by other means will be determined by the County's Project Officer at his or her sole discretion at least two weeks prior to the date of the meeting or event.
8. The Artist shall secure all required licenses, permits and other required governmental approvals, at the Artist's sole expense, that are necessary to complete the Work. All Work shall be completed in accordance with applicable local, state and federal law. The County has entered into this Contract as a purchaser of the Work and not in

its general capacity as a governing body. The County's entry into this Contract does not constitute any form of governmental approval that may be required of the Artist by law.

9. The Artist agrees that when the County bids the construction of the Project, the Artist shall answer all RFIs (Request for Information) submitted during the bid process.
10. The Artist shall provide photographic documentation of the Work to the County.

#### C. DESIGN SERVICES & CONSTRUCTION ADMINISTRATION

The Artist shall undertake the following as the detailed and specific Work under this Contract:

##### **1. MASTER PLAN DEVELOPMENT (4-6 months)**

The Artist will develop designs which will include a Public Art Piece and which shall provide an overall vision for a Master Plan reflective of the rich social and cultural history of Nauck in the design of a new dynamic public space.

The Artist shall:

- a. Coordinate with the County to determine the relevant guidance in existing County design standards and guidelines, adopted planning and zoning documents, or any other policy or Site or budget constraints for the Concept development.
- b. Conduct Site research by exploring archives, oral histories, and mappings of the physical and ecological palimpsest of the Site, illuminating its rich cultural history and reflecting the community's expressed identity to bring forward in the development of the design.
- c. Conduct a minimum of three (3) meetings or workshops that engage the community throughout the Concept development process. Meetings/workshops to be scheduled in conjunction with County staff.
- d. Develop a design narrative that summarizes all discussions community, County staff, etc. The summary shall include analysis/recommendation on the types of uses to include at the Site and how they would illuminate the rich cultural history of the Site and reflect the community's expressed identity. Highlight key points that will enhance the overall effort to develop an active and inviting public space.
- e. Develop diagrams, storyboards, concept sketches, study models, neighborhood district illustrative plans, vignettes and sections that illustrate three (3) different concept designs for County staff and stakeholder review and selection of a preferred approach ("Master Plan").
- f. Develop and provide a rendered Master Plan of Nauck Town Square at a scale suitable for public presentation.

- g. Develop and provide sections, elevations and/or perspectives depicting views into and out of Nauck Town Square Master Plan at a scale appropriate for public presentation.
  - h. Identify Site elements that may be considered specialty items to be further developed by Artist.
  - i. Develop a preliminary construction cost estimate for the Public Art Piece based on fixed construction budget ranging from \$50,000-\$75,000.
  - j. Develop a preliminary construction cost estimate for the Master Plan based on total fixed construction budget which is \$3.14 Million Dollars or less.
  - k. Present, with County staff, the preferred Master Plan to key civic groups and commissions as determined by County staff.
  - l. Provide electronic/digital files or products illustrating the Master Plan for email distribution and/or use of the County's website.
  - m. Revise Master Plan, which may include the Public Art Piece, per County comments and project limits, providing scope and program for Design Development.
2. DESIGN DEVELOPMENT (3-4 months)
- The Artist shall further develop the Design based on the Master Plan which through the review process will result in a final Design (which may include a Public Art Piece) from which the Construction Documents will be created. In furtherance of the final Design, the Artist shall continue to meet regularly with the County staff in addressing the following:
- a. HARDSCAPE, LANDSCAPE& PLANTING DESIGN: Provide preliminary layout, materials layout and preliminary grading plans. Submit refined materials palette including, but not limited to, paving materials, plant materials, site furnishings, walls, stairs, and fencing. Review standard details provided by Arlington County and incorporate in Design. Provide further review structural considerations, surface integrity, permanence and maintenance, as well as an outline of the proposed construction methods. Standard details of hardscape, landscape features and planting design shall be prepared by an Arlington County Contractor.
  - b. GRADING PLANS AND STORMWATER SYSTEM DESIGN: Review the stormwater management policies that are specific to Federal, Virginia State and Arlington County policy and ordinance. Develop a preliminary grading and stormwater management plan. Final grading plan and stormwater management plan shall be prepared by an Arlington County Contractor during the Construction Documents phase.
  - c. STRUCTURAL ENGINEERING DESIGN: Develop preliminary concepts for structural engineering, no later than 30% Design submittal. Final structural design shall be included in subsequent submissions and

during the Construction Documents phase. The Artist is responsible for this design.

