

**CONTRACT FOR DOWNTOWN CIVIC CENTER PLAZA PUBLIC ART PROJECT
HARMONIC ASCENSION**

THIS CONTRACT is being entered into, effective as of _____, by and between the City of Las Vegas (hereinafter the "City"), a municipal corporation within the State of Nevada having its principal office at 495 South Main Street, Las Vegas, Nevada 89101, and Cliff Garten & Associates, Inc., DBA Cliff Garten Studio (hereinafter the "Artist"), a corporation organized and existing under the laws of the State of California, having its principal office at 1315 Preston Way, Venice, California 90291.

SECTION A – Contract Overview**A-1 Summary of Contract [CAO-12/30//2020]**

This Contract sets forth the terms and conditions for the performance of services (sometimes also referred to herein as "Artwork") described herein, and the execution hereof by the parties hereto forms a legally binding contract. Artist shall provide the services in accordance with this Contract using Artist's own equipment, tools and other materials, unless otherwise described herein. Artist shall perform all services and obtain all permits, inspections and similar legal authorizations, supplies, material and/or equipment at Artist's sole expense as necessary for the design, fabrication and installation of the Artwork at the project site. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Contract and all applicable laws. This is a Non-Exclusive Contract.

(a) Contract Synopsis The legally binding Scope of Work is more fully defined in Section C	Permitting, fabrication, delivery, and install of a sculpture for the Downtown Civic Center Plaza.	
Performance Dates The Performance Period is more fully defined in Section A-2	Award Date See first paragraph	Completion Date 22 months from Award Date
Contract Type As defined in Section B-1	The contract type is Fixed Fee Contract	
Contract Amount This Not-to-Exceed Amount is subject to Section C-2	\$923,000	Fixed Fee

(b) Contract Exhibits / Attachments The following documents are hereby incorporated into this Contract
Exhibit A – Scope of Work Exhibit B – Excerpted Proposal

(c) City Project Manager Per Section D-4, (a)	Name Laura Machado	Phone (702) 229-4631	Email lmachado@lasvegasnevada.gov
Artist Representative Per Section D-4, (b)	Name Cliff Garten	Phone (310) 392-2060	Email cg@cliffgartenstudio.com

(d)

City Legal Notice Representative per Section E-1			
Artist Legal Notice Representative Per Section E-1	Name Cliff Garten	Address 1315 Preston Way Venice, CA 90291	Email cg@cliffgartenstudio.com

A-2 Performance Period

- (a) The performance period commences from Award Date and continues through the completion of services provided, anticipated to be no later than the Completion Date stated in Section A-1(a), unless extended in writing in accordance with Section E-13 "Modification/Amendment".
- (b) The City reserves the right to temporarily extend this Contract for up to one hundred eighty (180) calendar days from the Completion Date, for any reason, provided that City shall be responsible for any increase in materials or supply costs as a result of any such extension initiated by the City.

SECTION B – Basic Terms**B-1 Definitions** [CAO-10/13/2020]

The following definitions apply to this Contract:

- (a) "*Artist*" means the individual, partnership or company, identified in the first paragraph of this Contract, who is responsible for the performance of services.
- (b) "*Award Date*" means the date that a Contract becomes effective. It is the date entered into the first paragraph of a Contract upon execution by an authorized representative of the City.
- (c) "*Contract*" means this document, consisting of Sections A through E, and the exhibits and attachments attached hereto, which is binding and effective only upon execution by the City.
- (d) "*Contract Amount*" means the maximum amount of compensation that may be paid to the Artist for performance of the Contract, which includes, without limitation, compensation for all direct and indirect expenses.
- (e) "*Deliverable*" means any report, software, hardware, data, documentation or other tangible item that the Artist is required to provide to the City under the terms of the Contract. Deliverable also includes, without limitation, sketches, drawings, conceptual designs, models, maquettes, slides, photographs, or other related materials used in the design and/or creation of the Artwork that are fixed in a medium of expression and actually/to be delivered to the City by the Artist.
- (f) "*Fixed Fee Contract*" means a contract that provides for a firm price that is not subject to any adjustment on the basis of the Artist's cost experience in performing the Contract.
- (g) "*F.O.B. Destination*" means that the Artist is responsible for paying the costs (including, without limitation, the loading, unloading and shipping costs) of transporting the Artwork to the point of delivery designated by the City, and includes the risk of loss or destruction associated with such transportation.
- (h) "*Non-Exclusive Contract*" means a Contract under which the City agrees to obtain some, but not necessarily all, of the City's requirements for a particular service.

SECTION C – Statement of Work**C-1 Scope of Work**

Services will be provided in accordance with the Scope of Work attached as **Exhibit A** and the Excerpted proposal attached as **Exhibit B**.

C-2 Deliverables, Delivery Schedules & Fees [CAO-10/13/2020]

The Artist shall provide the following Deliverables in accordance with the following delivery schedule and the City shall pay the following amounts. The Artist shall deliver the Artwork F.O.B. Destination to the project site.

Item No.	Description	Delivery Schedule	Amount
1	First Milestone: Artist will meet with City's Project Manager to provide updated project information and an illumination plan within 30 days of Contract execution.	Within 30 days of Award Date	\$100,000
2	Second Milestone: Upon approval by the City of Artist-provided final electrical and lighting plans, stamped a Nevada-licensed Professional Engineer, showing at minimum the wiring specifications which will be required for pole-mounted light installations, including any change required to the Plaza utility poles to accommodate lighting.	No later than September 30, 2024	\$30,000
3	Third Milestone: Upon approval by the City of Artist-provided drawings approved and stamped by a Nevada licensed Professional Engineer, plan approval by the City of Las Vegas Building & Safety Division, and City validation of Artist's possession of all required licenses, certifications, and insurance required to undertake the project.	No later than October 30, 2024	\$200,000
4	Fourth Milestone: Upon City's inspection and approval that artwork is 50% fabricated and fabrication is progressing.	Within 10 months of Award Date	\$200,000
5	Fifth Milestone: Upon City's inspection and approval of fabricated artwork and verification that the artwork meets all technical specifications for the project, that the artwork is 100% fabricated, finished, and ready for installation.	Within 19 months of Award Date	\$200,000
6	Sixth Milestone: Upon City's inspection of jobsite and verification that Artist has properly prepared required installation attachment points and the site is ready for installation.	Within 19 months of Award Date	\$70,000
7	Seventh Milestone: Upon City's inspection of artwork lighting (including lighting testing), and any other required elements in preparation for artwork installation.	Within 19 months of Award Date	\$70,000
8	Eighth Milestone: Upon delivery, installation, and the City Project Manager's approval of completed project, and Artist's provision of a comprehensive maintenance plan for the final as-built product. Transfer of ownership to the city shall commence upon final payment to the Artist.	Within 22 months of Award Date	\$53,000

The City agrees to indicate its acceptance of the Artwork in a written notice to the Artist, which will occur within ten (10) days after full installation at the project site. However, until such time as final acceptance, the City shall bear no responsibility, nor incur any liability, for loss or damage to the Artwork even if installed at the project site.

C-3 City Obligations

- (a) The City shall be responsible for preparation of the project site in accordance with the Scope of Work and this Contract, including construction of the sculpture's footing, above-ground cast-in-place pedestal, and power and data cabling to all lights at point of installation in the pedestal and on the City's lighting poles. The City's site preparation work described in this paragraph will be performed in accordance with stamped and approved plans provided by the Artist. The City shall be responsible for the completion of project site preparations by the scheduled installation start date or shall notify the Artist in writing of any delays.
- (b) The City shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, and reports, and other existing relevant data, if any, which is needed by the Artist in order to perform the services.

SECTION D – Special Conditions**D-1 Payment** [CAO-10/13/2020]

- (a) Payment Payment to the Artist will be made only for the actual services performed and accepted by the City, and upon receipt of a timely invoice submitted in accordance with Section D-3, "Invoices". The Contract Amount includes all costs and expenses associated with providing and performing the services for the City including, without limitation, permit fees and similar legal authorizations, supplies, material and/or equipment, expenses for inspection, meeting warranty requirements and complying with all the terms and conditions of this Contract.
- (b) Reimbursable Travel Expenses There are no reimbursable travel expenses authorized or payable under this Contract.

D-2 Fee Revisions [CAO-08/28/19]

For the term of this Contract, Contract Amount shall remain firm.

D-3 Invoices [CAO-10/13/2020]

- (a) The Artist will submit a detailed invoice to the City upon completion of each Deliverable or Milestone as detailed in Section C-2. Each invoice shall contain the following information:
- (i) the date of the invoice and invoice number;
 - (ii) the Purchase Order number;
 - (iii) the Contract Item against which charges are made; and
 - (iv) the performance dates covered by the invoice.
- (b) Upon reconciliation of all errors, corrections, credits, and disputes, payment to the Artist will be made in full within thirty (30) calendar days. **Invoices received without a valid Purchase Order number will be returned unpaid.** The City shall also not be liable for any errors or omissions in an invoice once said invoice is paid by the City, all of which shall be expressly waived by Artist. Notwithstanding the foregoing, this paragraph shall in no way waive the City's rights and remedies should the City find any errors or omissions in an invoice before or after said invoice is paid by the City.

The Artist shall submit the original invoice to:

Department of Finance
ATTN: Accounts Payable
City of Las Vegas
495 South Main Street, 4th Floor
Las Vegas, NV 89101–2986

- (c) The Artist shall also forward a copy of the invoice to the City's Project Manager, identified in Section D-4, "Project Manager/Artist Representative." In determining eligibility for payments to the Artist for Contract items or milestones listed in this Contract, the City's Project Manager or his or her designee in his or her reasonable discretion, shall be the sole judge with respect to progress or completeness with the Scope of Work (and all related specifications).
- (d) The City may subtract or offset from any unpaid invoice from the Artist any claims, which the City may have incurred for failure of the Artist to comply with the terms, conditions or covenants of this Contract, or any damages, costs and expenses caused by, resulting from, or arising out of the negligent act or omission of the Artist in the performance of the services under this Contract. Within thirty (30) calendar days, the City shall provide a written statement to the Artist of the off-set which has been subtracted from any payment to the Artist along with appropriate documentation and receipts, if any, and a description of the failure, error or deficiency attributed to the Artist. The Artist may dispute the right or amount of the off-set made by the City by providing written notification to the City within ten (10) calendar days after receipt of the City's written notice. The City shall provide a written response to the Artist within ten (10) calendar days of receipt of the Artist's written dispute notice. If the Artist disputes the City's determination, the Artist may file a claim pursuant to Section E-2, "Disputes" of this Contract. If the Artist hires any person to assist Artist with the Artwork, the Artist shall be solely responsible for paying the hired person.

D-4 Project Manager/Artist Representative [CAO-8/28/19]

- (a) The City's designated Project Manager for this Contract is named in Section A-1 (c). The City will provide written notice to the Artist should there be a subsequent Project Manager change. The Project Manager will be the Artist's principal

point of contact at the City regarding any matters relating to this Contract, will provide all general direction to the Artist regarding Contract performance, and will provide guidance regarding the City's goals and policies. *The Project Manager is not authorized to waive or modify any material scope of work changes or terms of the Contract.*

- (b) The Artist's designated Artist Representative for this Contract is named in Section A-1 (c). The Artist will provide written notice to the City should there be a subsequent Artist Representative change. The City has the right to assume that the Artist Representative has full authority to act for the Artist on all matters arising under or relating to this Contract.

D-5 Insurance [R]

- (a) The Artist shall procure and maintain, at its own expense, during the entire term of the Contract, the following coverage(s):
- (i) Industrial/Workers' Compensation Insurance protecting the Artist and the City from potential Artist employee claims based upon job-related sickness, injury, or accident, during performance of this Contract, and must submit proof of such insurance on a certificate of insurance issued by an insurer qualified to underwrite workers' compensation insurance in the State of Nevada, in accordance with NRS 616A-616D, inclusive. If Artist is a sole proprietor, it will be required to submit an affidavit indicating that the Artist has elected not to be included in the terms, conditions and provisions of NRS 616A-616D, inclusive, and is otherwise in compliance with those terms, conditions and provisions. The Artist's Workers' Compensation policy shall have a waiver of subrogation endorsement in favor of the City of Las Vegas.
 - (ii) Commercial General Liability Insurance (bodily injury, property damage) with respect to the Artist's agents assigned to the activities performed under this Contract in a policy limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, for bodily injury, products, completed operations, personal injury and property damages. Such coverage shall be on an "occurrence" basis and not on a "claims made" basis, and be provided on either a Commercial General Liability or a Broad Form Comprehensive General Liability (including a Broad form CGL endorsement) insurance form. The form must be written on an ISO Form CG 00 01 10 01, or an equivalent form. The Artist's General Liability policy shall have a waiver of subrogation endorsement in favor of the City of Las Vegas, and shall be endorsed to include the City, its officers, and employees as additional insured.
 - (iii) Commercial Automobile Liability Insurance of limits no less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage to include, but not be limited to, coverage against all insurance claims for injuries to persons or damages to property which may arise from services rendered by Artist and any auto used in the performance of services under this Contract. The policy must insure all vehicles **owned** by the Artist and include coverage for **hired** and **non-owned** vehicles. If the services requested do not require the use of the vehicle to perform, the Commercial Automobile Liability Insurance requirements as described in this paragraph do not apply. The Artist's Automobile Liability policy shall have a waiver of subrogation endorsement in favor of the City of Las Vegas, and shall be endorsed to include the City, its officers, and employees as additional insured.
- (b) The Artist must provide compliant certificates of insurance and required endorsements to the City or its designated certificate tracking service immediately upon request. The Artist shall maintain coverage for the duration of this Contract, and any renewal periods if applicable. The Artist shall annually provide the City's designated certificate tracking service with a certificate of insurance and endorsements as evidence that all insurance requirements have been met. A certified, true, and exact copy of each of the project specific insurance policies (including renewal policies) required under this Section shall be provided to the City or its designated certificate tracking service if so requested.
- (c) All required aggregate limits must be disclosed and amounts entered on the certificate(s) of insurance. The certificates must identify the Contract number, the Contract description, and for internal City routing purposes only the name of the appropriate City division/department. The Artist and/or insurance carrier shall provide the City with a 30-day advance notice of policy modification, cancellation or erosion of insurance limits, sent by certified mail "return receipt requested".
- (d) The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada. Each insurance carrier's rating as shown in the latest Best's Key Rating Guide shall be fully disclosed and entered on the required certificate of insurance. The City requires insurance carriers to maintain a Best's Key minimum rating of A- VII, A- VIII, A- IX, A- X, or higher. The adequacy of the insurance supplied by the Artist, including the rating and financial health of each insurance carrier providing coverage, is subject to the approval of the City.
- (e) All deductibles and self-insurance retentions shall be fully disclosed in the certificate of insurance. No deductible or self-insured retention may exceed \$25,000 without the prior written approval of the City.

- (f) **Companies requesting increased deductibles or self-insured retentions must provide the City a written request stating the desired amounts along with recent audited financial statements for review. The City will review the request and determine if the requested deductibles or self-insured retentions are acceptable. In the event the request for increased deductibles or self-insured retentions is denied, the Artist is obligated to provide the deductibles or self-insured retentions established in the Contract at no additional expense to the City.**
- (g) If the Artist fails to carry the required insurance, the City may (i) order the Artist to stop further performance hereunder, declare the Artist in breach, pursuant to Section E-5, "Event of Default", terminate the Contract if the breach is not remedied and, if permitted, assess liquidated damages, or (ii) purchase replacement insurance and withhold the costs or premium payments made from the payments due to the Artist or charge the replacement insurance costs back to the Artist.
- (h) Any subcontractor or subconsultant approved by the City shall be required to procure, maintain, and submit proof of insurance to the City of the same insurance requirements as specified above, and as required in this paragraph.
- (i) The Artist is encouraged to purchase any additional insurance it deems necessary.
- (j) The Artist is required to remedy all injuries to persons and damage or loss to any property of the City caused in whole or in part by the Artist's intentional and/or negligent acts, its subcontractors or anyone employed, directed, or supervised by the Artist.

