

AGREEMENT
BETWEEN
THE CITY OF WYLIE, TEXAS
AND
HEAVY METAL ART WERK-DBA JAGGED EDGE METAL ART,
TERRANCE MARTIN, ARTIST
FOR
THE FABRICATION AND INSTALLATION OF THE PROPOSED
WYLIE FIRE STATION #4 PUBLIC ART PROJECT
3200 MCMILLEN, WYLIE, TEXAS 75098

Made as of the 24th day of August, 2021.

Between City: City of Wylie, Texas
300 Country Club Road
Wylie, Texas 75098
Telephone (972) 516-6000
-

and Artist(s): Heavy Metal Werks-DBA Jagged Edge Metal Art
Terrance Martin, Artist
773 Northport Drive #C
West Sacramento, CA 95691
Telephone 916-372-9353

Project: Fabrication and Installation of the proposed public art titled
“NEVER FORGET”

This Agreement (“Agreement”) is made and entered by and between the **City of Wylie, Texas**, a home-rule municipality (“City”), and **Heavy Metal Werks, dba Jagged Edge Metal Art AND Terrance Martin** (“Artist”), to be effective from and after the date as provided herein. City and Artist are sometimes referred to collectively as the “parties” or individually as a “party.”

WHEREAS, City desires to engage the services of Artist to fabricate and install a 6061 aluminum sculpture (“Artwork”) in connection with the Public Art Project at City’s Fire Station #4, which shall be installed in the location designated by City on property located at 3200 McMillen, Wylie, Texas 75098, Wylie Fire Station #4 (“Project”); and

WHEREAS, Artist desires to render all services necessary for the Project on the terms and conditions provided herein.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1 ARTIST'S SERVICES

1.1 **Employment of Artist** — City hereby agrees to retain Artist to provide the Services as set forth herein in connection with the Project. Artist agrees to perform such Services in accordance with the terms and conditions of this Agreement.

1.2 **Scope of Services** — The parties agree that Artist shall provide the services and deliverables that are set forth and described in the Scope of Services, attached hereto as Exhibit “A” and incorporated herein by reference for all purposes (“Scope of Services”), and shall furnish all personnel, labor, equipment, supplies and all other items necessary to provide all of the Services and deliverables as specified by the terms and conditions of this Agreement (collectively, the “Services”). The parties understand and agree that deviations or modifications to the Scope of Services, in the form of written change orders, may be authorized from time to time by City (“Change Orders”). Artist shall not perform any “extra” work and/or additional services without a duly executed, written change order issued by the Wylie City Manager or authorized designee.

1.3 **Schedule of Work** — Artist agrees to commence work immediately upon execution of this Agreement and receipt of first payment, and to proceed diligently with said work to completion as described in the Completion Schedule/Project Billing/Project Budget, attached hereto as Exhibit “B” and incorporated herein by reference for all purposes. Notwithstanding anything herein to the contrary, fabrication of the Artwork shall be completed no later than April 1, 2022. The Artwork shall be delivered and installed on or before April 15, 2012 or reasonably promptly thereafter, as determined by City in its sole discretion. The Artwork shall not be delivered to the Wylie Fire Station #4 site before the City is notified by written notice from the Artist of the delivery date (“Notice of Delivery”) and after all portions of the base construction and lighting infrastructure have been completed by Artist. Delivery and full installation of the Artwork shall be completed within fourteen (14) days of the Notice of Delivery.

ARTICLE 2 CITY'S RESPONSIBILITIES

2.1 **Project Data** — If reasonably requested by Artist, City shall furnish required information that it has in its possession as of the date of the request, and Artist shall be entitled to rely upon the accuracy and completeness of the information furnished by City under this Article 2.1.

2.2 **City Project Manager** — City shall designate, when necessary, a representative authorized to act on City’s behalf with respect to the Project (“**Project Manager**”). City or the Project Manager shall examine the documents submitted by Artist and shall render any required decisions pertaining thereto as soon as practical so as to avoid unreasonable delay in the progress of the Services. Artist understands and agrees that the Project Manager and his or her authorized representative are not authorized to issue verbal or written Change Orders for “extra” work or “claims” invoiced as “extra” work.

