

AN ORDINANCE 2016-10-20-0817

AUTHORIZING THE EXECUTION OF A DONATION AGREEMENT BETWEEN THE CITY OF SAN ANTONIO, THE SAN ANTONIO TRICENTENNIAL CELEBRATION COMMISSION, AND SCULPTURE TRAIL LLC PROVIDING FOR THE CONVEYANCE OF EIGHT BRONZE STATUES OF HISTORICALLY SIGNIFICANT INDIVIDUALS WHO CONTRIBUTED TO SAN ANTONIO FROM SCULPTURE TRAIL LLC TO THE CITY AND THE INSTALLATION OF A TOTAL OF FOURTEEN STATUES AS PART OF THE CITY'S TRICENTENNIAL CELEBRATION IN 2018.

* * * * *

WHEREAS, in 2001, the City of San Antonio accepted seventeen bronze statues donated by Sea World of Texas, known as the "Texas Walk," and these statues are currently displayed inside and outside the Henry B. Gonzalez Convention Center; and

WHEREAS, local philanthropist Jack Guenther has proposed the installation of a trail of historic bronze statues on City property between the Briscoe Western Art Museum and Alamo Plaza, as part of celebrating San Antonio's Tricentennial, and the trail would be comprised of six of the City-owned statues from the Convention Center and eight newly commissioned bronze statues funded by private donations; and

WHEREAS, upon installation, Sculpture Trail LLC or the private donor will convey ownership of the newly commissioned sculptures to the City; and

WHEREAS, Sculpture Trail LLC will be responsible for contracting with sculptors, installers and adhering to a placement plan that is approved by the City and for maintaining all fourteen sculptures for three years following installation, subject to the terms of the Donation Agreement;

NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of the Donation Agreement with Sculpture Trail LLC are authorized and approved. The City Manager, or her designee, is authorized to execute the Donation Agreement, a copy of which, previously executed by Sculpture Trail LLC, is attached to this Ordinance as **Exhibit I**.

SECTION 2. Non-cash donations to the City of San Antonio should comply with GASB 33 and COSA AD 8.8. These items must be coordinated through the City's Finance Department for recording of the proper accounting transactions.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers,

LB
10/20/16
Item No. 14

SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

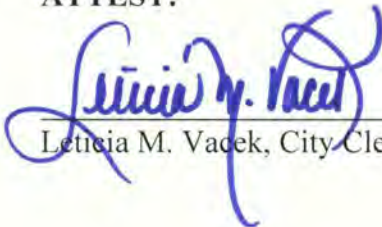
SECTION 4. This Ordinance shall take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.

PASSED AND APPROVED this 20th day of October, 2016.



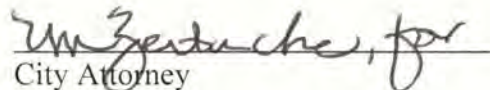
M A Y O R
Ivy R. Taylor

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



City Attorney

Agenda Item:	14 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18, 19, 20, 23)						
Date:	10/20/2016						
Time:	09:27:27 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the execution of a Donation Agreement between the City of San Antonio, the San Antonio Tricentennial Celebration Commission, and Sculpture Trail LLC providing for the conveyance of eight bronze statues of historically significant individuals who contributed to San Antonio from Sculpture Trail LLC to the City and the installation of a total of fourteen statues as part of the City's Tricentennial Celebration in 2018. [Lori Houston, Assistant City Manager; Debbie Racca-Sittre, Interim Director, Arts and Culture]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x			x	
Alan Warrick	District 2		x				x
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Exhibit I

Alamo Sculpture Trail Agreement

This Alamo Sculpture Trail Agreement (the “Agreement”) is made and entered into as of the Effective Date (defined below) by and among the City of San Antonio, a municipal corporation (the “City”), the San Antonio Tricentennial Celebration Commission, a Texas public, non-profit corporation (the “Commission”), and Sculpture Trail LLC, a Texas limited liability company (the “Management Company”). The City, the Commission and the Management Agreement are each referred to herein as a “Party” and collectively as the “Parties.”

Recitals

The Commission is organized to assist with planning, developing, identifying potential partners, fundraising, managing and financing projects involved with the City’s Tricentennial Celebration during 2018. Through the terms of this Agreement, the Management Company desires to establish a trail of fourteen (14) monumental bronze sculptures of historically significant individuals who contributed to the City of San Antonio at specified locations on the sidewalks, rights of way and public spaces between the Alamo Mission and the Briscoe Western Art Museum, a Texas non-profit corporation (the “Briscoe”). The Management Company is a wholly owned, tax exempt subsidiary of the Briscoe and its purpose is to facilitate the completion of the trail. The Management Company intends to raise funds from donors sufficient to commission artists to sculpt eight (8) of the sculptures for the trail, which will be donated to and owned by the City after their installation. The City currently owns six (6) sculptures donated by the owners of SeaWorld San Antonio, which are currently on display in the City’s Henry B. Gonzalez Convention Center (“Convention Center”). The Parties intend this Agreement to set forth each Party’s responsibilities and obligations in establishing the trail and maintaining the sculptures thereafter.

Accordingly, the Parties agree as follows:

1. Definitions and Construction.

(a) Definitions. In addition to defined terms appearing elsewhere in this Agreement, the following capitalized terms shall have the meaning assigned to them.

“Artist” means an individual sculpture artist, as identified on Exhibit A, who has been or will be commissioned to create the Commissioned Sculpture identified on Exhibit A and appearing opposite the artist’s name.

“Artist Agreement” means an agreement with an Artist calling for the creation of one of the Commissioned Sculptures.

“City Sculptures” means the six (6) historical sculptures owned by the City and on public display in the Convention Center, as further identified on Exhibit C.

“Commissioned Sculptures” means eight (8) monumental bronze sculptures of historic individuals as described on Exhibit A.

“Donor” means a Person who signs a Donor Gift Letter and contributes funds stated therein as a gift to the Commission.

“Donor Gift Letter” means a written commitment whereby a Donor agrees to contribute an amount of funds specified therein, as a restricted gift to the Commission.

“Donor Funds” means amounts given by Donors to the Commission pursuant to Donor Gift Letters.

“Effective Date” means the date the City Council of the City approves this Agreement.

“Management Company Bank Account” means a non-interest bearing checking account in the name of the Management Company with International Bank of Commerce.

