

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
SUITE 500
2100 CLARENDON BOULEVARD
ARLINGTON, VIRGINIA 22201
NOTICE OF AWARD OF CONTRACT

TO: The Lipski Group
138 East 36th Street
Apt 10-C
New York, NY 10016

DATE ISSUED: February 25, 2015

CURRENT REFERENCE NO: 590-13

Public Art

CONTRACT TITLE:

THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

Your firm is awarded the above referenced contract. The contract term covered by this Notice of Award is effective immediately and expires on December 31, 2015. This contract is valid for one thousand four hundred forty days.

CPI-U increase is based on SEPTEMBER. This contract renewal period is January 2015 for allowable increase.

The contract documents consist of the terms, conditions, and specifications of agreement 590-13 and the terms and conditions incorporated herein by reference.

ATTACHMENTS:
AGREEMENT NO. 590-13.

CONTRACT PRICING:
REFER TO ATTACHED AGREEMENT

EMPLOYEES NOT TO BENEFIT:
NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

CONTACT: Donald Lipski

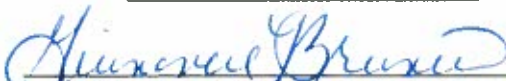
VENDOR PAYMENT TERMS: NET 30 DAYS TELEPHONE NO.: 215-301-4800

CONTACT EMAIL: donaldlipski@gmail.com

COUNTY CONTACT: Aliza Schiff TELEPHONE NO.: 703-228-3771

CONTRACT AUTHORIZATION

DISTRIBUTION


Guinevere Bruner, CPPB
PROCUREMENT OFFICER

2/25/15 BID FOLDER: 1
DATE

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

AGREEMENT NO. 590-13

This AGREEMENT (hereinafter "Agreement") is made on the date of its execution by the County, between The Lipski Group, 138 East 36th Street, Apt. 10-C, New York, NY 10016 (hereinafter "Artist"), a sole proprietor 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), Exhibit B (Payment Schedule), and Exhibit C (Transfer of Title and Bill of Sale). Collectively the Agreement and Exhibits A, 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 services described in the Contract Documents (alternatively, the "Work") in exchange for the consideration set forth in the Contract. The primary purpose of the Work is to design, engineer, fabricate, and install a site-specific, permanent, integrated wind turbine blade sculpture, including construction of the foundation ("Artwork") for the area known as the western gateway at the intersection of Columbia Pike and South Jefferson Street in Arlington, Virginia ("Site"). The Work must be coordinated with Arlington County and the timing for installation is dependent upon the Columbia Pike Multimodal Improvement Project – Four Mile Run to South Jefferson Street Phase ("Project").

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 his 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 and installed no later than one thousand four hundred forty (1440) calendar days from the date of execution of this Agreement, 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 four hundred forty (1440) 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 Artist shall bear any and all transportation and storage costs resulting from the completion of his services hereunder prior to the time provided in the schedule for installation. The Artist shall bear all costs associated with fabricating and installing the Artwork, unless otherwise agreed upon by both parties.

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, or if conditions beyond the Artist's control or acts of God (which means, for the purposes of this section only, weather that affects fabrication of the Artwork and is significantly different from the weather experienced in Arlington County, Virginia, or the location where the Artwork is being fabricated, in the previous ten years during the calendar months that occur during the Contract Term) render timely performance of the Artist's services impossible or unexpectedly burdensome. The Artist's written request must be presented at the time the basis for delay arises, and must fully detail the cause of the delay as well as the delay's known and anticipated effects. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligation shall be tolled only for the duration of such conditions.

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 two hundred thirty thousand dollars (\$230,000) 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 development, engineering, construction, transportation, and installation of the physical components of the Artwork. 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 with the proposal warrants an amendment to the Contract Amount. Any Contract Amount amendment shall be memorialized by the parties in writing.

The Artist shall keep a log of the Artist's project hours and shall retain all original receipts pertaining directly to the Work and the materials and equipment used therein. The County may at any time require the Artist to make the original receipts or copies thereof available to the County or the County's agents for inspection.

