



AGENDA REPORT

Meeting Date: April 17, 2012
Item Number: F-8
To: Honorable Mayor & City Council
From: Nancy Hunt-Coffey, Assistant Director of Community Services
Subject: AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND RICHARD GRAY GALLERY, AS AGENT FOR JAUME PLENSA, FOR THE CREATION, SALE AND ASSIGNMENT OF CERTAIN RIGHTS IN THE ARTISTIC WORK WHICH IS *UNTITLED* AND FROM THE SERIES "ENDLESS"
Attachments: 1. Agreement

RECOMMENDATION

Based on recommendations by the City Council and Fine Arts Commission, staff requests approval of an agreement with Richard Gray Gallery for the purchase of *Untitled* artist Jaume Plensa in the amount of \$350,000 to be paid from the Fine Art Fund. The fund is exclusively used in support of the City's public art program.

INTRODUCTION

This report asks the City Council to approve the agreement and a purchase order with Richard Gray Gallery which represents Spanish artist Jaume Plensa to create, sell and assign certain rights for a sculpture to be located in Beverly Gardens Park in the block between Rodeo and Beverly Drive. The cost is \$350,000 and includes shipping of the piece. Additional costs for the installation of the piece include creation of the support base and associated electrical work to provide lighting will be approximately \$30,000. This work will be conducted through City contracts apart from the one with the gallery.

DISCUSSION

One of the charges of the Fine Arts Commission is to select public art for the City. The Commission recommended the purchase of *Untitled* by Plensa, which is to be part of the artist's *Endless* series. Jaume Plensa (b. 1955) is a Spanish Catalan artist and sculptor whose award winning work has been installed and shown internationally. The piece is made of stainless steel and measures approximately 96 1/2" x 100 3/8" x 87 3/4". The

piece is in the form of a seated human being and is created by fusing together letters from 8 different languages, including English, Hebrew and Arabic. This piece was recommended unanimously by the Fine Arts Commission and the Council liaison (Bosse and Mirisch). Additionally, the full City Council at the February 7th study session reviewed this proposal and approved the acquisition of this piece.

The City Council and the Fine Arts Commission have recommended the placement of the piece in Beverly Gardens Park, along Beverly Drive. At its January 24th meeting the Recreation and Parks Commission endorsed the Beverly Drive location, and subsequently at the February 7th study session, the full Council approved this location.

This report asks the City Council to formally approve the agreement between the City and the gallery that represents artist in order to initiate the process of commissioning the piece.

FISCAL IMPACT

The cost to commission and ship the piece is \$350,000. Additionally, the cost to install it, provide the base and light will be approximately \$30,000. It should be noted that the balance of the Fine Arts fund as of February 2012 was \$979,285.74. As a result, there are sufficient funds to purchase and install the piece.



Scott Miller, Chief Financial Officer
Finance Approval



Nancy Hunt-Coffey, Asst. Dir. Of
Comm. Svcs
Approved By

Council will be advised if agreement is not signed by Tuesday.

Attachment 1

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND RICHARD GRAY GALLERY, AS AGENT FOR JAUME PLENSA, FOR THE CREATION, SALE AND ASSIGNMENT OF CERTAIN RIGHTS IN THE ARTISTIC WORK WHICH IS UNTITLED AND FROM THE SERIES "ENDLESS"

THIS AGREEMENT FOR CREATION AND SALE AND ASSIGNMENT OF CERTAIN RIGHTS IN ARTISTIC WORKS (the "Agreement") is made and entered into as of this _____ of April, 2012, by and between the City of Beverly Hills, a municipal corporation ("City") and Richard Gray Gallery, as agent for Jaume Plensa ("Artist").

Section 1. Description of Work.

Jaume Plensa is an internationally known artist ("Artist"). The Artist is hereby commissioned by the City to design and oversee the creation of an original work of art entitled "Untitled" and from the series "Endless" (the "Work") as set forth in Exhibit A ("Scope of Services"). The Work shall be consistent with the approved rendering of the Work set forth in Exhibit A and shall consist of welded stainless steel sculpture measuring approximately 96 ½ inches high x 100 3/8 inches wide x 87 ¾ inches deep.

Section 2. Artist's Work Schedule.

