

**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
BRUSH DESIGN, LLC  
AND THE CITY OF ANN ARBOR  
FOR  
THE STADIUM BOULEVARD RECONSTRUCTION PROJECT  
“LEAVEN” PUBLIC ART**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron St. Ann Arbor, Michigan 48104 ("City"), and Brush Design, LLC, ("Contractor" or "Artist") a New York Limited Liability Company with its address at 54 W. 40<sup>th</sup> Street, First Floor, New York, New York 10018 agree as follows on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Contractor agrees to provide services to the City under the following terms and conditions:

**I. DEFINITIONS**

Administering Service Area/Unit means the Public Services Area.

Contract Administrator means Nicholas S. Hutchinson, P.E., acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for and delivered to City by Contractor under this Agreement

Project means Stadium Boulevard Reconstruction Project - S. Main Street to Kipke Drive – Public Art Installation – “Leaven”; City of Ann Arbor File No. 2014-035.

**II. DURATION**

This Agreement shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for in Article XI.

**III. SERVICES**

- A. The Contractor agrees to provide services in connection with the Project as described in Exhibit A ("Services"). The City retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement.
- B. Quality of Services under this Agreement shall be of the level of quality performed by persons regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Contractor shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

- D. The Contractor may rely upon the accuracy of reports and surveys provided to it by the City (if any) except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

#### **IV. INDEPENDENT CONTRACTOR**

The Parties agree that at all times and for all purposes under the terms of this Agreement each Party's relationship to any other Party shall be that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants. No liability, right, or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement.

#### **V. COMPENSATION OF CONTRACTOR**

- A. The Contractor shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the Contractor, and approved by the Contract Administrator.
- B. The Contractor will be compensated for Services performed in addition to the Services described in Section III, only when the scope of and compensation for those additional Services have received prior written approval of the Contract Administrator.
- C. The Contractor shall keep complete records of work performed (e.g. tasks performed/hours allocated) so that the City may verify invoices submitted by the Contractor. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

#### **VI. INSURANCE/INDEMNIFICATION**

- A. The Contractor shall procure and maintain during the life of this contract 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 Contractor, any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Contractor shall provide to the City, before the commencement of any work under this contract, documentation satisfactory to the City demonstrating it has obtained the policies and endorsements required by Exhibit C.
- B. Any insurance provider of 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.

- C. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses, including attorney's fees, resulting or alleged to result, from any acts or omissions by Contractor or its employees and agents occurring in the performance of or breach in this Agreement, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from the City's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement.

## **VII. COMPLIANCE REQUIREMENTS**

- A. Nondiscrimination. The Contractor agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the provisions of Section 9:158 of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.
- B. Living Wage. If the Contractor is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code, the Contractor agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Contractor agrees to pay those employees providing Services to the City under this Agreement a "living wage," as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

## **VIII. WARRANTIES BY THE CONTRACTOR**

- A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of quality performed by persons regularly rendering this type of service.
- B. The Contractor warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.
- C. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.
- D. The Contractor warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes.

- E. The Contractor warrants that its proposal for services was made in good faith, it arrived at the costs of its proposal independently, without consultation, communication or agreement, for the purpose of restricting completion as to any matter relating to such fees with any competitor for these Services; and no attempt has been made or shall be made by the Contractor to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

## **IX. OBLIGATIONS OF THE CITY**

- A. The City agrees to give the Contractor access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.
- B. The City shall notify the Contractor of any defects in the Services of which the Contract Administrator has actual notice.

## **X. ASSIGNMENT**

- A. The Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.
- B. The Contractor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

## **XI. TERMINATION OF AGREEMENT**

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice. The waiver of any breach by any party to this Agreement shall not waive any subsequent breach by any party.
- B. The City may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to Contractor, except the obligation to pay for Services actually performed under the Agreement before the termination date.
- C. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice

of termination to Contractor. The Contract Administrator shall give Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.

