

**AMENDMENT # 2 TO  
PROFESSIONAL SERVICES AGREEMENT BETWEEN  
WIDGERY STUDIO, LLC  
AND THE CITY OF ANN ARBOR  
FOR "ARBOR WINDS" PUBLIC ART AT THE STADIUM BRIDGES**

**Effective Date:** \_\_\_\_\_  
(to be filled in by City)

**I. PARTIES**

"City" means the City of Ann Arbor, a Michigan municipal corporation, with its address at 301 E Huron Street, Ann Arbor, Michigan 48104.

"Artist" means Widgery Studio, LLC, a Massachusetts limited liability company, with a mailing address of P.O. Box 400452, Cambridge, MA 02140.

**II. EFFECTIVE DATE; DURATION**

This amendment shall become effective on the date of the last signature of the parties and shall remain in effect until satisfactory performance of all services under the amended contract, unless terminated earlier.

**III. AMENDMENTS**

Unless specifically amended by this amendment, all provisions of the original agreement remain in effect and apply to this amendment. This Amendment #2 supersedes and replaces Amendment # 1, entered into between the parties on \_\_\_\_\_. The parties agree to amend the original agreement between them entered into on May 20, 2014 and titled PROFESSIONAL SERVICES AGREEMENT BETWEEN WIDGERY STUDIO, LLC AND THE CITY OF ANN ARBOR FOR "ARBOR WINDS" PUBLIC ART AT THE STADIUM BRIDGES as follows:

- A. Exhibits A and B attached to the original agreement and Amendment #1 are replaced with Exhibits A and B attached to this amendment. The Artist's proposal attached to Exhibit A of the original agreement remains the same.
- B. Exhibit C is added.
- C. Section IX.B. is amended to read as follows:

Insurance: Artist is responsible for procuring and maintaining at Artist's own expense whatever insurance is required during this agreement to protect Artist from claims for bodily injuries, death, or property damage which may arise under this agreement and to cover bodily injuries, death, property damage, or other losses that Artist may suffer while performing services under this agreement, including damage to or loss of works of art while they are in Artist's possession or control. For that portion of the services that involves installation or site preparation, Artist or Artist's contractor(s) shall procure and maintain such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the act(s) or omission(s) giving rise to the claim were made by the Artist, any contractor, or anyone employed by them directly or indirectly.

B. Any insurance provider of Artist or Artist's contractor shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.

D. Section V.A. is amended to read as follows:

Total Fee: This is a flat fee contract for services. The total fee for all services to be performed under this agreement, including administrative and overhead costs, will be \$365,262.

E. Section V.D. is added to read as follows:

Local Permit Fees: Local permit fees shall be paid by the City.

#### IV. SIGNATURES

**ARTIST:**

Widgery Studio, LLC, a  
Massachusetts limited liability  
company

By: \_\_\_\_\_  
Catherine Widgery, Manager  
and Sole Member

**CITY OF ANN ARBOR,** a Michigan  
municipal corporation

By: \_\_\_\_\_  
Christopher Taylor, Mayor

By: \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

**Approved as to substance**

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Steven D. Powers, City Administrator

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Craig Hupy, Public Services Area  
Administrator

**Approved as to form and content**

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Stephen K. Postema, City Attorney

**EXHIBIT A**  
**Scope of Services**  
**“Arbor Winds” Public Art at East Stadium Boulevard Bridges**

Artist shall complete the following services to finalize the design and structural engineering, fabricate, and install the Project as described and depicted in the attached proposal:

Final Design and Engineering:

1. Complete a final design of all artwork in the proposal, including final fabrication and installation specifications.
2. Prepare computer files for metal fabrication and cutting.
3. Design appropriate foundations, anchors, members, and structural supports for all artwork and obtain final, sealed approval of these designs from a professional engineer from Northwest Consultants, Inc., as described in the proposal.
4. Develop a project work plan and work schedule.
5. Submit a written description of the artwork, including a statement from the artist.
6. Address any design issues with City staff, the Project Development Task Force, and the Ann Arbor Public Art Commission.
7. Obtain City approval of the final structural engineering design.
8. Develop draft maintenance guidelines and include estimates of cost for regular and future maintenance.

Fabrication:

1. Complete fabrication of all artwork with subcontractors specified in the proposal or otherwise approved by the City.
2. Prepare the artwork for complete and safe shipment to the site.
3. Purchase any necessary appurtenances, including lighting, that Artist will not fabricate.

