

PERCENT FOR ART: DESIGN/BUILD CONTRACT

AGREEMENT

BETWEEN

ARTIST

KAMEELAH JANAN RASHEED

AND

CONSTRUCTION MANAGER

LIRO ENGINEERS, INC.

AGREEMENT by and between LiRo Engineers, Inc. (the "**Construction Manager**"), with an office located at One State Street Plaza, 28th Floor, New York, NY 10004 and a primary place of business located at 3 Aerial Way, Syosset, NY 11791 and Kameelah Janan Rasheed (the "**Artist**"), residing at 110 New York Ave. #5K, Brooklyn, NY 11216.

WHEREAS, the New York City Economic Development Corporation ("**NYCEDC**"), a corporation formed pursuant to the Not-for-Profit Corporation Law of the State of New York has entered into a contract with the Construction Manager whereby the Construction Manager shall perform certain design and construction phase services for the City on a public project that involves the construction or the substantial renovation of the Willoughby Square public open green space in the borough of Brooklyn, New York City (the "**Project**");

WHEREAS, pursuant to Section 224 of the City Charter ("**Section 224**"), the City of New York (the "**City**") has instituted the Percent for Art Program ("**Percent for Art Program**"), a public art program within the City's Department of Cultural Affairs which requires the allocation of certain capital funds for the establishment of art works in public places;

WHEREAS, the Artist has been selected in accordance with regulations promulgated by the Mayor and by procedures adopted by the Percent for Art Program pursuant to Section 224 to design, fabricate and install a certain work of art as further described in Exhibit A hereto ("**Art Work**") in a public space to be improved by the Project and located at the south side of Willoughby Street between Albee Square West and Duffield St, Brooklyn, NY 11201 (the "**Site**");

WHEREAS, the Site is under the jurisdiction of the [New York City Department of Citywide Administrative Services ("**DCAS**")];

WHEREAS, design and construction services for the Site will be performed under the jurisdiction of the NYCEDC;

WHEREAS, the City has established certain procedures for the commissioning of works of public art through the Percent for Art Program;

WHEREAS, the Construction Manager is required by NYCEDC to retain the services of Artist for the design, fabrication and installation of the Art Work;

WHEREAS, the Construction Manager and Artist desire to undertake this Agreement to design, build and install the Art Work for the Project;

WHEREAS, the parties intend for the City to be a third-party beneficiary of this Agreement;
and

WHEREAS, the Artist selected for this task possesses an array of skills necessary to design and create as well as supervise the actual fabrication and installation of the desired Art Work.

NOW THEREFORE, the parties hereby agree as follows:

ARTICLE 1. SCOPE OF SERVICES

1.1. General Provisions

- A. Subject to the review and approval procedures set forth in this Agreement, the Artist shall:
- i) determine the form of artistic expression used in the creation of the Art Work, including, but not limited to, the choice of size, material, texture and color;
 - ii) be responsible for the design, fabrication and installation of the Art Work in accordance with the terms of this Agreement and the Scope of Work ("**Scope of Work**") set forth in Exhibit B hereto;
 - iii) unless otherwise indicated in this Agreement, furnish all supplies, labor, material and equipment necessary for the design, fabrication, transportation, installation and signage of the Art Work;
 - iv) cooperate with the Construction Manager to ensure the Art Work is integrated with the design of the underlying Project and complies with all Legal Requirements (as defined below);
 - v) obtain the insurance required under the terms of Article 5.
- B. The Construction Manager shall be responsible for the following:
- i) monitoring compliance by and acting as liaison with the Artist with regard to certain procedures as set forth in this Agreement;
 - ii) making payments to the Artist for services performed; and,
 - iii) integrating the Art Work created hereunder with the design of the underlying Project, advising the Artist of all applicable statutes, ordinances and regulations of any governmental regulatory body, whether Federal, State and City, having jurisdiction over the Project (collectively, "**Legal Requirements**"), and monitoring the Artist's compliance with said requirements.
- C. As directed by NYCEDC and the Percent for Art Program (collectively, the "**City Parties**"), the Artist, and if requested by NYCEDC, the Construction Manager, shall be available to meet with community representatives, including but not limited to the Community Board in which the Project is located, to discuss the Artist's proposal during the Conceptual and Preliminary Design review phases outlined below, and at such other times as may reasonably be specified by the City Parties. Notwithstanding the foregoing, but subject to the review procedures set forth in Articles 1.2 through 1.6, the final decision on artistic expression shall remain with the Artist.
- D. The Construction Manager and the Artist shall use their best efforts to establish a cooperative, consultative relationship with each other throughout the duration of this Agreement.
- E. The City of New York is an intended beneficiary of this Agreement. The parties agree that the City may enforce the provisions of this Agreement as if it were a party.

1.2. Conceptual Design Review

- A. Within a reasonable amount of time after the execution of this Agreement, as determined by the City Parties and the Construction Manager (collectively, the “**Core Review Group**” or “**CRG**”), the Artist shall conduct such reasonable site inspections with the Construction Manager (if required by NYCEDC or the City Parties), interviews and research as may be necessary in order to prepare a preliminary concept, including meeting with the Core Review Group. The Construction Manager shall make available to the Artist, or request that NYCEDC make available, background information on the Project and the Site that may be relevant to the eventual installation of the Art Work. This shall include a detailed description of conditions applicable to that portion of the Site where the Art Work will be located (lighting, electrical outlets or feeds, air vents, etc.)
- B. Within a reasonable amount of time after the execution of this Agreement, as determined by the Core Review Group, the Artist shall prepare and submit a conceptual design (the “**Conceptual Design**”) to the Construction Manager. The Conceptual Design shall include drawings and/or any other documents and models as are required to present a meaningful representation of the concept and design of the proposed Art Work in content, detail and form as may be required by the Public Design Commission of the City of New York (“**Design Commission**”). The Conceptual Design shall also include a budget (the “**Project Budget**”) in a format to be provided by the Percent for Art Program, such budget not to exceed the Contract Price set forth in Article 2.1. Such budget shall (i) contain a preliminary estimate of all projected costs for design, execution, fabrication, insurance (including but not limited to fine arts insurance if such insurance is required under the terms of Exhibit B), storage (if any), transportation, installation, signage of the Art Work and the Artist’s fee; (ii) identify any proposed subcontractors, and describe the work to be performed by and the fee to be paid to such subcontractor; and (iii) be consistent with the payment schedule set forth in Exhibit C. Upon approval of the Conceptual Design by the Core Review Group as set forth in Article 1.2(C), all expenditures by the Artist shall be made substantially in accordance in with the terms of the approved Project Budget, and any subsequent revision of such Project Budget by the Artist must be approved in advance by the Core Review Group.
- C. Upon the submission of the Conceptual Design to the Construction Manager, the Construction Manager shall arrange for review of the Conceptual Design by the Core Review Group. This will include a feasibility review considering the technical constraints of the Site and potential engineering issues. The Artist shall make such revisions to the Conceptual Design as may be requested by the Core Review Group pursuant to the foregoing review until the Conceptual Design is approved by the Core Review Group.
- D. If the Conceptual Design is approved after the review required under Article 1.2(C), the Percent for Art Program, together with the Artist, and if requested by NYCEDC, the Construction Manager, may present the Conceptual Design to the Community Board in which the Art Work is located to discuss the Art Work and its integration into the community. The decision to present the Conceptual Design to the Community Board shall be at the discretion of the City.
- E. Following presentation of the Conceptual Design to the Community Board as set forth in Article 1.2(D), or if no such presentation is made, after the Conceptual Design is approved as set forth in Article 1.2(C), the Percent for Art Program shall submit the Conceptual Design to