“Person” means any individual, corporation, partnership (limited or general), limited liability company, association, business trust, joint stock company, trust, unincorporated organization, governmental or quasi-governmental authority or any other entity.

“Sculpture” means either a Commissioned Sculpture or a City Sculpture.

“Sculpture Donor” means a Person who contracts directly with the Artist for the creation of one of the Commissioned Sculptures.

“Sculpture Site” means each City approved location for the installation of a Sculpture.

(b) Construction. Titles and headings to articles, sections and subsections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. For the purposes of this Agreement, (i) words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires, (ii) the terms “hereof,” “herein” and “herewith” and words of similar import shall be construed to refer to this Agreement in its entirety and not to any particular provision, unless otherwise stated, (iii) the term “including” shall mean “including, without limitation,” and (iv) unless otherwise stated, the term “day” means a calendar day.

2. Fundraising by the Management Company.

(a) Solicitation of Sponsorships. The Management Company will: (i) solicit Donors to commit, pursuant to Donor Gift Letters, to contribute the funds to the Commission necessary to pay for the Commissioned Sculptures, excluding any Commissioned Sculptures that

a Sculpture Donor contracts separately with the Artist, and (ii) install the Sculptures in accordance with this Agreement. The Donors will be requested to sign and deliver written donor commitments pursuant to a Donor Gift Letter. Upon receipt of a signed Donor Gift Letter, the Management Company will provide a copy thereof to the Commission and the City. The Management Company will notify the Commission of any Commissioned Sculptures commissioned by a Sculpture Donor.

(b) Artist Agreements. The Management Company will enter into Artist Agreements with the Artists for the creation of the Commissioned Sculptures, other than those Commissioned Sculptures commissioned separately with Artists by Sculpture Donors. The Management Company will provide the Commission and the City with copies of each signed Artist Agreement promptly after it is signed by all the parties thereto. The Management Company will monitor the Artists' progress and administer the Artist Agreements (other than agreements of the Sculpture Donors) with the Artists.

(c) Transfer of Funds to the Management Company. Upon the execution of an Artist Agreement, the Management Company will invoice the Commission for the Donor Funds and within ten (10) days of the receipt of such invoice, the Commission will transfer the Donor Funds it received to the Management Company Bank Account. The Management Company shall retain all Donor Funds only in the Management Company Bank Account, shall not commingle any other funds from any other source with the Management Company Bank Account, and will disburse funds from the Management Company Bank Account only to pay Artists according to their respective Artists Agreements, to install the Sculptures in accordance with this Agreement and to pay the related expenses the Management Company incurs in fulfilling its obligations under this Agreement, to include accounting fees, insurance premiums, legal fees, and vendor charges. This Subsection 3(c) shall not apply to Sculpture Donors or the Sculptures they donate.

(d) Neither the Commission nor the City will be liable for any payments to Artists. All such payments shall come from Donor Funds or be funded by Sculpture Donors.

4. Storage; Risk of Loss and Installation of the Sculptures.

(a) Storage. The City and the Management Company will cooperate in identifying a site for the temporary storage of the completed Commissioned Sculptures pending their installation on the trail.

(b) Risk of Loss. The Management Company will insure at its expense the completed Commissioned Sculptures against theft or damage until they have been installed in accordance with this Agreement. The Management Company will bear the risk of loss or damage to the Commissioned Sculptures until they have been installed in accordance with this Agreement. If a Commissioned Sculpture is stolen or damaged, the Management Company shall make the claim on its insurance and shall be entitled to re-commission the production of the stolen or damaged Commissioned Sculpture from insurance proceeds, if any.

(c) Location. A proposed location map of the Sculpture Sites is attached as Exhibit B; however, all or some of the Sculpture Sites may be relocated from the locations set forth in Exhibit B, if necessary, as determined by the City at any time prior to installation. If relocated, the Sculpture shall be placed in a suitable location as close as feasibly possible to the location designated in Exhibit B. Upon installation of the Sculptures, the Parties shall also attach an updated Exhibit B setting forth the final Sculpture Sites approved by the City. After the Sculptures are donated to the City, the City may relocate the Sculptures from the final Sculpture Sites to another location that is as close as feasibly possible in the City's discretion and at its expense.

(d) Installation. The Management Company will construct permanent bases for the Sculptures at the final Sculpture Sites and permanently install all of the Sculptures on the bases, however the all the bases and the Sculptures will be installed in a manner to permit the removal and relocation of the bases and the Sculptures, as necessary. The Management Company will arrange the transportation of all the Sculptures to the respective final Sculpture Sites, provided, however, the City shall move the City Sculptures out of its Convention Center to a mutually designated site to be accessed by the Management Company's contracted transportation. The City will provide a controlled and safe access to the final Sculpture Sites, temporarily closing streets and sidewalks if necessary, to allow (i) the Management Company's contracted construction and installation crews to construct the bases at the Sculpture Sites and to install the Sculptures on the bases and (ii) the Management Company's contracted transportation company to transport the Sculptures from the City's Convention Center to the respective Sculpture Sites.

5. Donation of the Commissioned Sculptures to the City after Installation. At the completion of the installation of each Commissioned Sculpture, the Management Company will deliver an executed letter of gift conveying title to the Commissioned Sculpture to the City, free and clear of all liens and other encumbrances, and assigning to the City all associated warranties, if any, of the Artist. The Management Company will use all reasonable business efforts to ensure that letter of gift includes a non-exclusive license to use the copyright to the Commissioned Sculpture for purposes of reproducing images of the Commissioned Sculpture for promotion of the Sculpture Trail or the City of San Antonio. The Management Company will grant a similar license of the copyright to the Briscoe. With respect to Commissioned Sculptures commissioned directly by the Sculpture Donors, the Management Company will make arrangements for the Sculpture Donor to enter into a similar letter of gift to the City and a similar license of the copyright as part of the Sculpture Donor's gift to the City. Prior to conveyance to the City, the Management Company shall own the Commissioned Sculptures other than the Commissioned Sculptures commissioned by the Sculpture Donors. Upon delivering the executed letter of gift, the City shall accept all liability for injuries or death, and risk of loss, associated with the gifted Commissioned Sculpture effective as of the date of the conveyance.