ARTICLE 3 ARTIST’S COMPENSATION

3.1 **Compensation for Artist’s Services** — As described in Article 1, Artist’s Services of this Agreement, compensation for this Project shall be on a milestone basis, in an amount not to exceed Eighty One Thousand and No/100 Dollars (\$81,000.00) (“**Artist’s Fee**”), and will cover all Services to be rendered and materials to be provided in accordance with this Agreement. Artist’s Fee shall be paid in accordance with this Article 3 and the Completion Schedule/ Project Billing /Project Budget as set forth in Exhibit “B”. The final fifteen (15) percent of the Artist’s Fee, or Twelve Thousand One Hundred Fifty and No/100 Dollars, (\$12,150.00) (“**Final Payment**”), shall not be paid to Artist until Artist has completed, delivered and installed, as applicable, all of the Artwork, Services and tasks described in Exhibits “A” and “B” to City’s satisfaction.

3.2 **Invoices** — No payment to Artist shall be made until Artist tenders an invoice to City. Payments are payable to Artist within thirty (30) days from the date of invoice as long as the invoice is mailed to City within three (3) days of the date of the invoice. Invoices are to be mailed to City immediately upon completion of each individual task listed in Exhibit “A”. If any invoice remains outstanding and unpaid for more than sixty (60) days from the date of invoice, and Artist has fully performed its obligations as set forth herein, Artist has the option upon written notice to City, to suspend all work specified under this Agreement until the account is brought current. Continued performance and/or completion of work by Artist under this Agreement shall resume upon the payment of the earned fees by City.

3.3 **Failure to Pay** — Failure of City to pay an invoice, for a reason other than cause, within sixty (60) days from the date of the invoice shall grant Artist the right, in addition to any and all other rights provided, to, upon written notice to City, refuse to render further Services to City and such act or acts shall not be deemed a breach of this Agreement. City shall not be required to pay any invoice submitted by Artist if Artist breached any provision(s) herein.

3.4 **Adjusted Compensation** — If the Scope of Services for the Project or if the Services are materially changed by written change order, the amounts of the Artist’s Fee shall be equitably adjusted as approved by City in its sole discretion. Any additional amounts paid to Artist as a result of any material change to the Scope of Services for the Project shall be agreed upon in writing by both parties before the Services are performed.

3.5 **Project Suspension** — If the Project is suspended or abandoned, in whole or in part, by City for more than three (3) months, Artist shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to

suspension or abandonment. In the event of such suspension or abandonment, Artist shall deliver to City all finished or unfinished Artwork, documents, data, studies, surveys, drawings, maps, models, reports, photographs and /or any other items prepared by Artist in connection with this Agreement prior to Artist receiving final payment. If the Project is resumed after being suspended for more than three (3) months, the Artist's compensation shall be equitably adjusted as approved by City in its sole discretion. Any additional amounts paid to Artist after the Project is resumed shall be agreed upon in writing by both parties before the Services are performed.

ARTICLE 4 OWNERSHIP AND COPYRIGHT

4.1 **Ownership of Work** — Upon completion, the Artwork and the Project shall be the sole property of City, and Artist shall not make any duplicate work of the same or substantially similar size, nor shall Artist grant permission to others to do so except with the written permission of City. City shall be entitled to copies of the plans and the maquette which are prepared by Artist in connection with the development and fabrication of the Project under this Agreement. The ownership of the Artwork is automatically transferred to and vested in City upon full payment of the Artist's Fee as set forth in Article 3.1 of this Agreement.

4.2 **Ownership of Copyright** — Artist shall retain the copyright to the Artwork. Artist shall take all steps, at his own expense, to protect the copyright of the Artwork.