D-6 Warranty – Artwork [R]

- (a) The Artist represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for two (2) years after the date of final acceptance by the City. The Artist understands that the Artwork installed may be subject to extreme environmental factors including, but not limited to, substantial fading, peeling, chalking or other deterioration, sun exposure, irrigation overspray, public urination, and application of tape or adhesives. The Artist warrants that the completed Artwork will be resistant to the above described environmental factors to the degree that no substantial or significant deterioration occurs within this warranty period. The City in its sole discretion shall determine what constitutes substantial or significant deterioration of the Artwork.
- (b) The Artist represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the Maintenance Plan to be submitted by the Artist in a format reasonably specified by the City.
- (c) If within two (2) years the City observes any breach of warranty described in this Section that is curable by the Artist, the Artist shall, at the request of the City, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the City. The City shall give notice to the Artist of such breach with reasonable promptness.
- (d) If within two (2) years the City observes a breach of warranty described in this Section that is not curable by the Artist after Artist's attempts to cure, the Artist is responsible for reimbursing the City for actual, out of pocket damages, expenses and loss incurred by the City as a result of the breach. However, if the Artist disclosed the risk of this breach in the Proposal and the City accepted that it may occur, it shall not be deemed a breach for purposes of this warranty.
- (e) To the extent the Artwork incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties to the City. To the extent a manufacturer's warranty extends to the City and/or provides for longer duration or greater coverage, that coverage shall supersede the Artist's warranty. The City is covered by the lighting manufacturer's warranty for the light fixtures and lighting equipment, usually five (5) years, which transfers to the City when the City takes title to the Artwork. If a fixture is defective, it must be returned to the manufacturer for repair. Deinstallation and reinstallation of lights is the responsibility of the City under manufacturer's warranty. The Artist's two-year warranty does not cover water damage to the electrical system, which is beyond the IP rating of the fixtures or the normal standard of wiring and connection. (All lighting system components will be potted where possible.)
- (f) The Artist further represents and warrants in perpetuity that the Artwork and/or Deliverables prepared by Artist for City under this Contract will be original, and the Artwork and associated Deliverables will not violate or infringe any intellectual property right, including but not limited to, copyright, trademark, patent, trade dress, right of privacy, right of publicity, or any other right of any person, nor will the Artwork and associated Deliverables constitute libelous, defamatory, obscene or unlawful matter. In addition to and as part of Section E-15 herein, Artist agrees to indemnify,

defend, and hold City harmless against any and all Liabilities (defined herein below) arising out of any claim, demand, suit, action or proceeding against City alleging a violation of the warranties and representations contained in this Section.

(g) This Section will survive termination or expiration of this Contract for any reason.

D-7 Ownership of Artwork and Licenses

- (a) Ownership of Artwork. Artist understands and agrees that the Artwork and Deliverables are being developed by Artist for the sole and exclusive use of the City and that City shall be deemed the sole and exclusive owner of all right, title, and interest therein free and clear of all liens and encumbrances, or claims of Artist or Artist's partners, affiliates, subsidiaries, officers, directors, employees, agents and representatives, or claims of third parties. City shall and may from time to time, and at all times hereafter, peaceably and quietly have, hold, possess, and enjoy the Artwork itself and/or the associated Deliverables and every part thereof, to and for its own use and benefit, without any manner of hindrance, interruption, molestation, claim or demand of, from or by the Artist. City has the right to use or not use the Artwork and/or the associated Deliverables. The transfer of title and ownership shall be self-executing upon receipt of payment in full hereunder to Artist. Notwithstanding the foregoing, Artist agrees to execute such document or documents as may be requested by the City to ensure title and ownership of the Artwork and/or associated Deliverables are solely in the City's name.
- (b) Copyright Ownership. Notwithstanding the transfer of title to the Artwork itself and associated Deliverables pursuant to Section D-7(a) (Ownership of Artwork) above, and excluding the waiver of rights and claims under the State VARA and Federal VARA set forth in Section D-8 (a) (Waiver of Rights) and D-8(b) (Waiver of Claims) below, the Artist shall retain all rights under the Copyright Act of 1976 (17 U.S.C. Section 101 et seq.) as the sole author of the Artwork for the duration of the copyright. The City is not responsible for any third party infringement of the Artist's copyrights, and is not responsible for protecting the intellectual property rights of the Artist. The Artist's copyright shall not extend to any predominantly utilitarian aspect of the Artwork, such as the landscaping, furnishings or other similar objects.
- (c) License. Artist has no outstanding claims and knows of no outstanding claims against the Artwork. Artist grants the City an exclusive, irrevocable, assignable, transferrable, unlimited, perpetual, royalty-free, fully paid-up, worldwide license (i) to use and display the Artwork, and (ii) to non-commercially use the image, name and likeness of the Artwork, and (iii) to graphically reproduce (through photography, video, electronic media, the internet or otherwise) the images of the Artwork for the City's documentation, commercial publicity, and for municipal (e.g. internet publicity, educational purposes, public information, promotion of the arts, for condition records, etc.) purposes. Municipal purposes mean, without limitation, reproductions and transmissions in exhibit catalogues, books, slides, photographs, postcards, public banners, newsletters, reports, the City's websites and social media, the City's blogs and other electronic formats for news, review or commentary, City promotional items and calendars; in art magazines, art books and art and news sections of newspapers and periodicals; in general books and magazines not primarily devoted to art but of an educational, historical or critical nature; in slides and films not intended for mass audience; and in government telecasts, television from stations operated for educational purpose or on programs for educational or informational purposes from all stations and electronic media. Artist agrees to execute such document(s) as may be requested by the City to ensure a valid City license to the Artwork as set forth herein.
- (d) Artwork to be Unique. The parties intend that the Artwork owned by the City shall be a unique and one-of-a-kind creation by the Artist. In furtherance of this intention, the Artist agrees not to create or make, nor authorize others to create or make, any exact or significantly similar two-dimensional, three-dimensional, or other forms of duplicate or reproductions of the Artwork, which is the same or substantially similar in image, design, dimensions and materials, without the express written consent of the City, which consent may or may not be granted in its sole discretion. Nothing contained herein shall prevent the Artist from creating other works of art that are not exact or significantly similar but are in the Artist's manner and style of artistic expression.
- (e) Public Space. As the Artwork will be located in a public space for public display and viewing, any photographing or other reproduction of the Artwork, or the incidental appearance of the Artwork in images, videos or filming of events in the public space, whether by the public in general, or by commercial television or film companies authorized by the City to photograph, videotape or film in the public space, shall be considered within the City's license rights and right of physical ownership of the Artwork itself, and right of reproduction of the City.
- (f) All reproductions by City shall contain a credit or attribution to Artist and a copyright notice in substantially the following form: "Copyright 20[] [Artist]", to the reasonably possible and appropriate extent, as determined by City. In any public showing of any photographs or graphic reproductions of the Artwork by Artist, the City and/or the Arts Commission shall receive credit for ownership and commissioning, respectively, of the Artwork. The Artist agrees to give credit in the following form: "Original owned by the City of Las Vegas and displayed at [the location]".

- (g) Artist hereby also grants to City the right to use the Artist's name, image, likeness, and biographical information in connection with the display or graphic reproduction of the Artwork in promotional or advertising materials regarding the City and/or the City's Arts Commission. If so requested by the City, the Artist agrees to attend any inauguration or presentation ceremonies relating to public dedication of the Artwork. Any documents provided by the Artist to the City are considered to be public records and are subject to disclosure and copying pursuant to the public record laws of this State.
- (h) The City shall not make any commercial use of the Artwork unless and until the parties enter a separate agreement governing the terms of a license for the City to use commercial reproductions of the Artwork and the royalty, if any, the Artist may receive. Notwithstanding anything contained herein to the contrary, neither party shall be obligated to enter into any further commercial use agreements regarding the Artwork. Work intended to promote or benefit the City, its public/municipal services or its public/municipal purposes, regardless of whether or not a fee is charged to the public, or whether revenue is otherwise received by City, shall be deemed a non-commercial purpose and thus within the City's license rights and right of physical ownership of the Artwork itself.

D-8 Artistic Moral Rights: Waiver of Federal and State VARA Rights

- (a) Waiver of Rights. The Artist has been selected and commissioned to design and create a work of visual art. As the creator of visual art, the Artist may enjoy various statutory rights provided under the federal Visual Artists Rights Act of 1990 (17 USC § 106A and 113(d)) (the "Federal VARA") and NRS Sections 597.720 through 597.760 (the "State VARA"), including, without limitation, the rights of attribution and integrity. In consideration for the contractual rights, procedures and remedies granted under Section D-9 below, the Artist agrees to waive, and does hereby waive, voluntarily, all moral rights, including, without limitation, the rights granted to the Artist under the Federal VARA, the State VARA, including, without limitation the rights of attribution and integration, and any other local, state or international laws currently existing or as may be hereinafter enacted that convey the same or similar rights to the Artist with respect to the Artwork as those conveyed under the Federal VARA and the State VARA, and its display, removal, relocation, exhibition, conservation, restoration, destruction, distortion, mutilation, alteration, deaccessioning or any other activity conducted by the City, its officers, employees, contractors or agents.
- (b) Waiver of Claims. In addition to the waiver of rights under the Federal VARA, the State VARA, and other similar laws, set forth in (a) of this Section D-8, with respect to the Artwork produced under this Contract, and in consideration for the contractual rights, procedures and remedies granted under Section D-9 below, the Artist agrees to waive, and does hereby waive, any and all claims, against the City, its officers, employees, agents, arising under the Federal VARA, the State VARA, including, without limitation, the rights of attribution and integrity, and any other local, state, federal or international laws currently existing or as may be hereinafter enacted that convey the same or similar rights to the Artist with respect to the Artwork as those conveyed under the Federal VARA and the State VARA, and its display, removal, relocation, exhibition, conservation, restoration, destruction, distortion, mutilation, alteration, deaccessioning or any other activity conducted by the City, its officers, employees, or agents. If the Artwork is incorporated into a building, sidewalk, right of way or other project site such that the Artwork cannot be removed without causing the destruction, distortion, mutilation, or other modification of the Artwork, Artist waives any and all such claims and against any future owners of the project site, and their officers, employees and agents, for destruction or other alteration of the Artwork.
- (c) Notwithstanding any of the rights granted to the Artist pursuant to this Contract, the City hereby reserves the right to make the Artwork available for temporary loan to government entities, public institutions, galleries, museums, and other artistic organizations for the purpose of exhibition to the public.
- (d) The Artist agrees that upon the Artist's death, all of the rights granted to the Artist in connection with the Artwork pursuant to this Contract shall cease and the City or its designee acting as custodian of the Artwork, shall have no further obligations to the Artist, or to the heirs or devisees of the estate of the Artist, concerning the Artwork.

D-9 Artist Attribution

- (a) Attribution. The City may, in its sole discretion, identify the Artist as the author (but not the owner) of the Artwork. The City is permitted to display a credit for the Artwork substantially in the following form, or similar: "Original owned by the City of Las Vegas, commissioned by the Las Vegas Arts Commission under the Percent for the Arts Ordinance and displayed at [the location]" in any public showing or any reproductions of the Artwork. The displayed credit may be on or in proximity to the Artwork.

The City shall make reasonable efforts as determined by the City to ensure that its reproductions or publications that prominently feature the Artwork contain a credit to the Artist. In the event that the City's use of the Artwork creates a

trademark, service mark or trade dress right in connection with the Artwork, the City shall have an exclusive and irrevocable right to such trademark, service mark or trade dress.

- (b) Right of Integrity. The City agrees to take reasonable steps to properly clean, maintain and protect the Artwork after final acceptance. If the Artwork is in need of restoration as determined solely by the City, and the restoration will compromise the artistic intent of the Artist, the City agrees to take reasonable steps to consult with the Artist on the future restoration and repair of the Artwork. The City retains the right to proceed with restoration or repairs if the City is unable to contact or come to an agreement with the Artist concerning such restoration or repair.

The City has no obligation to pursue any claim against a third party for intellectual property infringement, alteration, defacement, modification or damage to the Artwork done without the City's authorization. However, the City may alone, in its discretion, pursue such claims against a third party for such intellectual property infringement, alteration, defacement, modification or damage to the Artwork if performed without the City's authorization. If such claim is pursued, the City may notify the Artist, and the Artist agrees to cooperate with the City's efforts to prosecute such claims.

(c) City Right to Alter, Remove, Relocate and Dispose of Artwork.

- (i) In General. The City intends to publicly display the Artwork at the project site as originally created by the Artist and to maintain the Artwork in good condition for the enjoyment of the public. Notwithstanding this intent to display the Artwork, the City retains complete control and flexibility to operate and manage its property, including the project site used for the display of the Artwork. Such right to operate and manage its property includes, without limitation, the right to display, remove, relocate, exhibit, conserve, maintain, restore, destroy, deaccession or otherwise dispose of the Artwork in the City's sole judgment.
- (ii) Relocation of Artwork. If, during or after the term of this Contract, the City desires to relocate any part of the Artwork to a new location within the boundaries of the project site, the City shall have the right to do so without the need to contact or obtain the assistance of the Artist provided the relocation is within the boundaries of the project site. If the relocation is to a site outside the boundaries of the project site, then the City agrees to take reasonable steps to notify the Artist pursuant to Section E-1 (Legal Notice) of the proposed removal for the purpose of determining if an alternative site, acceptable to both parties, is available for relocation of the Artwork, or portion thereof. If the parties cannot agree to an alternative site, the City shall nevertheless have the right to relocate the Artwork, or portion thereof, to another site, which is determined in its sole discretion.
- (iii) Alteration of Artwork on Public Display. If the City is going to take action that would significantly alter, modify or otherwise change the Artwork, the City agrees to take reasonable acts to notify the Artist pursuant to Section E-1 (Legal Notice) at least thirty (30) days prior to taking any such action, provided time permits such notification. The City will consult with the Artist as to minimize the effect of such action on the Artwork. If the City is unable or fails to contact the Artist, or if after contacting the Artist, the parties cannot agree on how to minimize the effect of such action on the Artwork, the City shall nevertheless have the right to proceed with such action. If the alteration, modification or change is unacceptable, the Artist's sole remedy is to disclaim authorship of the Artwork, and the City to remove from public display any plaque or other identification mark crediting or attributing authorship to the Artist. This provision does not apply to any cleaning or maintenance of the Artwork, which the City may perform as needed without notice to the Artist.
- (iv) Restoration of Artwork. If the Artwork is in need of significant restoration as a result of normal wear and tear, or as a result of unauthorized acts by a third party resulting in damage to or destruction of the Artwork, and the City intends to maintain the Artwork on public display, the City agrees to take reasonable acts to procure the assistance of the Artist in restoring the Artwork to its original or an acceptable condition and to compensate the Artist in an amount agreed to by the parties for such assistance. Notwithstanding the foregoing, the City shall have no obligation to restore the Artwork to its original or an acceptable condition, to compensate the Artist for any assistance provided in connection with the restoration or to maintain the Artwork on public display. If the parties cannot reach an agreement as to the compensation for such assistance, the City reserves the right to contract with another art conservator or artist for the restoration of the Artwork, or to proceed with such restoration without such assistance. If the restoration is unacceptable, the Artist's sole remedy is to disclaim authorship of the Artwork, and the City agrees to remove from the public display any plaque or other identification mark attributing authorship of the Artwork to the Artist. This provision does not apply to any cleaning or maintenance of the Artwork, which the City may perform as needed without notice to the Artist.
- (v) Removal of Artwork from Public Display. If the City desires to remove the Artwork from public display, the City agrees to take reasonable steps to notify the Artist pursuant to Section E-1 (Legal Notice) of the proposed removal for the purpose of determining if an alternative site, acceptable to both parties, is available for relocation of the Artwork. If the parties cannot agree to an alternative site, or the City no longer wants to publicly display the Artwork,

the City may elect in its sole discretion to keep and store the Artwork as part of its Permanent Art Collection, or dispose of the Artwork pursuant to Section D-9 (c)(vi) (Disposition of Artwork Removed from Public Display). The City may, at its sole discretion, choose to offer the Artwork to the Artist.