6. PRICE ADJUSTMENTS NEGOTIATED UP TO CPU-I

The Contract Amount shall remain firm for calendar year 2015. The Contract Amount shall be negotiated by the County and the Contractor for each subsequent year. Increases in the contract amount for ensuing years shall not exceed the percentage of change in the U.S. Department of Labor, Consumer Price Index, All Items, Unadjusted, Urban Areas (CPI-U) for the twelve (12) month period ending in SEPTEMBER of each year of the Contract, and in no event shall exceed five percent (5%).

If the Contractor and the County do not agree on a Subsequent Contract Amount using the procedure set forth above by the thirtieth (30th) calendar day prior to the end of 2015 or any Subsequent Contract Term, the County may terminate the Contract whether or not the County has previously elected to extend the term. The Contract Amount that changed as a result of this procedure shall become effective on the anniversary date of the Contract and shall be binding on the parties for the next Subsequent Contract Term.

7. 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.

8. RISK OF LOSS

Until such time as the Artwork is completely and finally installed at the Site, the County has accepted the Artwork, 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.

9. NOTICE OF FINAL ACCEPTANCE

Upon final and proper installation of the Artwork at the Site, the County will issue a Notice of Final Acceptance to the Artist. Whether the Artwork is finally and properly installed shall be in the sole discretion of the County. If the County determines that the Artwork is not properly installed, the County shall give the artist notice in writing of its objections to the installation. The Artist shall have 15 days to correct the County's written objections. Upon issuance of the Notice of Final Acceptance and the Artist's delivery of the Transfer of Title and Bill of Sale document in this Contract to the County, title to the Artwork shall pass from the Artist to the County.

10. WARRANTIES

A. The Artist hereby represents and warrants that the Artwork is solely the result of the artistic efforts of the Artist, and further represents and warrants that:

- 1) Except as otherwise disclosed in writing to the County, the Artwork is unique and original and does not infringe upon any copyright;
- 2) The Artwork, or any duplicate thereof, has not been accepted for sale elsewhere; and
- 3) The Artwork is free and clear of any liens from any source whatsoever.

B. The Artist hereby represents and warrants, except if previously disclosed in writing to the County, that:

- 1) The execution, fabrication, and installation of the Artwork will be performed in a workmanlike manner;
- 2) The Artwork, as fabricated and installed, will be free of defects in material and workmanship; and
- 3) Reasonable maintenance of the Artwork 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 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 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.

11. REPAIRS, MAINTENANCE AND RESTORATION

A. The County recognizes that the maintenance of the Artwork on a regular basis is essential to the integrity of the Artwork. The County therefore agrees to maintain and protect the Artwork, taking into account any written instructions provided to the County by the Artist. The County will make reasonable efforts to protect the Artwork 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 Artwork 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 Artwork.

- D. Notwithstanding any terms contained in this section, the Artist shall remain responsible for all repairs to the Artwork, regardless of their size or scope, during the two (2) year warranty period.
- E. Any and all repairs and restoration shall be made by qualified individuals in accordance with recognized principles of conservation.

12. REMOVAL AND REPOSITIONING OF THE ARTWORK FROM THE SITE; RESALE TO ARTIST

Nothing contained in this Agreement shall preclude any right of the County to remove the Artwork from public display. If the County should ever decide to deaccession the Artwork, due to the excessive cost of restoration or for any other reason during the Artist's lifetime, then the County will notify the Artist, at the address of which he last informed the County, of the County's decision. In the event that the Artist responds to the County's notice within 30 calendar days of receiving it, then the Artist will be given the opportunity to buy back the Artwork at the then-current fair market value of the Artwork, as such value is determined at that time by an USPAP-certified appraiser with a specialization in public art. The USPAP-certified appraiser will be mutually selected by the County and the Artist. The cost of the appraisal services will be shared by the County and the Artist equally. Provided that the Artist and the County agree on the value of the artwork then the Artist shall have the option to remove the Artwork after payment to the County for the Artwork. Upon payment for the Artwork, title to the Artwork shall pass to the Artist and the Artist shall restore the Site to a condition acceptable to the County at no cost to the County.

13. REPRODUCTION OF THE ARTWORK

- A. The Artist shall credit the County in any public showing of the Artwork, 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 Artwork. The County will obtain the written permission of the Artist prior to making any three-dimensional reproductions of the Artwork.
- C. All reproductions of the Artwork that are made by the County will credit the Artist and contain a copyright notice substantially in the form: ""©Donald Lipski, 2018".

14. 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.

15. 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.