the Design Commission for review. During the period in which the Design Commission is considering the Conceptual Design, the Artist and the Construction Manager shall be available to meet with the City Parties and the Design Commission to discuss the Conceptual Design.

- F. If the Design Commission rejects the Conceptual Design, the Percent for Art Program shall provide the Artist with a copy of the Design Commission's rejection. The Artist shall, at his or her own expense, submit a revised Conceptual Design to the Design Commission within the time period specified by the Design Commission, provided, however, that the Artist shall first submit the revised Conceptual Design to the Construction Manager who shall arrange for review and approval of such revisions in the manner set forth in Article 1.2(C). Upon approval of the revised Conceptual Design by the Core Review Group, the Percent for Art Program shall use best efforts to submit the revised Conceptual Design to the next regularly scheduled Design Commission meeting following such approval. If the revised Conceptual Design is rejected, the Percent for Art Program shall provide the Artist with a copy of the Design Commission's rejection notice, this Agreement shall then terminate, and the parties shall be under no further obligation to each other except as set forth in Article 11.

1.3. Preliminary Design Review

- A. Within a reasonable amount of time after the Design Commission's approval of the Conceptual Design, as determined by the Core Review Group, and after consultation and collaboration with the Core Review Group, the Artist shall prepare and submit to the Construction Manager a detailed preliminary design for the Art Work ("**Preliminary Design**"). The Preliminary Design submission shall specify the materials, dimensions, weight, finish, proposed site preparation requirements and proposed installation method, and any additional modifications to the Site necessary to prepare it for the Art Work. Additionally, the Preliminary Design shall include (i) working drawings of the Art Work, and its placement at the Site; (ii) a report by an art conservator containing proposed recommendations with cost estimates for appropriate maintenance and preservation of the Art Work (the "**Preliminary Maintenance Recommendations**"); (iii) if requested by the City Parties, a description and layout of the plaque (the "**Plaque**") to be installed in connection with the Art Work as set forth in Article 7.1; and (iv) such other graphic material as may reasonably be requested by the City Parties as necessary to make a presentation of the Art Work and required site preparation to the Design Commission. To assist the Artist in preparing the Preliminary Design, following approval of the Conceptual Design, the Construction Manager shall furnish to or obtain for the Artist all drawings, material samples and similar documentation from the underlying Project provided by the City Parties necessary to enable the Artist to prepare the Preliminary Design in compliance with any applicable Legal Requirements.
- B. Upon the submission of the Preliminary Design to the Construction Manager, the Construction Manager shall arrange for review of the Preliminary Design by the Core Review Group for (i) conformity with the Conceptual Design as approved by the Design Commission and applicable Legal Requirements; and (ii) the feasibility of construction, both in terms of fabrication of the Art Work and its eventual installation, and maintenance considerations. The Artist shall make such revisions to the Preliminary Design (including the Preliminary Maintenance Recommendations) as are necessary to comply with all applicable Legal Requirements and such other revisions as may be requested by the Core Review Group pursuant to the foregoing review until the Preliminary Design is approved by the Core Review Group.

- C. Upon approval of the Preliminary Design by the Core Review Group as set forth in Article 1.3(B) (the “**CRG Approved Preliminary Design**”), the Percent for Art Program, together with the Artist and the Construction Manager, may present the CRG Approved Preliminary Design to the Community Board in which the Art Work is located to discuss the Art Work and its integration into the community. The decision to present the CRG Approved Preliminary Design to the Community Board shall be at the discretion of the City.
- D. Following presentation of the CRG Approved Preliminary Design, to the Community Board as set forth in Article 1.3(C), or if no such presentation is made, after the Preliminary Design is approved as set forth in Article 1.3(B), the Percent for Art Program shall submit the CRG Approved Preliminary Design to the Design Commission for review. During the period in which the Design Commission is considering the CRG Approved Preliminary Design, the Artist and the Construction Manager shall be available to meet with the City Parties and the Design Commission to discuss the CRG Approved Preliminary Design.
- E. If the Design Commission rejects the CRG Approved Preliminary Design, the Percent for Art Program shall provide the Artist with a copy of the Design Commission's rejection notice. The Artist shall, at his or her own expense, make a resubmission to the Design Commission within that period of time specified by the Design Commission, provided, however, that the Artist shall first submit the revised Preliminary Design to the Construction Manager who shall arrange for review and approval of such revisions in the manner set forth in Article 1.3(B). Upon approval of the revised Preliminary Design by the Core Review Group, the Percent for Art Program shall use best efforts to submit the revised Preliminary Design to the next regularly scheduled Design Commission meeting following such approval. If the revised Preliminary Design is rejected, the Percent for Art Program shall provide the Artist with a copy of the Design Commission's rejection notice, this Agreement shall then terminate and the parties shall be under no further obligation to each other than as set forth in Article 11.

1.4. Fabrication of the Art Work

- A. After the Preliminary Design has been approved by the Design Commission (the “**Approved Design**”), but prior to fabrication of the Art Work, the Artist shall furnish the Core Review Group with (i) shop drawings that detail appearance, location, performance, attachment and prescriptive descriptions from the approved project design and must include any relevant specifications and a list of any third-party contractors required to complete the Art Work or its installation, and (ii) a schedule for completion of the Art Work's fabrication and installation, including a schedule for the submission of progress reports; the Construction Manager, in turn, shall submit such schedule and shop drawings for approval by the City Parties. Upon written approval of the drawings, specifications, and schedule (the “**Approved Schedule**”) and receiving written notice to proceed to fabrication from the Core Review Group (the “**Notice to Fabricate**”), the Artist shall complete the Art Work's fabrication and installation in accordance with the Approved Schedule. The Approved Schedule may be amended only by written agreement between the Construction Manager and the Artist and with the prior consent of the City Parties. The Construction Manager shall at regular intervals give the Artist reports on the progress of the Project and any delays that may have an impact on the Approved Schedule, and the Approved Schedule shall be adjusted accordingly.
- B. If requested by the CRG, the Artist shall present such shop drawings to a qualified engineer licensed in the State of New York for certification that the Art Work will be of adequate structural, electrical, plumbing or other engineered integrity and the Artist shall provide the

Core Review Group with such certification, signed and stamped by such licensed engineer. In the event such engineering services are not to be provided as part of the underlying Project, all costs associated with such services shall be included in the Contract Price for the Art Work set forth in Article 2.1 herein (or otherwise be borne by the Artist).