#### Installation:

1. Assist the City in obtaining all applicable local permits for installation of artwork and appurtenances; obtain any necessary state and federal permits; and ensure that the installation meets all applicable local, state, and federal legal requirements.
2. Ship artwork and appurtenances to the installation site and secure the artwork and appurtenances at the site.
3. Establish a timeline and plan for safe installation of the artwork and appurtenances.
4. Install all necessary support foundations, anchors, members, lighting, and structural supports to City-approved specifications.
5. Complete installation of all artwork and appurtenances.

#### Project Completion:

1. Restore all disturbed areas at the installation site to a condition equal to or better than the condition prior to installation of the artwork and appurtenances.
2. Provide final maintenance guidelines for use by City staff and include estimates of cost for regular and future maintenance.
3. Provide the final computer files for metal cutting and fabrication and glass etching and fabrication to the City.

If a provision in the attached proposal conflicts with a provision in this agreement as amended, this agreement prevails.

**EXHIBIT B**  
**Schedule of Compensation**  
**“Arbor Winds” Public Art at East Stadium Boulevard Bridges**

Six payments will be made in the following amounts. The payments will be paid upon completion of the identified elements in the Scope of Services as set out in Exhibit A and upon receipt of invoices and evidence of completion from Artist. All payments are subject to the City's acceptance of the work invoiced, which acceptance shall be provided by the Contract Administrator. Payment shall be made within 30 days of acceptance

**First Payment**

Upon execution of the original agreement by all parties:

<i>Total</i>	<b>\$3,000</b>
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**Second Payment**

Upon completion of Final Design and Engineering:

<i>Total</i>	<b>\$5,248</b>
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**Third Payment**

Upon commencement of Fabrication:

Payment reflects the following budget items:

Preparation of shop drawings for: Glass etching and metal fabrication	\$1,200
Insurance	\$500
Purchase Lighting Fixtures	\$18,593
50% of Artist Overhead	\$7,500
50% of Glass Elements	\$47,385
50% of Metal Elements	\$56,000
34% of Artist Fee	\$11,667
Sub-total	<b>\$142,845</b>

## **Fourth Payment**

Upon 50% completion of Fabrication:

Payment reflects the following budget items:

Glass Shipping Cost	\$7,200
Metal Shipping Cost	\$2,845
Fabrication of anchor bolt templates for foundations	\$1,250
50% of Glass Elements	\$47,385
50% of Metal Elements	\$56,000
33% of Artist Fee	\$11,667
Sub total	<b>\$126,347</b>

## **Fifth Payment**

Upon completion of Fabrication:

Payment reflects the following budget items:

Foundation installation	\$42,155
Installation of artwork	\$14,265
Foundation layout, staking, and inspection	\$6,436
Budget for repair of damaged sidewalks, streets, and other areas damaged during installation activities	\$3,000
Artist travel, lodging, and per diem	\$2,800
Sub-total	<b>\$68,656</b>

## **Sixth Payment**

Upon completion of Installation and Project Completion:

Payment reflects the following budget items:

50% of Artist Overhead	\$7,500
33% of Artist Fee	\$11,666
Sub-total	<b>\$19,166</b>

**Grand total** **\$365,262**

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

Effective on or before any delivery of artwork or appurtenances to the site, and continuing without interruption until installation is completed, Artist or its contractor shall have, at a minimum, the following insurance, including all endorsements necessary for Artist or Artist's contractor to have or provide the required coverage.

A. Artist or Artist's contractor shall have insurance that meets the following minimum requirements:

1. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident  
Bodily Injury by Disease - \$500,000 each employee  
Bodily Injury by Disease - \$500,000 each policy limit

2. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements which diminish the City's protections as an additional insured under the policy. Further, the following minimum limits of liability are required:

\$1,000,000 Each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined  
\$2,000,000 Per Job General Aggregate  
\$1,000,000 Personal and Advertising Injury

3. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97 or current equivalent. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

B. Insurance required under A.2 above shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, Artist agrees to waive any right of recovery by its insurer against the City.

C. Insurance companies and policy forms are subject to approval of the City Attorney, which approval shall not be unreasonably withheld. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be



approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. Artist shall furnish the City with satisfactory certificates of insurance and endorsements prior to commencement of any work. Upon request, Artist shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this contract, Artist shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.