16. ARLINGTON COUNTY BUSINESS LICENSES

The Artist agrees that he will comply with all applicable provisions of Chapter 11 ("Licenses") of the Arlington County Code, a copy of which can be found on the Arlington County Government website. Any business license required shall be from the date of the Notice to Proceed.

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 Artwork 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, Contractor 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 will be ordered to continue work.

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 Artwork, 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 either fifteen (15) days before termination of the Contract may occur (if the cure does not require travel by the Artist to Arlington County or the location where the Artwork is being fabricated) or thirty (30) days before termination of the Contract may occur (if the cure does require travel by the Artist to Arlington County or the location where the Artwork is being fabricated) ("Cure Period"). The County shall have sole authority to determine which Cure Period applies to a given failure to perform. 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 of delay in completing the project or the cost of repairing or correcting any unsatisfactory or noncompliant 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. In the event that such termination occurs when the Artwork has been completed through the approved fabrication phase, then the County shall have the right, at its option, to complete installation of the Artwork. The Artist shall, at his option, have the right to have his name credited or not. In such event of such completion of installation, the Artist shall be paid for all County-approved work up to the point of termination.

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. The County reserves the right to install or complete installation of approved fabricated Artwork, provided the Artist has been paid for the approved fabricated Artwork.

23. COUNTYEMPLOYEES

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 Artwork in its final form shall be unique, the Artist shall not make any additional exact duplicate, three-dimensional reproductions of the final Artwork, 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 Artwork shall pass to the County upon the County's written final acceptance of Artwork. The Artist grants the County on final acceptance an irrevocable, non-exclusive license to make two-dimensional reproductions of the Artwork 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. Any reproduction authorized by this article shall have a credit as follows - Name of work, Donald Lipski © 2014. Since the Artwork 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 artwork. 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 artwork 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 Artist, for the purposes of this article, shall be deemed Donald Lipski.

40. 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 pursuant to this Contract. The Artist agrees to maintain such insurance until the completion of this Contract. All required insurance coverage must be acquired from insurers authorized to do business in the Commonwealth of Virginia and acceptable to the County. The minimum insurance coverage shall be:

- A. Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 annual aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.
- B. Additional Insured - Arlington County, its officers, elected and appointed officials, and employees shall be named as an additional insured in the Artist's Commercial General Liability policy; a copy of the Additional Insured endorsement shall be provided with the certificate of insurance.
- C. Cancellation - All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage until thirty (30) days prior written notice has been given to the Purchasing Agent, Arlington County, Virginia." A copy of the endorsement shall be provided with the certificate of insurance.
- D. Contract Identification - The insurance certificate shall state this Contract's number and title.
- E. Business Automobile Liability - \$500,000 Combined Single Limit (Owned, non-owned and hired).

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 Artist's obligations under the Contract, or in connection in any way whatsoever with the contracted Work.

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 Artwork 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 shall be as fully responsible to the County for the acts and omissions of his subcontractors and of persons employed by him as he is for acts and omissions of persons directly employed by him.

41. 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.

42. AMENDMENTS

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

43. 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.

44. 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:

The Lipski Group
138 East 36th Street
Apt. 10-C
New York, NY 10016

TO COUNTY:

Richard D. Warren, Jr., Purchasing Agent
Arlington County
2100 Clarendon Boulevard, Ste. 500
Arlington, Virginia 22201

WITH A COPY TO:

Aliza Schiff, Public Art Project Manager
Arlington County, Virginia
1100 North Glebe Road, Ste.
1500
Arlington, Virginia 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.

45. 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.

46. 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)

47. SURVIVAL OF TERMS

In addition to sections in this Contract which specifically state that the term or paragraph survives the expiration of 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, RESALE TO ARTIST; 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.

48. 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.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

AUTHORIZED
SIGNATURE



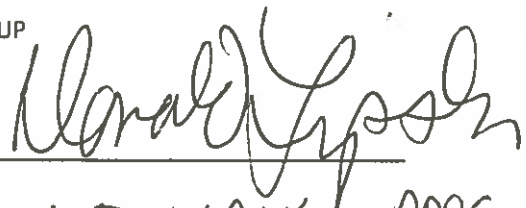
NAME: RICHARD D. WARREN, JR.
TITLE: PURCHASING AGENT

DATE:

2/25/15

THE LIPSKI GROUP

AUTHORIZED
SIGNATURE:



NAME AND
TITLE:

DONALD LIPSKI, PRES.