- d. LIGHTING DESIGN: Develop preliminary lighting design and photovoltaic plan, no later than 30% Design submittal. Final lighting design shall be included in subsequent submissions and during the Construction Documents phase. The Artist is responsible for this design.
- e. SPECIALTY ITEMS: The Artist shall develop construction details and specifications for any Specialty Items. Specialty Items may include but are not limited to: sculptural elements, lights, canopies, trellises, custom site furnishings, specialty fencing and structures. The Artist shall engineer Specialty Items. Artist is responsible for this design. These construction details and specifications shall be submitted at the 30%, 60% and 90% ("Submission") Design submittals.
- f. Each Submission shall include the following:
  - i. Three (3) sets of full-size progress prints;
  - ii. Electronic submission via PDF;
  - iii. Electronic submission of CAD files. These files shall be submitted in AutoCAD 2015, or version approved by Arlington County. Native files shall also be included in all submissions.
- g. Prior to resubmission by the Artist to the County, all comments made by the County shall be incorporated into subsequent submissions by the Artist.
- h. Submit 100% Design submission to the County for final comment and review. The County will review the Design and Specialty Item(s) details and specifications and submit its comments and revision requests or approval of the final Design within thirty (30) calendar days.
- i. Prepare illustrative drawings for use by County for various presentations after the County has approved 100% Design. Provide electronic/digital files or products illustrating the Design for email distribution and/or use of the County's website.
- j. Attend a minimum of one (1) community meeting to present the approved 100% Design drawings.
- k. Prepare cost estimates based on the 30%, 60%, 90% and 100% Design submissions. The Artist is responsible for providing cost estimates prepared by an independent cost consultant.

### 3. CONSTRUCTION DOCUMENTS AND PERMITTING (4-6 Months)

- a. The Artist shall review and comment on all of the Construction Documents prepared by the Arlington County contractor(s) and shall review and comment on complete Construction Document plan set at the 30%, 60%, 90% and 100% milestones. Reviews shall include any additional reviews required during the permitting process.

- b. The Artist shall prepare final Construction Documents for Specialty Items and items requiring structural engineering and lighting design at the 30%, 60%, 90% and 100% milestones. All Construction Documents shall be prepared by and signed and stamped by an engineer licensed in the Commonwealth of Virginia.
- c. The artist shall submit final Construction Documents and specifications for item 3 b) (above). Each submission shall include the following:
  - i. Three (3) sets of full-size progress prints;
  - ii. Electronic submission via PDF;
  - iii. Electronic submission of CAD files. These files shall be submitted in AutoCAD 2015, or version approved by Arlington County. Native files shall also be included in all submissions.
- d. During the permitting process the Artist is responsible for all changes required by County to Specialty Items, Structural Engineering and Lighting Design. The Artist shall review the full plan set of Construction Documents prior to all permitting re-submittal(s).

#### 4. PARTICIPATION IN CONSTRUCTION ADMINISTRATION

The Artist shall visit the Site up to three (3) times as determined by the County to review the progress and quality of the construction.

#### 5. COUNTY RESPONSIBILITIES

The County will provide to the Artist copies of existing designs, drawings, specifications, reports, and other existing relevant data which are required for design of the Work.

#### 6. APPROVAL AND ACCEPTANCE OF WORK

- a. The County will notify the Artist of its acceptance of the Work required under this Contract within fifteen (15) days after the Artist has completed the tasks as set forth in Schedule B ("Task"). The date of final acceptance of all Work shall be the date on which the County submits written notice to the Artist of the County's final acceptance of each Task. The final acceptance shall be understood to mean that the County acknowledges completion of the Task in conformity with the approved Master Plan, and that the County confirms that all services as required of both parties by this Contract have been completed.
- b. If the County disputes that all the Tasks have been performed, the County will notify the Artist in writing of those services the Artist has failed to perform within fifteen (15) days after the Artist submits written notice. The Artist shall promptly perform those services identified by the County.
- c. If the Artist disputes the County's determination that not all services have been performed for any Task, the Artist shall submit reasons in writing to the County within fifteen (15) days of the County's prior notification to the contrary. The County will make reasonable efforts to resolve the dispute with the Artist in good faith. However, the County in its sole discretion will make the final determination as to whether all services have been performed.