6. Sculpture Maintenance. The Management Company shall be responsible for maintaining the Sculptures by cleaning and waxing them on an annual basis, in accordance with professional standards for outdoor bronze sculptures, for an initial term of three (3) years from the date of the last installation of the Commissioned Sculptures (“Maintenance Term”). The Management Company shall apply any Donor Funds remaining after paying the Artists, the costs of installation and all related expenses of the Management Company, to the maintenance of the Sculptures. In the event the Management Company exhausts such remaining Donor Funds, the City shall be responsible for paying any remaining maintenance costs to the Management Company for the remainder of the Maintenance Term. The Parties agree that maintenance costs shall not exceed \$14,000 per year.

8. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and will be deemed to have been duly given upon receipt) by delivery in person, by facsimile, by nationally recognized overnight courier or by registered or certified mail (postage prepaid, return receipt requested) to each other Party as follows:

If to the Management Company:

Sculpture Trail LLC
153 Treeline Park, Suite 300
San Antonio, Texas 78209
Attention: Jack Guenther, President
Facsimile: (210) 579-7262

with a copy (which copy shall not constitute notice) to:

Kreager Mitchell PLLC
7373 Broadway, Suite 500
San Antonio, Texas 78209
Attention: Mike Kreager
Facsimile: (210) 821-6672

If to the City, to:

Department for Arts and Culture
115 Plaza de Armas, Ste. 102
San Antonio, Texas 78205
Attention: Debbie Racca-Sittre
Facsimile: (210) 207-5426

If to the Commission, to:

San Antonio Tricentennial Commission
101 S. Santa Rosa
San Antonio, Texas 78207
Attention: Edward Benavides, CEO

Such notice will be deemed to be received when delivered if delivered personally, or the next business day after the date sent if sent next business day service by a United States national overnight delivery service, or three (3) business days after the date mailed if mailed by certified or registered mail, or upon receipt of confirmation of delivery if sent by facsimile. Any notice of any change in such address shall also be given in the manner set forth above. Whenever the giving of notice is required under this Agreement, the giving of such notice may be waived in writing by the Party entitled to receive such notice.

9. Indemnity.

(a) **THE MANAGEMENT COMPANY COVENANTS AND AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES AND THE COMMISSION AND ITS OFFICERS AND EMPLOYEES AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COST, LIENS, LOSSES, EXPENSES, FEES (INCLUDING ATTORNEY'S FEES AND COSTS OF DEFENSE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT MAY ARISE OUT OF OR BE OCCASIONED OR CAUSED BY THE NEGLIGENT ACT, ERROR, OR OMISSION OF THE MANAGEMENT COMPANY, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONTRACTOR OR SUBCONTRACTOR OF THE MANAGEMENT COMPANY, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES. THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF THE COMMISSION, ITS OFFICERS OR EMPLOYEES, OR THE CITY, ITS ELECTED OFFICIALS, OFFICERS OR EMPLOYEES. IF THE MANAGEMENT COMPANY, THE CITY AND/OR THE COMMISSION ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE**

CITY OR THE COMMISSION UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

(b) The provisions of this INDEMNIFICATION are solely for the benefit of the parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

(c) The Management Company shall advise the City and the Commission in writing within 24 hours of receipt of any written claim or demand against the Management Company, the City and/or the Commission related to or arising out of the Management Company's activities under this Agreement.

(d) Defense Counsel. THE CITY and THE COMMISSION shall have the right to select or to approve defense counsel to be retained by THE MANAGEMENT COMPANY in fulfilling its obligation hereunder to defend and indemnify THE CITY and THE COMMISSION, unless such right is expressly waived in writing. THE MANAGEMENT COMPANY shall retain such approved defense counsel within seven (7) business days of THE CITY or THE COMMISSION's written notice invoking its right to indemnification under this Agreement. If THE MANAGEMENT COMPANY fails to retain counsel within such time period, THE CITY or THE COMMISSION shall have the right to retain defense counsel on its own behalf, and THE MANAGEMENT COMPANY shall be liable for all costs incurred by CITY and COMMISSION. THE CITY and THE COMMISSION shall also have the right, at their options, to be represented by advisory counsel of their own selection and at their own expense, without waiving the foregoing.

(e) Employee Litigation. In any and all claims against any party indemnified hereunder by any employee of THE MANAGEMENT COMPANY, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for THE MANAGEMENT COMPANY or any subcontractor under worker's compensation or other employee benefit acts.

10. Miscellaneous.

(a) Entire Agreement; Amendments. This Agreement and the exhibits to it contain the entire understanding of the Parties with regard to the subject matter contained herein or therein, and supersede all other prior agreements, understandings, term sheets, heads of terms or letters of intent among the Parties. No amendment to or modification of this Agreement will be effective unless it is in writing and signed by each of the Parties and approved by City Council, when required.

(b) Invalidity. If any provision of this Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable, the remainder of this Agreement

and the application of such provision to other Persons or circumstances will not be affected thereby and, to such end, the provisions of this Agreement are agreed to be severable.

(c) Specific Performance. Each of the Parties acknowledges and agrees that each of the other Parties would be damaged irreparably if any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached. Accordingly, in addition to any and all other remedies that may be available at law or in equity, the Parties agree that each of the other Parties may be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action in any court having jurisdiction over the Parties and the matter, in addition to any other remedy to which such Party may be entitled pursuant hereto.

(d) Amendment; Extension; Waiver. Any Party may (a) extend the time for the performance of any of the obligations or other acts of the other Parties, or (b) waive compliance by any other Party with any of the agreements or conditions contained herein. Any agreement on the part of any Party to any such extension or waiver will be valid only if set forth in an instrument, in writing, signed on behalf of such Party. The failure of any Party to assert any of its rights hereunder will not constitute a waiver of such rights.

(e) Expenses. Except as otherwise provided herein, each Party shall pay all costs and expenses incident to its negotiation and preparation of this Agreement and to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with.

(f) Public Announcements. All press releases or other public communications of any nature whatsoever relating to the subject matter of this Agreement, and the method of the release for publication thereof, will be subject to the prior mutual approval in writing of the Parties. Notwithstanding anything herein to the contrary, each Party has the right to publicly disclose this Agreement and its subject matter as required by applicable laws without the prior written approval of the other Parties.

(g) Successors and Assigns; No Third-Party Beneficiaries. The rights of a Party under this Agreement are not assignable by such Party without the written consent of the other Parties. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to or will be construed to confer upon any Person any right, remedy or claim under or by reason of this Agreement.