4.3 **License to City** — Artist irrevocably licenses City, its employees, representatives, officers and agents, the right to make photographs, two dimensional reproductions, and adaptations of the work for educational, public relations, arts promotional and other non - commercial purposes. For the purposes of this Agreement, the following, among others, are deemed to be reproductions and/or adaptations for non-commercial purposes: reproduction in exhibition catalogues, websites, books, slides, photographs, postcards, posters, and calendars; in magazines, books, 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, videos and film strips not intended for a mass audience, and television from stations operated for educational purposes or on programs for educational and news purposes from all stations.

4.4 **Copyright Notice** — City undertakes to use its reasonable efforts to include in any reproductions which it makes of the Artwork a copyright notice in the following form: Copyright Jagged Edge Metal Art, Terrance Martin, Artist.

4.5 **Representations and Warranties Regarding Copyright** — Artist represents and warrants that the Artwork is an original creation of Artist and will not infringe the copyright, trademark or other intangible rights of any third party. Artist represents and warrants that the Artwork is an edition of 1, unless otherwise agreed upon with the City.

ARTICLE 5 FABRICATION

5.1 **Specifications** — Artist will fabricate the Artwork, or cause it to be fabricated, in substantial conformity with the design approved by City as set forth in Exhibit “A”.

5.2 **Changes** — Any significant changes to the Artwork by either Artist or as requested by City will be approved in writing by the other party. For purposes of this Agreement, a significant change will mean any change, including but not limited to, a change in the scope, design, color, size or material of the Artwork, which affects cost, installation, site preparation, maintenance and concept as represented in the design described in Exhibit “A”. If Artist wishes to make a significant change to the Artwork, he must request written approval from City of the change in writing at the address provided in Section 14. City will provide a written response within thirty (30) calendar days.

5.3 **Review of the Artwork** — City will be given access to the Artwork during reasonable business hours at Artist’s or fabricator’s studio in order to review the Artwork and Artist’s or fabricator’s progress with fabrication of the Artwork. Alternatively, City may request, and shall be given photographic documentation of Artist’s progress.

5.4 **Notification of Fabrication Completion** — Artist shall notify City in writing pursuant to Section 14 when the Artwork is completed and ready for delivery. Designated representatives of City will have the opportunity to inspect the Artwork under Section 5.3 for conformity with the design and structural requirements prior to delivery and to give written approval or disapproval of the Artwork for thirty (30) business days following notice from the Artist. As an alternative to the studio inspection, photographic documentation may be submitted to City upon completion of the Artwork. City will be responsible for providing electrical connection to the site; Artist is responsible for preparation of site, base construction, lighting, and all other specifics regarding the installation of the Artwork at the site.

5.5 **Warranty of Craftsmanship** — Artist warrants that the Artwork will be free of defects in workmanship and materials. In the event that any defects become apparent in the workmanship or materials within five (5) years of the execution of this Agreement, Artist will remedy any defects at Artist’s sole cost and expense provided that City has followed and documented the maintenance procedures detailed in Exhibit “A”.

ARTICLE 6 STORAGE

6.1 **Storage** — Artist shall be solely responsible for any and all necessary storage and transportation costs associated with this Agreement as provided by the mutually agreed delivery and installation timetable. If, for reasons outside the control of Artists, there is a delay in installation, City will store the Artwork at a secure City facility. If the delay in installation is caused by Artist, Artist will be responsible for the costs of storage. Artist will be on site at time of delivery of the Artwork.

ARTICLE 7 FINAL APPROVAL OF ARTWORK

7.1 **Final Approval** — Within ten (10) business days after the permanent installation of the

Artwork, City will inspect the Artwork to determine whether it conforms to all of the requirements of this Agreement. If City finds that any aspect of the Artwork is not in conformance with this Agreement, City will notify Artist in writing within seven (7) business days of the inspection. Artist will have an opportunity to address and cure any defects, requests or concerns of City within fifteen (15) days of the date of City's notice provided pursuant to this Article 7. All of the foregoing is without prejudice to any other remedies available to City under this Agreement or at law.