- d. 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 Work.
- e. After final acceptance of the Work, the Artist shall be available at such time(s) as may be mutually agreed upon by the County and the Artist to attend any public meetings, presentations and community outreach events:
  - i. During such public presentations and in all subsequent references of the Project by the Artist, the Artist shall acknowledge the County's role in funding the Work as the County will acknowledge the Artist's role in its design.
  - ii. The County shall be solely responsible for coordinating public information materials and activities related to public presentations regarding the Work.
  - iii. The costs associated with the Artist's attendance at such meetings and functions are included in the Contract Amount as part of the agreed upon number of trips, and the County shall not owe the Artist any additional costs or reimbursement associated with that attendance.
- f. The requirements of this section shall survive the conclusion of the Contract Term.

AGREEMENT NO. 674-14

**EXHIBIT B**  
**PAYMENT SCHEDULE**  
**Walter Hood**

**Payment, Schedule, and Milestones**

**Payment installments**

The County agrees to pay Artist in six (6) installments as set forth in the schedule below. So long as the other requirements of the Contract have been met, the County will release payment to the Artist within thirty days (30) of being invoiced. The total fee for the Work is \$140,000.00 and is all-inclusive, covering all aspects of this Contract, including meeting/work time, project-related travel expenses, materials, and coordination. The fee includes but is not limited to the following costs: labor of assistants, subcontractors; materials; communication and other indirect costs; and travel expenses of the Artist for Site visits, research, and any visits to Arlington County, Virginia, to meet with County staff and/or members of the public as required by the County pursuant to this Contract. The Artist will not be paid at an hourly rate or be reimbursed for individual expenses. Payment installments will be made upon reaching the milestones described below and in Exhibit B.

TASK	PAYMENT
<b>Execution of Contract.</b> The County will review and approve the invoice and authorize the payment when the Artist submits an invoice along with a final project schedule. Payment may take up to 30 days from execution of Contract and will be processed immediately upon approval of a Purchase Order.	Payment 1 \$28,000.00
<b>Approval of Master Plan. (4-6 months)</b> The County will review and approve the invoice and authorize the payment when the Artist submits and invoice along with the approved Master Plan, which shall include the Public Art Piece. See Scope of Work section D. 1.	Payment 2 \$28,000.00
<b>Approval of Design. (3-4 months)</b> The County will review and approve the invoice and authorize the payment when the Artist submits and invoice along with the approved Design and transfer of ownership of the approved Master Plan. (bill of Sale, Exhibit c) See Scope of Work section D.2.	Payment 3 \$28,000.00

<p><b>Artist Review of Construction Drawings and Specifications prepared by Arlington County contractor and Artist Preparation of Construction Drawings and Specifications for Specialty Items, Lighting Design and Structural Engineering. (4-6 months)</b> The County will review and approve the invoice and authorize payment after Arlington County permit review approval.</p>	<p>Payment 4 \$28,000.00</p>
<p><b>Completion of Construction Administration</b> The Artist shall visit the project Site during construction up to three (3) times at the discretion of the County to review the progress and quality of the work. Upon completion of the construction administration and construction of the Master Plan, the County will review and approve this invoice.</p>	<p>Payment 5 27,000.00</p>
<p><b>FINAL PAYMENT</b> The County will review and approve the invoice and authorize payment when the entirety of the Site is fully constructed and complete.</p>	<p>Payment 6 \$1,000.00</p>
<p><b>TOTAL PAYMENTS</b></p>	<p><b>\$140,000.00</b></p>

EXHIBIT C  
TRANSFER OF TITLE AND BILL OF SALE

STATE OF \_\_\_\_\_

CITY / COUNTY OF \_\_\_\_\_

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, Hood Design, LLC, located at the street address stated below, does hereby sell, transfer and convey to the County Board of Arlington County, Virginia, its assigns and successors, all right, title and interest, with general warranty, in the ownership of the Work commissioned by Agreement No. 674-1413 executed on \_\_\_\_\_.

Title:

Locatio

n:

IN WITNESS WHEREOF, Hood Design, LLC has executed this Transfer of Title and Bill of Sale on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Walter Hood

Walter Hood

Design

Studio

ADDRESS

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

NOTARY PUBLIC

My Commission Expires:

(NOTARY SEAL)

Exhibit D  
Survey of Site