(h) Governing Law; Attorney's Fees. This Agreement and any disputes hereunder will be governed by and construed in accordance with the internal laws of the State of Texas.

(i) Jurisdiction. The Parties hereby agree that any dispute or controversy arising out of or related to this Agreement or the transactions contemplated hereby will be conducted only in federal and state courts located in San Antonio, Bexar County, Texas. Each Party hereby irrevocably consents and submits to the exclusive personal jurisdiction of and venue in the federal and state courts located in the City of San Antonio, Texas. Each Party agrees to accept service of any summons, complaint or other initial pleading made in the manner provided for the giving of notices in Section 8. Nothing in this Section, will affect the right of any Party to serve such summons, complaint or initial pleading in any other manner permitted by law.

(j) Execution in Counterparts. This Agreement may be executed in multiple counterparts, each of which will be considered an original instrument, but all of which will be considered one (1) and the same agreement, and will become binding all such counterparts have been signed by each of the Parties and delivered to the other Parties.

IN WITNESS WHEREOF, the Parties sign this Agreement to be effective as of the Effective Date.

City:

City of San Antonio

By: _____
Sheryl Sculley, City Manager

Commission:

San Antonio Tricentennial Celebration Commission

By: _____
Edward Benavides, CEO

Management Company:

Sculpture Trail LLC

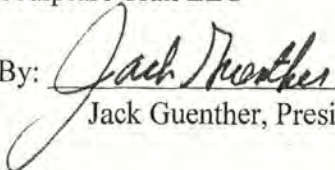
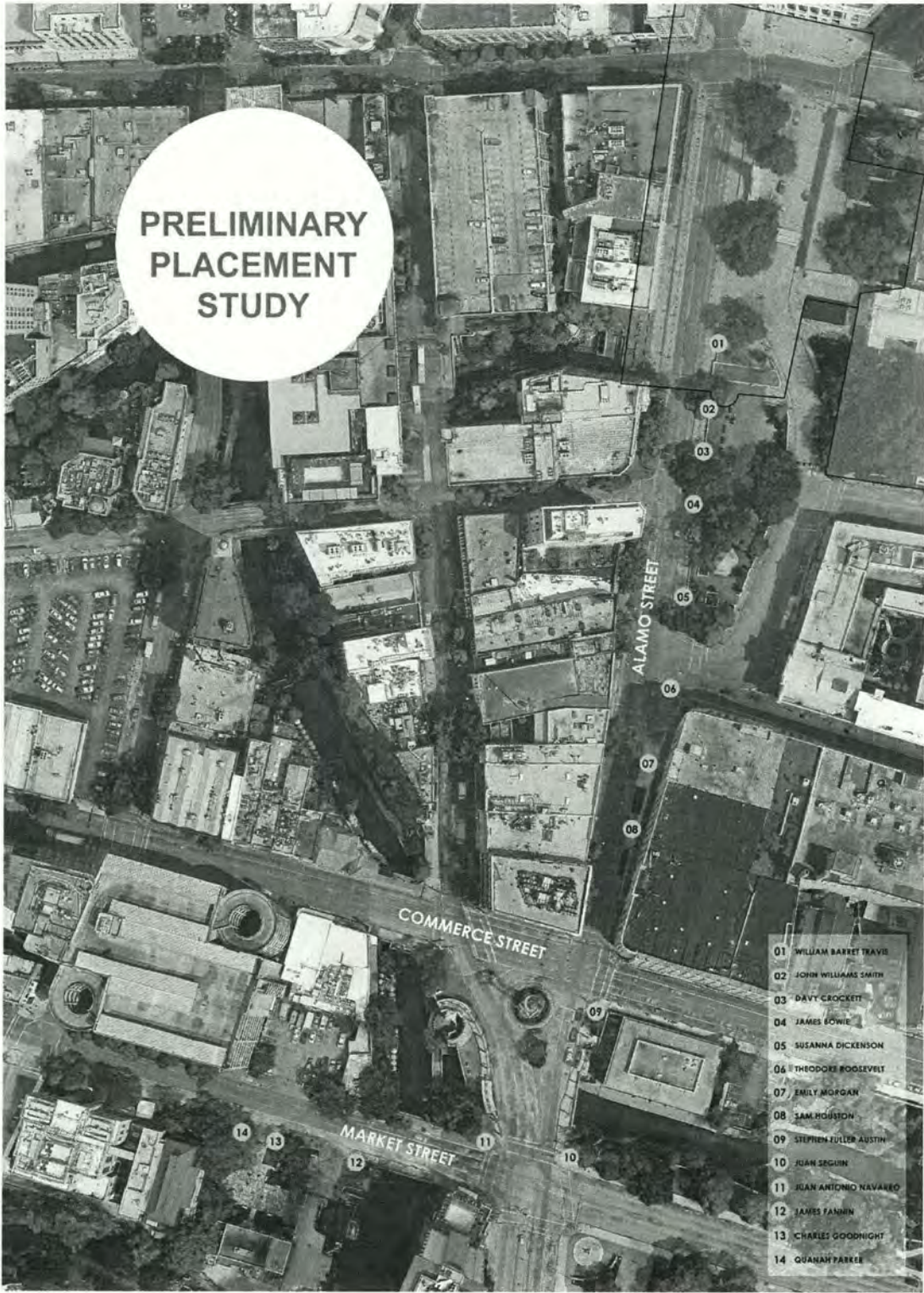
By: 
Jack Guenther, President

Exhibit A
List of Artists and Descriptions of Commissioned Sculptures

<u>ALAMO SCULPTURE WALK</u>	<u>ARTIST</u>
1. John William Smith (1792-1845) The last messenger from the Alamo and the first Mayor of San Antonio, State Senator	Chris Navarro
2. David "Davy" Crockett (1786-1836) Frontiersman and U.S. Congressman, died at the Alamo	George Lundeen
3. James Bowie (1796-1836) Frontiersman, died at the Battle of the Alamo	Deborah Fellows
4. Teddy Roosevelt (1858-1919) Trained the Rough Riders in front of the Menger Hotel, and 26 th President	Alexander Proctor (1860-1950)
5. Susanna Dickinson (1814-1883) Survivor of Alamo Battle, along with her infant daughter	Bruce Green
6. Emily West Morgan (1815-1891) Indentured Servant known as "The Yellow Rose of Texas" who, legend has it, helped win the Texas Revolution	Eddie Dixon
7. Juan Seguin (1806-1890) Tejano hero during the Texas Revolution	Enrique "Kiko" Guerra
8. James Fannin (1804-1836) Executed at Goliad along with 400 of his men	Dan Snarr