- D. The provisions of Articles VI and VIII shall survive the expiration or earlier termination of this Agreement for any reason. The expiration or termination of this Agreement, for any reason, shall not release either party from any obligation or liability to the other party, including any payment obligation that has already accrued and Contractor's obligation to deliver all Deliverables due as of the date of termination of the Agreement.

## **XII. REMEDIES**

- A. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the Parties.
- B. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any agreement between the parties or otherwise.
- C. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently effect its right to require strict performance of this Agreement.

## **XIII. NOTICE**

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONTRACTOR, it shall be addressed and sent to:

Brush Design, LLC  
54 W. 40<sup>th</sup> Street, First Floor  
New York, New York 10018  
Attention: Brian W. Brush

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor  
Public Services Area  
c/o Craig A. Hupy, P.E., Public Services Area Administrator  
P.O. Box 8647  
Ann Arbor, Michigan 48107

#### **XIV. CHOICE OF LAW AND FORUM**

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

#### **XV. OWNERSHIP OF DOCUMENTS**

Upon completion or termination of this Agreement, all documents (i.e., Deliverables) prepared by or obtained by the Contractor as provided under the terms of this Agreement shall be delivered to and become the property of the City. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Contractor as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the City without restriction or limitation on their use. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the City shall have a recognized proprietary interest in the work product of the Contractor.

Unless otherwise stated in this Agreement, any intellectual property owned by Contractor prior to the effective date of this Agreement (i.e., Preexisting Information) shall remain the exclusive property of Contractor even if such Preexisting Information is embedded or otherwise incorporated in materials or products first produced as a result of this Agreement or used to develop Deliverables. The City's right under this provision shall not apply to any Preexisting Information or any component thereof regardless of form or media.

#### **XVI. CONFLICTS OF INTEREST OR REPRESENTATION**

Contractor certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Contractor further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

Contractor agrees to advise the City if Contractor has been or is retained to handle any matter in which its representation is adverse to the City. The City's prospective consent to the Contractor's

representation of a client in matters adverse to the City, as identified above, will not apply in any instance where, as the result of Contractor's representation, the Contractor has obtained sensitive, proprietary or otherwise confidential information of a non-public nature that, if known to another client of the Contractor, could be used in any such other matter by the other client to the material disadvantage of the City. Each matter will be reviewed on a case by case basis.

## **XVII. SEVERABILITY OF PROVISIONS**

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

## **XVIII. EXTENT OF AGREEMENT**

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Contractor with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Agreement, regardless of the other party's failure to object to such form. This Agreement shall be binding on and shall inure to the benefit of the parties to this Agreement and their permitted successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement may only be altered, amended or modified by written amendment signed by the Contractor and the City. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

**FOR CONTRACTOR**

By \_\_\_\_\_  
Brian W. Brush

Its

**FOR THE CITY OF ANN ARBOR**

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

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

**Approved as to substance**

\_\_\_\_\_  
Howard S. Lazarus, City Administrator

\_\_\_\_\_  
Craig A. Hupy, P.E.  
Public Services Area Administrator

**Approved as to form and content**

\_\_\_\_\_  
Stephen K. Postema, City Attorney



## **Exhibit A Scope of Services**

“Artwork” means the design for decorative metal leaves as described in the Artist’s proposal, titled “Leaven,” attached to this Exhibit, including any material derived from or based on the artwork that is created under this agreement.

Artist shall provide the Artwork as described and depicted in this scope of services. If a provision in the attached proposal conflicts with a provision in this agreement as amended, this agreement prevails.

### **1. Deliverables**

Artist shall complete the following deliverables:

Final Design and Engineering:

1. Complete the final design of the Artwork in the proposal, including final fabrication and installation specifications. Provide a drawing depicting the general layout of the project on the retaining walls.
2. Prepare computer files for metal fabrication and cutting.
3. Design appropriate anchors, members, and supports for the Artwork and obtain final approval of these designs from the City of Ann Arbor.
4. Develop a work plan and work schedule.
5. Submit a complete written description of the Artwork, including a statement from the Artist.
6. Address any design issues with City staff.
7. Develop draft maintenance guidelines and include estimates of cost for regular and future maintenance for 20 years.