DATE:

2/19/15

**AGREEMENT NUMBER 590-13
EXHIBIT A
SCOPE OF WORK**

A. PROJECT COSTS

The total fee for the Work is \$230,000 and is all-inclusive, covering all aspects of this Contract, including but not limited to: meeting and work time, contract and project-related travel expenses, fabrication, materials, construction of foundation, installation 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. Lump sum payments will be made upon reaching the milestones described below as shown in Exhibit B.

The Contract Amount shall remain firm for calendar year 2015. The Contract Amount shall be negotiated by the County and the Contractor for each subsequent year. Increases in the contract amount for ensuing years shall not exceed the percentage of change in the U.S. Department of Labor, Consumer Price Index, All Items, Unadjusted, Urban Areas (CPI-U) for the twelve (12) month period ending in SEPTEMBER of each year of the Contract, and in no event shall exceed five percent (5%).

If the Contractor and the County do not agree on a Subsequent Contract Amount using the procedure set forth above by the thirtieth (30th) calendar day prior to the end of 2015 or any Subsequent Contract Term, the County may terminate the Contract whether or not the County has previously elected to extend the term. The Contract Amount that changed as a result of this procedure shall become effective on the anniversary date of the Contract and shall be binding on the parties for the next Subsequent Contract Term.

B. DESIGN, DIMENSIONS, MATERIALS, INSTALLATION

The Artwork shall be fabricated and installed so that it resembles the County-approved design, materials, details and dimension, as shown in Exhibit A, Appendix 1 and approved by the Public Art Committee of the Arlington Commission on the Arts on October 2, 2013.

C. OVERALL COUNTY RESPONSIBILITIES

1. The County will provide copies of existing designs, drawings, specifications, reports, and other existing relevant data related to the Project, if any, that will aid in the Artist's design, fabrication and installation of the Artwork.
2. The County will incorporate the hardscape details and specifications provided by the Artist into the construction documents for the Project, to the extent agreed to by the County during the Design Development phase.
3. The County will require its general construction contractor to develop a schedule in coordination with the Artist and ensure that the Site is ready for the Artwork installation by the date scheduled for such installation.
4. The County will landscape the site as agreed upon by the County and the Artist and install lighting for the Artwork in consultation with the Artist.
5. The County will provide and install a plaque on or near the Artwork containing a credit to the Artist and a copyright notice substantially in the following form: "©Donald Lipski, 2018".

D. DESIGN OF THE ARTWORK

1. The Artist shall submit to the County a design development proposal ("Design Development Proposal") to include further development of the approved design, including indication of scale, form, location, landscaping/hardscaping, foundation and footings, lighting and electrical load requirements, materials (samples to be provided where appropriate), information on structural and engineering considerations, surface integrity, permanence, and maintenance, as well as an outline of the proposed installation method and required time for fabrication. The Proposal shall include detailed drawings for cost estimating and provide a detailed budget breakdown of quantities and estimated costs; no more than

fifteen percent (15%) of the total contract amount shall be reserved for design fee purposes. The proposal will be reviewed via Skype or conference call.

2. If necessary, the Artist shall submit to the County a revised Design Development Proposal based upon the written comments provided to the Artist from the County Project Officer after the review of the Design Development Proposal.

3. Upon acceptance of the Design Development Proposal and issuance of a Notice to Proceed by the County, the Artist shall develop a set of detailed Construction Documents, to include details and specifications for the construction of the foundation, footing, ground plane, lighting, and the Artwork. The County will review the construction documents ("Construction Documents") and request revisions, if any.

4. If necessary, the Artist shall submit to the County revised Construction Documents based upon the written comments provided to the Artist from the County Project Officer after the review of the Construction Documents.

5. Upon acceptance of the Construction Documents, the Artist shall provide engineered drawings ("Engineered Drawings") signed and sealed by a Virginia-licensed engineer. Engineered Drawings shall be completed by the Artist and accepted by the County by July 30, 2015, unless otherwise agreed upon by both parties.