Exhibit B
Proposed Sculpture Site Locations

PRELIMINARY PLACEMENT STUDY



0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

BEATY PALMER ARCHITECTS

Exhibit C
List of City Sculptures

	<u>ALAMO SCULPTURE WALK</u>	<u>ARTIST</u>
1.	William Barret Travis (1809-1836) – “Victory or Death.” Commander of the Alamo	Goodacre, Glenna
2.	Sam Houston (1793-1863) – A Texas Giant President of the Republic of Texas, State Governor, U.S. Senator	Ludtke, Larry (1929-2007)
3.	Stephen Fuller Austin (1793-1836) – A Pioneer in Swallowtails The Father of Texas	Goodacre, Glenna
4.	José Antonio Navarro (1795-1871) – A Mexican Who Gave All for Texas, Independence Fighter, State Senator	Dell, Juan
5.	Charles Goodnight (1836-1929) – The Man Who Started the Big Cattle Drives, Rancher and Trailblazer	Reno, Jim (1929-2008)
6.	Quanah Parker (circa 1845-1911) – Half Indian, Half-English The Last Great Comanche War Chief	Reno, Jim

Alamo Sculpture Trail Agreement

This Alamo Sculpture Trail Agreement (the "Agreement") is made and entered into as of the Effective Date (defined below) by and among the City of San Antonio, a municipal corporation (the "City"), the San Antonio Tricentennial Celebration Commission, a Texas public, non-profit corporation (the "Commission"), and Sculpture Trail LLC, a Texas limited liability company (the "Management Company"). The City, the Commission and the Management Agreement are each referred to herein as a "Party" and collectively as the "Parties."

Recitals

The Commission is organized to assist with planning, developing, identifying potential partners, fundraising, managing and financing projects involved with the City's Tricentennial Celebration during 2018. Through the terms of this Agreement, the Management Company desires to establish a trail of fourteen (14) monumental bronze sculptures of historically significant individuals who contributed to the City of San Antonio at specified locations on the sidewalks, rights of way and public spaces between the Alamo Mission and the Briscoe Western Art Museum, a Texas non-profit corporation (the "Briscoe"). The Management Company is a wholly owned, tax exempt subsidiary of the Briscoe and its purpose is to facilitate the completion of the trail. The Management Company intends to raise funds from donors sufficient to commission artists to sculpt eight (8) of the sculptures for the trail, which will be donated to and owned by the City after their installation. The City currently owns six (6) sculptures donated by the owners of SeaWorld San Antonio, which are currently on display in the City's Henry B. Gonzalez Convention Center ("Convention Center"). The Parties intend this Agreement to set forth each Party's responsibilities and obligations in establishing the trail and maintaining the sculptures thereafter.

Accordingly, the Parties agree as follows:

1. Definitions and Construction.

(a) Definitions. In addition to defined terms appearing elsewhere in this Agreement, the following capitalized terms shall have the meaning assigned to them.

"Artist" means an individual sculpture artist, as identified on Exhibit A, who has been or will be commissioned to create the Commissioned Sculpture identified on Exhibit A and appearing opposite the artist's name.

"Artist Agreement" means an agreement with an Artist calling for the creation of one of the Commissioned Sculptures.

"City Sculptures" means the six (6) historical sculptures owned by the City and on public display in the Convention Center, as further identified on Exhibit C.

“Commissioned Sculptures” means eight (8) monumental bronze sculptures of historic individuals as described on Exhibit A.

“Donor” means a Person who signs a Donor Gift Letter and contributes funds stated therein as a gift to the Commission.

“Donor Gift Letter” means a written commitment whereby a Donor agrees to contribute an amount of funds specified therein, as a restricted gift to the Commission.

“Donor Funds” means amounts given by Donors to the Commission pursuant to Donor Gift Letters.

“Effective Date” means the date the City Council of the City approves this Agreement.

“Management Company Bank Account” means a non-interest bearing checking account in the name of the Management Company with International Bank of Commerce.

“Person” means any individual, corporation, partnership (limited or general), limited liability company, association, business trust, joint stock company, trust, unincorporated organization, governmental or quasi-governmental authority or any other entity.

“Sculpture” means either a Commissioned Sculpture or a City Sculpture.

“Sculpture Donor” means a Person who contracts directly with the Artist for the creation of one of the Commissioned Sculptures.

“Sculpture Site” means each City approved location for the installation of a Sculpture.

(b) Construction. Titles and headings to articles, sections and subsections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. For the purposes of this Agreement, (i) words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires, (ii) the terms “hereof,” “herein” and “herewith” and words of similar import shall be construed to refer to this Agreement in its entirety and not to any particular provision, unless otherwise stated, (iii) the term “including” shall mean “including, without limitation,” and (iv) unless otherwise stated, the term “day” means a calendar day.

2. Fundraising by the Management Company.

(a) Solicitation of Sponsorships. The Management Company will: (i) solicit Donors to commit, pursuant to Donor Gift Letters, to contribute the funds to the Commission necessary to pay for the Commissioned Sculptures, excluding any Commissioned Sculptures that

a Sculpture Donor contracts separately with the Artist, and (ii) install the Sculptures in accordance with this Agreement. The Donors will be requested to sign and deliver written donor commitments pursuant to a Donor Gift Letter. Upon receipt of a signed Donor Gift Letter, the Management Company will provide a copy thereof to the Commission and the City. The Management Company will notify the Commission of any Commissioned Sculptures commissioned by a Sculpture Donor.

(b) Artist Agreements. The Management Company will enter into Artist Agreements with the Artists for the creation of the Commissioned Sculptures, other than those Commissioned Sculptures commissioned separately with Artists by Sculpture Donors. The Management Company will provide the Commission and the City with copies of each signed Artist Agreement promptly after it is signed by all the parties thereto. The Management Company will monitor the Artists' progress and administer the Artist Agreements (other than agreements of the Sculpture Donors) with the Artists.