The Artist shall complete the Work in accordance with the work schedule agreed upon in writing by the City and Artist, which is estimated to be six months from receipt by Artist of first payment, as specified in Exhibit B.

Section 3. Artist's Fee.

Artist agrees to sell, and City agrees to purchase the Work under the terms and conditions set forth in this Agreement. The price for the Work shall be Three Hundred and Fifty Thousand Dollars (\$350,000) ("Artist's Fee"). The Artist's Fee is more particularly described in Exhibit B. Payments shall be made in accordance with the payment schedule set forth in Exhibit B. City shall not withhold applicable federal or state payroll or any other required taxes, or other authorized deduction from each payment made to Artist. Upon payment, Artist will sign a written acknowledgement of receipt of said monies and such document shall be incorporated in this Agreement.

Section 4. Personnel.

Artist agrees that he will be responsible for completing all services in the Scope of Services and providing the personnel necessary for such services. Artist will be responsible for the satisfactory work performance of the personnel engaged in performing services required by this Agreement.

Section 5. Term.

This Agreement is effective as of the Commencement Date.

Section 6. Right to Display. Artist hereby grants to City the right to publicly display the Work at a location selected by City.

Section 7. Transfer of Rights of Reproduction.

Artist hereby grants City the right to reproduce the Work in a one or two dimensional representation in any manner whatsoever for commercial and non-commercial purposes without further payment to or approval of Artist.

Section 8. Waiver of Certain Moral Rights.

Artist acknowledges and agrees that City, in its sole and exclusive discretion, may abandon, dismantle or destroy the Work. City, shall however, provide notice to the Artist prior to any destruction of the Work and shall offer in writing to return the Work to Artist at Artist's sole expense. Artist shall have thirty (30) days from the date of such offer to notify City in writing of its desire to accept return of the Work, or City may destroy the Work. City may not permanently modify, alter, or change the Work except for conservation of the Work for structural or aesthetic purposes. Artist hereby waives his rights arising under the federal Visual Artist Rights Act, 17 U.S.C. sections 106A and 113 (d) ("VARA") and the California Art Preservation Act (Cal. Civil Code section 987 et seq.) ("CAPA") and any other state, federal or international law to the extent, and only to the extent that such laws conflict with the provisions of this section. Artist waives no other rights arising under VARA, CAPA and any other state, federal or international law relating to an artist's moral rights.

Section 9. Replication of Work.

The Artist acknowledges that the Work is unique and one of a kind, and Artist shall not reproduce the Work in identical form for commercial or non-commercial purposes.

Section 10. City's Sole and Exclusive Ownership Rights.

A. The Artist shall not retain ownership of or title to the Work. The parties agree that the title to the Work belongs to and is being sold and assigned to City for whatever use it desires, and that City does and shall at all times own, solely and exclusively, complete and unencumbered, all title in and to the Work.

B. City hereby authorizes Artist to make, and to authorize the making of photograph reproductions of the Work for self-promotional purposes. For purposes of this agreement, the following are deemed to be photograph reproductions for self-promotional purposes: photograph reproduction for use in Artist's personal portfolio or an Artist's website; and reproduction for use in self-promotion mailers such as catalogues or postcards as long as such reproduction is provided to others at no cost. On any and all such reproductions, Artist shall place a copyright notice in the form and manner provided by City to protect the copyrights in the Works under the United States copyright law. In addition, all reproductions shall contain the following credit line unless otherwise requested to the contrary in writing by City: "Untitled" from the series "Endless", Commissioned by the City of Beverly Hills." Under no circumstances shall Artist use or make any photograph reproductions of the Work for commercial purposes and any photograph reproductions used or made by Artist shall not compete with any City endeavor to sell or promote reproductions of the Work. City has sole discretion to determine whether a photograph reproduction is utilized for self-promotional purposes or whether the reproduction competes with City's endeavors to sell or promote its reproductions in the Works. If City determines that the photograph reproduction does not meet the terms of this section, City shall

provide written notice to Artist and Artist shall immediately cease and desist the use of the reproduction.

Section 11. Transferability.

All rights granted by Artist to City pursuant to this Agreement are fully transferable to others, by license or otherwise without further payment or approval of Artist.

Section 12. City's Responsibility.