Fabrication:

1. Complete fabrication of 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. Provide 50 extra leaves to the City for use in repairing damage, should it occur, to the Artwork. Provide instructions for replacement of leaves.

Installation:

1. Obtain all necessary permits for Artwork installation and meet all applicable local and state worker safety codes and other applicable legal requirements.
2. Deliver the Artwork to, and secure the Artwork at, the installation site or another location as agreed upon by the Artist and the City of Ann Arbor.
3. Establish a timeline and plan for safe installation of the Artwork, which is subject to City approval.
4. Install all necessary support structures for the Artwork to City-approved specifications.
5. Complete installation of the Artwork. Artwork shall be installed on both retaining walls along the south side of East Stadium Boulevard that were constructed as part of the Stadium Boulevard Reconstruction Project.

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.
2. Provide final maintenance guidelines for use by the City staff and include estimates of cost for regular and future maintenance.
3. Provide the final computer files for metal cutting and fabrication to the City.

## 2. Preliminary Project Work Schedule

A final work schedule will be prepared in conjunction with Submittal Item b in Exhibit B.

The preliminary project schedule is as follows (submittals described in Exhibit B):

July 11th, 2017 – Execution of contract, Notice to Proceed; submittal a  
August 1st, 2017 – Submittal b  
August 7th, 2017 – Submittal c  
August 31st, 2017 – Submittal d  
September 15th, 2017 – Submittal e  
December 1st – Submittal f  
December 15th – Submittal g

## 3. Ownership and Use of Artwork; Intellectual Property Rights

- A. Waiver of "Droit Moral" and Rights Under Visual Artists Rights Act: As to Artist's rights in the Artwork, the provisions of this agreement shall supersede the provisions of the Visual Artists Rights Act of 1990, 17 U.S.C. § 101 et. seq., as amended ("VARA"). Artist waives all rights in or protections applied to the Artwork and any uses of the Artwork set forth in VARA or in the nature of "Droit Moral."
- B. Maintenance, Repairs, or Restorations: The City shall have the right to determine, in its sole discretion, when and if maintenance, repairs, or restorations of the Artwork will be made. In order to effectuate maintenance, repairs, or restorations, Artist shall provide the City with a detailed list of materials and methods used to create the Artwork upon the City's request.
- C. Damage or Alteration: The City shall not intentionally alter the Artwork without the prior written approval of Artist. Repair, restoration, or maintenance of the Artwork in substantially the same materials and form as the original Artwork (including replacement of individual metal leaves with extra leaves provided by Artist) shall not be considered alteration. Artist acknowledges, for the benefit of the City, that installation of the Artwork into the building, structure, landscape or other City facility for which it has been designed may subject the Artwork to destruction, damage, distortion, mutilation, or alteration upon its removal. Artist acknowledges that the Artwork may be placed outdoors in a public location and may be unsecured. Artist acknowledges the possibility of and waives all claims against the City arising from the destruction, damage, distortion, mutilation, or alteration of the Artwork by third parties or force majeure, including by weather, graffiti, or vandalism.
- D. Removal, Relocation, Sale, Donation or Destruction: Nothing in this agreement shall preclude the right of the City, in its sole discretion, to remove, relocate, sell, donate, or destroy the Artwork or any discrete piece thereof.
- E. Intellectual Property Rights: Except as provided in this agreement, all intellectual property rights in the Artwork shall vest in and at all times remain vested in the originator of the material produced. Artist shall identify and clearly mark all portions of the Artwork that constitute intellectual property, the rights to which are vested in or retained by any other originator, and shall identify that other originator.