E. CHANGES TO DESIGN

1. The Artist shall present to the County, in writing, for further review and approval, any significant changes in the scope, design, color, size, material or texture of the Artwork not permitted by or not in substantial conformity with the Proposal. A "significant change" is any change in the scope, design, color, size, material, texture, or location of the Artwork on the Site that affects installation, scheduling, Site preparation, or maintenance of the Artwork or the concept of the Artwork as represented in the Artist's Proposal. Such notice shall also include a detailed description of any additional costs that may be incurred or changes to the Contract Amount that are proposed by the Artist.

2. If the County approves the change(s), the County will promptly notify the Artist in writing. County staff will also make any necessary presentations to the interested County departments and commissions.

3. If the County disapproves of the change(s), the County will promptly notify the Artist in writing and the Artist shall continue to fabricate the Artwork in conformity with the previously approved design(s).

F. FABRICATION OF THE ARTWORK

1. The Artist shall complete the fabrication of the Artwork in compliance with this Exhibit A, unless changes and or revisions are permitted in writing by the Project Officer.

2. The Artist shall fabricate the Artwork in accordance with the production and installation schedule for the Project as a whole. Fabrication of the Artwork shall be completed within two hundred and forty (240) days of the County's issuance of a Notice to Proceed to Fabrication. Such schedule may be amended by written agreement between the County, the Artist, and other contractors.

3. The Artist shall take reasonable measures to protect or preserve the integrity of the Artwork, such as the application of protective or anti-graffiti coatings, if applicable, unless the County disapproves. If the Artwork is being constructed on-site, the Artist shall take all reasonable actions within his power to ensure that he and his agents do not create any nuisance arising out of the Artist's operations at the Site.

4. The County shall have the right to review the Artwork at reasonable times during the fabrication thereof, upon reasonable notice. The Artist shall submit to the County monthly progress reports on the first Monday of each month, including photographs of the progress, in accordance with the schedule provided in Exhibit B.

5. If the County, upon review of the Artwork during fabrication, determines that the Artwork does not conform to the design or designs approved by the Project Officer, then the County may notify the Artist in writing of the deficiencies and the County shall have the right to withhold payments due to the Artist until the deficiency is corrected or satisfied.

6. The Artist shall promptly correct the deficiencies noted by the County and will notify the County in writing of completion of the correction. The County shall promptly review the Artwork, and upon approval, will release payments it has withheld, if any. If the Artist disputes the County's determination that the Artwork does not conform to approved designs, the Artist shall submit his reasons for disagreement in writing to the County within

fifteen (15) days. The County will make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether the Artist has complied with the terms of this Contract shall remain with the County.

7. The County will inspect the Artwork and notify the Artist in writing of the County's approval or disapproval (including reasons for disapproval) within ten (10) days after the receipt of the notification of completion of the fabrication of the Artwork from the Artist. The Artist shall then have fifteen (15) days from the date of issuance of the County's notice of the disapproval to make the necessary adjustments and to obtain the County's approval. Such adjustments shall be made by the Artist at no further expense to the County.

G. DELIVERY AND INSTALLATION

1. The Artist shall notify the County, in writing, when fabrication of the Artwork is completed and when the Artwork is ready for delivery and installation at the Site.

2. Prior to requesting authorization to transport and install the Artwork, the Artist shall be required to provide the County with a list of all workers or subcontractors and equipment to be used along with the hours of operation and the scope of work to be performed on Site. All additional workers or subcontractors must provide proof of insurance prior to entering the Site.

3. The County will attempt to notify the Artist of any matters of which the County is aware that may delay the installation of the Artwork. The County may choose to pay for the storage fee cost, if it is determined by the Project Officer that the delay is caused by the County, however it is the Artist's responsibility to inspect the Site in advance of the date(s) scheduled for the installation and to notify the County in writing if there are any Site conditions that will have an adverse impact on the installation schedule.

4. Upon the County's final approval of the completed Artwork as being in conformity with the design(s), the Artist shall deliver and install the completed Artwork at the Site in accordance with the coordinated and mutually agreed project schedule, to be developed by Arlington County, the County's general contractor, and the Artist at a later date after the approved construction schedule is known. Any and all costs, fees and taxes related to shipping, delivery, or completion of the Artwork (including customs fees, broker fees, and other handling charges) shall be paid by the Artist and not by the County.