- C. The Core Review Group shall have the right to review the Art Work at reasonable times during fabrication. The Artist shall submit progress reports as specified in the Approved Schedule to the Construction Manager who shall in turn provide copies of such reports to the City Parties.
- D. (1) The Artist shall complete the Art Work's fabrication and installation in substantial conformity with the Approved Design, provided, however, that the Artist shall cease fabrication and immediately present in writing to the City Parties for further review and approval any proposed significant changes to the Art Work not permitted by, or not in substantial conformity with, the Approved Design. For the purpose of this Agreement, a significant change is any change in the scope, design, color, size, or material of the Art Work, which affects cost, installation, site preparation, maintenance, visual appearance and/or concept as represented in the Approved Design. Following such approval, the Percent for Art Program shall present such change to the Design Commission for its approval. The Artist shall not re-commence the fabrication of the Art Work, until such time as he or she has received written notice to do so from the Percent for Art Program.

(2) In connection with the submission of the proposed change to the Design Commission, the Artist shall at his or her own cost furnish Percent for Art Program with such additional materials as may be reasonably requested by Percent for Art Program for purposes of such submission.

1.5. Installation

- A. The Artist shall notify the Construction Manager in writing when the Art Work is completed and ready for delivery and installation. The Construction Manager shall notify the other members of the Core Review Group that the Art Work has been completed and is ready for inspection by the City. The Core Review Group shall review the Art Work for conformity with the Approved Design and shall either indicate preliminary acceptance ("**Preliminary Acceptance**"), or shall advise the Artist as to any additional work that may be necessary to enable Preliminary Acceptance of the Art Work.
- B. Upon the Artist's receipt of Preliminary Acceptance, the Artist shall deliver and install the completed Art Work at the Site on or before the date for installation provided for in the Approved Schedule.
- C. The Construction Manager shall be responsible for all ordinary and reasonable expenses, labor and equipment necessary to prepare the Site for the installation of the Art Work and the Plaque, if any, including landscaping, plumbing, lighting and footings for the Art Work, provided, however, that all such work ("**Required Site Preparation**") shall have been fully outlined and approved in advance by the City Parties as part of the Approved Design. If upon the Artist's receipt of Preliminary Acceptance, the Required Site Preparation has not been completed, the Artist shall submit to the Core Review Group a list of the ordinary and reasonable expenses necessary to complete the Required Site Preparation and a summary of the work remaining to be done. If this list and summary are approved by the Core Review Group in writing, the Artist may execute the work accordingly, and the Contract Price set forth

in Article 2.1 herein shall be increased and Exhibit C amended to reflect the approved additional expenses as reimbursement.

1.6. Post-Installation and Final Acceptance

- A. The Artist shall notify the Construction Manager in writing that the Art Work is installed, who shall in turn notify the other members of the Core Review Group. The Core Review Group shall inspect the Art Work and its installation within thirty (30) days after receiving such notification and shall either notify the Artist in writing that the Art Work as installed is ready for review and acceptance by the Design Commission or advise the Artist as to any additional work that may be necessary so as to enable such installation to be ready for Design Commission review and acceptance.
- B. Within sixty (60) days after receiving notice that the Art Work is ready for review by the Design Commission as set forth in Article 1.6(A), the Artist shall furnish the Percent for Art Program with the following:
- i) A description of the Art Work in Word format;
 - ii) Printed photographic documentation of the installed Art Work, consisting of three sets of professional-quality color photographs printed on photo-quality paper of the completed work, taken from at least three different viewpoints (details and in situ), as well as a view of the Plaque, and a depiction of how the public interacts with the Art Work;
 - iii) Digital photographic documentation of the installed Art Work as outlined in subparagraph (ii) above, consisting of high-resolution JPEG or TIFF files of color images of the Art Work as installed, image resolution to be minimum 300 dpi/1024 x 760 pixel size, all such content to be capable of being viewed on an IBM/PC compatible system;
 - iv) Pursuant to specifications provided by the Percent for Art Program, audio and video recordings or any other educational or informational materials that document the Artist's process and the completed Art Work for the purposes of making the Art Work programmatically accessible to the public (the "**Educational Recordings**"). The Educational Recordings shall be at least one (1) minute long in duration, contain any necessary credits, use an open format so that it may be easily played on most media players, include links to hosting platforms, and be available for download in high-resolution format;
 - v) Final recommendations for appropriate maintenance and preservation of the Art Work, based on the Preliminary Maintenance Recommendations included in the Preliminary Design submission and approved by the Design Commission as part of the Approved Design (these recommendations may be included in the CD or DVD furnished in response to subparagraph (vi) below); and
 - vi) One (1) universal serial bus (USB) flash drive (or such other method as the City Agencies may approve) for each of the City Parties and the Construction Manager that includes all the materials listed in subparagraphs (i) through (v) above.

- C. The Percent for Art Program will submit the required material to the Design Commission for final approval at its next regularly scheduled meeting. The Design Commission will review the Art Work to determine its conformity with the Approved Design. The Construction Manager and the Artist shall be available to meet with the Design Commission to discuss the Art Work. The Percent for Art Program shall notify the Artist of the Design Commission's decision on the Art Work.
- D. If the Design Commission rejects the final Art Work, the Percent for Art Program shall provide the Artist and Construction Manager with a copy of the Design Commission's Certificate of Resolution rejecting the final Art Work and the Artist shall revise the Art Work, at the Artist's expense, within the time period specified by the Design Commission. After approval of the revised Art Work by the Core Review Group, the final Art Work shall be re-inspected by the Design Commission. If the resubmitted Art Work is again rejected, the Percent for Art Program shall provide the Artist and Construction Manager with a copy of the Design Commission's Certificate of Resolution rejecting the resubmission, final payment shall be withheld, this Agreement shall then terminate and the parties shall be under no further obligation to each other than as set forth in Article 11.
- E. If the Design Commission approves the final Art Work ("**Final Acceptance**"), the Percent for Art Program shall notify the Artist in writing of the Design Commission's acceptance of the Art Work.
- F. Final Acceptance shall be effective as of the date of the Design Commission's final Certificate of Resolution accepting the Art Work, provided, however, that the Artist shall have first submitted to the Percent for Art Program all documentation required to properly catalog the Art Work in the City's art collection, including the final Preliminary Maintenance Recommendations as approved by the Design Commission at Final Acceptance (the "**Approved Maintenance Recommendations**"). The Construction Manager will send a copy of the Certificate of Resolution indicating Final Acceptance to the Artist.
- G. The Artist shall be available at such time or times as may be agreed among the City Parties and the Artist to attend any inauguration or presentation ceremonies relating to the Art Work.