- F. Copyright Identification: When displaying or reproducing any image of the Artwork that is subject to Artist's or another party's copyright (as identified and marked in accordance with paragraph E above of this section), the parties shall acknowledge such copyright with "©," as appropriate, in immediate adjacency to the image.
- G. Use of Artwork: The City may create, display, or distribute photographs, scans, or other representations of the Artwork in any media, including brochures, books, flyers, postcards, posters, broadcasts, films, and electronic files. If the Artwork is a plan, design, or template, the City may reproduce the Artwork, with appropriate technical modifications necessary to do so, in any location, in any format, in whole or in part, for any City purpose. The City may authorize other government entities or entities that receive government or public tax funding to use the Artwork in the same manner as the City is permitted to under this agreement.
- H. No Liability: The City shall not be liable and Artist shall not seek to hold the City liable for the further interpretation, design, or implementation by others of ideas, concepts, or intellectual copyright materials derived from the Artwork. Artist waives all claims against the City for royalties, compensation, or damages that arise from the City's use of the Artwork or the City's authorization of third-party use of the Artwork.
- I. Ownership of Materials: The City shall own the physical embodiment of the Artwork, including designs, schematics, templates, images, or computer files from which the Artwork may be reproduced.

#### **4. Artwork Warranties**

- A. Artist warrants that:
  - 1) Artist has the authority to grant the uses of the Artwork permitted under this agreement.
  - 2) The Artwork does not infringe or violate any copyright, trade secret, trademark, patent, or other proprietary or personal right held by any third party.
  - 3) The Artwork is free of defects in workmanship, materials, and design.
  - 4) The Artwork is safe and fit for its intended purpose and operates as intended.
  - 5) The City will receive ownership of the Artwork free of liens, security interests, or other encumbrances.
  - 6) The Artwork has been created by Artist in accordance with applicable laws.
- B. These warranties are in addition to all other express, implied, or statutory warranties. These warranties will survive inspection, test, delivery, acceptance, use, and payment by the City. If any warranty is nonconforming, the City may, at its sole option:
  - 1) Retain the Artwork, in whole or in part, with a refund of the value of the nonconforming portion.

- 2) Require Artist to correct or replace the nonconforming portion at Artist's expense (including delivery and installation costs).
- 3) Correct or replace the nonconforming portion and recover the costs from Artist.
- 4) To the extent that any portion of the Artwork is in any action held to constitute an infringement of any third party's rights and its use is enjoined, require Artist, at Artist's expense, to do one of the following: (a) procure for the City the right to continue its use of the Artwork, (b) provide a revised or new Artwork that does not infringe, the acceptance of which shall be entirely at the City's discretion, or (c) repay the purchase price to the City.
- 5) Exercise any other statutory rights.

Brian Brush

LEAVEN (pronounced lev-uhn)

### **Overview**

Brian W. Brush is a designer and artist who uses the interaction of light and material to tell stories at the intersection of art, science, technology, and environment with public art. Through his New York-based creative practice BRUSH he designs and constructs data-driven, interactive environments integrating high-tech illumination and digital media with complex geometric and material systems. His goal is to reveal the fascinating hidden relationships between people and the environments they inhabit by manifesting these phenomena in color, light, and form in a way that inspires the public and energizes public spaces. He's twice been awarded the Public Art Network Year in Review Award and his work has appeared in numerous publications including Art Forum, Metropolis Magazine, Interior Design Magazine, The Architect's Newspaper, ArchDaily, Make Magazine, FastCoDesign, Atlantic Cities, Wired Design, and Phaidon Press's recent book "Room:Inside Contemporary Interiors."

### **Description**

LEAVEN is a faceted, vine-like relief sculpture that mimics and magnifies the adjacent natural elements native to the southern side of East Stadium Blvd. Taking cues from the repetition of stones and leaves, and the branches that pattern the site's verdant edge, LEAVEN will visually soften the hard boundary of the new concrete retaining wall by creating 'windows' to nature with flowing tendrils of reflective aluminum 'leaves' nestled in the recessed pockets of the wall. The myriad reflections on the aluminum 'leaves' intend to embody Ann Arbor's many colors at different times of the day and year, while also mediating the contrast between the surrounding natural material and the built environment.