5. The Artist shall coordinate closely with the County and with the County's general contractor to ensure that the Site is ready to receive the Artwork prior to completion of the base construction contract. The Artist shall notify the County of any adverse conditions at the Site that would affect or impede the installation of the Artwork. The Artist shall be responsible for the timely installation of the Artwork. The Artist shall confer and coordinate with the County's Project Officer and with the County's general contractor to ensure coordination with construction operations and schedules. The Artist may not install the Artwork until authorized in writing by the County's Project Officer to do so. The Artist shall deliver and install the completed Artwork at the Site in compliance with the approved construction schedule that will be provided by the County in writing to the Artist for this Contract.

6. The Artist shall be present at the Site throughout installation in order to supervise the installation of the Artwork.

7. The Artist shall be responsible for all expenses, labor, and equipment to prepare the Site for the installation of the Artwork, including public access, as well as security for the Artwork.

8. The Artist shall be responsible for any and all damages to the Site that occur during and as a result of the installation of the Artwork.

9. Upon written acceptance of the Artwork by the County, the Artwork shall be deemed to be in the custody of the County for the purposes of section I.1. of this Exhibit.

10. Within thirty (30) days after installation of the Artwork, the Artist shall furnish the County the following photographs of the Artwork as installed:

i. Two (2) sets of 8" x 10" prints of the Artwork at three (3) different stages of fabrication. The prints shall be printed in full color and on glossy paper;

ii. A set of three (3) digital, 300 dpi, JPG or TIFF files, of the completed and installed Artwork, on a CD-ROM compact disc. Photographs shall be labeled with the name of the Artwork, the date the photograph was taken, and the viewpoint from which the photograph was taken. The Artist shall also furnish the County with a full written narrative description of the Artwork.

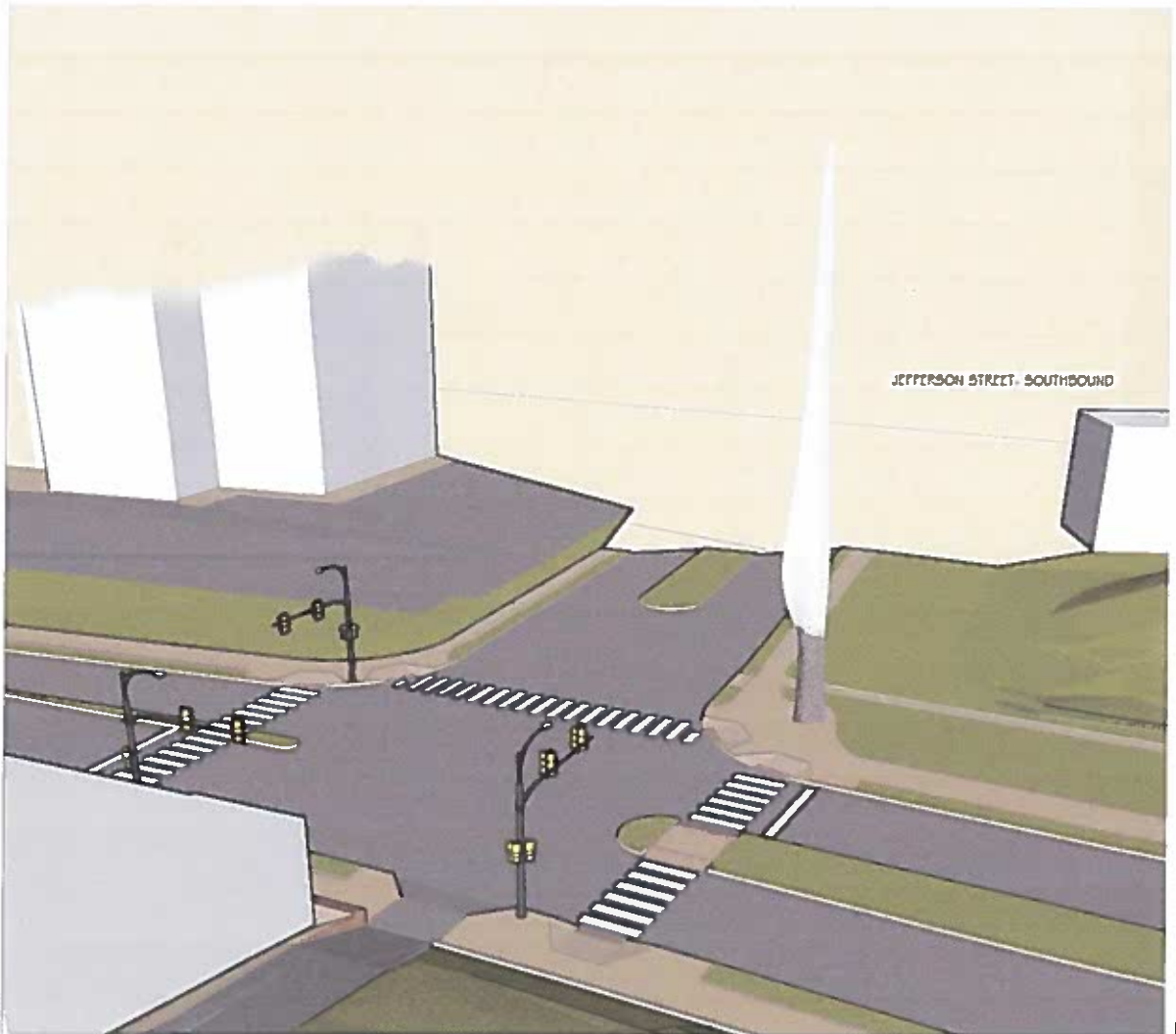
11. Within thirty (30) days after the installation of the Artwork, the Artist shall provide the County with written instructions for the appropriate maintenance and preservation of the Artwork along with product data sheets for any materials or finish used in the Artwork or its installation. The Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation and considerable movement of people and equipment. The Artist must ensure that all maintenance requirements will be reasonable in terms of time and expense. The County will be responsible for the proper care and maintenance of the Artwork after its installation and acceptance. The Artist shall also submit a recent résumé and Artist Statement specifically pertaining to the Artwork. The County will be responsible for the cost to create a plaque for the Artwork. The plaque will be written, produced and installed by the County.