- (vi) Disposition of Artwork Removed from Public Display. If, at any time in the future, the City desires to sell or donate the Artwork separate and apart from the project site, and provided the Artist can be notified pursuant to Section E-1 (Legal Notice) after reasonable attempts to do so, the Artist will be given a right of first refusal to purchase the Artwork from the City at a value that is determined by a certified appraiser selected by the City. This Section is not intended to give the Artist any rights if the Artwork is sold by the City as part of, or as a consequence of, the sale of the project site, or the vacation of the City's interests in the project site. The rights of the Artist under this paragraph will be specific to the Artist itself, and cannot be transferred, assigned, pledged or levied upon, nor will they pass by way of inheritance or other operation of law to any third person. If the Artist has no interest in purchasing the Artwork, the City may dispose of the Artwork in any manner, including, without limitation, by donation or sale to any person or entity, or subsequent destruction of the Artwork. If the City sells the Artwork, the Artist shall not be entitled to any proceeds or royalties from such sale.

D-10 Representations and Warranties

- (a) Originality. The Artist represents and warrants: (1) Artwork and associated Deliverables are the original product of the Artist's own creative efforts; and (2) Artwork and associated Deliverables are unique and that the Artwork, or a duplicate thereof, has not been accepted for sale elsewhere, unless, as stipulated to the City as one of a limited edition of Artwork; and (3) the Artist expressly warrants that no pre-existing agreements with an Artist's gallery agent will be the cause for any breaches of this Contract or render this Contract impracticable by the Artist; and (4) the Artwork and associated Deliverables do not infringe upon any copyright or other intellectual property rights or the rights of any person. Nothing herein shall prevent the Artist from creating other works in the Artist's style.
- (b) No Finders Fees. All negotiations relative to this Contract have been and will be carried on without the intervention of any person whose act or acts would give rise to any valid claim against the City for a finder's fee, brokerage commission, or other like payment.
- (c) Public Records Request. Any documents provided by the Artist to the City are considered to be public records and are subject to disclosure and copying pursuant to the public record laws of this State.

SECTION E – General Conditions

E-1 Legal Notice [CAO-4/2020]

- (a) Any notice required to be given hereunder shall be deemed to have been given when written notice is (i) received by the party to whom it is directed by personal service; (ii) three (3) days after deposit with the United States Post Office, by registered or certified mail, postage prepaid and addressed to the party to be notified at the address for such party; (iii) one (1) day after deposit with a nationally recognized air courier service such as FedEx; or (iv) by an email sent to the email address of the recipient stated in this Section. All notices shall be effective upon receipt by the party to which notice is given or if it is delivered by email, when the recipient acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for notice purposes. Either party hereto may change its address by giving ten (10) days advance notice to the other party as provided herein. Phone and fax numbers, if listed, are listed for information only:

FOR THE CITY:	Manager, Purchasing and Contracts City of Las Vegas 495 South Main Street, 4th Floor Las Vegas, Nevada 89101-2986 Fax: (702) 384-9964 Email: purchasing@lasvegasnevada.gov
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FOR THE ARTIST:	As Noted in Section A-1 (d) of the Contract:
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- (b) The parties shall provide written notification of any change in the information stated above.
- (c) For purposes of this Contract, legal notice shall be required for all matters involving potential termination actions, litigation, indemnification, and unresolved disputes. This does not preclude legal notice for any other actions having a material impact on the Contract.

- (d) Routine correspondence should be directed to the Project Manager or the Artist Representative, as appropriate.

E-2 Disputes [CAO-4/2020]

- (a) For each claim or dispute arising between the parties under this Contract, the parties shall attempt to resolve the matter through escalating levels of management. In the event the matter cannot be successfully resolved in this manner, the City is granted the sole right, regardless of which party is asserting the claim or dispute, to determine between arbitration and litigation as the forum in which the party desiring to proceed further shall file to resolve the claim or dispute. For any and all claims or disputes asserted by the Artist, the Artist shall notify the City of its intent to proceed further with the claim or dispute and in response thereto, the City shall notify the Artist as to its selected forum for resolution. For any and all claims or disputes asserted by the City, the City shall notify the Artist in the notice of its intent to proceed with further resolution whether it has selected arbitration or litigation as the forum to resolve the claim or dispute. In the event arbitration is the designated forum, such arbitration shall be binding on the parties.
- (b) If arbitration is selected by the City as the forum for further resolution, the claim or dispute shall be filed with the American Arbitration Association under its then current Commercial Arbitration Rules, Expedited Procedures, regardless of the amount of the claim or dispute.
- (c) The laws of the State of Nevada shall govern the validity, construction, performance, and effect of this Contract, without giving effect to its conflict of law provisions. If arbitration is selected, each party hereto consents to, and waives any objection to, venue being the offices of the American Arbitration Association located in Las Vegas, Nevada, or other venue mutually agreed by the parties. If litigation is selected, each party hereto consents to, and waives any objection to, the State courts located in the County of Clark, State of Nevada as the proper and exclusive venue for any disputes arising out of or relating to this Contract or any alleged breach thereof. Each party hereby waives trial by jury in any action, proceeding or counterclaim brought by either of them against the other on any matters whatsoever arising out of or in any way connected with this Contract.

E-3 Notice of Delay [CAO-01/20/16]

- (a) If timely performance by the Artist is jeopardized by the non-availability of City provided personnel, data, or equipment, the Artist shall notify the City immediately in writing of the facts and circumstances causing such delay. Upon receipt of this notification, the City will advise the Artist in writing of the action which will be taken to remedy the situation.
- (b) The Artist shall advise the City in writing of an impending failure to meet established milestones or delivery dates based on the Artist's failure to perform. Notice shall be provided as soon as the Artist is aware of the situation; however, such notice shall not relieve the Artist from any existing obligations regarding performance or delivery.

E-4 Termination for Convenience [R]

The City shall have the right at any time to terminate further performance of this Contract, in whole or in part, for any reason whatsoever (including no reason). Such termination shall be effected by written notice from the City to the Artist specifying the extent and effective date of the termination. On the effective date of the termination, the Artist shall terminate all work and take all reasonable actions to mitigate expenses. The Artist shall submit a written request for incurred costs for services performed through the date of termination, and shall provide any substantiating documentation requested by the City. In the event of such termination, the City agrees to pay the Artist within thirty (30) days after receipt of a correct, adequately documented written request. The City's sole liability under this Section is for payment of costs for goods and services under this Contract actually performed by the Artist.

E-5 Event of Default [CAO-12/30/2020]

- (a) If, during the term of this Contract, the Artist (i) fails to deliver services that comply with the Scope of Work, (ii) fails to deliver the services within the time specified in the Scope of Work or Project Schedule or any extension thereof, (iii) fails to make progress so as to endanger the performance of this Contract, (iv) becomes insolvent, bankrupt or makes an assignment for the benefit of creditors, or if a receiver or trustee in bankruptcy is appointed for the Artist, or if any proceeding in bankruptcy, receivership, or liquidation is instituted against the Artist and is not dismissed within thirty (30) days following commencement thereof, or (v) fails to perform any of the other obligation or requirement of this Contract, then any of the aforementioned failures shall constitute an "Event of Default" under this Contract.
- (b) If there occurs an Event of Default, the Artist shall be entitled to ten (10) calendar days from written notice thereof to remedy the Event of Default, provided, however, such is capable of being remedied within that period. If the Event of Default can be remedied, but the remedy cannot be completed within the ten (10) day period, the Artist may be allowed such additional time as may be reasonably necessary to remedy the Event of Default, provided, however, the remedy

is commenced within the ten (10) day period and is diligently pursued to completion but in no event later than thirty (30) days after such written notice. Said time period may be extended at City's sole discretion. If the Event of Default is incapable of remediation, or is not remedied as required herein, the City may, in addition to any other remedies available in law or equity, invoke any of the remedies provided for under Section E-6, "Termination for Default", below.

E-6 Termination for Default [R]

- (a) If the Event of Default is not remedied as required pursuant to Section E-5, "Event of Default", the City may, by written notice to the Artist pursuant to Section E-1, "Legal Notice", terminate this Contract in whole or in part.
- (b) If this Contract is terminated in whole or in part because the Artist has failed to provide services in compliance with the specifications by the deadline of remediation period, the City may acquire, under reasonable terms and in a manner it considers appropriate, replacement services that are comparable to the services that the Artist failed to deliver to the City, and the Artist shall be liable to the City for any excess costs related thereto. If the City terminates this Contract only in part, the Artist shall continue to perform the un-terminated obligations or portions of this Contract.
- (c) The Artist shall not be liable for any excess costs if the failure to perform the Contract arises from circumstances beyond the control of, and without the fault or negligence on the part of, the Artist. These circumstances are limited to such causes as (i) acts of God or of the public enemy, (ii) acts of governmental bodies, (iii) fires, (iv) floods, (v) epidemics/pandemics, (vi) quarantine restrictions, (vii) labor strikes, (viii) freight embargoes, or (ix) unusually severe weather. The time of performance of the Artist's obligations under this Contract shall be extended by such period of enforced delay; provided, however, that such reasonably extended time period shall not exceed sixty (60) days. If the foregoing circumstances result in a delay greater than 60 days, the City may terminate the affected portion of the Contract pursuant to the terms of Section E-4, "Termination for Convenience," including the provisions in that Section allowing for payment for services performed up to termination date.
- (d) The City retains the right to terminate for default immediately if the Artist fails to maintain the required insurance, and/or bonding, fails to comply with applicable local, state, and federal statutes governing performance of these services, or fails to comply with statutes involving health or safety.
- (e) If the City fails to perform any obligations required under this Contract, and does not remedy the failure after notice thereof is provided to the City by the Artist pursuant to the requirements of Section E-1, "Legal Notice" above, the Artist shall have the right to treat the failure as a claim or dispute subject to the resolution provisions of E-2, "Disputes" of this Contract. During the period of such resolution, the Artist shall continue with its performance under the Contract.
- (f) Upon termination of this Contract by either party, for any reason whatsoever, prior to completion of the Artwork and Notice of Acceptance, all finished and unfinished work, drawings, sketches, photographs and other work products or deliverables prepared and submitted or prepared for submission by the Artist under this Contract shall be retained by and constitute the sole property of the City.

E-7 Limitation of Funding/Non-Appropriation [CAO-4/2020]

The Artist acknowledges that City is a governmental entity and the Contract's validity is based upon the availability of public funding under its authority. The City reserves the right to reduce estimated or actual quantities, in whatever amount necessary, without prejudice or liability to the City, if funding is not available or if legal restrictions are placed upon the expenditure of monies for the services required under this Contract. In addition, and without prejudice or liability to the City, if funds are not appropriated or otherwise made available to support continuation in any fiscal year succeeding the first fiscal year, this Contract will be deemed to have been terminated automatically when appropriated funds expire and are not available. The City shall notify Artist in writing of any such non-allocation of funds at the earliest possible date and shall pay Artist any reasonable fees earned and costs incurred in performing this Contract for any period prior to such notice.

E-8 Changes - Fixed-Price Goods or Services [CAO-10/13/2020]

- (a) The City may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Contract in any one or more of the following: (i) Description of services to be performed or Artwork to be provided; (ii) Time of performance (i.e., hours of the day, days of the week, etc.); (iii) Place of performance of the services; (iv) Time or place of delivery of Artwork.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, the Artist shall provide current, complete, and accurate documentation to the City in support of any request for equitable adjustment.

- (c) The Artist must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order, or shall otherwise be barred and shall have waived any right to an adjustment under this clause.
- (d) The parties shall negotiate a timely requested equitable adjustment by mutual written agreement and the change will be effected by purchase order revision. Failure to agree to any adjustment shall be a dispute under Section E-2, "Disputes"; however, nothing in this clause shall excuse the Artist from proceeding with the Contract as changed.

E-9 Entire Contract, Section and Paragraph Headings [CAO-4/2020]

- (a) This Contract represents the entire and integrated agreement between the City and the Artist. It supersedes all prior and contemporaneous understandings, negotiations, communications, representations, and agreements, whether oral or written, relating to the subject matter of this Contract.
- (b) The section and paragraph headings appearing in this Contract are inserted for the purpose of convenience and ready reference. They do not purport to define, limit, or extend the scope or intent of the language of the sections and paragraphs to which they pertain.

E-10 Order of Precedence [CAO-7/24/08]

In the event of a conflict between the specific language set forth in Sections A through E of this Contract and any Attachment or Exhibit, the specific language in Sections A through E shall prevail. Any exception to this order of precedence will be addressed through specific language elsewhere in Sections A through E.

E-11 Severability [CAO-7/24/08]

The invalidity, illegality, or unenforceability of any provision of this Contract or the occurrence of any event rendering any portion or provision of this Contract void shall in no way affect the validity or enforceability of any other portion or provision of this Contract. Any void provision shall be deemed severed from this Contract, and the balance of this Contract shall be construed and enforced as if this Contract did not contain the particular portion or provision held to be void. The parties further agree to amend this Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this clause shall not prevent this entire Contract from being void should a provision which is of the essence of this Contract be determined void.

E-12 Waiver [CAO-7/24/08]

Waiver of any of the terms of this Contract shall not be valid unless it is in writing signed by each party. The failure of the City to enforce any of the provisions of this Contract, or to require performance of any of the provisions herein, shall not in any way be construed as a waiver of such provisions or to affect the validity of any part of this Contract, or to affect the right of the City to thereafter enforce each and every provision of this Contract. Waiver of any breach of this Contract shall not be held to be a waiver of any other or subsequent breach of this Contract.

E-13 Modification/Amendment [CAO-7/24/08]

This Contract shall not be modified or amended except by the express written agreement of the parties, signed by a duly authorized representative for each party. Any other attempt to modify or amend this Contract shall be null and void, and may not be relied upon by either party.

E-14 Assignment [CAO-7/24/08]

Neither party may assign their rights nor delegate their duties under this Contract without the written consent of the other party. Such consent shall not be withheld unreasonably. Any assignment or delegation shall not relieve any party of its obligations under this Contract.

E-15 Indemnification [R]

- (a) In addition to the insurance requirements set forth in Section D-5, "Insurance", and not in lieu thereof, the Artist shall protect, defend, indemnify and hold harmless the City, its elected officials, officers, employees, agents, and consultants (collectively herein the "City") from and against any and all claims, liabilities, damages, losses, suits, actions, decrees, arbitration awards and judgments including reasonable attorney's fees, court costs or other expenses of any and every kind or character (collectively herein the "Liabilities") which may be recovered from or sought against the City, as a result of, by reason of, or as a consequence of (i) any intentional and/or negligent acts on the part of the Artist, its officers, employees, independent contractors, vendors, suppliers, consultants, or agents in the performance of the

terms, conditions and covenants of the Contract; or (ii) a breach of any agreement between the Artist and its employees, vendors, independent contractors, suppliers, consultants or agents; or (iii) any default in the performance of any obligation on Artist's part to be performed under the terms of this Contract, except to the extent any of the Liabilities were caused by the City. Artist agrees that it is assuming the sole risk of any Liabilities related to the contraction by Artist's officers, employees, vendors, suppliers, agents, independent contractors, and consultants or any other person of any viral infection or other disease, including, without limitation, COVID 19, related to the performance of this Contract and that Artist's indemnity obligations contained herein cover any such Liabilities. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the Federal and State Constitutions or by law.