1.7. Risk of Loss

The risk of loss or damage to the Art Work shall be borne by the Artist until Final Acceptance. The Artist shall take appropriate measures to protect the Art Work from loss or damage until such acceptance, including, but not limited to, obtaining fine art insurance. The cost of such insurance shall not serve to increase the Contract Price referred to in Article 2.1(A), but rather should be included in the Project Budget to be submitted as part of the Conceptual Design. Notwithstanding the above, the risk of loss or damage shall be borne by the Construction Manager while the Site is in the custody, control, or supervision of the Construction Manager or its agents, except to the extent that any loss or damage to the Art Work is the result of the Artist's negligence or intentional or willful misconduct.

ARTICLE 2. COMPENSATION AND PAYMENT SCHEDULE

2.1. Fee Schedule and Payment Requisition

- A. The Artist shall be paid a fee up to Six Hundred Eighty-Nine Thousand Dollars (\$689,000) (the “**Contract Price**”) in accordance with the milestones identified in the schedule attached as Exhibit C hereto, each installment contained therein to represent full and final payment for all services and materials provided up to the date of the relevant milestone. The Contract Price shall constitute full compensation for all services to be performed, and materials to be furnished, by the Artist under this Agreement, and the Artist shall not be entitled to any additional fees unless expressly agreed to in advance and in writing by the City Parties.
- B. (1) As each milestone is completed, the Artist shall submit to the Construction Manager in a format to be specified by the Construction Manager a requisition for payment of the amount referenced in Exhibit C as owed upon completion of such milestone. Such payment shall only be made upon certification by the Construction Manager that the Artist has satisfactorily performed the work necessary to achieve the relevant milestone and, where applicable, such work has been approved by the City Parties and the Design Commission.
- (2) The Construction Manager shall review the requisition promptly upon its submission and within ten (10) business days shall either certify the requisition for payment or notify the Artist as to the reasons why the requisition cannot be certified. Upon certification, the Construction Manager shall present the requisition to NYCEDC for payment as part of the Construction Manager’s next request for payment by NYCEDC.
- (3) The Construction Manager shall pay the Artist for work performed under this Agreement no later than ten (10) business days after receipt of payment(s) to the Construction Manager by the City under its contract for the Project. The Construction Manager shall be solely responsible for making payments to the Artist under this Agreement.

ARTICLE 3. TIME OF PERFORMANCE

3.1. Duration

The Artist's required services set forth in Exhibit B shall commence upon the execution of this Agreement and thereafter shall be performed as provided in the Approved Schedule, provided that the deadlines stated in the Approved Schedule may be extended by written agreement between the Artist and the Construction Manager with the written approval of the CRG. Said Approved Schedule shall coincide, as closely as possible, to the Project schedule as developed by the Construction Manager.

3.2. Construction Delays

In the event that the Artist completes the Art Work's fabrication in accordance with the Approved Schedule and is delayed from installing it on or before the time specified as a result of delays in either (a) the Project or (b) the Required Site Preparation, and the Artist notifies the Construction Manager that the Art Work is ready for installation, the Artist shall be reimbursed for reasonable transportation and storage related costs incurred and approved in advance in writing by the City Parties for the period between the time specified in the Approved Schedule for installation and the date upon which work on the Project or the Required Site Preparation is sufficiently completed to reasonably permit the Art Work's installation. With regard to such reimbursement, the Contract Price and Exhibit C shall be amended to reflect the approved additional expenses. In the alternative, the City may elect to make arrangements to have the Art Work stored at the City's expense until such time as it can be installed.

3.3. Early Completion of the Art Work

The Artist shall bear the cost of transporting and storing the Art Work should it be completed prior to the Approved Schedule.

3.4. Time Extensions

A reasonable extension of time will be granted in the event there is a delay on the part of the City Parties in providing the reviews or acceptance necessary under this Agreement, or in completing the Project, or if conditions beyond the Construction Manager's or Artist's control or acts of God render performance of services impossible. Failure to fulfill contract obligations due to conditions beyond either party's reasonable control shall not be considered a breach of contract. Notwithstanding the above, the time for the performance of the parties' obligations shall only be extended for a period equal to the duration of the contingency that occasioned the interruption or delay.

ARTICLE 4. WARRANTIES

4.1. Warranties and Representations

The Artist represents and warrants that the Artist has read, understands, and is in compliance with all of the terms of Article 7 of Exhibit D hereto. For the purposes of Article 7 of Exhibit D, the word "Consultant" shall be replaced with "Artist" and all warranties and representations shall be applicable to both the Construction Manager and the Artist.

4.2 Warranties of Title

The Artist represents and warrants that: (a) the Art Work is the Artist's original creation and is solely the result of the Artist's artistic effort; (b) the Art Work does not infringe upon any copyright, trademark or any other property or personal right; (c) the Art Work or an exact duplicate thereof, has not been offered or accepted for sale, display or exhibition elsewhere; (d) the Art Work is free and clear of liens or encumbrances from any source whatsoever; (e) Artist knows of no adverse claims to the Art Work and (f) the Art Work is not in the public domain.

4.3. Warranties of Quality and Condition of the Art Work

- A. The Artist represents and warrants that: (i) the Art Work's execution and fabrication will be performed in a workerlike manner; (ii) the Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects consisting of inherent vice, defined as qualities which cause or accelerate deterioration of the Art Work; and (iii) reasonable maintenance of the Art Work will not require procedures substantially in excess of the Approved Maintenance Recommendations approved by the Design Commission at Final Acceptance.
- B. Without limiting any other warranty provisions of the Agreement, the warranties described in this Article 4.3 shall survive for a period of one (1) year after Final Acceptance. In the event of any breach of a warranty which is curable by the Artist and which cure is consistent with generally accepted professional conservation standards (including, for example, cure by means of repair or refabrication of the Art Work), the Artist shall, at the request of the City, cure such breach at no cost to the City, NYCEDC or the Construction Manager. The City or

NYCEDC shall give notice to the Artist of any such observed breach with reasonable promptness and the Artist shall cure such breach with reasonable promptness. The Artist agrees to be reasonably available to fulfill his or her obligations under this Article 4.3.