H. APPROVAL AND ACCEPTANCE

1. After the Artist has submitted written notice of final installation to the County, the County shall notify the Artist of its final acceptance of the Artwork within fifteen (15) days. The date of final acceptance shall be the date on which the County submits written notice to the Artist of the County's final acceptance of the Artwork. The final acceptance shall be understood to mean that the County acknowledges completion of the Artwork in substantial conformity with the approved design, and that the County confirms that all services as required of both parties by this Contract have been completed. Title to the Artwork shall pass to the County upon final acceptance and final payment by the County, and delivery of a fully executed Transfer of Title and Bill of Sale document by the Artist to the County.
2. If the County disputes that all the services have been performed, the County shall 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.
3. If the Artist disputes the County's determination that not all services have been performed, 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.
4. 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 Artwork.
5. After final acceptance of the Artwork, 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 and community outreach functions, as well as any inauguration or presentation ceremonies relating to the dedication of the Artwork;
 - a) During such public presentations by the Artist, the Artist shall acknowledge the County's role in funding the Artwork.
 - b) The County shall be solely responsible for coordinating public information materials and activities related to public presentations regarding the Artwork.
 - c) The costs associated with the Artist's attendance at such meetings and functions are included in the Contract Amount, and the County shall not owe the Artist any additional costs or reimbursement associated with that attendance.
6. The requirements of this section shall survive the conclusion of the Contract Term.

**EXHIBIT A
APPENDIX 1**

The Artwork shall consist of a wind turbine blade, approximately 50 feet tall and a concrete base, approximately 10 feet tall, with coins attached to the base, to generally resemble the illustration below.



EXHIBIT

AGREEMENT 590-13
EXHIBIT B
PAYMENT, SCHEDULE, AND MILESTONES

PAYMENT INSTALLMENTS

The County agrees to pay the Artist in seven (7) 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 Contract Amount shall remain firm for calendar year 2015. The Contract Amount shall be negotiated by the County and the Contractor for each subsequent year. Increases in the contract amount for ensuing years shall not exceed the percentage of change in the U.S. Department of Labor, Consumer Price Index, All Items, Unadjusted, Urban Areas (CPI-U) for the twelve (12) month period ending in SEPTEMBER of each year of the Contract, and in no event shall exceed five percent (5%).

If the Contractor and the County do not agree on a Subsequent Contract Amount using the procedure set forth above by the thirtieth (30th) calendar day prior to the end of 2015 or any Subsequent Contract Term, the County may terminate the Contract whether or not the County has previously elected to extend the term. The Contract Amount that changed as a result of this procedure shall become effective on the anniversary date of the Contract and shall be binding on the parties for the next Subsequent Contract Term.