- (b) If a third party claim against the City for negligent performance by the Artist is within the limits of its liability insurance, and the insurance company has accepted the City's tender of defense, then the City will pay the Artist what is due and owing to them within the payment method specified in this Contract. However, if the claim is greater than the coverage amount, the City, for its protection, may retain any money due and owing the Artist under this Contract, until the claim has been resolved.
- (c) It is expressly agreed that the Artist shall defend the City at Artist's expense, by legal counsel reasonably satisfactory to City, against the Liabilities and in the event that the Artist fails to do so, the City shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs, including attorney's fees and court costs, to the Artist. Artist's indemnity obligations herein are not intended to nor shall they relieve any insurance carrier of its obligations under policies required to be carried by Artist pursuant to the provisions of this Contract. Artist's obligations under this Section shall survive any termination of this Contract.

E-16 Patent Indemnity [CAO-4/2020]

The Artist hereby indemnifies and shall defend and hold harmless the City and its representatives respectively from and against all claims, losses, costs, damages, and expenses, including attorney's fees, incurred by City and its representatives, respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent or other intellectual property rights and/or arising out of the use of the equipment or materials furnished under the contract by the Artist, or out of the processes or actions employed by, or on behalf of the Artist in connection with the performance of the Contract. The Artist shall, at its sole expense, by legal counsel reasonably satisfactory to City, promptly defend against any such claim or action unless directed otherwise by the City or its representative; provided that the City or its representatives shall have notified the Artist upon becoming aware of such claims or actions, and provided further that the Artist's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by the City or its representatives.

E-17 Audit of Records [R]

- (a) The Artist agrees to maintain the financial books and records (including supporting documentation) pertaining to the performance of this Contract according to standard accounting principles and procedures. The books and records shall be maintained for a period of three (3) years after completion of this Contract, except that books and records which are the subject of an audit finding shall be retained for three (3) years after such finding has been resolved. If the Artist goes out of business, the Artist shall forward the books and records to the City to be retained by the City for the period of time required herein.
- (b) The City or its designated representative(s) shall have the right to inspect and audit (including the right to copy and/or transcribe) the books and records of the Artist pertaining to the performance of this Contract during normal business hours. The City will provide prior written notice to the Artist of the audit and inspection. If the books and records are not located within Clark County, the Artist agrees to deliver them to the City, or to an address designated by the City within Clark County. In lieu of such delivery, the Artist may elect to reimburse the City for the cost of travel (including transportation, lodging, meals, and other related expenses) to inspect and audit the books and records at the Artist's office. If the books and records provided to the City are incomplete, the Artist agrees to remedy the deficiency after written notice thereof from the City, and to reimburse the City for any additional costs associated therewith including, without limitation, having to revisit the Artist's office. The Artist's failure to remedy the deficiency shall constitute a material breach of this Contract. The City shall be entitled to its costs in enforcing the provisions of this Section.
- (c) If at any time during the term of this Contract, or at any time after the expiration or termination of the Contract, the City or the City's designated representative(s) find the dollar liability is less than payments made by the City to the Artist, the

Artist agrees that the difference shall be either: (i) repaid immediately by the Artist to the City or (ii) at the City's option, credited against any future billings due the Artist.

E-18 Confidentiality – City Information [CAO-4/2020]

- (a) All information, including but not limited to, oral statements, computer files, databases, and other material or data supplied to the Artist is confidential and privileged. The Artist shall not disclose this information, nor allow it to be disclosed to any person or entity without the express prior written consent of the City. The Artist will use at least the same standard of care and exercise equivalent security measures to maintain the confidentiality of the City's information that it uses to maintain the confidentiality of its own confidential information; provided in no event shall such standard be less than reasonable care. The Artist shall have the right to use any such confidential information only for the purpose of providing the services under this Contract, unless the express prior, written consent of the City is obtained. City shall be and remain the sole owner of such confidential information. Nothing contained in this Contract shall be construed as granting or conferring any right or license in the City's information or in any patents, software, or other technology, either expressly or by implication to the Artist. Upon request by the City, the Artist shall promptly return to the City all confidential information supplied by the City, together with all copies and extracts. Artist is required to employ the highest ethical standards and shall avoid those actions that are inconsistent with the City's best interest.
- (b) The confidentiality requirements shall not apply where (i) the information is, at the time of disclosure by the City, then in the public domain; (ii) the information is known to the Artist prior to obtaining the same from the City; (iii) the information is obtained by the Artist from a third party who did not receive the same directly or indirectly from the City; or (iv) the information is subpoenaed by court order or other legal process, but in such event, the Artist shall notify the City. In such event the City, in its sole discretion, may seek to quash such demand.
- (c) The obligations of confidentiality shall survive the termination of this Contract.

E-19 Marketing Restrictions [CAO-4/2020]

The Artist shall at all times be in compliance with Las Vegas Municipal Code 1.08.050, and shall not publish or sell any information from or about this Contract without the prior written consent of the City. This restriction does not apply to the use of the City's name in a general list of customers, so long as the list does not represent an express or implied endorsement of the Artist or its services. The City logo shall not be used without the prior written consent of the City.

E-20 Taxes/Compliance with Laws [CAO-08/01/13]

- (a) The City is exempt from paying Sales and Use Taxes under the provisions of Nevada Revised Statutes 372.325(4), and Federal Excise Tax, under Registry Number 88-87-0003k. The Artist shall pay all taxes, levies, duties and assessments of every nature and kind which may be applicable to any work under this Contract. The Artist shall make any and all payroll deductions required by law. The Artist agrees to indemnify and hold the City harmless from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.
- (b) The Artist, in the performance of the obligations of this Contract, shall comply with all applicable building codes, laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this Contract including, but not limited to, the Federal Occupational Safety and Health Act.

E-21 Licenses/Registrations [CAO-01/20/16]

During the entire performance period of this Contract, the Artist shall maintain all federal, state, and local licenses, certifications and registrations applicable to the work performed under this Contract, including maintaining an active City of Las Vegas business license if required by Las Vegas Municipal Code 6.02.060.

E-22 Non-Discrimination and Fair Employment Practices [CAO-07/31/13]

- (a) Discrimination: The City of Las Vegas is committed to promoting full and equal business opportunity for all persons doing business in Las Vegas. The Artist acknowledges that the City has an obligation to ensure that public funds are not used to subsidize private discrimination. Artist recognizes that if the Artist or their subcontractors or subconsultants are found guilty by an appropriate authority of refusing to hire or do business with an individual or company due to reasons of race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, national origin, or any other legally protected status, City may declare the Artist in breach of contract and terminate Contract.
- (b) Fair Employment Practices: In connection with the performance of work under this Contract, the Artist agrees not to

discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, national origin, or any other legally protected status. Such agreement shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- (c) The Artist further agrees to insert this provision in all subcontracts hereunder. Any violation of such provision by Artist shall constitute a material breach of this Contract.

E-23 Employment of Unauthorized Aliens [CAO-01/20/16]

In accordance with the Immigration Reform and Control Act of 1986, the Artist agrees that it will not employ unauthorized aliens in the performance of this Contract.

E-24 Conforming Services [CAO-4/2020]

The services performed under this Contract shall conform in all respects with the requirements set forth in this Contract. The Artist shall furnish the City with sufficient data and information needed to determine if the services performed conform to all the requirements of this Contract.

E-25 Independent Contractor [CAO-4/2020]

In the performance of its obligations under this Contract, the Artist and any other person employed by it shall be deemed to be an independent contractor and not an agent or employee of the City. The Artist shall be liable for the actions of any person, organization, or corporation with which it subcontracts to fulfill this Contract. Accordingly, Artist shall be responsible for payment of all taxes including federal, state and local taxes arising out of the Artist's activities in accordance with this Contract, including by way of illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or business license fees as required under existing or subsequently enacted laws, rules or regulations. Artist shall not be entitled to any benefits afforded to City's employees, including without limitation worker's compensation, disability insurance, health insurance, vacation, or sick pay. Artist shall be responsible for providing, at Artist's expense, and in Artist's name, unemployment, disability, worker's compensation, and other insurance, as well as licenses and permits usual or necessary for performance of its obligations pursuant to this Contract. Artist shall hereby defend, indemnify, and hold the City harmless from any claims, losses, costs, fees, attorney's fees, liabilities, damages or injuries suffered by the City arising out of Artist's failure with respect to its obligations in this Section. Artist, upon request, shall furnish evidence satisfactory to the City that any or all of the foregoing obligations have been fulfilled. During Artist's contacts with third parties they shall identify themselves as an independent party and not as an employee for the City. Artist understands and agrees that they do not have the power or authority to bind City in any capacity. The City shall hold the Artist as the sole responsible party for the performance of this Contract. The Artist shall maintain complete control over its employees and all of its subcontractors. Nothing contained in this Contract or any subcontract awarded by the Artist shall create a partnership, joint venture, or agency with the City. Neither party shall have the right to obligate or bind the other party in any manner to any third party.

E-26 Official, Agent and Employees of the City Not Personally Liable [CAO-01/20/16]

It is agreed by and between the parties of this Contract, that in no event shall any official, officer, employee, or agent of the City in any way be personally liable or responsible for any covenant or agreement therein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this Contract.

E-27 Conflict of Interest (City Officials) [CAO-4/2020]

- (a) An official of the City, who is authorized on behalf of the City to negotiate, make, accept or approve, or take part in negotiating, making, accepting, or approving this Contract, payments under this Contract, or work under this Contract, shall not be directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of, or for the City, who is authorized on behalf of the City to exercise any legislative, executive, supervisory or other similar functions in connection with this Contract, shall become directly or indirectly interested personally in this Contract or in any part hereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to this Contract.
- (b) Each party represents that it is unaware of any financial or economic interest of any public officer or employee of the City relating to this Contract. Notwithstanding any other provision of this Contract, if such interest becomes known, the City may immediately terminate this Contract for default or convenience, based on the culpability of the parties.

E-28 Public Records [CAO-5/2/12]

The City is a public agency as defined by state law. As such, it is subject to the Nevada Public Records Law (Chapter 239 of the Nevada Revised Statutes). The City's Records are public records, which are subject to inspection and copying by any person (unless declared by law to be confidential). This Contract and all supporting documents are deemed to be public records.

E-29 Certification – No Israel Boycott [CAO – 4/2020]

By signing this Contract, the Artist certifies that it is not engaged in, and agrees for the duration of the Contract not to engage in, a boycott of the State of Israel per NRS 332.065.

"Boycott of Israel" means refusing to deal or conduct business with, abstaining from dealing or conducting business with, terminating business or business activities with or performing any other action that is intended to limit commercial relations with Israel; or a person or entity doing business in Israel or in territories controlled by Israel, if such an action is taken in a manner that discriminates on the basis of nationality, national origin or religion. It does not include an action which is based on a bona fide business or economic reason; is taken pursuant to a boycott against a public entity of Israel if the boycott is applied in a nondiscriminatory manner; or is taken in compliance with or adherence to calls for a boycott of Israel if that action is authorized in 50 U.S.C. § 4607 or any other federal or state law.

"Artist" means any domestic or foreign sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited-liability partnership, limited-liability company, or other domestic or foreign entity or business association, including, without limitation, any wholly owned subsidiary, majority owned subsidiary, parent company or affiliate of such an entity or business association, that exists for the purpose of making a profit.

A violation of this Section by Artist shall be considered an incurable Event of Default of this Contract, thereby allowing the City to immediately terminate this Contract upon giving Legal Notice to Artist.

E-30 Counterpart Signatures [CAO-08/11/2022]

This Contract may be executed in counterparts. All such counterparts will constitute the same contract and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

The parties agree that this Contract may be signed electronically via the City's designated electronic signature platform, and that the electronic signatures appearing herein shall be considered the same as handwritten signatures for the purposes of validity, admissibility, and enforceability.

E-33 Miscellaneous [CAO – 4/2020]

- (a) In the event of a dispute under this Contract which results in litigation or other formal dispute resolution proceedings, the prevailing party shall be entitled to reimbursement of its or their actual reasonable attorney's fees and costs in connection with such proceeding.
- (b) Time is of the essence of the Contract and each of its provisions.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized representatives.

CITY OF LAS VEGAS

SignatureDate

Printed Name

Title

ATTEST:

LuAnn D. Holmes, MMCDate

City Clerk

APPROVED AS TO FORM:

DocuSigned by:
Dimitri P. Dalacas
C888014177D943F...

7/1/2024 | 11:26 AM PDT

Deputy City AttorneyDate

Dimitri P. Dalacas

Printed Name

CLIFF GARTEN & ASSOCIATES, INC.

DocuSigned by:
Cliff Garten
EC39F974287144E...

7/1/2024 | 11:59 AM PDT

SignatureDate

Cliff Garten

Printed Name

President

Title

EXHIBIT A – SCOPE OF WORK**1. Scope of Services**

- a. The Artist shall design an original artwork developed in accordance with attached Exhibit B.
- b. The artwork will be appropriate for a public space.
- c. After review and approval of the artwork design by City staff and Evaluators, the Artist shall fabricate and install the artwork according to specification.
- d. Artwork fabrication must conform to all Clark County Building Code requirements and restrictions, including third-party inspection requirements for structural construction completed off-site.
- e. Artist shall be responsible for all street and/or lane closures associated with installation, include traffic plans and barricading costs.
- f. Artist shall be responsible for all permitting costs associated with installation.
- g. Artist will be required to contract with a NV licensed general contractor for any installation elements requiring construction services.
- h. The artwork will be constructed of durable materials suitable for an arid desert environment where temperatures reach 100-plus degrees for up to six months of the year.
- i. The artwork will must be durable and safe, to the City's satisfaction.
- j. The artwork will accomplish most, if not all of the following:

2. Deliverables

- a. The Artist shall provide original and distinctive design. The deliverable package shall include artistic renderings, plans and proposed materials list and description.
- b. The Artist shall provide an illumination plan. Lights installed on Plaza utility poles will be color-coordinated to match other pole fixtures as closely as possible.
- c. Artist will be required to submit Nevada licensed engineer stamped foundation drawings, structural drawings and detailed fabrication plan for the City's approval. The Artist shall provide fabricated, delivered and installed Artwork based on approved design, and as scheduled.
- d. The Artist shall complete the submission of the Public Art Maintenance and Conservation form for the final as-built artwork.
- e. The Artist shall provide a written report to the Project Manager at minimum monthly, or at the end of every milestone, and regularly keep open communication with the City, Design Team and Artist's fabricators for the duration of the project, detailing project status, budget status, schedule status, and outstanding or potential issues



CLIFF GARTEN STUDIO

Harmonic Ascension

Downtown Civic Center Plaza Public Art

The Department of Parks, Recreation, and Cultural Affairs'
Public Art Program

The City of Las Vegas

Primary Contact:
Cliff Garten
Cliff Garten Studio
1315 Preston Way
Venice, CA 90291
cg@cliffgartenstudio.com
310.392.2060

Executive Summary

The challenge of this project is to create a connection between Las Vegas City Hall, the Municipal Courthouse, and the new Downtown Civic Center Plaza. The goal of public art is to create an iconic sculpture that unites the three parcels and celebrates a new green community gathering space.