ARTICLE 8 INTEGRITY OF THE WORK

8.1 **Repairs and Maintenance** - City shall exercise reasonable care to protect, repair, and maintain the work. Artist agrees to cooperate with and advise the City in connection with any such non-routine maintenance, including, without limitation, damage by acts of God, vandalism, conservation and/or replacement of any portion of the Artwork to the extent that he or she is able to do so.

During Artist's lifetime, City will not undertake any non-routine maintenance on the Artwork without attempting to consult with the Artist or his or her authorized representative unless an emergency requires the City to do so.

8.2 **Relocation of the Work** – To the extent that the Artwork is capable of being relocated, the City shall have the right to do so. If feasible, the City shall attempt to consult with the Artist concerning the relocation of the Artwork prior to any such relocation; however, the Artist's approval is not required for the relocation, if any. If the Artist is not pleased with such relocation, he or she shall have the right to renounce credit for the Artwork. If Artist renounces credit for his Artwork, this would include, among other things, relinquishment and abandonment of the copyrights described herein.

8.3 **Credit** – City agrees, at its own expense, to prepare and install at or near the Project a public notice, the form and exact location of which shall be solely determined by City, giving Artist credit for the creation of the Artwork.

ARTICLE 9 INSURANCE COVERAGE

9.1 **Required Insurance** — Artist shall, at Artist's sole cost and expense, procure and maintain the types and amounts of insurance set forth herein for and during all aspects and phases of this Project. Artist shall be required to provide and maintain general liability insurance with a minimum of One Million and No/100 Dollars (\$1,000,000.00) per occurrence and Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate. In addition, Artist shall procure and maintain insurance for loss (including theft, fire and damage) and employee health and disability insurance, as well as any statutorily required workers' compensation insurance. All insurance and certificate (s) of insurance shall contain the following provisions:

1. Name City, its officers, agents, representatives and employees as additional insureds as to all applicable coverage with the exception of workers' compensation insurance.
2. Provide for at least thirty (30) days prior written notice to City for cancellation, non-renewal or material change of the insurance.
3. Provide for a waiver of subrogation against City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

9.2 **Insurance Company Qualification** — All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

9.3 **Certificate of Insurance** — A certificate of insurance and endorsement (s) evidencing the required insurance shall be submitted no later than the date of the execution of this Agreement. If this Agreement is renewed or extended by the City, a certificate of insurance and endorsement(s) shall also be provided to the City prior to the date the Agreement is renewed or extended.

ARTICLE 10

AUDITS AND RECORDS/PROHIBITED INTEREST/VENDOR DISCLOSURE

Artist agrees that at any time during normal business hours and as often as City may deem necessary, Artist shall make available to representatives of City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of four (4) years from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

Artist agrees that he is aware of the prohibited interest requirement of the City Charter, which is repeated on the Affidavit attached hereto as Exhibit "C" and incorporated herein by reference for all purposes, and will abide by the same. Further, Artist shall execute the CIQ Affidavit attached hereto as Exhibit "D". Artist understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

Artist agrees that he is further aware of the vendor disclosure requirements set forth in Chapter 176, LOCAL GOV' T CODE, as amended, and will abide by the same.

ARTICLE 11

TERMINATION OF AGREEMENT/REMEDIES

11.1 **Artist Default** — Failure or refusal of Artist to perform any act herein required, unless mutually agreed to in writing by City and Artist, shall constitute a default under this Agreement. In the event of a default, in addition to any other remedy available to City, this Agreement may be terminated by City upon ten (10) days' written notice. Such notice does not waive any other legal

remedies available to City. Should termination occur due to Artist default, Artist will refund any payments received, in addition to any other remedies available to City under this Agreement or at law. In the event of any termination under this article, Artist shall deliver to City all work, entirely or partially completed, in addition to any other remedies available to City under this Agreement or at law.