- A. City shall be responsible for constructing the base and providing lighting for the Work, as specified by Artist in Attachment 2 to Exhibit A and for all associated costs.
- B. City shall be responsible for overseeing the installation of the Work and for all associated costs.

Section 13. Originality of Works.

Artist represents and warrants that (i) the Work is and will be original; (ii) at the time of transfer hereunder, Artist is the sole owner of the Work and of all rights therein including copyright, trademark and other proprietary rights therein; (iii) Artist is and will be the sole creator of the Work; (iv) Artist has and will have full and sufficient right to assign all rights granted herein and to waive all rights relinquished herein; (v) Artist is not under any obligation to transfer or sell any of the Work to any third party; (vi) the Work has not been and will not be published under circumstances which have or will cause a loss of any copyright, trademark or other proprietary rights therein; and (vii) the Work does not and will not infringe any patent, copyright, trademark or other proprietary rights, privacy rights or other rights of any third party, nor has any claim (whether or not embodied in a legal action, past or present) of such infringement been threatened or asserted, nor is such a claim pending, against Artist (or, insofar as Artist is aware, against any entity from which Artist has obtained any rights).

Section 14. Risk of Loss.

Artist bears the sole risk of damage to or loss of the Work to be produced by Artist pursuant to this Agreement until such Work is delivered and installed to City and City accepts such Work as satisfactorily completed pursuant to Exhibit A.

Section 15. Artist's Commitment.

Artist agrees that Artist will not make reference to the Work produced under this Agreement in a way that reflects discredit on the City or the Work.

Section 16. Maintenance of Work.

City shall maintain the Work in the same or similar condition as when the Work was installed.

Section 17. Addresses for Notices.

Any notice, bills, invoices, demand or document which any party is required or may desire to give or deliver to the other hereunder, shall be in writing and may be delivered personally or given by facsimile or overnight courier service, postage prepaid, addressed as follows:

To Artist:

Jaume Plensa
c/o Richard Gray Gallery
875 North Michigan Avenue, #2503
Chicago, IL 60611
Tel: 312-642-8477
Fax: 312-642-8788

To City:

City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210
Attention: City Manager
Fax: (310) 274-3267

with a copy to:

City Attorney
City of Beverly Hills
455 North Rexford Drive, Room 230
Beverly Hills, California 90210
Fax (310) 285-1056

Either party shall have the right to designate a different address by written notice similarly given. Any notice, demand or documents shall be deemed received on: (a) the day of delivery if delivered by hand or overnight courier service during the party's regular business hours; or (b) the day of delivery if delivered by facsimile during the party's regular business hours. City assumes no responsibility to search for Artist if it cannot be reached at the address of record.

Section 18. Termination.

A. City shall have the right to terminate this Agreement, with cause, upon ten calendar days written notice to Artist. If terminated, Artist agrees to cease all work under this Agreement on or before the effective date of such notice. If such cause is a default by the artist and upon notice this default is not cured within 15 days, all completed and uncompleted Works up to the date of receipt of written notice of termination shall become the property of City.

B. In the event of termination of this Agreement by City, due to no fault or failure of performance by Artist, all monies paid to date shall be considered as earned and not refundable to City and the completed or uncompleted work and all rights and title conveyed under this Agreement will be forfeited. In no event shall Artist be entitled to receive more than the amount that would be paid to Artist for the full performance of the services required by this Agreement.

Section 19. Attorneys' Fees.

In the event either party shall commence any action against the other party relating to this Agreement or for the breach of any obligation contained herein, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees, expenses, and court costs.

Section 20. Prohibition Against Assignment.

Artist shall not delegate, transfer, subcontract or assign his duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Artist.

Section 21. Successors and Assigns.

The terms of this Agreement shall be binding upon and inure to the benefit of the respective heirs, successors in interest and assigns of the parties hereto.

Section 22. Entire Agreement.

This Agreement represents the entire integrated agreement between City and Artist, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and Artist.

Section 23. Severability.

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

Section 24. Headings.

The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification only and shall not be deemed to limit, expand or define the contents of the respective sections or paragraphs.

Section 25. Governing Law; Jurisdiction.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of litigation between the parties, venue in State trial courts shall be exclusively in Los Angeles County. In the event of litigation in a United States District Court, exclusive venue shall lie in the Central District of California.