The sculpture Harmonic Ascension will create excitement and gather energy from all sides of the plaza and create a focus for both the City Hall and the Courthouse. A literal form or one liner is not what is needed in this situation. The Plaza requires a sculpture which in its changing form and transparency can be read differently from all sides and will change in the sunlight, during all times of the day. At night, the sculpture should become an entirely different experience when the dynamism of a full spectral display of colored LED light takes over its form. The experience of Las Vegas is one of being on the street in the light of entertainment and my sculpture will reflect this environment while using a softer more subtly engaging experience as its forms gather sunlight during the day and illuminate with programmed LED light shows at night. This will provide a more formal civic presence for the plaza while subtly alluding to the constant public performance of the strip. This is a civic destination and the sculpture offers an embrace to all who visit the Downtown Civic Center Plaza.

My sculpture has an international reputation for defining civic space through sculptures that work with social history and the contexts of places where they are installed. Harmonic Ascension, my illuminated sculpture will create energy between the City Hall and the Court House, so that the sculpture marks the Downtown Civic Center Plaza, and it becomes an iconic and egalitarian place. Cliff Garten Studio has a unique body of work focusing on illuminated forms that occupy an approachable scale between people and architecture with light shows that energize public programs and places. I have 40 years of experience making sculpture in the public realm and my studio has completed over one hundred projects that bring people together through the creation of sculptures that enliven civic spaces and serve the communities who use them. My sculpture will position itself towards a transformative civic center and the sculpture will activate the Plaza's programs and engage the community in its events and activities.



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Downtown Civic Center Plaza

Department of Park, Recreation and
Cultural Affairs' Public Art Program
City of Las Vegas

Section 2 - Work Plan

A. Title and Project Narrative - Harmonic Ascension

Las Vegas is home to an array of high-profile shows, concerts and performances featuring famous artists, musicians, comedians, and magicians. People come from all over the world to see its sights and performances. Its streets and casinos are stages for extravagant productions and intimate lounge performances. The performer is the character on the stage who we all come to see in Las Vegas, but people come to see themselves in public as well. Harmonic Ascension is a sculpture guided by the idea that art and music generate community and gather people together. When experienced from different vantage points in the plaza it is also a highly figurative piece, that we identify as the main performer on the stage of the Civic Plaza. A musical instrument is a loose metaphor for creativity and is the generation of Sculpture's form. Harmonic Ascension contains a hidden, but discoverable story for those who are willing to look for it. It is not readily apparent to viewers, but it is fun to discover.

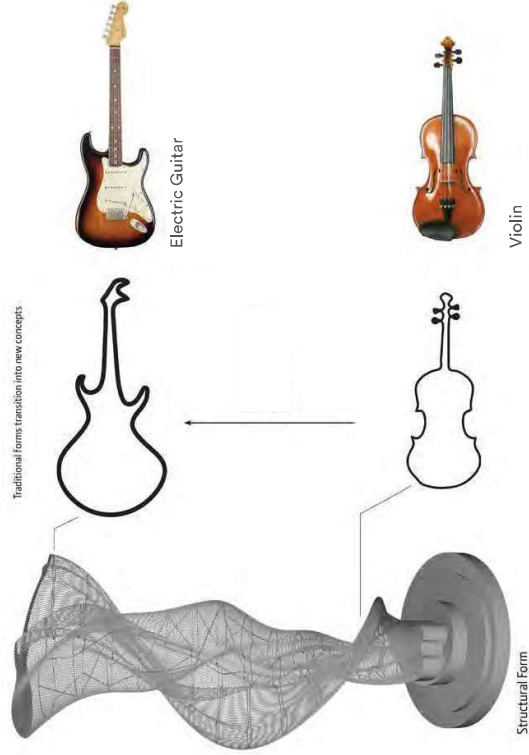
The spiral movement of the Sculpture is established as the outline of an electric guitar in 3/4" and 1/2" sectional plates rising in a spiral motion from the pedestal to the top of the piece. The form of the sculpture is defined by 3/8" stainless-steel round rods hand formed and welded to these sectional plates. This structure creates a sculpture of superior strength. The spaces between the stainless-steel rods create an open volume that is very interactive with sunlight and LED light at night. The formed and welded stainless-steel pedestal begins the spiraling upward movement of the rods. The finish of the sculpture is hand rubbed stainless-steel. You will never have to deal with refinishing or painting. Any cleaning or minor refinishing of the surface of the sculpture can be easily done on site. (see Detailed Preliminary Engineering Plan, Materials and Finishes and Maintenance Plan)

The movement of the sculpture towards the sky is an analogy for the creative reach of art and the extension of its influence. In the spirit of art, comedy, music, theater, and dance in the City of Las Vegas and in its arts community, the spiral ascension and unfolding of form suggests the constant transformation and evolution of art and culture in Las Vegas. Harmonic Ascension also suggests the figurative form of a dancer in motion. This very appropriate gesture towards the city and its vibrant entertainment scene has enough formality to be the main character of the Plaza and to become the visual symbol for the Downtown Civic Center Plaza. (insert dancing dancer and sculpture)

I have used the metaphor of music in a manner that is subtle, yet still provides a sense of narrative and connection for the public. The silhouette of the electric guitar that generates Harmonic Ascension, is revealed only after one spends time with and connects with the Sculpture's spiraling form. The form of the guitar with its body and long neck creates the dynamics of the total form or the sculpture as it rotates skyward. The only full image of the guitar that is visible is from above in the buildings surrounding the plaza. For the viewer on the Plaza there is a small game of hide and seek to find these forms, that will delight both residents who know the answer and visitors who do not.

The rotation of the guitar along the vertical axis of the sculpture creates a very figurative piece

whose patterns reference the dynamic gestures of dance and allow the transformation of the guitar into the gestural form of dance. The form of the guitar is just visible enough to allow a connection to music and entertainment, but not to overwhelm the viewer with a heavy-handed metaphor. The image of the guitar spiraling through the Sculpture, allows new abstract forms to emerge from the piece. The Sculpture suggests how established forms of expression transform into new ones which is a fitting image for the cultural connections that Las Vegas has to America and beyond.



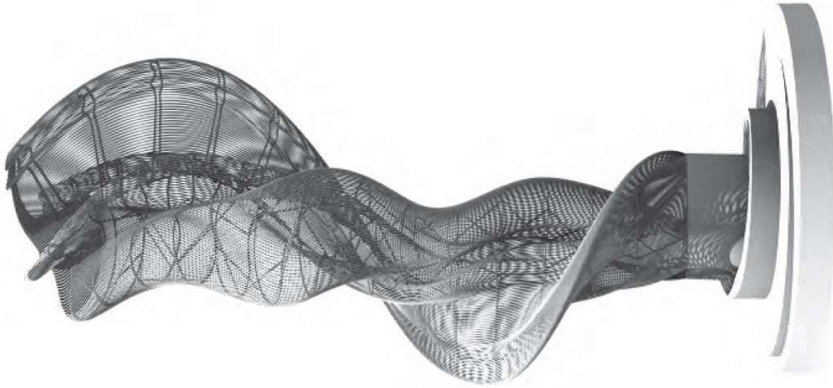
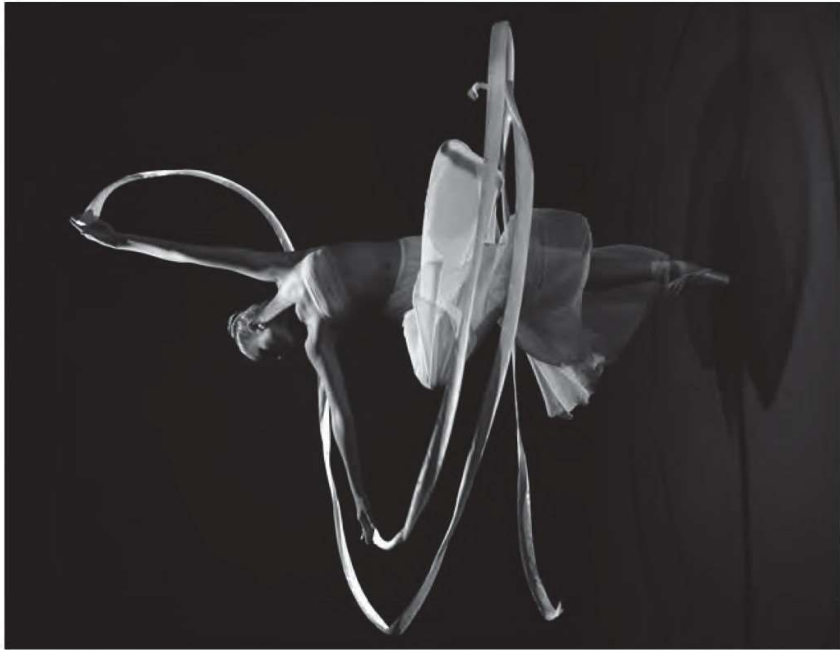
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A. Title and Project Narrative - *Harmonic Ascension*

Response Attachment 1
Section 2 - A



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A. Title and Project Narrative - Harmonic Ascension



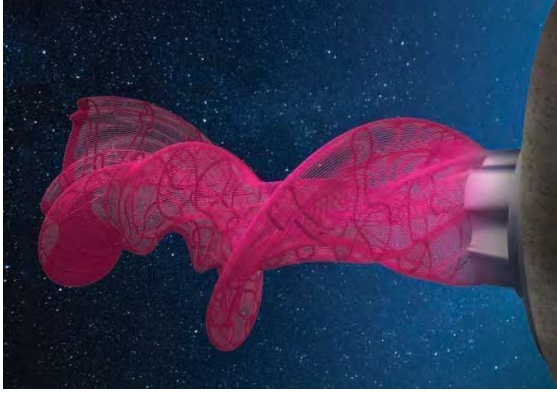
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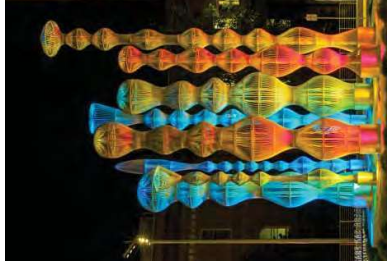
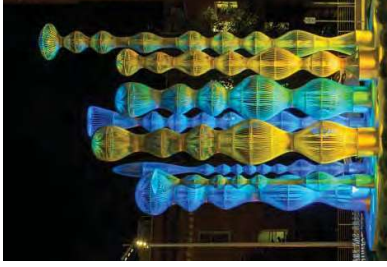
Day- See Page 12 for effects of changing daylight



Night- See Page 11 for effects of changing LED light

Illumination - Day and Night Experiences

Harmonic Ascension's form is a volume that is structured to fill with light, because of its openness. Illumination during the day is activated by sunlight and by LED light at night. The volume of the Sculpture is transparent and light enters the sculpture from every angle. In the day the structure of the stainless-steel rods creates a volume that gathers sunlight and throws intricate shadows on the Plaza's surface. Throughout the changing light conditions of the day the sculpture also changes in character as do the patterns of shadow tracing time across the pavement. In the full sun of the day the sculptures are silver. In the early morning or late in the day when the angle of the sun is low, the stainless-steel changes from silver to gold. This is a quality of light that has repeated itself in all of the sculptures I have made with S.S. rods and I have capitalized on it through the proprietary surfacing of the stainless-steel during fabrication. This surface enhances the daylight color shift depending upon the angle of the sun and time of year. Moiré patterns are visible as the 3/8" stainless steel rods overlap and recombine into different patterns and shapes given the deliberately transparent structure of the Sculpture and the surfacing of the stainless steel.



Images of Ethereal Bodies 8 at the Zuckerberg General Hospital and Trauma Center in San Francisco, 2014 show how forms can be illuminated in multiple colors. © Cliff Garten Studio

Artist Curated Light Show

At night the image of the Sculpture is entirely different, as it is illuminated with color changing LED light. I will curate a light show specific to the form of Harmonic Ascension. All lights are individually addressable so it is possible to illuminate the sculpture with multiple colors. I begin with a series of colors that I normally use and then progress from there to change the colors into slow fades of complementary colors that bring out certain aspects of the form. This curated light show will be a great addition to the night life of the Downtown Civic Center Plaza. The lighting is controlled by a DMX controller that can be programmed and changed to accommodate changing festivals, seasonal interest and events at the Civic Center. Many of the communities we work with appreciate the ability to imprint their own community programs on the sculpture by working with me to create their own specialized programming of the light show. I will provide a light show which complements the sculpture and will be played on a daily basis as part of the artistic concept. (See, Description of LED/DMX Lighting System and Installation of Electrical and Lighting section of this proposal, for more information)

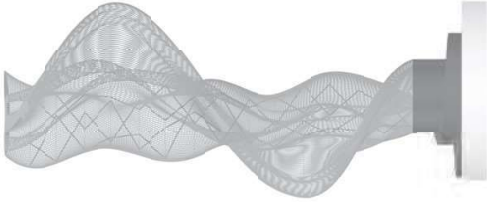
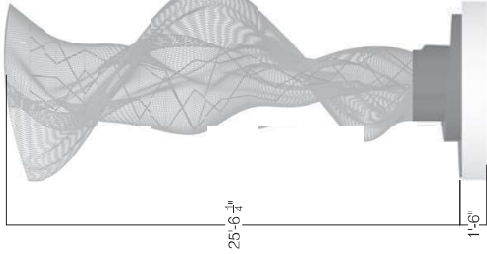
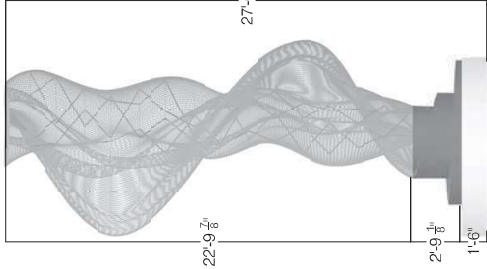
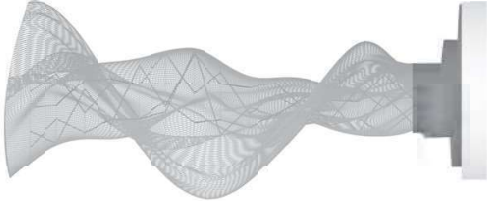
One of the most beautiful moments for the piece is late in the day at dusk when the sunlight and LED light blend together to yield the subtle effects of a watercolor over its surface. These pastel blushes then turn into fully saturated colors as day turns to night.

The committee is invited to rely on photographic images of my past work to understand these lighting phenomena as it is challenging to represent the spectral light in the colored renderings.



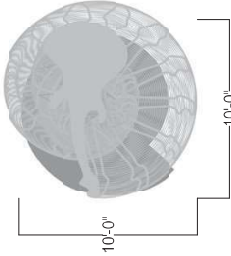
D. Dimensions of Art Work

Response Attachment 1
Section 2 - B

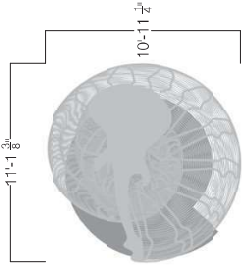


ELEVATIONS

Sculpture Weight- 7000 lbs



PEDESTAL DIMENSIONS



PLAN DIMENSIONS

C. Materials and Finishes

The sculptures are the result of 20 years of experience making stainless steel sculptures of a similar structure. They are some of the lowest maintenance pieces that you can find and their structures are very difficult to damage. The sculptures are made of 3/8" 304L stainless steel rod, and laser cut 304L stainless steel plates as sectional members and mounting plates also of stainless-steel. The sculptures are hand finished with a 7447 maroon Scotch Brite pad. This surface has been developed for two reasons, 1) it allows the maximum interaction, refraction, reflection and absorption of sunlight and colored LED light on the surface of the stainless-steel rods and 2) if the sculpture has random surficial scratching through public use, these areas can be hand rubbed on site with a 7447 pad and brought back to the original surface. Unlike other finishes, this surface can be spot repaired to match the existing surface without removing and/or refinishing the entire piece.

Stainless steel is the most durable material for the high temperatures of the desert environment. It will be extremely stable and will not move or warp in extreme heat.