### **Materiality and Effect**

LEAVEN's aluminum 'leaves', each a 9" x 9" square rotated in a "diamond" orientation, are anodized to create diffuse reflections of light that will translate the movement of clouds, the sky, leaves and trees, and the various colors of cars and people that pass by. The reflections are achieved by folding the bottom half of each 'leaf' upwards according to three distinct angles. Each angle corresponds to the distance the leaf bottom protrudes from the recessed wall surface. A 1", 2", or 3" bend is utilized to control these angles ensuring that no leaves extend

beyond the 3" recess in the wall. This limits the potential for catching or snagging by any pedestrians. The bend angles within that range can be varied randomly or according to a specific visual pattern integrated with the overall composition.

As its primary material, LEAVEN utilizes anodized aluminum for its ability to create soft and diffused reflections of its surroundings. The 'leaves' will create subtle gradients of color by blurring the surrounding context of city, trees, and people. This effect will be especially spectacular when moving past the wall at fast speeds such as from a car or bicycle. The quick changes in viewpoint will create the illusion of rustling leaves and flowing shifts of color. This effect can be seen to a limited extent in the accompanying time-lapse video submitted with the proposal.

### **Compositional Organization**

The organization and distribution of the 'leaves' throughout the wall recesses is inspired by the flowing stacks of stones that construct the stone wall located on site. Although the stones are self-similar units, their arrangement produces an irregular yet continuous 'branching' pattern where stones appear to follow invisible curvilinear lines that converge and bifurcate. LEAVEN duplicates this logic of flow lines by arranging the 'leaves' in a continuously changing, overlapping sequence that is smooth yet variable as it meanders the length of the wall. The invisible ordering 'branches' rise, fall, sweep, and sway guiding the placement of 'leaves' in a visually dynamic form. This curving, dynamic, flow contributes to LEAVEN's energetic appearance to viewers on foot and in cars.

### **Construction**

Aluminum is one of the lightest structural metals so it can easily be folded into position at the specified increments. This can be done before mounting the 'leaves' onto the wall or during installation for maximum compositional flexibility. The 'leaves' will be mounted according to a removable/disposable paper template placed on the wall recess surfaces and anchored using simple concrete screws or anchors that could be pre-drilled if necessary. The template also allows for adjustments to be made on site to allow the 'leaves' to reflect the most desirable visual conditions. Most anchors will be hidden from view in the folds of the 'leaves' and those that support the lower folded-up sides of the 'leaves' will be encased in hollow aluminum standoff spacers to preserve the clean visual sophistication of the piece. With a high heat-capacity, the aluminum 'leaves' will not absorb or release heat that can burn passersby and anodized aluminum is also very durable, so it will not rust or stain the concrete wall. As

such the material should be safe, secure, long-lasting, and easy to maintain while providing amazing artistic quality.

### **Concluding Statements**

LEAVEN is designed to maximize the visual character of East Stadium Boulevard as it transitions from a wild, natural threshold to a formal, developed boundary. Although this change will be abrupt it can be most effectively and beautifully softened with a nature-inspired artwork that recalls natural materials and textures yet abstracts them through light, shape, and form in a way that augments the site's evolution as a developing place. Having visited the site myself, I see this change as a unique opportunity to create an artwork that will preserve the inherent character of that natural threshold with the very same materials that will lend it a fresh new look that and lighten, uplift, and activate the entire East Stadium Boulevard streetscape.