11.2 Conditions for Termination of Agreement Other than Artist's Default — If City deems, in its sole discretion, the Project design is inappropriate or unworkable for the site, or if the deadlines specified herein are not met due, in whole or in part, to the Artist's actions and/or omissions, or if cost estimates indicate that the Project cannot be completed within the Project budget, City retains the right to terminate this Agreement and is released from the obligation to enter into fabrication and installation of Artist's design concept for the Project.

In the event of any termination under this Section 11.2, Artist shall deliver to City all work, entirely or partially completed. Artist shall receive as compensation, full payment for Services satisfactorily performed, as solely determined by City, as outlined in Exhibit "B", as applicable, to the date of the termination notice received. City shall make this final payment within thirty (60) days of notifying the Artist. Any payment not timely made under this Section 11.2 is subject to interest charges as described in Section 3.1.

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

ARTICLE 12 DISPUTE RESOLUTION/MEDIATION

In addition to all remedies at law, the parties may agree to attempt to resolve any controversy, claim or dispute arising out of or relating to the interpretation or performance of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator. However, if both parties do not agree to voluntarily mediate any such controversy, claim or dispute, mediation shall not be required.

ARTICLE 13 INDEMNITY

ARTIST SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES INCLUDING LOSS OF USE), CLAIMS FOR PATENT, TRADEMARK AND/OR COPYRIGHT INFRINGEMENT AND/OR ANY OTHER INTELLECTUAL PROPERTY AND /OR PROPRIETARY CLAIM, LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY' S FEES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED BY THE

NEGLIGENT, GROSSLY NEGLIGENCE, AND/OR INTENTIONAL ACT AND /OR OMISSION OF ARTIST, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FROM WHOM ARTIST IS LEGALLY RESPONSIBLE, IN ITS /THEIR PERFORMANCE OF THIS AGREEMENT AND/OR ARISING OUT OF GOODS AND/OR SERVICES PROVIDED BY ARTIST PURSUANT TO THIS AGREEMENT HEREINAFTER (“CLAIMS”). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM CLAIMS” IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL. IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN ARTIST AND HIS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR’ S OR EMPLOYEE’ S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH ARTIST, INCLUDING BUT NOT LIMITED TO, ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS’ COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. ARTIST IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY ARTIST IN FULFILLING HIS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF ARTIST’ S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF ARTIST’S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. ARTIST SHALL RETAIN CITY- APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY’S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF ARTIST FAILS TO RETAIN COUNSEL WITHIN SUCH TIME. PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND ARTIST SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS

AND OBLIGATIONS CREATED BY THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

**ARTICLE 14
NOTICES**

Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing the same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested; by facsimile; by electronic mail, with documentation evidencing the addressee's receipt thereof; or by delivering the same in person to such party a via hand-delivery service, or to any courier service that provides a return receipt showing the date of actual delivery of the same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to City, addressed to it at:
Chris Holsted, City Manager
Carole Ehrlich, Public Arts Coordinator
City of Wylie
300 Country Club Road, Bldg. 100
Wylie, Texas 75098

With a copy to:
Abernathy, Roeder, Boyd & Hullett, P.C.
Attention: Ryan D. Pittman
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Telephone: (214) 544-4000
Facsimile: (214) 544-4054

If to Artist, addressed to him at:
Jagged Edge Metal Art
Terrance Martin, Artist
773 Northport Drive #c
Sacramento CA 95691

**ARTICLE 15
MISCELLANEOUS**

15.1 **Complete Agreement** — This Agreement, including the exhibits hereto labeled “A” through “D”, all of which are incorporated herein for all purposes, constitute the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented and/or modified except by written agreement, duly executed by both parties. To the extent that any provision of this Agreement should conflict with the provisions of an exhibit, the

provisions of this Agreement shall prevail. The following exhibits are attached and made part of this Agreement:

Exhibit “A”, Scope of Services.

Exhibit “B”, Compensation Schedule/ Project Billing/ Project Budget.