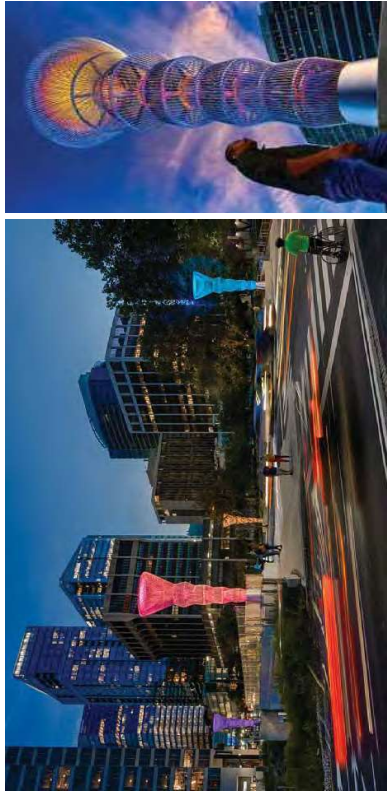
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Samples of 304L stainless-steel rods showing the material for *Harmonic Ascension*. The stainless-steel will be hand formed with a process that my fabricator and I have developed in response to the forms of my sculpture.



Illumination of my Luminous Body sculptures. (Right image) Showing the mixing of spectral color on the surface of the sculpture in place, on the Esplanade Bridge of the Corridor of Light. (Left) Four Sculptures each sculpture 24' H x 19' W x 15' D overall

D. Fabrication Plan

The fabrication of the sculptures takes place entirely off site, with our fabricator Metal Arts Foundry in Lehi, UT. Because of the highly specialized nature of the fabrication, we prefer to work with our fabricator who has developed and is familiar with our construction techniques. We understand and we must perform third party quality assurance requirements at our expense by a qualified firm. We have performed these on-site inspections for welding at the foundry on other similar projects. This quality assurance will be performed by, ES Engineering Services, An Independent Commercial Testing Laboratory, or we will use a Nevada testing agent if this is required.

Once engineering is complete, we will complete shop drawings. Laser cut files will be created from the Shop Drawings. These will be used for the laser cutting of the sectional plates that comprise the sculpture. The sculptures are fabricated by mounting the sectional plates on a rigid rotating platform which holds the sectional plates in their spiraling configuration while the 3/8" rods are shaped and welded to the exterior. (See image of other CGS sculptures under fabrication) Since the curves of the sculpture have large radii, each rod is hand formed to the body of sectional plates as they are welded in place through a proprietary process that uses specially fabricated clamps and jigs in the footing in the plaza.

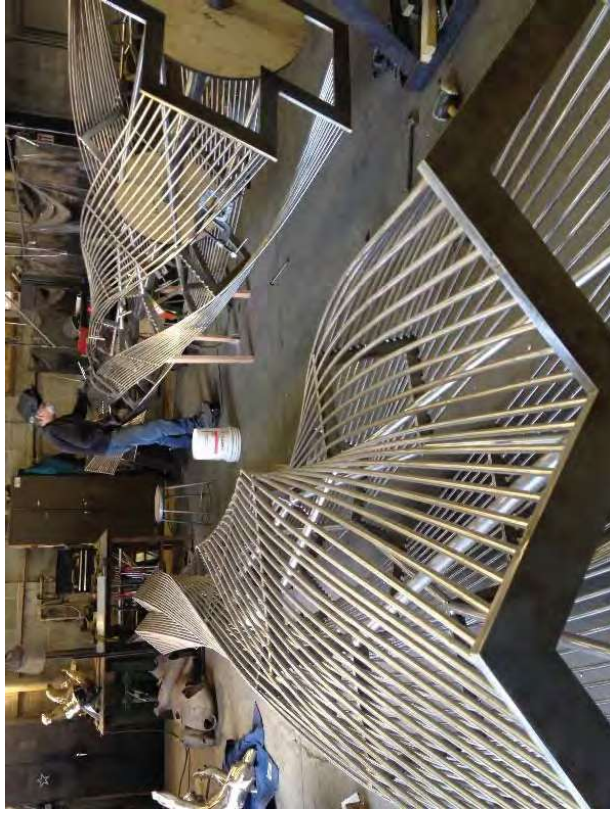
The sculpture has a stainless-steel attachment harness/plate that is imbedded into the concrete footing according to engineering. The fabricator will provide a template of this match plate to the contractor who will use it to establish the bolting pattern that the contractor will imbed into the concrete pedestal. The bolting pattern will match the sculpture that will be lifted by a crane and bolted into place on the footing in the plaza. (see Detailed Preliminary Engineering Plan, page 15).



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Example of the 304L stainless-steel rods being hand formed by our longtime fabricators and collaborators at Metal Arts Foundry in Lehi, UT.

E. List of Collaborators

Response Attachment 1
Section 2 - E

Project Team's Roles and Responsibilities

Cliff Garten Studio (CGS) Project Team:

- Artist, Project Lead, Sculpture, Site Integration and Lighting, Cliff Garten, President, Master of Fine Arts, Rhode Island School of Design, Master of Landscape Architecture, Harvard, Graduate School of Design, 30 years' experience in Public Art, 310 625 3354, cg@cliffgartenstudio.com
- Design and Project Management, Sixto Cordero, Master of Architecture, MIT. Six years in Studio. sixto@cliffgartenstudio.com
- Molly Reid, Master of Architecture, SCI-Arc, CA License, LEED Accredited. 20 years in Studio. mreidstudio@yahoo.com

The following are members of my team who I work with on a regular basis. Stainless Steel Sculptures will be fabricated in **Metal Arts Foundry** in Salt Lake Utah where we have a 23-year working relationship. They have fabricated over 80 of my sculptures. I have worked with **Light Switch, California Lighting Sales** and **4Wall Entertainment** for 10 years and **YetiWeurks** our structural engineer for 4 years.

Fabrication of Stainless-Steel Sculptures: Kevin Maag, President, Metal Arts Foundry, 790 West State Street, Lehi, UT 84043, 40 years' experience, Bronze, and Stainless-Steel Fabrication, 801 768 4442, kevin@mtlarts.com

Structural Engineering of Sculpture and Footing: Nick Geurts, PE, NV PE License # 29871, YetiWeurks, 55 Graceful Way, Chandler, NC 28715, 714 345 5267, yetiroot@gmail.com

Testing for Welding Done Outside Clark County: ES Engineering Services, An

Independent Commercial Testing Laboratory, 1197 North Tustin Ave., Anaheim, CA, 800 640 1026. We will use a testing service that complies with any municipal codes, working with a service in Nevada if necessary.

Electrical Engineer: Henderson Engineers, Inc., 8311 W Sunset Rd UNIT 240, Las Vegas, NV 89113, 702 6972187

Electrical Contractor for Installation of LED Lights: Canyon Electric Company Inc., 4080 E Lake Mead Blvd, Suite C-200, Las Vegas, NV 89115, 702 384 4747

Lighting Design: Norm Schwab, Principal, Light Switch, 4000 Bridgeway, Suite 315, Sausalito, CA 94965, 415 602 7284, nschwab@lightswitch.net

Lighting Design. Fixture Specification: Rich Molinero, California Lighting Sales, 310 200 6473, richm@californialightingsales.com

Lighting Systems Integration: Barbara Brennan, VP of System Integration Sales, 4Wall Entertainment, 3325 W. Sunset Rd., Suite F, Las Vegas, NV 89118, bbrennan@4wall.com

Sculpture Footing: Concrete Contractor, and City of Las Vegas

Sculpture Installation: Crane and Rigging, Dielco Crane Service, Inc., 545 Arville St, Las Vegas, NV 89118



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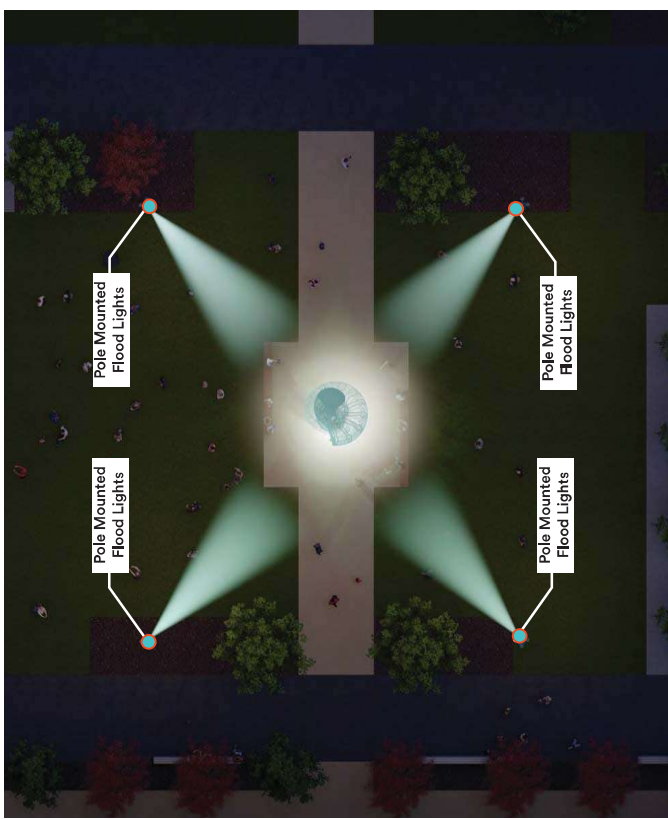
F. Detailed Illumination Plan

Response Attachment 1
Section 2 - F

Description of LED/DMX Lighting System and of Electrical and Lighting

Improvements in the brightness LED lighting and the lensing, or the ability to direct the light allows for very selective aiming of light at the sculpture without spill. LED lights that illuminate the piece run on standard DMX technology. All fixtures are individually addressed and programmed from the DMX controller. Controls for the lights can be housed in a building adjacent to the plaza or in a cooled NEMA box on the Plaza. Location in an adjacent building of Power and Data is preferable. Power and Data will run from the control panel to two data injectors.

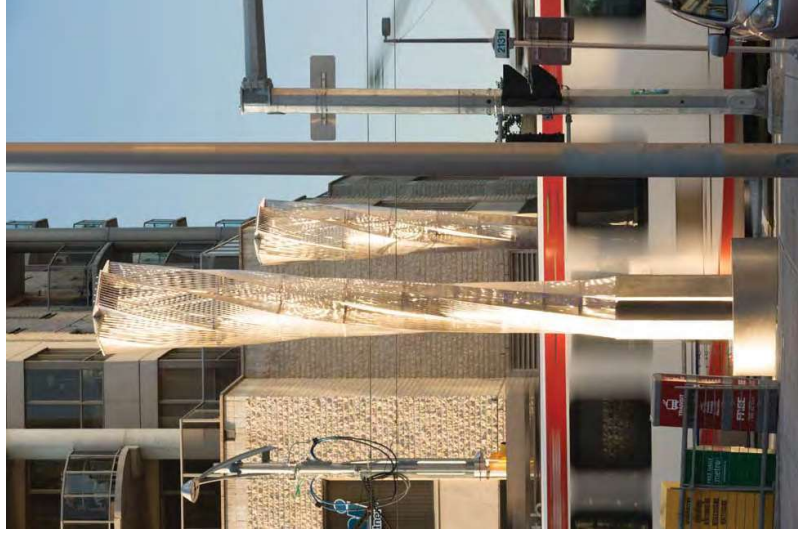
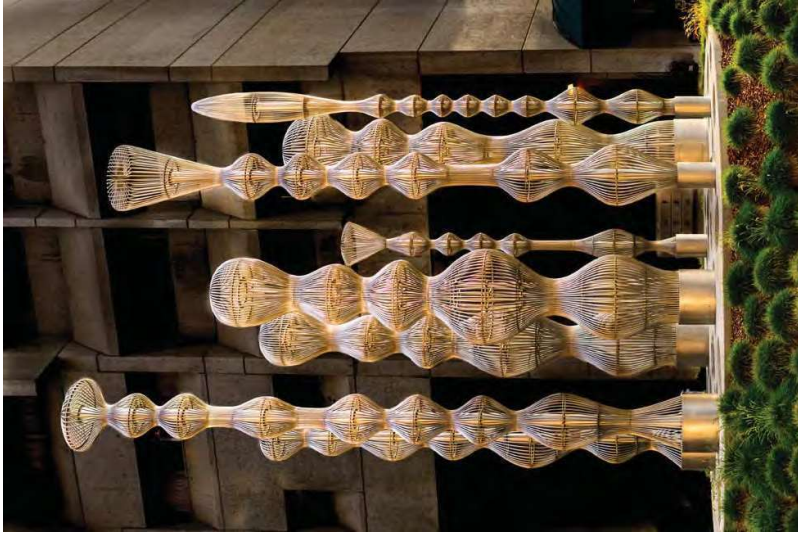
There are sixteen total flood lights on four City-Provided poles (4 Quadralux Q4 flood lights per light pole) located at the edge of the plaza that illuminate the top portion of the sculpture. Poles are located at the edge of the plaza keeping the green space open. The structure is open and therefore light will enter its volume from all directions. There are no lights inside the sculpture, all illumination is from outside the sculpture.





F. Detailed Illumination Plan continued

Response Attachment 1
Section 2 - F



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1515 Preston Way, Venice, CA 90291, cliffgartenstudio.com

The sculptures are designed to fill with sunlight that is reflected and refracted through the volume, making them sparkle and glow. In midday they are silver, but as the sun rises or sets in the sky the surfaces acquire a golden cast. As the sunsets, the LED lights come on at dusk and begin to mix with the sunlight with pastel type watercolor effects. These subtle effects of sunlight are impossible to render, please use your imagination and these reference images I have made to see the glowing effects of sunlight.



F. Detailed Illumination Plan continued

Installation of Lighting

PHASE 1

- **Electrical Planning Meeting:** Artist's Electrical Engineer and Artist will coordinate with City Engineer to identify location of Electrical Control Panel adjacent to the Plaza and the location of conduit runs for Data and Power from the Control Panel location to the Sculpture's lighting. The artist's electrical engineer will coordinate loading requirements with the city and coordinate the location of conduit runs from the Control Panel to the Sculpture.

- **Preconstruction Meeting:** Underground Conduit: When the location of the Control Panel is known and final fixture selection has been made and approved by the city, the electrical engineering will be completed by the Artist's Electrical Engineer. The Artist's Electrical Contractor will run two separate conduits from the Control Panel to two Data Injectors to the pedestal of the Sculpture in the Plaza. Power and Data will run from two ports in the Data Injectors and will be daisy chained to the fixtures in the Sculpture's Pedestal/Footing. From the second Data Injector another run of Power and Data will create a daisy chain to the four poles on the edge of the Plaza. Four lighting poles are to be city-provided.

PHASE 2

- **Installation of Electrical Conduit:** Underground Electrical Conduit: All conduit for Power and Data will be run underground to the sculpture's pedestal coordinated in Phase 1 with City, City's General Contractor, and Artist's Electrical Contractor. Stubins will be located at each light fixture and sealed for installation of lighting at a later date. Footings for Lighting Poles will be installed by the City Concrete Contractor under Artist. Four lighting poles to be city-provided.

PHASE 3

- **Preconstruction Meeting:** Fixture Installation: The Artist's Electrical Contractor will coordinate with City and City's General Contractor for pulling wire and fixture installation.

PHASE 4

- **Installation of Electrical:** Artist's Electrical Contractor four fixtures per light pole for a total of sixteen flood lights (Quadralux Q4).

PHASE 5

- **Lighting Fixture Adjustment:** Electrical Contractor aims Fixtures under Artist's supervision.

PHASE 6

- **Programming of Curated Light Programs:** Artist, & Systems Programmer load CGA's curated lighting shows onto DMX controller and adjust. The city approves lighting program on site. On site training of City occurs as CGA reviews lighting program on site.