My work is always very sensitive to context and the kind of symbolic detail that can contribute to identity of place, both of which will give the project distinct richness. Hopefully these traits are evident in the proposal. If you need any other information or clarification on LEAVEN, please reach out. It still has a ways to go, but I'm very enthusiastic about the project's development and appreciate the opportunity to apply. Thank You

### **Project Budget (Rough Estimate)**

Materials (Aluminum, fasteners, finishes) - \$40,000

Labor and Installation - \$20,000

Permits, Fees, and Consultation - \$2000

Engineering - \$4000

Artist Fee - \$18,000

Artist Travel - \$4000

Rental Equipment - \$2000

Contingency - \$10,000

Total - \$100,000

### **References**

Jennifer Easton - Art Program Manager, San Francisco Bay Area Rapid Transit (BART)

jeaston@bart.gov

Ruth Bruno - Public Art Program Manager State of Colorado/Colorado Creative Industries

ruth.bruno@state.co.us

Sandy Bellamy - Percent for Art  
Department of General Services  
Construction Services  
District of Columbia Government  
sandy.bellamy@dc.gov



# LEAVEN

East Stadium Blvd. Public Art Proposal  
Ann Arbor, Michigan

LEAVEN is a faceted, vine-like relief sculpture that mimics and magnifies the adjacent natural elements native to the southern side of East Stadium Blvd. Taking cues from the repetition of stones and leaves, and the branches that pattern the site's verdant edge, LEAVEN will visually soften the hard boundary of the new concrete retaining wall by creating "windows" to nature with flowing tendrils of reflective aluminum "leaves" nestled in the recessed pockets of the wall. The myriad reflections on the aluminum "leaves" intend to embody Ann Arbor's many colors at different times of the day and year, while also mediating the contrast between the surrounding natural material and the built environment.

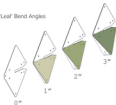
Full-Scale Model Prototype (photograph)

# LEAVEN

East Stadium Blvd. Public Art Proposal  
Ann Arbor, Michigan

LEAVEN's aluminum 'leaves', each a 9"x9" square rotated in a "diamond" orientation, are anodized to create diffuse reflections of light that will translate the movement of clouds, the sky, leaves and trees, and the various colors of cars and people that pass by. The reflections are achieved by folding the bottom half of each 'leaf' upwards according to three distinct angles. Each angle corresponds to the distance the leaf bottom protrudes from the recessed wall surface. A 1", 2", or 3" bend is utilized to control these angles ensuring that no leaves extend beyond the 3" recess in the wall.

'Leaf' Bend Angles



# LEAVEN

East Stadium Blvd. Public Art Proposal  
Ann Arbor, Michigan

The organization and distribution of the 'leaves' throughout the wall recesses is inspired by the flowing stacks of stones that construct the stone wall located on site. Although the stones are self-similar units, their arrangement produces an irregular yet continuous 'branching' pattern where stones appear to follow invisible curvilinear lines that converge and bifurcate. LEAVEN duplicates this logic of flow lines by arranging the 'leaves' in a continuously changing, overlapping sequence that is smooth yet variable as it meanders the length of the wall. The invisible ordering 'branches' rise, fall, sweep, and sway guiding the placement of 'leaves' in a visually dynamic form.



Stone Wall Unit



Stone Wall Pattern 'Branching' Structure



# LEAVEN

East Stadium Blvd. Public Art Proposal

Ann Arbor, Michigan



Leaf Pattern - Schematic Detail Drawing



Schematic Street Elevation View (Final pattern can change)

## **EXHIBIT B COMPENSATION**

This is a flat fee contract. Seven payments will be made in the following amounts corresponding to the submittals below. The payments shall be paid upon completion of the identified elements in the Scope of Services as set forth in Exhibit A and upon receipt of invoices and evidence of completions from the Artist. All payments are subject to the City's acceptance of the work invoiced by the Contract Administrator. Payment shall be made within 30 days of acceptance.

### Schedule of Submittals:

- a. \$10,000 upon execution of this contract;
- b. \$10,000 upon completion of a work plan, detailed and itemized cost breakdown of project deliverable elements, and project schedule;
- c. \$20,000 prior to fabrication;
- d. \$20,000 at 50% fabrication complete;
- e. \$20,000 at 100% fabrication, prior to installation;
- f. \$10,000 upon completion of installation; and
- g. \$10,000 upon final acceptance of installed Artwork.