(c) Transfer of Funds to the Management Company. Upon the execution of an Artist Agreement, the Management Company will invoice the Commission for the Donor Funds and within ten (10) days of the receipt of such invoice, the Commission will transfer the Donor Funds it received to the Management Company Bank Account. The Management Company shall retain all Donor Funds only in the Management Company Bank Account, shall not commingle any other funds from any other source with the Management Company Bank Account, and will disburse funds from the Management Company Bank Account only to pay Artists according to their respective Artists Agreements, to install the Sculptures in accordance with this Agreement and to pay the related expenses the Management Company incurs in fulfilling its obligations under this Agreement, to include accounting fees, insurance premiums, legal fees, and vendor charges. This Subsection 3(c) shall not apply to Sculpture Donors or the Sculptures they donate.

(d) Neither the Commission nor the City will be liable for any payments to Artists. All such payments shall come from Donor Funds or be funded by Sculpture Donors.

4. Storage; Risk of Loss and Installation of the Sculptures.

(a) Storage. The City and the Management Company will cooperate in identifying a site for the temporary storage of the completed Commissioned Sculptures pending their installation on the trail.

(b) Risk of Loss. The Management Company will insure at its expense the completed Commissioned Sculptures against theft or damage until they have been installed in accordance with this Agreement. The Management Company will bear the risk of loss or damage to the Commissioned Sculptures until they have been installed in accordance with this Agreement. If a Commissioned Sculpture is stolen or damaged, the Management Company shall make the claim on its insurance and shall be entitled to re-commission the production of the stolen or damaged Commissioned Sculpture from insurance proceeds, if any.

(c) Location. A proposed location map of the Sculpture Sites is attached as Exhibit B; however, all or some of the Sculpture Sites may be relocated from the locations set forth in Exhibit B, if necessary, as determined by the City at any time prior to installation. If relocated, the Sculpture shall be placed in a suitable location as close as feasibly possible to the location designated in Exhibit B. Upon installation of the Sculptures, the Parties shall also attach an updated Exhibit B setting forth the final Sculpture Sites approved by the City. After the Sculptures are donated to the City, the City may relocate the Sculptures from the final Sculpture Sites to another location that is as close as feasibly possible in the City's discretion and at its expense.

(d) Installation. The Management Company will construct permanent bases for the Sculptures at the final Sculpture Sites and permanently install all of the Sculptures on the bases, however the all the bases and the Sculptures will be installed in a manner to permit the removal and relocation of the bases and the Sculptures, as necessary. The Management Company will arrange the transportation of all the Sculptures to the respective final Sculpture Sites, provided, however, the City shall move the City Sculptures out of its Convention Center to a mutually designated site to be accessed by the Management Company's contracted transportation. The City will provide a controlled and safe access to the final Sculpture Sites, temporarily closing streets and sidewalks if necessary, to allow (i) the Management Company's contracted construction and installation crews to construct the bases at the Sculpture Sites and to install the Sculptures on the bases and (ii) the Management Company's contracted transportation company to transport the Sculptures from the City's Convention Center to the respective Sculpture Sites.

5. Donation of the Commissioned Sculptures to the City after Installation. At the completion of the installation of each Commissioned Sculpture, the Management Company will deliver an executed letter of gift conveying title to the Commissioned Sculpture to the City, free and clear of all liens and other encumbrances, and assigning to the City all associated warranties, if any, of the Artist. The Management Company will use all reasonable business efforts to ensure that letter of gift includes a non-exclusive license to use the copyright to the Commissioned Sculpture for purposes of reproducing images of the Commissioned Sculpture for promotion of the Sculpture Trail or the City of San Antonio. The Management Company will grant a similar license of the copyright to the Briscoe. With respect to Commissioned Sculptures commissioned directly by the Sculpture Donors, the Management Company will make arrangements for the Sculpture Donor to enter into a similar letter of gift to the City and a similar license of the copyright as part of the Sculpture Donor's gift to the City. Prior to conveyance to the City, the Management Company shall own the Commissioned Sculptures other than the Commissioned Sculptures commissioned by the Sculpture Donors. Upon delivering the executed letter of gift, the City shall accept all liability for injuries or death, and risk of loss, associated with the gifted Commissioned Sculpture effective as of the date of the conveyance.

6. Sculpture Maintenance. The Management Company shall be responsible for maintaining the Sculptures by cleaning and waxing them on an annual basis, in accordance with professional standards for outdoor bronze sculptures, for an initial term of three (3) years from the date of the last installation of the Commissioned Sculptures ("Maintenance Term"). The Management Company shall apply any Donor Funds remaining after paying the Artists, the costs of installation and all related expenses of the Management Company, to the maintenance of the Sculptures. In the event the Management Company exhausts such remaining Donor Funds, the City shall be responsible for paying any remaining maintenance costs to the Management Company for the remainder of the Maintenance Term. The Parties agree that maintenance costs shall not exceed \$14,000 per year.

8. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and will be deemed to have been duly given upon receipt) by delivery in person, by facsimile, by nationally recognized overnight courier or by registered or certified mail (postage prepaid, return receipt requested) to each other Party as follows:

If to the Management Company:

Sculpture Trail LLC
153 Treeline Park, Suite 300
San Antonio, Texas 78209
Attention: Jack Guenther, President
Facsimile: (210) 579-7262

with a copy (which copy shall not constitute notice) to:

Kreager Mitchell PLLC
7373 Broadway, Suite 500
San Antonio, Texas 78209
Attention: Mike Kreager
Facsimile: (210) 821-6672

If to the City, to:

Department for Arts and Culture
115 Plaza de Armas, Ste. 102
San Antonio, Texas 78205
Attention: Debbie Racca-Sittre
Facsimile: (210) 207-5426

If to the Commission, to:

San Antonio Tricentennial Commission
101 S. Santa Rosa
San Antonio, Texas 78207
Attention: Edward Benavides, CEO

Such notice will be deemed to be received when delivered if delivered personally, or the next business day after the date sent if sent next business day service by a United States national overnight delivery service, or three (3) business days after the date mailed if mailed by certified or registered mail, or upon receipt of confirmation of delivery if sent by facsimile. Any notice of any change in such address shall also be given in the manner set forth above. Whenever the giving of notice is required under this Agreement, the giving of such notice may be waived in writing by the Party entitled to receive such notice.