ACTIVITY	PAYMENT
<p>Execution of Contract. The County will approve the invoice and authorize the payment when the Artist submits an invoice along with a Final Design Schedule outlining the dates for completion and reviews of the Design Development Proposal, Construction Documents, and Engineered Drawings. Design Development Proposal, Construction Documents, and Engineered Drawings shall be completed by the Artist and approved by the County by April 30, 2015, unless otherwise agreed upon by both parties. Payment may take up to 30 days from execution of Contract and will be processed immediately upon approval of a Purchase Order.</p>	<p style="text-align: center;">Payment 1 \$20,000.00*</p>
<p>Presentation of Design Development Proposal.</p> <p>The County will review the Design Development Proposal and deliverables and provide written comments to Artist.</p>	<p style="text-align: center;">No Payment</p>
<p>Submission of Revised Design Development Proposal.</p> <p>If requested by the County, the Artist will submit a revised design development proposal based on the written comments provided to the Artist by the Project Officer. County will review and if accepted will give Artist notice to proceed to Construction Documents. County will approve the invoice and authorize the payment upon acceptance of Design Development Proposal.</p>	<p style="text-align: center;">Payment 2 \$10,000.00*</p>

<p>Construction Documents</p> <p>The Artist shall submit a set of detailed Construction Documents to the County. The County will review and provide written comments to Artist.</p>	<p>No Payment</p>
<p>Revised Construction Documents</p> <p>If requested by the County, the Artist will submit revised Construction Documents based on the written comments provided to the Artist by the Project Officer. The County will approve the invoice and authorize the payment upon acceptance of Construction Documents and delivery of Engineered Drawings of Artwork signed and sealed by a Virginia-licensed engineer.</p>	<p>Payment 3 \$40,000.00*</p>

<p>Construction Oversight and Coordination The Artist will review and approve any work done by the County or its contractors to prepare the Site for the Artwork and will coordinate with the County and its contractors to develop a Construction, Fabrication and Installation Schedule. The Construction, Fabrication and Installation Schedule will be subject to the approval of the County Project Officer and shall be consistent with the activities set forth in this Exhibit B.</p>	<p style="text-align: center;">No Payment</p>
<p>Notice to Proceed to Fabrication The County will issue a Notice to Proceed to Fabrication based on the Artist's stated required time for fabrication and the Project's construction schedule. The County will approve the invoice and authorize the payment upon issuance of the Notice to Proceed to Fabrication and receipt of an invoice.</p>	<p style="text-align: center;">Payment 5 \$55,000*</p>
<p>Fabrication The County will approve the invoice and authorize the payment upon inspection and acceptance of completion of fabrication of the Artwork, as documented by photos taken of the Artwork and submitted by the Artist to the County Project Officer, along with an invoice. The County will approve the invoice and authorize the payment upon acceptance of the completion of fabrication.</p>	<p style="text-align: center;">Payment 6 \$50,000*</p>
<p>Installation The County will conduct a site visit to verify that the installation of the Artwork is completed and acceptable. The County will approve the invoice and authorize the payment upon acceptance of installation.</p>	<p style="text-align: center;">Payment 7 \$50,000.00*</p>
<p>Final Payment The County will approve the invoice and authorize payment when the entirety of the Work is complete, Artist submits an invoice along with final Artwork documentation, as-builts, an inspection and maintenance manual, and transfer of ownership of the Artwork to the County.</p>	<p style="text-align: center;">Payment 8 \$5,000.00*</p>

TOTAL PAYMENTS

\$230,000.00*

**AGREEMENT NUMBER 590-13
EXHIBIT C
TRANSFER OF TITLE AND BILL OF SALE**

STATE OF _____

CITY / COUNTY OF _____

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, The Lipski Group, 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 Artwork commissioned by Agreement No. 590-13 executed on _____.

Title:

Location:

IN WITNESS WHEREOF, The Lipski Group has executed this Transfer of Title and Bill of Sale on this the ____ day of _____, 20__.

DONALD LIPSKI

ADDRESS

Sworn to and subscribed before me this ____ day of _____, 20__.

NOTARY PUBLIC

My Commission Expires:
(NOTARY SEAL)