Exhibit “C”, Affidavit.

Exhibit “D”, Conflict of Interest Questionnaire, Form CIQ.

15.2 **Assignment and Subletting** — Artist agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City, except for transportation, delivery and foundry services. Artist further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve Artist of its full obligations to the City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Artist, and there shall be no third party billing.

15.3 **Attorney’s Fees** — If either party files any action or brings any proceeding against the other arising from this Agreement, then as between City and Artist, the prevailing party shall be entitled to recover as an element of the costs of suit, and not as damages, reasonable and necessary attorneys’ and experts’ fees and litigation expenses to be fixed by the court both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOVT CODE §271.153, as it exists or may be amended, if applicable.

15.4 **Successors and Assigns** — City and Artist, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

15.5 **Savings /Severability** — In the event that a term, condition or provision of this Agreement is determined to be invalid, illegal, void, unenforceable or unlawful by a court of competent jurisdiction, then that term condition or provision shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.

15.6 **Venue** — This entire Agreement is performable in Collin County, Texas. This Agreement shall be construed under and in accordance with the laws of the State of Texas, without regard to Texas’ choice of law provisions. The exclusive venue for any action arising out of the parties’ performance under this Agreement shall be a court of appropriate jurisdiction in Collin County, Texas.

15.7 **Execution/Consideration** — This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.

15.8 **Authority** — The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date thereof.

15.9 **Waiver** — Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

15.10 **Headings** — The headings of the various sections of this Agreement are included solely for the convenience of reference and are not to be full or accurate descriptions of the content thereof.

15.11 **Multiple Counterparts** — This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

15.12 **Immunity** — The parties acknowledge and agree that, in executing and performing this Agreement, City has not waived nor shall be deemed hereby to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

15.13 **Representations** — Each signatory represents his Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.

15.14 **Miscellaneous Drafting Provisions** — This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.

15.15 **Death of Artist** — In the event the Artist dies or becomes incapacitated during the term of this Agreement, the fabrication, delivery and installation of the Artwork shall be completed pursuant to the Artist's design, conception and plans by: Name: Mari Todd, Address: 773 Northport Drive #C, Sacramento CA 95691, Telephone: (916) 747-6840, E-mail: maritodd85@gmail.com

15.16 **No Third Party Beneficiaries** — Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

15.17 **Reference to Artist** — When referring to “Artist,” this Agreement shall refer to and be binding upon Artist, and his partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Artist is legally responsible.

15.18 **Reference to City** — When referring to “City,” this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives, employees and/or any other authorized third parties for whom City is legally responsible.

15.19 **No Joint Enterprise** — The parties do not intend that this Agreement be construed as finding that the parties have formed a joint enterprise. The purposes for which each party has entered into this Agreement are separate and distinct. It is not the intent of either of the parties that a joint enterprise relationship is being entered into and the parties hereto specifically disclaim such relationship. This Agreement does not constitute a joint enterprise, as there are no common pecuniary interests, no common purpose and no equal right of control among the parties hereto.

(Signature page follows.)

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date set forth in the introductory clause of this Agreement.

CITY:

ARTIST:

City of Wylie, Texas Heavy Metal Art Werks=DBA **Jagged Edge Metal Art, Terrance Martin, artist**
a home-rule municipality

By: _____
Chris Holsted, City Manager

By: _____
Terrance Martin, Artist

Approved as to Form:

By: _____
Abernathy, Roeder, Boyd & Hullett, P.C.
Ryan Pittman, City Attorneys

STATE OF TEXAS §

COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, a Notary Public in and for this State of Texas, on this day personally appeared **CHRIS HOLSTED**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purpose and consideration expressed, and in the capacity therein stated.

Given under my hand and seal of office this ____ day of _____, 2021.

Notary Public in and For the State of Texas

STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for this State of _____, on this day personally appeared **TERRANCE MARTIN**, Artist, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration expressed, and in the capacity therein stated.