Attached is a projected budget associated with this schedule of compensation for specific line items costs associated with the project. This is a flat fee contract regardless of actual costs incurred by Artist. Any proposed expenditures by Artist beyond the items listed in the projected budget must receive prior approval from the Contract Administrator.

(insert/Attach Negotiated Fee Arrangement)

**Exhibit "B"**

**Compensation**

**"Leaven" - Projected Budget - City of Ann Arbor**

Date Prepared: 3/10/2017

Prepared by: Brian W. Brush

<u>Material/Equipment Type</u>	<u>Cost per Unit</u>	<u>Number of units</u>	<u>TOTAL Cost</u>	<u>Unit Size</u>	<u>Notes</u>	<u>Item #</u>
<b>Anodized Aluminum Leaves</b>						
5052 Aluminum Leaves sheet stock	\$8.00	3000	\$24,000.00			
Fabrication	\$3.00	3000	\$9,000.00			
shipping to anodizer			\$2,000.00			
Post-fabrication anodizing	\$4.00	3000	\$12,000.00			
Shipping to Ann Arbor			\$1,000.00			
<b>Anchoring System</b>						
1.5" custom stainless "Tapcon" concrete anchors	\$0.49	6000	\$2,940.00			
2.5" custom stainless "Tapcon" concrete anchors	\$0.59	1000	\$590.00			
3.5" custom stainless "Tapcon" concrete anchors	\$0.69	1000	\$690.00			
4.5" custom stainless "Tapcon" concrete anchors	\$0.79	1000	\$790.00			
Custom plastic sleeves for anchors	\$0.17	9000	\$1,530.00			
Custom plastic spacers	\$0.25	9000	\$2,250.00			
Custom 1" aluminum spacer	\$0.35	1200	\$420.00			
Custom 2" Aluminum spacer	\$0.40	1200	\$480.00			
Custom 3" Aluminum spacer	\$0.81	1000	\$810.00			
Shipping of all parts			\$1,000.00			
<b>Installation Labor</b>						
Layout			\$2,000.00			
Anchor Drilling			\$2,000.00			
Leaves mounting			\$5,000.00			
<b>Other Costs</b>						
Misc storage/work space			\$2,000.00			
Misc. Tools			\$1,000.00			
Misc materials			\$2,000.00			
Artist Fee			\$12,000.00			
Rental Equipment Cost			\$1,000.00			
Artist/consultants Travel (air, driving, accomodation)			\$2,000.00			
Public Art Insurance (liability, property, workers comp, volunteer accident)			\$1,500.00			
<b>Sub Total</b>			<b>\$90,000.00</b>			
<b>Contingency (10%)</b>	\$0.10	100000	\$10,000.00			
<b>Total</b>			<b>\$100,000.00</b>			

\* The indirect cost rate was negotiated with the U.S. Department of Health and Human Services effective June 1, 2004.

**EXHIBIT C  
INSURANCE REQUIREMENTS**

Effective the date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall have, at a minimum, the following insurance, including all endorsements necessary for Contractor to have or provide the required coverage.

- A. The Contractor shall have insurance that meets the following minimum requirements:
1. Professional Liability Insurance or Errors and Omissions Insurance protecting the Contractor and its employees in an amount not less than \$1,000,000.
  2. 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
  3. 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 respect Bodily Injury Liability or Property Damage Liability, or both combined  
\$2,000,000 Per Job General Aggregate  
\$1,000,000 Personal and Advertising Injury
  4. 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.
  5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.
- B. Insurance required under A.3 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, the Contractor 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. Contractor shall furnish the City with satisfactory certificates of insurance and endorsements prior to commencement of any work. Upon request, the Contractor 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, the Contractor shall deliver proof of renewal and/or new policies and endorsements to the Administering Service Area/Unit at least ten days prior to the expiration date.