Section 26. Execution.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. Richard Gray Gallery represents and warrants that it is authorized under the laws of this State to enter into this Agreement on behalf of Jaume Plensa.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

EXECUTED the _____ day of _____, 2012, at Beverly Hills, California.

CITY OF BEVERLY HILLS,
a municipal corporation

WILLIAM W. BRIEN, M.D.
Mayor of the City of
Beverly Hills, California

ATTEST:

(SEAL)

BYRON POPE
City Clerk

RICHARD GRAY GALLERY, as agent for
Jaume Plensa

PAUL L. GRAY
Managing Partner

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

LAURENCE S. WIENER
City Attorney

JEFFREY KOLIN
City Manager

STEVE ZOET
Director of Community Services

KARL KIRKMAN
Risk Manager

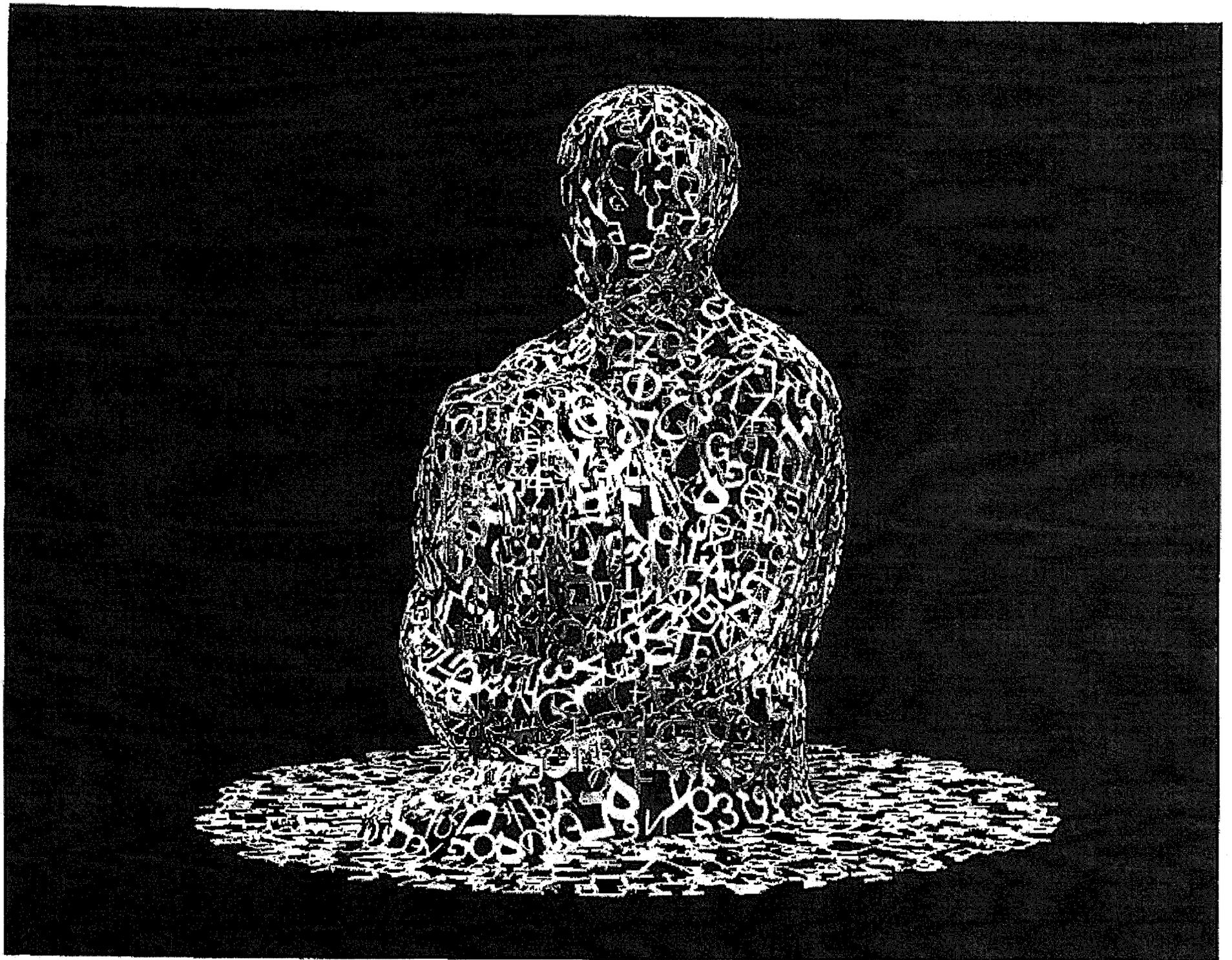
EXHIBIT A

SCOPE OF SERVICES

Artist has designed a mock up of the Work, a photograph of which is attached as Attachment 1 to this Exhibit A. The Work shall be fabricated in Artist's studio in Barcelona, Spain. Richard Gray Gallery shall be responsible for transportation of Work from Barcelona, Spain to City. Artist shall provide City with written instructions on the proper installation of the Work.