Given under my hand and seal of office this ____ day of _____, 2018.

Notary Public in and For the State of _____

**EXHIBIT “A”
SCOPE OF SERVICES**

Project Description

(“NEVER FORGET” Public Art Project)

To fabricate and install the proposed Fire Station #4 Public Art Project artist Terrance Martin, owner of Heavy Metal Art Werks, DBA Jagged Edge Metal Art will perform the following tasks:

A) Following a site visit, submit final schematic drawings of the proposal, based upon submitted maquette to City staff and the Public Arts Advisory Board for their review and approval within sixty (60) days of the receipt of this agreement. These drawings will include:

- Detailed information of every physical feature of the construction of the Artwork and its integration with the site with any proposed changes to the previously submitted concept highlighted. (Final Design).
- A description of any issues involved in the construction, integration and maintenance of the Artwork, as well as any third party subcontractors needed to work on the project.
- A final project budget breakdown not to exceed \$81,000.
- An installation timeline.

B) Following formal approval by the Public Arts Advisory Board, and the Wylie City Council, the Artist shall submit drawings stamped by an engineer, located and licensed by the State of Texas and paid for by the Artist, for certification that the Artwork, foundation, and its connection will be structurally sound.

C) Artist shall fabricate and install the Artwork in substantial conformity with the approved design. Any significant changes in the concept, as defined in Article 5.2, must be approved by the City. It is the responsibility of the Artist to coordinate with the City, the Project Landscape Architect, and Contractor to ensure that the site is prepared to receive the Artwork. Artist will be responsible for preparation of the site, including installation of the foundation base, risers, sculptures and lighting. City will be responsible for landscaping around the space and electrical power to the site.

D) Upon completion of the permanent installation and clean-up of the site, the City Project Manager will inspect the work and give notice of acceptance, as provided in this Agreement. Artist will complete City’s maintenance worksheet and submit it to the City within ten (10) days of City’s final acceptance of the Artwork.

MAINTENANCE PROCEDURES

Materials and Care Information Sheet (to be filled out by the artist and submitted upon completion of the project prior to final payment.)

Artist: Heavy Metal Werks, DBA Jagged Edge Metal Art, Terrence Martin, Artist

Date: 07/29/2021

Title of Work: **“NEVER FORGET”**

Media: Aluminum

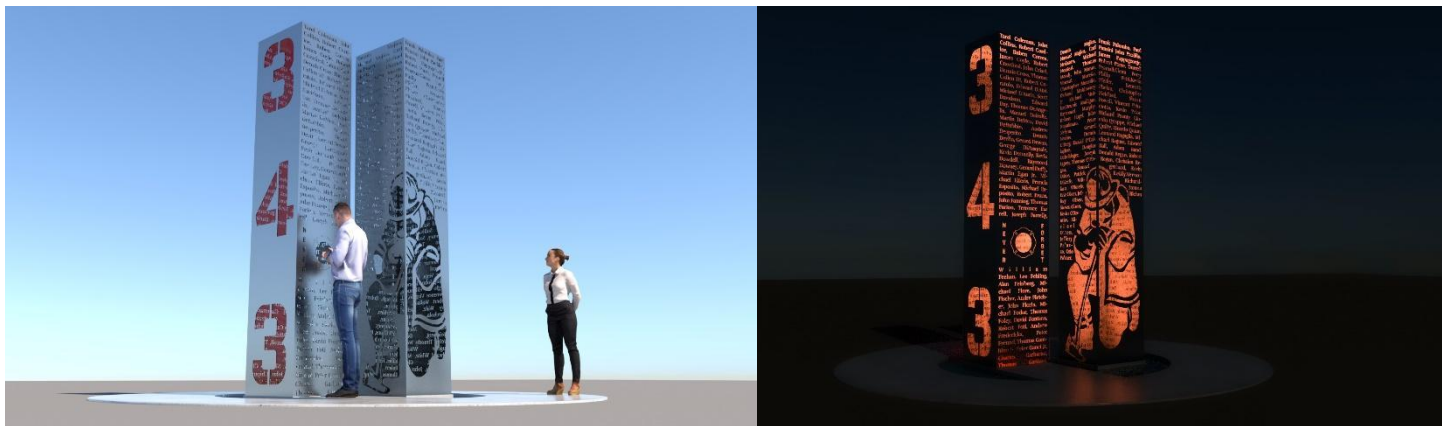
Specific materials used (Brand name and type of all materials, i.e. type of paper and fiber content, metal alloy, chemical composition of patina, etc.) 6061 Aluminum Alloy