4.4. Hold Harmless

- A. To the fullest extent permitted by law, the Artist shall defend, indemnify, and hold harmless NYCEDC, the City, including its DCAS (collectively the “**Indemnified City Parties**”) and the Construction Manager, including all of the Indemnified City Parties and Construction Manager’s officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the Indemnified City Parties or the Construction Manager, their officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Artist and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with law or any of the requirements of this Agreement.
- B. Infringement Indemnification. To the fullest extent permitted by Law, the Artist shall defend, indemnify, and hold harmless the Indemnified City Parties, and the Construction Manager, including their officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and any loss, costs, or expenses (including attorneys’ fees) to which the Indemnified City Parties or their officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Artist and/or its employees, agents, contractors or subcontractors in the performance of this Agreement. To the fullest extent permitted by Law, the Artist shall defend, indemnify, and hold harmless the Indemnified City Parties, their officials and employees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Agreement’s scope of services/scope of work. Insofar as the facts or Law relating to any of the foregoing would preclude the Indemnified City Parties, their officials and employees from being completely indemnified by the Artist, the Indemnified City Parties and their officials and employees shall be partially indemnified by the Artist to the fullest extent permitted by Law. Such indemnity shall specifically extend to the costs to procure either non-infringing intellectual property or a license to use such intellectual property for which such indemnity is being provided.
- C. The Construction Manager shall be solely responsible for all injuries to persons, including death, or damage to property, sustained during his or her performance of the Construction Manager’s obligations under this Agreement and solely resulting from any negligence, fault or default of the Construction Manager or any of his or her employees, authorized agents, servants or independent contractors hired by the Construction Manager or any subcontractor hired by any of the foregoing, other than the Artist and its subcontractors. To the fullest extent permissible by law, the Construction Manager agrees to indemnify and hold the City, NYCEDC, DCAS, and the Artist harmless from any liability upon any and all claims for damages on account of the negligence, fault or default of Construction Manager, his or her employees, authorized agents, servants or independent contractors hired by Construction Manager, or any subcontractor hired by any of the foregoing.

ARTICLE 5. INSURANCE

- A. The Artist shall provide and maintain, with a company or companies acceptable to the City Parties, policies of commercial general liability insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage and products/completed operations coverage in the aggregate for no less than two million dollars (\$2,000,000) covering the period during which the Art Work will be fabricated until Final Acceptance. The Construction Manager, NYCEDC and the City of New York (the "Indemnified Parties") shall be named as additional insureds on all insurance policies obtained hereunder. The Artist shall deliver the applicable certificate of insurance, naming all Indemnified Parties as additional insureds and the applicable insurance policy to the Construction Manager and the Indemnified Parties ten (10) days prior to the date fabrication is scheduled to commence in accordance with the Approved Schedule. The Artist shall not begin fabrication until such time as the City Parties have notified the Artist and the Construction Manager that the insurance coverage has been approved. Approval of the insurance coverage shall in no way, limit or relieve the Artist, subcontractors, or Construction Manager of its duties and responsibilities under this Agreement, including the duty to indemnify and hold harmless the Indemnified Parties.
- B. At the request of the Design Agency, the Artist shall provide and maintain fine art insurance as set forth in Article 1.7.
- C. The Artist shall purchase and maintain and shall require each of its subcontractors to purchase and maintain workers' compensation and disability benefits insurance in statutory amounts, and employer's liability insurance, for all of its employees engaged in connection with the Scope of Services described in Article 1, as applicable.

ARTICLE 6. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

6.1. Title and Ownership

Subject to the rights outlined in this Article 6, all rights and interest in, title to, and ownership of, the Art Work, as well as the Conceptual, Preliminary and Approved Designs as approved by the Design Commission and any documentation, drawings, materials, photographs or reproductions of same, as the Artist may elect, that are submitted to the City (collectively, "**Work Materials**") shall pass to and become the property of the City upon Final Acceptance.

6.2. Copyright

Except as provided herein, the Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. Sections 101 et seq.

6.3. Reproduction Rights

- A. The Artist hereby grants to the City Parties and their respective assigns an irrevocable, royalty-free, worldwide license to publicly display the Art Work and make, display and distribute, and authorize others to make, display and distribute, photographs, drawings, videotapes and other two-dimensional reproductions of the Art Work and the Work Materials in all media now known or hereafter discovered. The City Parties may use such two-dimensional reproductions for any City-related purpose, including advertising, education,

promotional materials, brochures, books, postcards, film or electronic media, catalogues and similar publications, provided that these rights are exercised in a reasonable and professional manner and a credit is given to the Artist in the manner specified in Article 6.4 below.

- B. Notwithstanding the foregoing provisions of this Article 6.3, the City shall not make three-dimensional derivative works based on the Art Work or the Work Materials or three-dimensional physical reproductions of the Art Work without the Artist's prior written consent.
- C. The parties acknowledge that, for purposes of documenting its contributions to the Project, the Construction Manager may make photographs and other two-dimensional reproductions of the Construction Manager's work at the Site, which may depict the Art Work. The use of such reproductions by the Construction Manager for noncommercial purposes such as art reviews or articles referencing the work of the Construction Manager, brochures or catalogs, shall not be deemed an infringement of the Artist's rights in copyright as set forth in Article 6.2, provided, however, in all such instances, the Artist shall be credited in the manner specified in Article 6.4.
- D. Since it is the intention of the parties that the Art Work shall be unique, the Artist hereby agrees not to make an exact duplicate or other reproduction of the final Art Work or permit others to do so except by written permission of the City.
- E. Neither the City Parties nor the Construction Manager is responsible for any third party infringement of Artist's copyright or for protecting the intellectual property rights of the Artist.

6.4. Art Work Credit

The Artist, the Construction Manager and the City agree to include a credit on any reproductions of the Art Work or Work Materials relating to the Art Work exhibited to the public which reads substantially "© Artist's name, Title of the work, year of completion, an original work commissioned by the City of New York Department of Cultural Affairs Percent for Art Program, in collaboration with the New York City Economic Development Corporation." Inadvertent failure on the part of the City to include such a credit shall not be deemed a breach of this Agreement.

6.5. Name, Biography, Likeness

- A. The Artist agrees that the City Parties may use his or her name, biography, and likeness in connection with the Art Work and related materials, in advertising and promotion of the Art Work and related materials, and in any and all archival, educational, and promotional brochures related to the Art Work and related materials regardless of the format in which such use occurs.
- B. The Artist shall have a right of prior review and written approval over any biography and/or likeness of the Artist used in connection with any public announcement or publicity relating to the Project or inauguration of the Art Work, such approval not to be unreasonably withheld, conditioned or delayed. Any such request for approval that is not denied or granted by the Artist within five (5) business days shall be deemed approved. Further, once an item (press release, biography, likeness, etc.) is approved, such item shall be deemed approved for any similar future use.