9. Indemnity.

(a) **THE MANAGEMENT COMPANY COVENANTS AND AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES AND THE COMMISSION AND ITS OFFICERS AND EMPLOYEES AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COST, LIENS, LOSSES, EXPENSES, FEES (INCLUDING ATTORNEY'S FEES AND COSTS OF DEFENSE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT MAY ARISE OUT OF OR BE OCCASIONED OR CAUSED BY THE NEGLIGENT ACT, ERROR, OR OMISSION OF THE MANAGEMENT COMPANY, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONTRACTOR OR SUBCONTRACTOR OF THE MANAGEMENT COMPANY, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES. THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF THE COMMISSION, ITS OFFICERS OR EMPLOYEES, OR THE CITY, ITS ELECTED OFFICIALS, OFFICERS OR EMPLOYEES. IF THE MANAGEMENT COMPANY, THE CITY AND/OR THE COMMISSION ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE**

CITY OR THE COMMISSION UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

(b) The provisions of this INDEMNIFICATION are solely for the benefit of the parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

(c) The Management Company shall advise the City and the Commission in writing within 24 hours of receipt of any written claim or demand against the Management Company, the City and/or the Commission related to or arising out of the Management Company's activities under this Agreement.

(d) **Defense Counsel.** THE CITY and THE COMMISSION shall have the right to select or to approve defense counsel to be retained by THE MANAGEMENT COMPANY in fulfilling its obligation hereunder to defend and indemnify THE CITY and THE COMMISSION, unless such right is expressly waived in writing. THE MANAGEMENT COMPANY shall retain such approved defense counsel within seven (7) business days of THE CITY or THE COMMISSION's written notice invoking its right to indemnification under this Agreement. If THE MANAGEMENT COMPANY fails to retain counsel within such time period, THE CITY or THE COMMISSION shall have the right to retain defense counsel on its own behalf, and THE MANAGEMENT COMPANY shall be liable for all costs incurred by CITY and COMMISSION. THE CITY and THE COMMISSION shall also have the right, at their options, to be represented by advisory counsel of their own selection and at their own expense, without waiving the foregoing.

(e) **Employee Litigation.** In any and all claims against any party indemnified hereunder by any employee of THE MANAGEMENT COMPANY, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for THE MANAGEMENT COMPANY or any subcontractor under worker's compensation or other employee benefit acts.

10. **Miscellaneous.**

(a) **Entire Agreement; Amendments.** This Agreement and the exhibits to it contain the entire understanding of the Parties with regard to the subject matter contained herein or therein, and supersede all other prior agreements, understandings, term sheets, heads of terms or letters of intent among the Parties. No amendment to or modification of this Agreement will be effective unless it is in writing and signed by each of the Parties and approved by City Council, when required.

(b) **Invalidity.** If any provision of this Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable, the remainder of this Agreement

and the application of such provision to other Persons or circumstances will not be affected thereby and, to such end, the provisions of this Agreement are agreed to be severable.

(c) Specific Performance. Each of the Parties acknowledges and agrees that each of the other Parties would be damaged irreparably if any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached. Accordingly, in addition to any and all other remedies that may be available at law or in equity, the Parties agree that each of the other Parties may be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action in any court having jurisdiction over the Parties and the matter, in addition to any other remedy to which such Party may be entitled pursuant hereto.

(d) Amendment; Extension; Waiver. Any Party may (a) extend the time for the performance of any of the obligations or other acts of the other Parties, or (b) waive compliance by any other Party with any of the agreements or conditions contained herein. Any agreement on the part of any Party to any such extension or waiver will be valid only if set forth in an instrument, in writing, signed on behalf of such Party. The failure of any Party to assert any of its rights hereunder will not constitute a waiver of such rights.

(e) Expenses. Except as otherwise provided herein, each Party shall pay all costs and expenses incident to its negotiation and preparation of this Agreement and to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with.

(f) Public Announcements. All press releases or other public communications of any nature whatsoever relating to the subject matter of this Agreement, and the method of the release for publication thereof, will be subject to the prior mutual approval in writing of the Parties. Notwithstanding anything herein to the contrary, each Party has the right to publicly disclose this Agreement and its subject matter as required by applicable laws without the prior written approval of the other Parties.

(g) Successors and Assigns; No Third-Party Beneficiaries. The rights of a Party under this Agreement are not assignable by such Party without the written consent of the other Parties. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to or will be construed to confer upon any Person any right, remedy or claim under or by reason of this Agreement.

(h) Governing Law; Attorney's Fees. This Agreement and any disputes hereunder will be governed by and construed in accordance with the internal laws of the State of Texas.

(i) Jurisdiction. The Parties hereby agree that any dispute or controversy arising out of or related to this Agreement or the transactions contemplated hereby will be conducted only in federal and state courts located in San Antonio, Bexar County, Texas. Each Party hereby irrevocably consents and submits to the exclusive personal jurisdiction of and venue in the federal and state courts located in the City of San Antonio, Texas. Each Party agrees to accept service of any summons, complaint or other initial pleading made in the manner provided for the giving of notices in Section 8. Nothing in this Section, will affect the right of any Party to serve such summons, complaint or initial pleading in any other manner permitted by law.

(j) Execution in Counterparts. This Agreement may be executed in multiple counterparts, each of which will be considered an original instrument, but all of which will be considered one (1) and the same agreement, and will become binding all such counterparts have been signed by each of the Parties and delivered to the other Parties.

IN WITNESS WHEREOF, the Parties sign this Agreement to be effective as of the Effective Date.