Specific techniques used in the fabrication of the Artwork. (Airbrush painting, lost wax casting, TIG welding, etc.): CNC Cut, Powder coated clear, TIG weld

Fabricator name and address (if other than artist): NONE

Installation materials and techniques (Attach as-built drawings as appropriate):

High strength structural embedded attachments, recirculation pump, and 12v LED lighting



Recommended Maintenance procedures:

Annual cleaning with mild soap solution

Cautions regarding maintenance, handling, etc:

NONE

Agreement for Fire Station #4 Public Art Project, Terrance Martin, Artists

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**EXHIBIT “B”
COMPLETION SCHEDULE/PROJECT BILLING/PROJECT BUDGET**

Completion Schedule and Project Billing

TASK	DESCRIPTION	PAYMENT	TIMELIN E
1	Execution of Agreement and Notice to Proceed. Insurance documentation sent to City.	\$10,000	9-1-2021
2	Submit final design and budget breakdown for approval to city staff. Stamped engineered drawings submitted.	\$8,500	10-1-2021
3	Artist begins work upon issuance of city permit.	\$15,000	10-15-2021
4	Artist (half complete) confirmed with staff. (pictures or examination)	\$20,000	12-15-2021
5	Artist ships work from studio to site.	\$8,000	3-10-2022
6	<ul style="list-style-type: none"> ● Artist installs work at site. 	\$7,000	4-1-2022 or before
7	City inspection and approval-final signoff.	\$12,500	4-15-2022
TOTA L		\$81,000	

EXHIBIT "C"
AFFIDAVIT

THE STATE OF _____ §

COUNTY OF _____ §

I, _____, Artist, make this affidavit and hereby on oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be peculiarly affected by the work or decision on the project (check all that apply);

Ownership of ten percent (10%) or more of the voting shares of the business entity.

Ownership of \$2,500 or more of the fair market value of the business entity.

Funds received from the business entity exceed ten percent (10%) of my income for the previous year.

Real property is involved and I have an equitable or legal ownership with a fair market value of at least \$2,500.

None of the above.

A relative of mine has substantial interest in the business entity or property that would be affected by my decision of the public body of which I am a member.

Other: _____

Upon the filing of this affidavit with the City of Wylie, Texas, I affirm that no relative of mine, in the first degree by consanguinity or affinity as defined in Chapter 573 of the Texas Government Code, is a member of the public body which took action on the agreement.

SIGNED this ___ day of _____, 2021.

Signature of Official/Title

BEFORE ME, the undersigned authority, this day personally appeared _____ and on oath stated that the facts hereinabove stated are true to the best of his/her knowledge or belief.

Sworn to and subscribed before me on this ___ day of _____, 2021.

Notary Public in and for
The State of _____
My commission expires: _____

EXHIBIT "D"

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	OFFICE USE ONLY	
<p>1 Name of vendor who has a business relationship with local governmental entity.</p>	Date Received 	
<p>2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p>3 Name of local government officer about whom the information is being disclosed.</p> <p align="center">_____</p> <p align="center">Name of Officer</p>		
<p>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</p> <p align="center">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p align="center"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p> <p align="center">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p align="center"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p>		
<p>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</p>		
<p>6 <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>		
<p>7</p> <p align="center"> _____ Signature of vendor doing business with the governmental entity </p> <p align="right"> _____ Date </p>		