ATTACHMENT 1 TO EXHIBIT A

Artist's Mock Up of Work





ATTACHMENT 2 TO EXHIBIT A

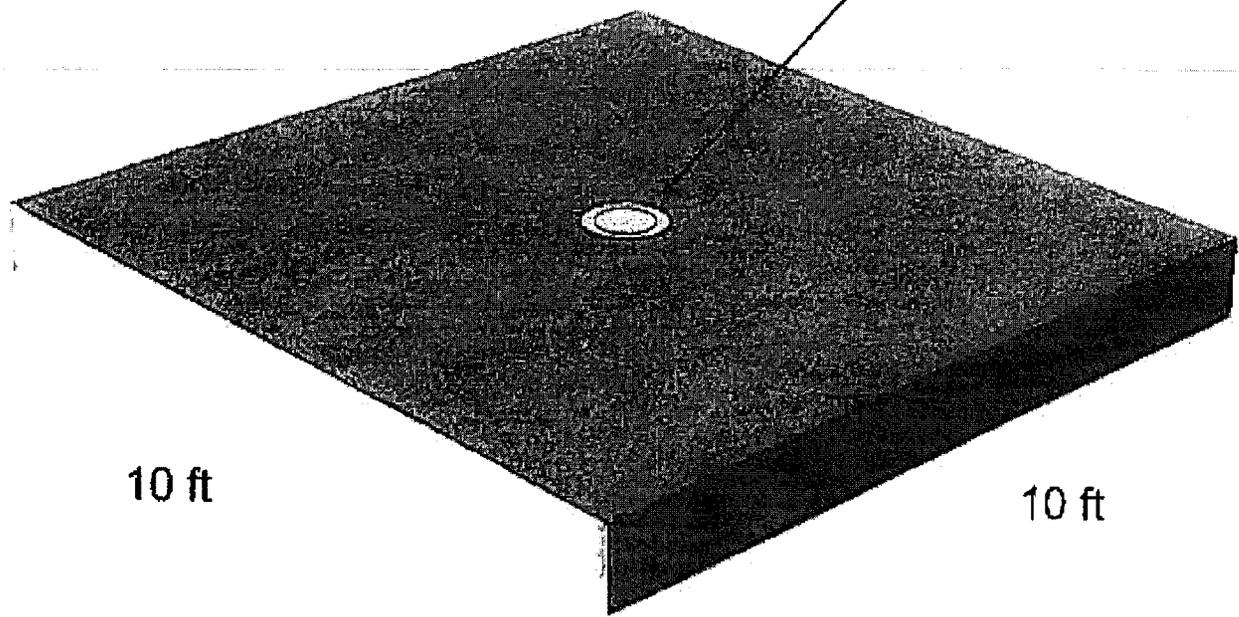
Drawing of Base and Lighting

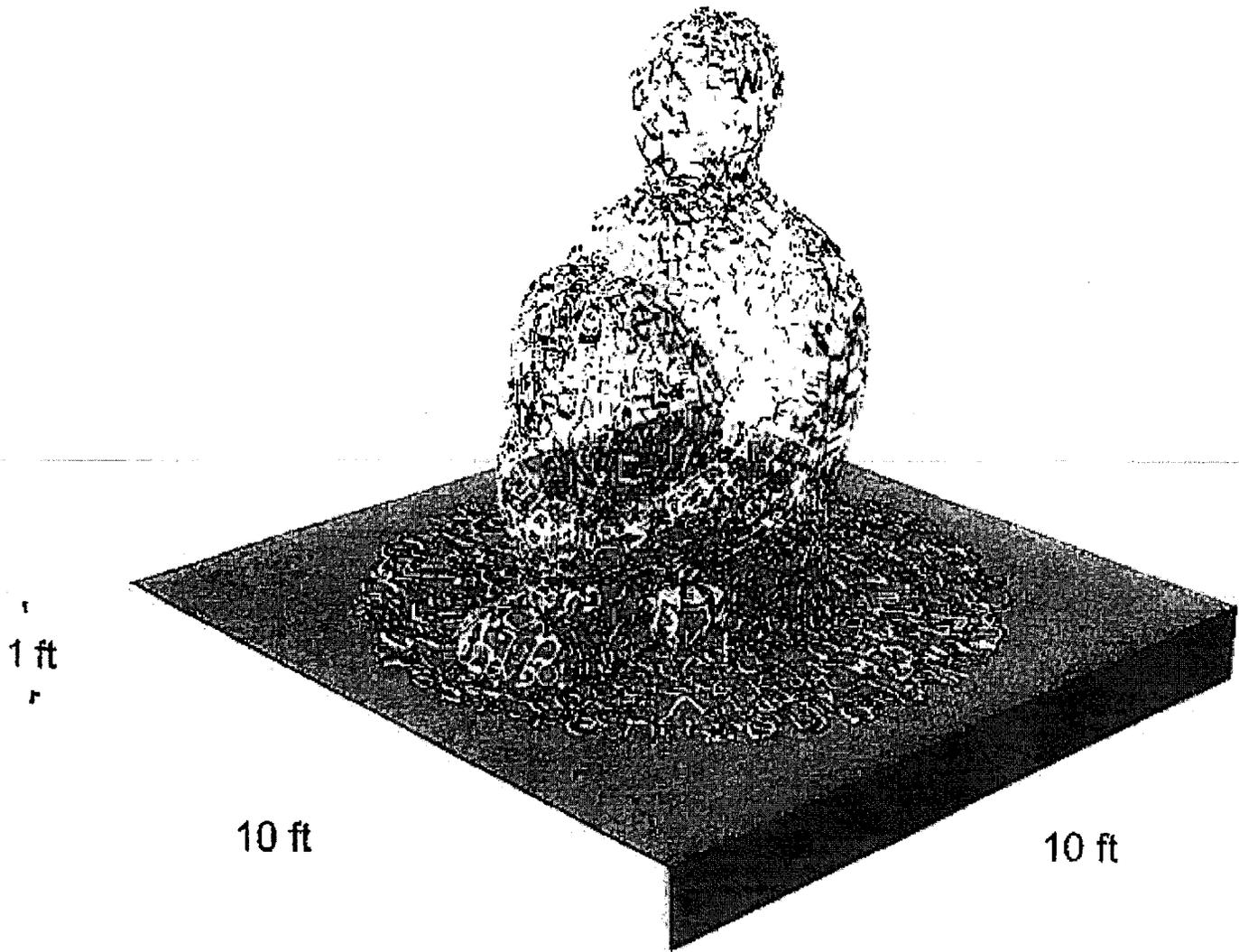
IN-GROUND LED RECESSED LUMINAIRE
(SEE SPECIFICATION SHEET FOR RECOMMENDED LUMINAIRE)

↑
1 ft
↓

10 ft

10 ft





**LIGHT UP WALK
PROFESSIONAL LED**

#1.BB3 LAMPING

In-ground LED recessed luminaire with multiple choice of optics. It has a cast aluminum body, stainless steel trim and tempered sealing glass. It is an ideal product for spaces with vehicular traffic. The total assembly can support a static load of 5000 Kg (11 000 lbs).