City:

City of San Antonio

By: _____
Sheryl Sculley, City Manager

Commission:

San Antonio Tricentennial Celebration Commission

By: _____
Edward Benavides, CEO

Management Company:

Sculpture Trail LLC

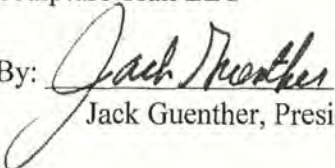
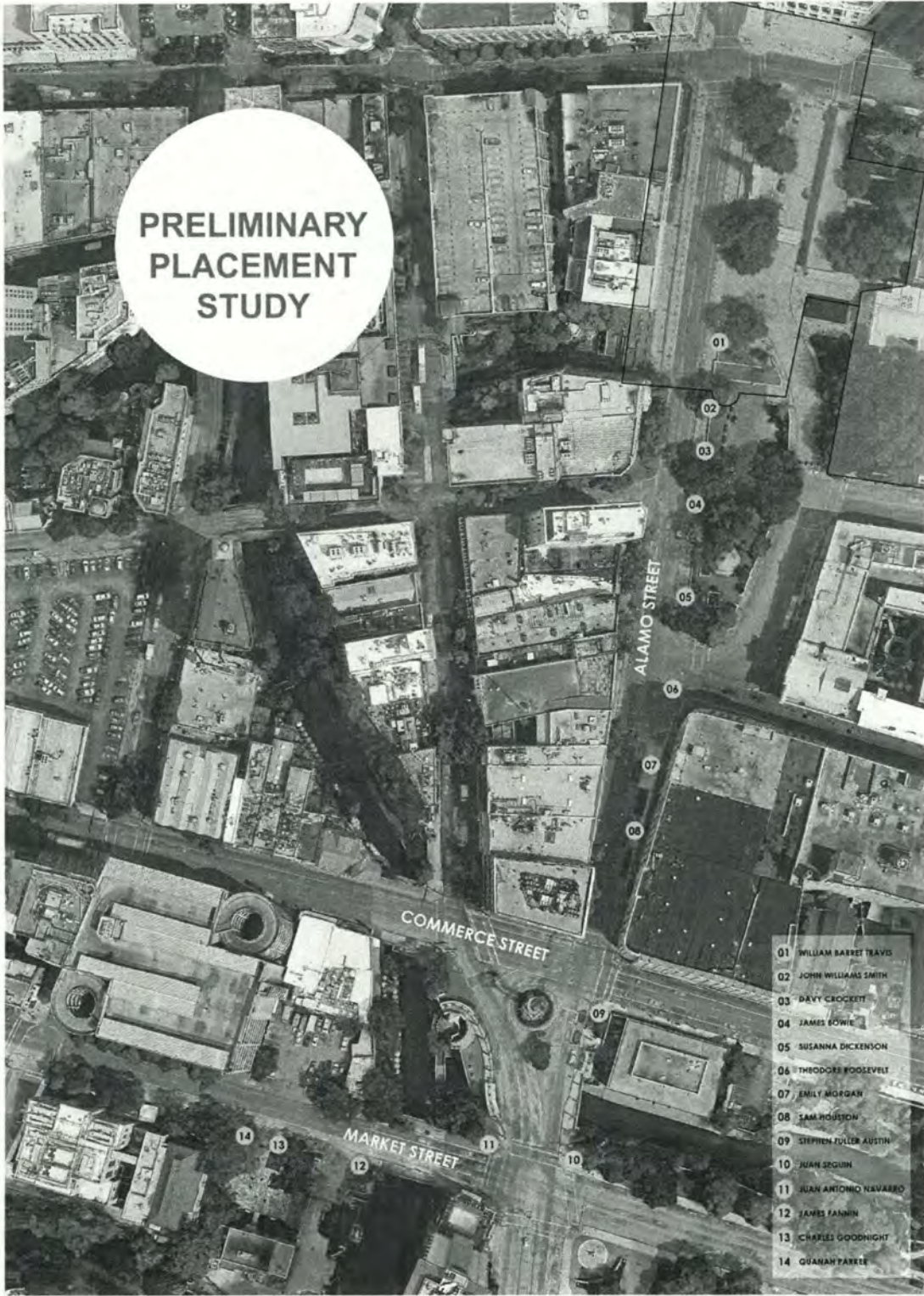
By: 
Jack Guenther, President

Exhibit A
List of Artists and Descriptions of Commissioned Sculptures

<u>ALAMO SCULPTURE WALK</u>	<u>ARTIST</u>
1. John William Smith (1792-1845) The last messenger from the Alamo and the first Mayor of San Antonio, State Senator	Chris Navarro
2. David "Davy" Crockett (1786-1836) Frontiersman and U.S. Congressman, died at the Alamo	George Lundeen
3. James Bowie (1796-1836) Frontiersman, died at the Battle of the Alamo	Deborah Fellows
4. Teddy Roosevelt (1858-1919) Trained the Rough Riders in front of the Menger Hotel, and 26 th President	Alexander Proctor (1860-1950)
5. Susanna Dickinson (1814-1883) Survivor of Alamo Battle, along with her infant daughter	Bruce Green
6. Emily West Morgan (1815-1891) Indentured Servant known as "The Yellow Rose of Texas" who, legend has it, helped win the Texas Revolution	Eddie Dixon
7. Juan Seguin (1806-1890) Tejano hero during the Texas Revolution	Enrique "Kiko" Guerra
8. James Fannin (1804-1836) Executed at Goliad along with 400 of his men	Dan Snarr

Exhibit B
Proposed Sculpture Site Locations

**PRELIMINARY
PLACEMENT
STUDY**



- 01 WILLIAM BARRETT TRAVIS
- 02 JOHN WILLIAMS SMITH
- 03 DAVID CROCKETT
- 04 JAMES BOWIE
- 05 SUSANNA DICKENSON
- 06 THEODORE ROOSEVELT
- 07 EMILY MORGAN
- 08 SAM HOUSTON
- 09 STEPHEN FULLER AUSTIN
- 10 JUAN SEGUIN
- 11 JUAN ANTONIO NAVARRO
- 12 JAMES FANNIN
- 13 CHARLES GOODNIGHT
- 14 QUANAH PARKER

SITE PLAN

BEATY PALMER ARCHITECTS

Exhibit C
List of City Sculptures

<u>ALAMO SCULPTURE WALK</u>	<u>ARTIST</u>
1. William Barret Travis (1809-1836) – “Victory or Death.” Commander of the Alamo	Goodacre, Glenna
2. Sam Houston (1793-1863) – A Texas Giant President of the Republic of Texas, State Governor, U.S. Senator	Ludtke, Larry (1929-2007)
3. Stephen Fuller Austin (1793-1836) – A Pioneer in Swallowtails The Father of Texas	Goodacre, Glenna
4. José Antonio Navarro (1795-1871) – A Mexican Who Gave All for Texas, Independence Fighter, State Senator	Dell, Juan
5. Charles Goodnight (1836-1929) – The Man Who Started the Big Cattle Drives, Rancher and Trailblazer	Reno, Jim (1929-2008)
6. Quanah Parker (circa 1845-1911) – Half Indian, Half-English The Last Great Comanche War Chief	Reno, Jim