6.6. Publicity

The Artist agrees that, during the performance of this Agreement, the Artist shall not disseminate publicity or news releases regarding the Art Work without prior written approval of the City Parties.

ARTICLE 7. ARTIST'S RIGHTS

7.1. Signage

The Artist shall prepare and install the Plaque at the Site, subject to the approval of the City as set forth in Articles 1.3(A) and (B) and any later written instructions as may be given by the City. The Plaque shall identify the Artist, the title of the Art Work and the date of completion, and shall include the text "Commissioned by the City of New York Department of Cultural Affairs Percent for Art Program, in collaboration with the New York City Economic Development Corporation." The Plaque shall be based on specifications provided by the Percent for Art Program.

7.2. Maintenance, Repairs and Restoration

- A. The City will use reasonable efforts to maintain the Art Work in accordance with the Approved Maintenance Recommendations. Notwithstanding the foregoing, the City shall have the exclusive right to determine whether repairs to, or restoration of, the Art Work will be made. The City through the Percent for Art Program shall use reasonable efforts to consult with the Artist on all questions involving repairs or restoration, provided, however, that the City shall not be obligated to communicate with the Artist except at his or her last known address, notice of which must be given to the City pursuant to Article 18 herein. The City may, subject to all laws, rules and regulations governing the same, obtain the Artist's services for the actual repair or restoration, or the supervision of any other party retained by the City to perform such repair or restoration.
- B. Any repairs on, and restorations to, the Art Work shall be made in accordance with generally recognized principles of conservation and may be subject to the prior approval of the Design Commission and any other applicable body with oversight authority.

7.3. Alteration of the Art Work or of the Site

- A. The City intends to display the Art Work at the Site as originally created by the Artist and to maintain the Art Work in good condition. Notwithstanding the foregoing, the City retains the absolute right to alter, relocate, remove from public display, modify, destroy, loan, sell or otherwise dispose of the Art Work in its sole judgment, provided that, except in the event that the City determines that the Art Work presents a hazard to the health or safety of the public, the City shall make a reasonable good faith effort to notify the Artist and provide an opportunity for consultation, further provided, however, that the City shall not be obligated to communicate with the Artist except at his or her last known address, notice of which must be given to the City pursuant to Article 18 herein.
- B. If the City alters the Art Work without the Artist's consultation in a manner that is prejudicial to the Artist's reputation, the Artist's sole remedy shall be to retain the right to disclaim authorship upon written request to the City, provided, however, that the City shall not be obligated to

change or remove the Artist's name/credit or other attributive reference on any materials printed, published, or created prior to the City's receipt of the Artist's written request.

7.4. Moral Right

The parties recognize that the Artist may be entitled to certain protection or remedies under the provisions of the Visual Artists Rights Act 17 USC 101, et seq., Section 14.03 of the New York State Arts and Cultural Affairs Law and any rights arising under federal or state law or under the laws of any other country with respect to the Art Work, Work Materials and any other work product that is the subject matter of this Agreement. For the sake of clarity, to the extent that the Artist would have otherwise been entitled to any protection or remedies under said laws and regulations but for the rights granted in this Agreement, the Artist hereby expressly and forever waives the provisions of such laws and regulations.

7.5. Permanent Record

Each of the Construction Manager and the City shall maintain copies of this Agreement and a record of the location and disposition of the Art Work. For the City, such copies shall be maintained by the Design Commission and the Percent for Art Program for a period of seven (7) years after Final Acceptance.

ARTICLE 8. ADDITIONAL RIGHTS AND REMEDIES, LIMITATIONS OF ACTIONS

The rights and remedies of the parties herein specified shall be cumulative, and not exclusive of any other rights and remedies herein provided or allowed by law. Notwithstanding any other provision of this Agreement, no action or special proceeding shall lie or be maintained by the Artist or Artist's successors in interest against the Construction Manager or the City upon any claim arising out of, based upon or in connection with this Agreement, unless such action or special proceeding is commenced within six (6) months after the date of final payment to the Artist, or if this Agreement is breached or terminated prior to final payment, unless such action or special proceeding is commenced within six (6) months of such breach or termination.

ARTICLE 9. RELATIONSHIP OF THE PARTIES

The Artist is entering into this Agreement as an independent contractor and shall not hold him or herself out as otherwise. Nothing herein contained shall be deemed to constitute the Artist and the Construction Manager as partners, co-venturers, or employer-employee. Neither shall the Artist be considered an agent or employee of the City or the Construction Manager nor shall he or she hold him or herself out as such.

ARTICLE 10. ASSIGNMENT, TRANSFER, SUBCONTRACTING

10.1. Assignment, Transfer

It is understood and agreed that the subject matter of this Agreement is special, unique, and of an artistic and intellectual nature, and that the personal services of the Artist are of the essence herein. Accordingly, neither the Construction Manager nor the Artist shall assign or transfer an interest in this Agreement without the prior written consent of the other and the City.

10.2. Subcontracting

- A. Notwithstanding anything contained in Article 10.1, the Artist may subcontract portions of the performance of this Agreement at the Artist's expense provided that said subcontracting shall not affect the Art Work's design, appearance or visual quality and that such work is performed under the personal supervision of the Artist. The identity of any such subcontractor and the work such subcontractor shall perform shall be approved in writing in advance as part of the Conceptual Design approval process as set forth in Article 1.2(B) and (C).
- B. All subcontracts to be entered by the Artist shall state that:
- i) Such subcontract is subject to the terms and conditions of this Agreement; and
 - ii) Nothing contained in either the subcontract or this Agreement shall create a contractual relationship between the City and the subcontractor or between the Construction Manager and the subcontractor.
- C. The City may require in its sole discretion that the terms of any subcontract to be entered into by the Artist in connection with the performance of this Agreement shall be subject to the prior written approval of the City.