LAMPING: 12W WHITE LED (12X 1W)
(SEE LAMPING OPTION)

PROJECT NAME: _____

TYPE: _____ QTY: _____

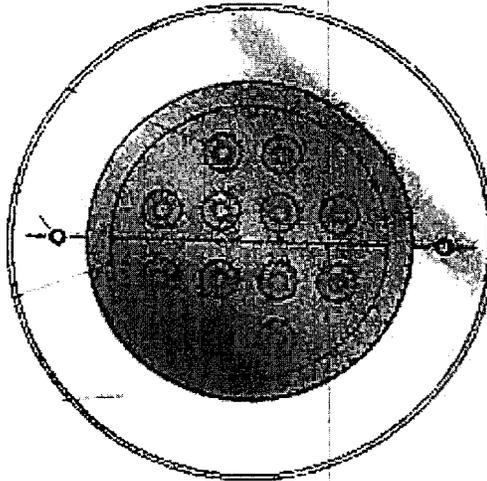
LAST UPDATE: FEBRUARY 13, 2013

12W LED
(12 X 1W)
(SEE LAMPING
OPTION)

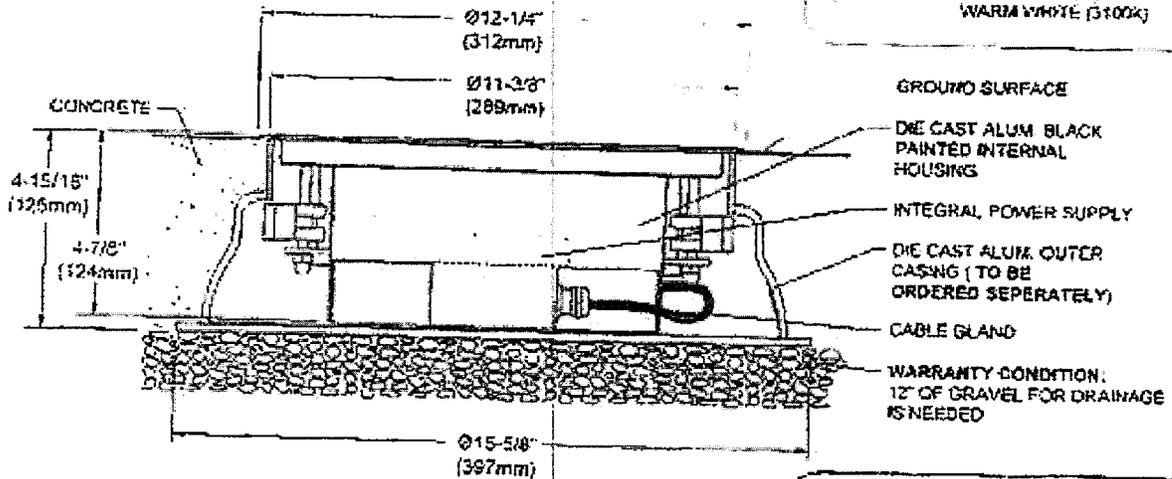
STAINLESS STEEL
ALLEN HEAD
SCREWS
(TYP. 2X)

TEMPERED GLASS
CONTAINED BY A
SILICONE GASKET.

STAINLESS STEEL
TRIM FINISH



TOP VIEW



IP 67

ACCESSORIES



I.B901 - CASING
IN - BLACK



I.B916 - SUCTION CUP

LAMPING

- I.BB33 - SPOT OPTIC 15°
NEUTRAL WHITE (4200K)
- I.BB34 - SPOT OPTIC 15°
WARM WHITE (3100K)
- I.BB35 - FLOOD OPTIC 0° - 15°
NEUTRAL WHITE (4700K)
- I.BB36 - FLOOD OPTIC 0° - 15°
WARM WHITE (3100K)

VOLTAGE

120V



5455 de Gaspé
sur le 100, Montée (Côte) St-Jacques
Canada H2T 3E3
P.: 514 523.1339 F.: 514 525.0107

LIGHT UP WALK
PROFESSIONAL LED

EXHIBIT B

PAYMENT AND PAYMENT SCHEDULE

City shall pay Artist \$350,000 for the Work, including shipping of the Work from Barcelona, Spain to City, pursuant to the terms and conditions of this Agreement.

Payment Schedule:

- A. Upon execution of this Agreement, City shall pay Artist \$175,000 as a deposit to begin Artist's work.
- B. Upon completion of Work at Artist's studio and prior to shipping, City shall pay Artist \$140,000.
- C. Within thirty days of the delivery and acceptance of the Work by City, City shall pay the remaining balance of \$35,000.