Luminous Body sculptures on the Esplanade Bridge that are part of the Corridor of Light in the Rosslyn District of Arlington, VA. Right image, One of the sculptures being craned into place.



F. Detailed Illumination Plan continued

Quadralex Q4 Spotlight

LS9140



The Quadralex Q4 is a medium, architectural grade spotlight that combines technology and performance in a modern form factor. Packed with features including EasyView™ visual comfort, and CoolDrive™ thermal management technology, the Q4 is designed to provide superior performance in a variety of applications. The Q4 is available in a variety of mounting options, and accessories enable installation in multiple orientations. Designer optics, provides superb color-over angle consistency and color blending even at close distances. Available in white, color-changing and tunable white light engines.

Performance

Static White & Color ¹	Lumen Output (lm)	Efficacy (lm/W)	Peak Intensity (cd)
3,700 K (80 CRI)	5,170	90	202,800
3,000 K (80 CRI)	5,450	95	227,800
3,500 K (80 CRI)	5,790	101	238,700
4,000 K (80 CRI)	5,800	102	221,900
5,000 K (70 CRI)	5,320	93	223,700

¹ Lumen output values are based on a 6° lens

Dynamic Color ²	Lumen Output (lm)	Efficacy (lm/W)	Peak Intensity (cd)
RGBW	2,600	48	82,600
RGBW (4,000 K) with Royal Blue ³	3,060	55	113,000

² Lumen output values based on an 8° lens

Tunable White ²	Lumen Output (lm)	Efficacy (lm/W)	Peak Intensity (cd)
2,700 K - 5,500 K	5,290	92	209,100

³ Lumen output values based on an 8° lens

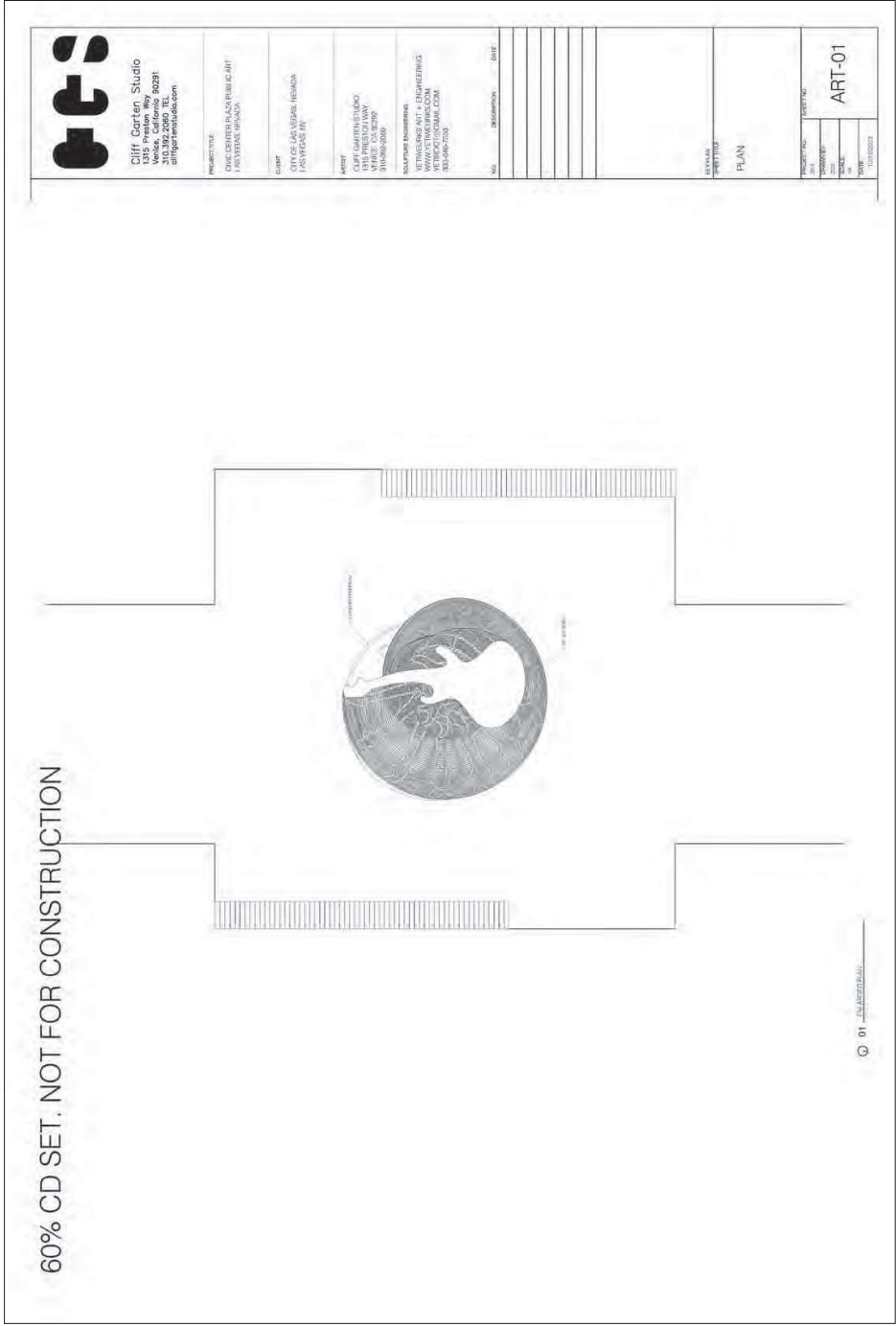
Beam Angles	6°, 10°, 15°, 30°, 45°, 65°, 10° x 40°, 10° x 60°, 60° x 10°, 20° x 40°, 40° x 20°, 20° x 60°, 60° x 20°
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Example Data Sheet- Quadralex Q4 Spotlight LS9140 or similar



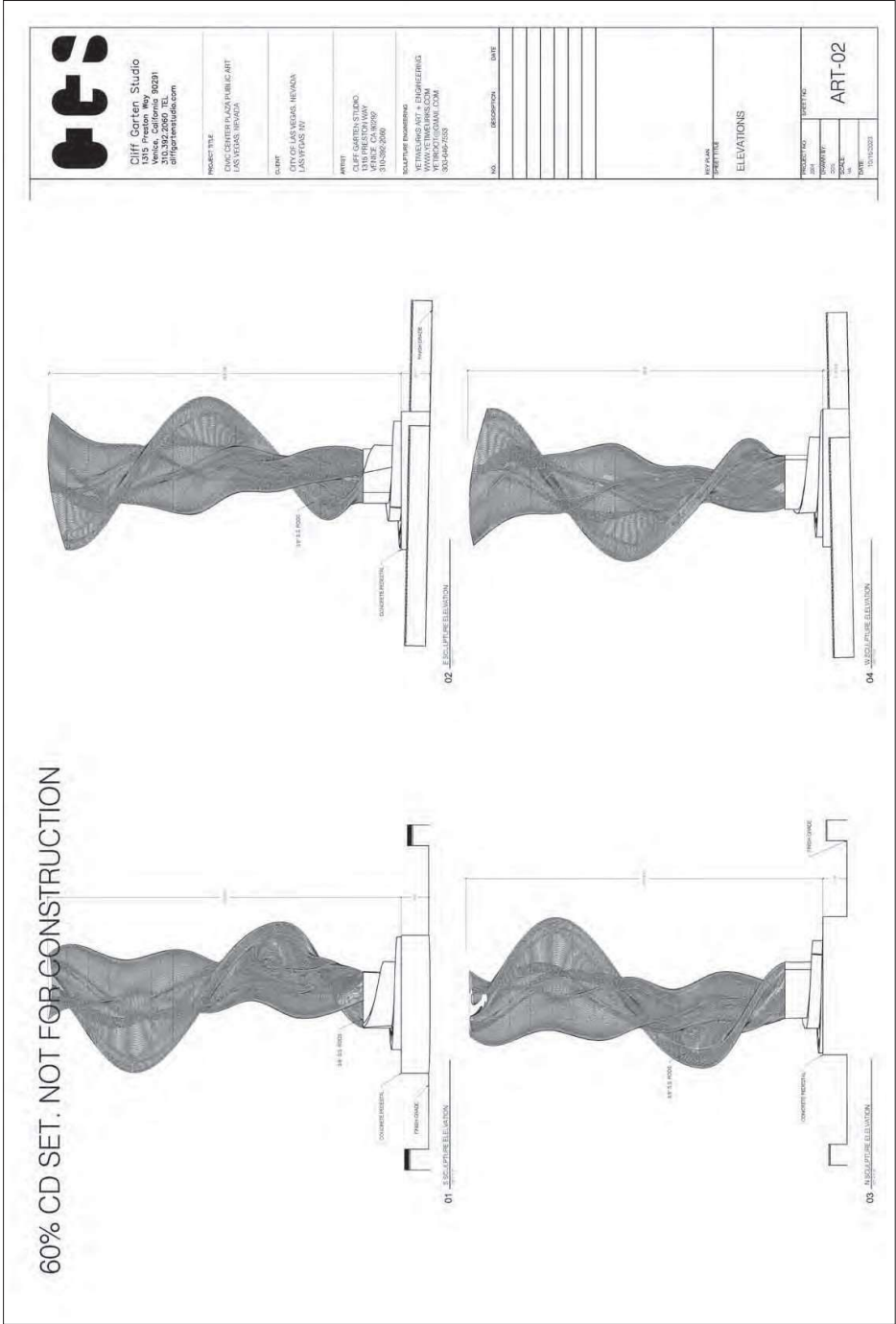
G. Detailed Preliminary Engineering Plan

Response Attachment 1
Section 2 - G





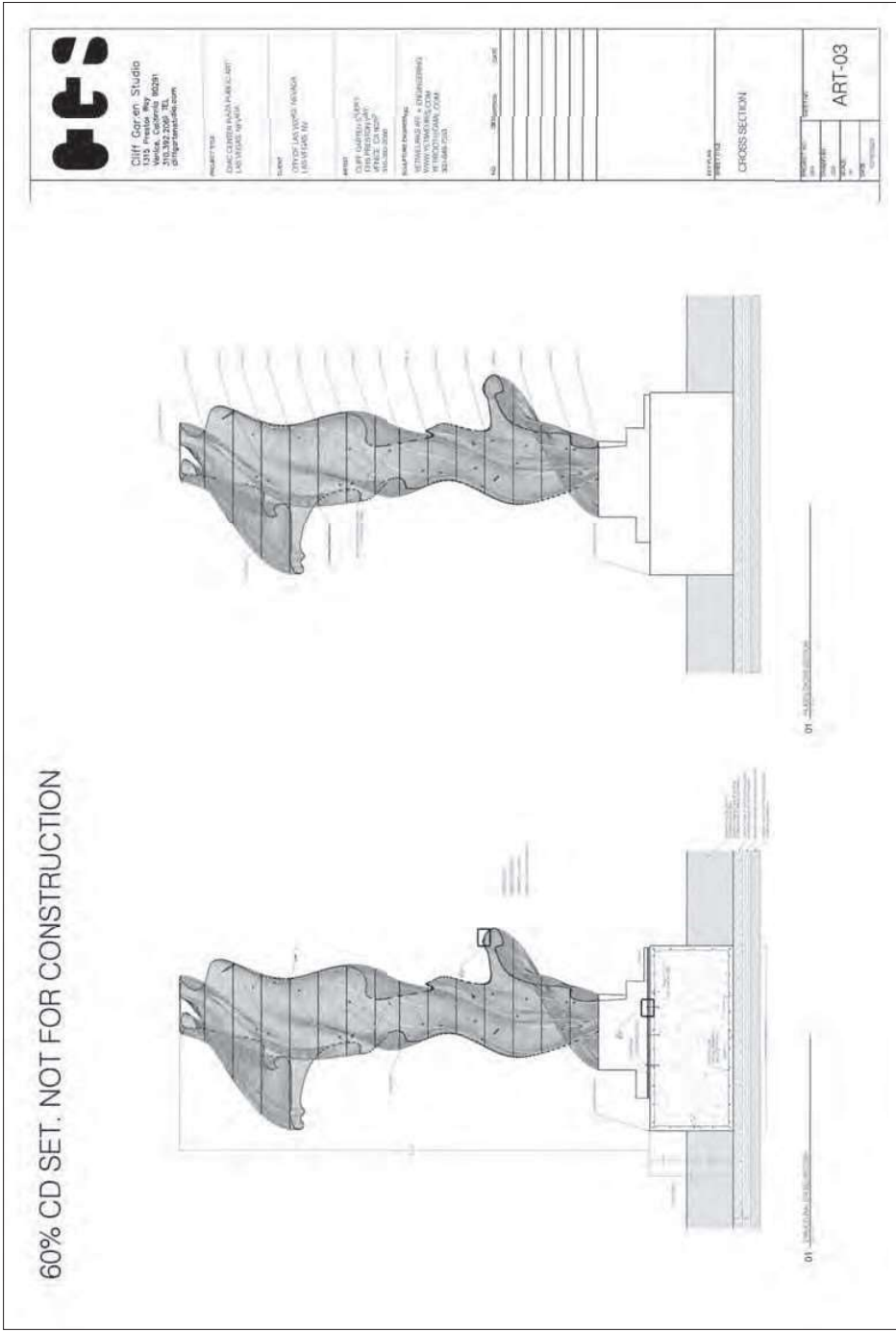
G. Detailed Preliminary Engineering Plan *continued*