ARTICLE 11. TERMINATION

- A. The City may terminate this Agreement in whole or in part:
- i) upon a City financial emergency, where the City terminates construction contracts for other capital projects; or
 - ii) upon the occurrence of an Event of Default, which is deemed to have occurred if any of the following events occurs, each an "**Event of Default**":
 - iii) The Artist fails to assign workers, order materials or enter into subcontracts (if applicable) in a manner sufficient to permit completion of the Art Work, or any portion thereof, within the time limits set forth in this Agreement, or as approved by the Core Review Group;
 - iv) The Artist fails to complete the Art Work, or any portion thereof, within the time limits set provided in this Agreement or as approved by the Core Review Group;
 - v) The Artist materially violates any term, covenant or provision of this Agreement;
 - vi) The Artist materially fails to comply with any applicable statutes or any applicable agreements, if applicable;
 - vii) Any representation or warranty made by the Artist in Article 4.1 of this Agreement or in any other Article of this Agreement shall prove to be untrue or be breached;
 - viii) The Artist becomes insolvent, files for bankruptcy, or is adjudged a debtor in possession;

- ix) The Artist voluntarily, or by operation of law, assigns, transfers, conveys or otherwise disposes of its interest in this Contract or its right to receive funds hereunder without the prior written consent of the Core Review Group; or
 - x) The Artist or if applicable, any of its officers, directors, partners, members, five (5%) percent shareholders, principals or other persons substantially involved in its activities, commits any of the acts or omissions specified as the grounds for debarment in the City's *Procurement Policy Board Rules*.
- B. The City shall provide the Artist and the Construction Manager with written notice of such termination and the Artist shall, upon receipt of such notice, and unless otherwise directed by the City:
- i) stop work on the date specified in the notice;
 - ii) take such action as may be necessary for the protection and preservation of the City's materials and property;
 - iii) cancel all cancelable orders for material and equipment for the Art Work;
 - iv) assign to the City and deliver to the Site or any other location designated by the City, any non-cancelable orders for material and equipment for the Art Work that are not capable of use except in the performance of this Agreement and have been specifically fabricated for the sole purpose of this Agreement and not incorporated in the Art Work;
 - v) take no action that will increase the amounts payable by the City under this Agreement, except as otherwise herein provided.
- C. Except in the case of a willful default, upon termination of this Agreement under Article 11(A), the Artist shall be reimbursed for:
- i) the portion of the Art Work completed up to the time of termination in accordance with the relevant milestone described in Exhibit C; and
 - ii) non-cancelable material and equipment for the Art Work that is not capable of use except in the performance of this Agreement or has been specifically fabricated for the sole purpose of this Agreement but not incorporated in the Art Work, the cost of which is not reflected in the milestone payment to be made pursuant to subparagraph (i) above, provided, however that payment pursuant to this subparagraph (ii) shall only be made in exceptional circumstances in the sole discretion of the City.
- D. The Artist shall submit his or her requisition for payment upon termination in accordance with Article 2.1(B).
- E. All payments pursuant to this Article 11 shall be in the nature of liquidated damages and shall be accepted by the Artist in full satisfaction of all claims against the City arising out of the termination.

- F. All payments pursuant to this Article 11 are subject to the City's right to deduct or set off against any sums due and payable pursuant to this Article any claims it may have against the Artist.
- G. All payments pursuant to this Article 11 are subject to audit and approval by the City and post audit by the Comptroller, pursuant to the provisions of the New York City Charter and Administrative Code.

ARTICLE 12. INTERRUPTION OR CANCELLATION OF PROJECT

12.1. Cancellation

If the Project for which the Art Work was commissioned is canceled or terminated, this Agreement shall automatically terminate, in which case the provisions of Article 11 shall apply with regard to all fees owed to the Artist for work actually performed. The Artist shall not be entitled to expected profit, overhead, or any other fees pursuant to this Agreement.

12.2. Delay of Project

The City Parties shall have the right to delay, postpone or suspend the Project or Art Work, or any portion thereof, immediately or upon a specified date for one (1) year, unless rescinded or modified earlier in writing, upon notice to the Artist, for any reason deemed by the City Parties to be in its interest. The Artist and all of its agents, subcontractors, and representatives shall cease all performance of the Scope of Work, or any specified portion thereof, immediately or as of the date specified in the notice. If the Project for which the Art Work was commissioned is delayed, suspended, or paused for any reason in the interest of the City Parties for a period greater than one (1) year, the Artist shall then have the option to terminate this Agreement, in which case the provisions of Article 11 shall apply with regard to all fees owed to the Artist. Any such delay, postponement or suspension shall not give rise to any cause of action for damages against the City Parties.

12.3. Artist's Option

In the event the Construction Manager is dismissed or resigns from the project, the Artist shall have the option to:

- a) terminate this Agreement pursuant to Article 11, or;
- b) suspend the performance of his or her services under this Agreement until such time as another Construction Manager is chosen by NYCEDC and the Artist elects to enter into a services agreement with said Construction Manager.

ARTICLE 13. GOVERNING LAW; COMPLIANCE WITH LAW

- A. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to its conflicts of laws principles.
- B. The parties hereto shall comply with all Federal, State and City statutes, ordinances, rules and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 14. ENTIRE AGREEMENT

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

ARTICLE 15. MODIFICATION

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

ARTICLE 16. WAIVER

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

ARTICLE 17. SEVERABILITY

If any provision of this Agreement is adjudged as invalid, void, or unenforceable, such provision shall be deleted herefrom and shall not affect the validity of this Agreement and the enforceability of any other provision herein.

ARTICLE 18. NOTICES

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

i) if the Construction Manager, to:

LiRo Engineers, Inc.
3 Aerial Way
Syosset, NY 11791
Attn: Michael Bailey, SVP

With a copy to:

Daniel Bradley - Bradleyd@liro.com

ii) if the Artist, to:

Kameelah Janan Rasheed
110 New York Ave. #5K
Brooklyn, NY 11216

iii) if NYCEDC, to:

New York City Economic Development Corporation
One Liberty Plaza, 14th Floor
New York, NY 10006
Attn: Elizabeth T. Arnaiz, AIA, Executive Vice President, Capital Program

With a copy to:

New York City Economic Development Corporation
One Liberty Plaza, 14th Floor
New York, NY 10006
Attn: General Counsel

iv) if the Percent for Art Program, to:

Department of Cultural Affairs
31 Chambers Street, 2nd Floor
New York, NY 10007
Attn: Director, Percent for Art Program
Copy to: General Counsel

- B. The Artist shall notify each of the City Parties listed above of changes to his or her address. The failure to comply with this requirement, if such failure prevents the City from locating the Artist, shall be deemed a waiver by the Artist of the right to enforce those provisions of this Agreement requiring the approval of, or consultation with, the Artist. During the term of this Agreement, the Artist shall also notify the Construction Manager of changes to his or her address.

ARTICLE 19. CONSTRUCTION MANAGER'S CONTRACT WITH NYCEDC

- A. This Agreement is subject to all of the relevant terms and conditions of the contract between the Construction Manager and NYCEDC, including but not limited to, Appendix A, attached hereto and incorporated herein.
- B. In the event of default by the Construction Manager of its contract with NYCEDC, this Agreement may be assigned by NYCEDC.

ARTICLE 20. COUNTERPARTS

This Agreement may be executed in one or more counterparts which, when taken together, shall constitute one and the same instrument. The delivery of an executed signature page of this Agreement by fax or electronic mail (in a portable document, .pdf) shall have the same effect as the delivery of a manually executed counterpart hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date indicated below.

Construction Manager

By:



Name: Michael Bailey
Title: Exec. Vice President

June 17, 2021

Date

Artist

By:



Name: Kameelah Janan Rasheed

2/17/2021

Date

EXHIBIT A
Description of Art Work

Project Background:

Willoughby Square will be a 1.15-acre, street-level, public open green space in the heart of Downtown Brooklyn, half a block from the vibrant Fulton Street Mall. The project is part of the Downtown Brooklyn Redevelopment Plan, a set of space and infrastructure commitments made in 2004 to reinvigorate the neighborhood and celebrate the area's unique heritage.

Site:

The Art Work will be sited at multiple locations within the Site as determined by the Core Review Group.

General Description of Proposed Art Work (as of the date of this Agreement):

QUESTIONS WORTH HAVING ANSWERS TO is a series of poetic questions carved into stone surfaces and other areas of gathering at Willoughby Square; stepped walls, non-stepped seat walls, benches, and table area. These questions explore the history of abolitionist efforts in Brooklyn to consider the unfinished work of emancipations in our contemporary context.

EXHIBIT B Scope of Work

The Artist will join the Construction Manager as a design team member to develop a work of art for the Site in accordance with this Scope of Work.

General Parameters

The following tasks and deliverables, in addition to those outlined in the artist contract, must be completed:

1. Visiting the site with the Core Review Group;
2. Coordinating design review with the CRG, including the Construction Manager, and community stakeholders as necessary;
3. Developing the concept and design of the Art Work;
4. Preparing periodic budget reports and maintenance cost estimates;
5. Presenting to Brooklyn Community Board 2 and the Design Commission for approvals throughout all project phases;
6. Developing contract drawings that show all of the details of the design (including specifications and a maintenance plan);
7. If requested, Artist shall hire a NYS licensed engineer or architect, as applicable, to verify the Art Work's compliance with any applicable rules, standards, codes, regulations or other requirements, identify material durability and maintenance;
8. Obtaining all insurance coverage and permits required to complete and install the Art Work;
9. If requested, Artist shall hire a structural engineer to review and sign off on structural integrity;
10. Submitting shop drawings from fabricator for review and approval, if required, by the CRG;
11. Fabricating, transporting and installing the Art Work;
12. Storing the Art Work, if necessary, during fabrication and installation phases;
13. Coordinating any onsite construction through NYCEDC;
14. Preparing detailed instructions for the maintenance and preservation of the Art Work and hiring a professional conservator, if necessary (as determined by the City Parties), to prepare such documentation; and
15. Submitting descriptive text, fabricating and installing accompanying Plaque.

Physical Art Work Parameters

Artist should consider the following restrictions when developing the Art Work:

- a. The Art Work must be sited within locations determined by the Core Review Group.
- b. The permanently installed Art Work must be designed to withstand a minimum lifespan of thirty (30) years in an urban freeze-thaw environment.

The elements below are referred to as the Services and Deliverables as follows:

- I. **Conceptual Design:** (Article 1.2)
 - a. Artist Services:

- III. **Fabrication and Installation:** (Articles 1.4 and 1.5)
The Artist shall complete the Art Work's fabrication and installation in conformity with the approved design.
- a. Artist Services:
- i. Artist production, supervision, quality control of Art Work fabrication.
 - ii. Coordinate City inspections of the Art Work at reasonable phases (25%, 50%, 75%, 100%) of fabrication
 - iii. Storage of the Art Work
 - iv. Prepare signage proof for City approval
 - v. Plaque installation
 - vi. Art Work installation, coordination, and execution.
- b. Artist Deliverables:
- i. Fabrication and installation schedule
 - ii. Shop drawings / reports / specifications where appropriate
 - iii. Material samples / proofs
 - iv. Fabrication budget
 - v. Plaque layout/proof
 - vi. Fabricated plaque
 - vii. Installation specifications
 - viii. General Liability Insurance
 - ix. Fine Art Insurance (if required)
- IV. **Post-Installation and Final Acceptance:** (Article 1.6)
- a. Artist Services:
- i. Coordinate City's inspection of installed Art Work
 - ii. Photography and video of installed Art Work
 - iii. Preparation of maintenance recommendations
 - iv. Preparation of Percent for Art web text
- b. Artist Deliverables:
- i. Percent for Art maintenance report
 - ii. Final Design submission materials. Refer to 1.6.b and the most current Design Commission guidelines:
<http://www1.nyc.gov/assets/designcommission/downloads/pdf/art-install-final.pdf>
 - iii. Percent for Art completed project web text

EXHIBIT C
Fee Schedule

Project Name: Willoughby Square – In Pursuit of Freedom

Artist Name / Construction Manager: Kameelah Janan Rasheed/ LiRo Engineers, Inc.

<i>Payment</i>	<i>Milestone</i>	<i>%</i>	<i>\$ Amount</i>	<i>Description</i>
A	Initial Proposal	5%	\$34,450	The Artist shall be entitled to this payment upon the execution of this Agreement and submission of an initial proposal for the Art Work.
B	Conceptual Design	15%	\$103,350	The Artist shall be entitled to this payment upon approval by the Design Commission of the Conceptual Design.
C	Preliminary Design	10%	\$68,900	The Artist shall be entitled to this payment upon approval by the Design Commission of the Preliminary Design, including the Preliminary Maintenance Recommendations.
D	Notice to Fabricate	30%	\$206,700	The Artist shall be entitled to this payment upon submission of the Approved Schedule and receipt of a Notice to Fabricate.
E	Fabrication (50% completion)	20%	\$137,800	The Artist shall be entitled to this payment upon 50% completion of the fabrication of the Art Work as determined by the CRG.
F	Fabrication (Preliminary Acceptance)	10%	\$68,900	The Artist shall be entitled to this payment upon completion of the fabrication of the Art Work and Preliminary Acceptance of the Art Work by the CRG.
G	Installation	5%	\$34,450	The Artist shall be entitled to this payment upon determination by the CRG that the Art Work as installed is ready for review and acceptance by the Design Commission.
H	Final Acceptance and completion of all services	5%	\$34,450	The Artist shall be entitled to this payment upon Final Acceptance of the Art Work by the Design Commission and completion of all other services required of the Artist under the Agreement, including submission to Percent for Art of all required documentation.
		100%	\$689,000	TOTAL

For each payment, the Artist shall provide the Construction Manager with underlying documentation indicating that (a) the relevant milestone has been completed; (b) the required approvals have been received; and (c) all submissions required by such milestone have been made. All payments shall be made in accordance with NYCEDC's contract with the CM and this Agreement.

EXHIBIT D
Contract By and Between NYCEDC and the Construction Manager

(Separate Attachment)

APPENDIX A

(Separate Attachment)