G. Detailed Preliminary Engineering Plan continued

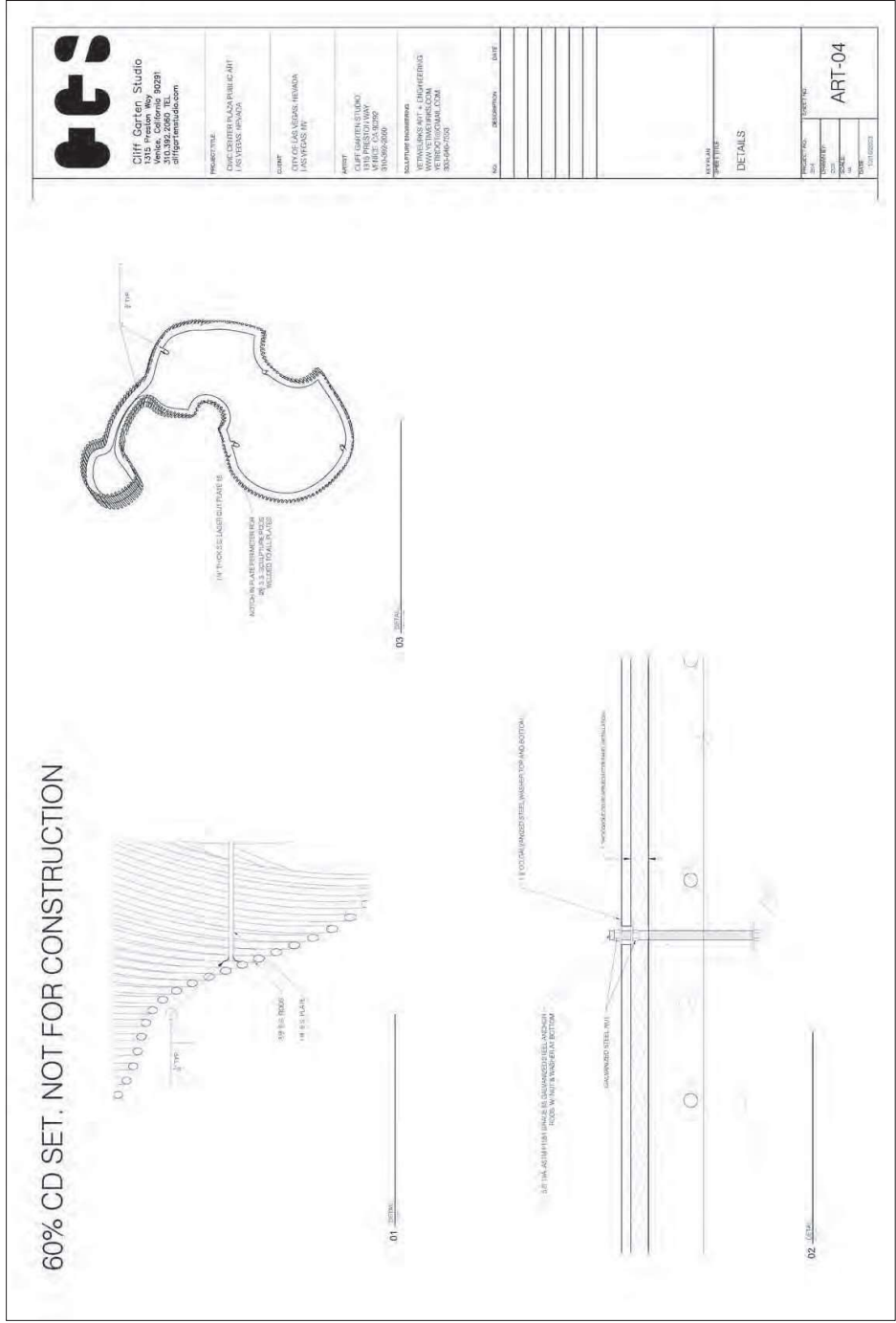
Response Attachment 1
Section 2 - G





G. Detailed Preliminary Engineering Plan continued

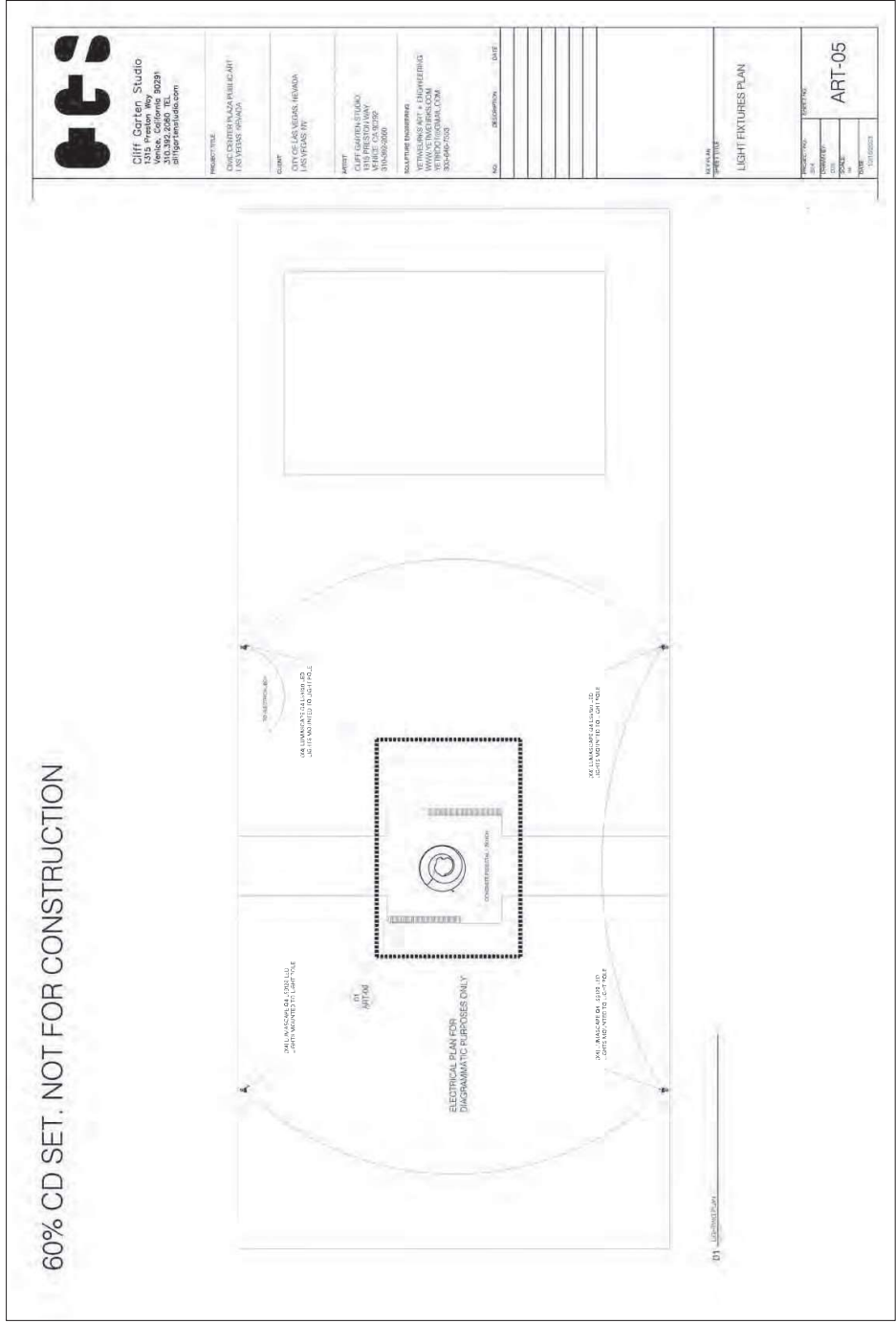
Response Attachment 1
Section 2 - G





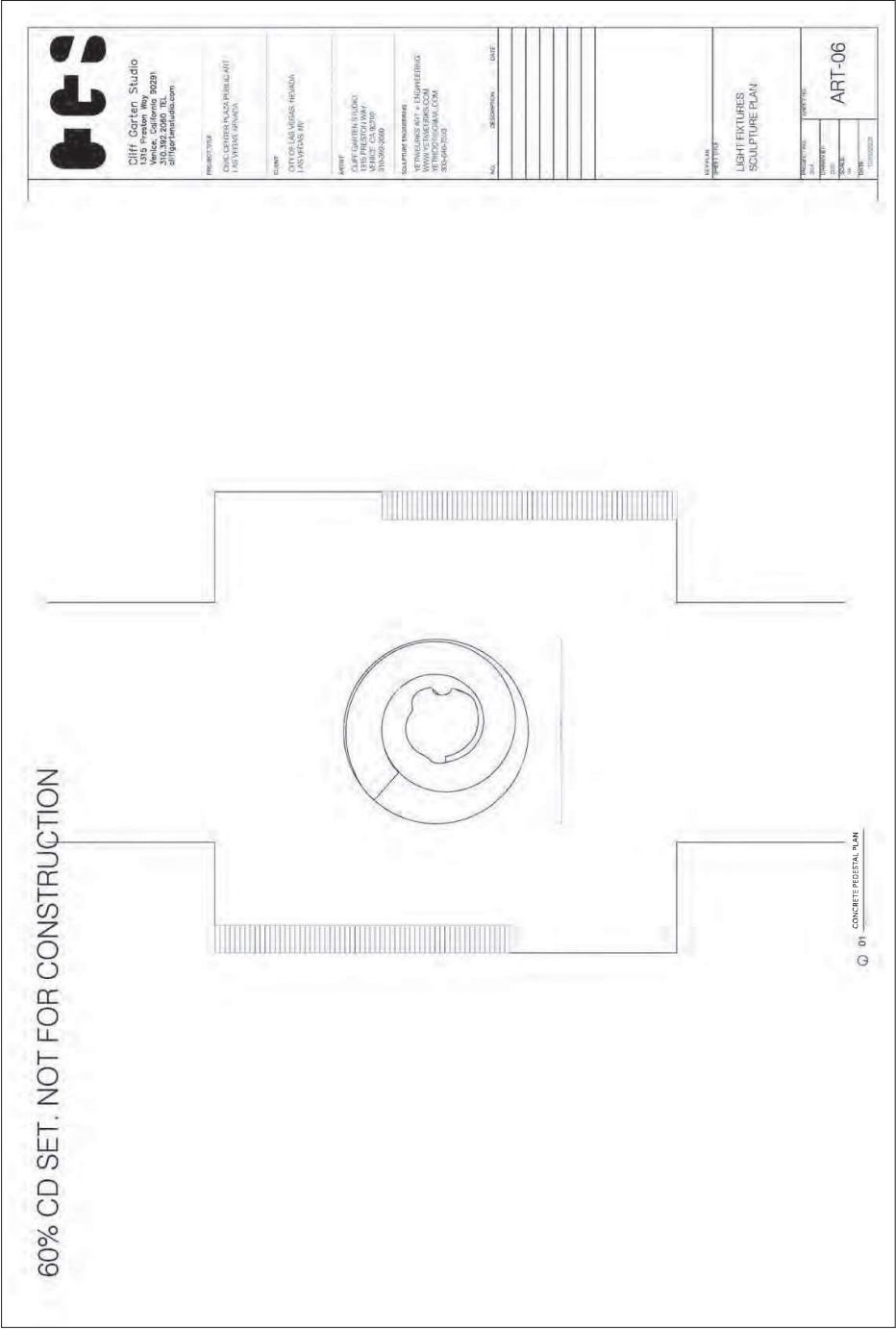
G. Detailed Preliminary Engineering Plan continued

Response Attachment 1
Section 2 - G





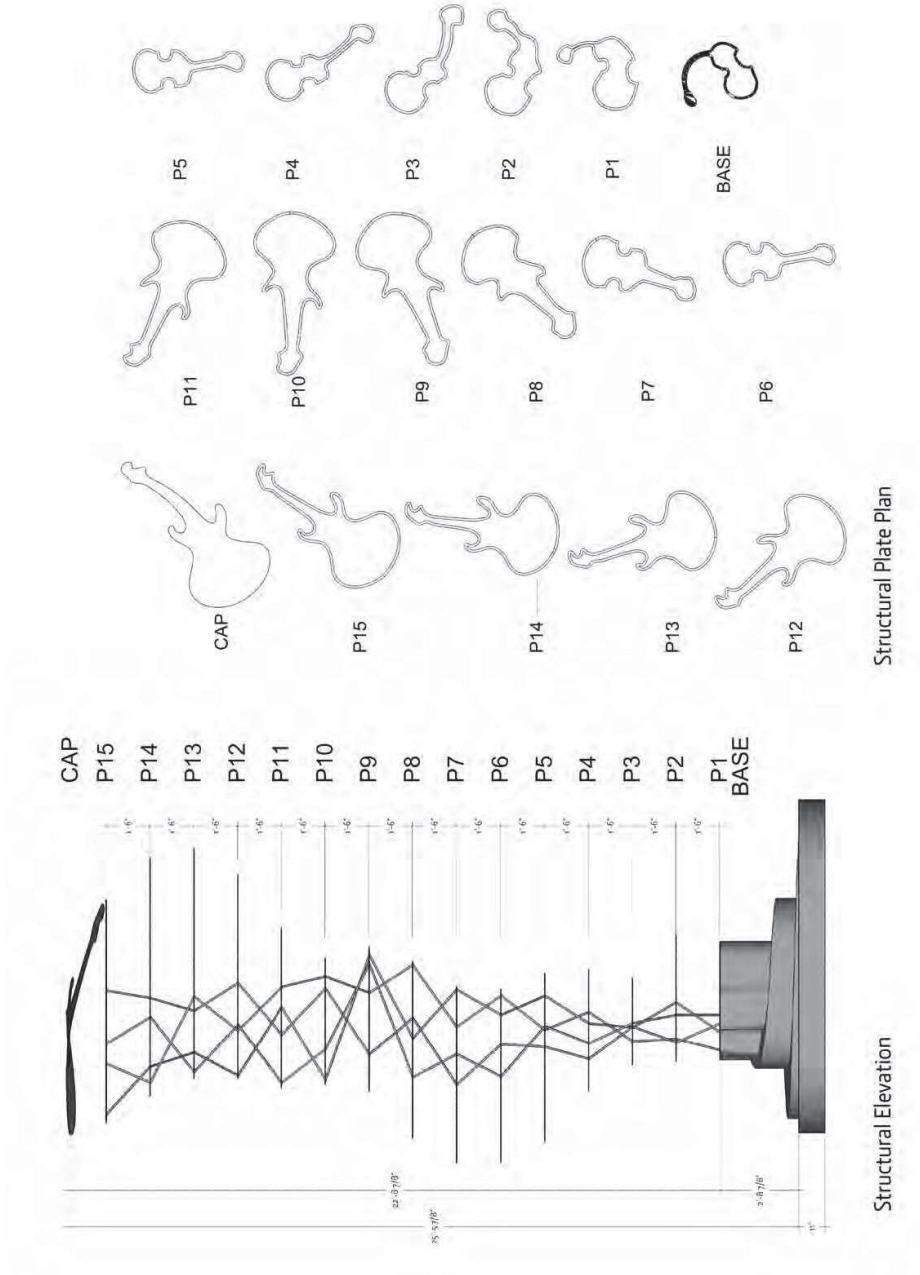
G. Detailed Preliminary Engineering Plan continued





G. Detailed Preliminary Engineering Plan *continued*

Response Attachment 1
Section 2 - G



H. Detailed Installation Plan

Installation of Sculpture

1. The installation plan begins with our engineering. We have installed many stainless-steel columnar sculptures using similar attachment and installation methods. All fabrication is done off site. The sculpture is delivered ready to install which is no more than a one-day process. We will engineer the sculptures with a bolting pattern imbedded into the concrete pedestal/footing during pouring or drilled and epoxied in place that matches the base plate of the sculpture.
2. A sheet steel bolting template is laser-cut to copy the laser-cut stainless-steel plate engineered as the base of the sculpture. The same bolting template is used by the fabricator to fabricate the bottom plate of the sculpture and is used by the concrete contractor for the bolting pattern of the footing. The bolts will either be poured in place or drilled and epoxied on site, depending upon the final engineering.
3. Preconstruction meeting with Artist: Artist, City Engineer, and Concrete Contractor, coordinate a schedule and use of Artist's bolting template. The City Engineer will advise the Artist of any special inspections necessary for installation.
4. Pre-construction meeting: Artist, Fabricator, City Engineer and Crane and rigging service (Dielco Crane Service, Inc.) who will install the sculpture. The Artist, Artist's Fabricator and the Crane Service will present an installation plan to the City Engineer. At this meeting the City will adjust or approve the crane and its weight and loading capacity necessary to install the sculpture, under the advisement of the City Engineer. The delivery truck and the crane's approach to the Plaza and any necessary traffic control will be discussed, as well as the position of the crane and the pick points for off-loading the sculpture from the delivery truck to the crane. The City Engineer will advise the Artist of any special inspections that are necessary to perform during installation.

5. On the day of installation, the arrival of the truck carrying the sculpture will be coordinated with any road closures by the city and with the Crane Service who will have their equipment ready adjacent to the Plaza to offload and install the sculpture. Once offloaded to a designated staging area, the sculpture will be rigged and hoisted onto the bolts which have either been poured in place in the pedestal/footing or drilled and epoxied in place. The bolting configuration will be an exact match to the base of the sculpture because the same template will be used by the concrete

- contractor and the fabricator. The sculpture is bolted down to the threaded stainless-steel rods in the footing. We have performed this operation many times for many different sculptures and the entire operation should take one half a day to one day.
6. Description of LED/DMX Lighting System and Installation of Electrical and Lighting
7. Improvements in the brightness LED lighting and the lensing, or the ability to direct the light allows for very selective aiming of light at the sculpture without spill. LED lights that illuminate the piece run on standard DMX technology. All fixtures are individually addressed and programmed from the DMX controller. Controls for the lights can be housed in a building adjacent to the plaza or in a cooled NEMA box on the Plaza. Location in an adjacent building of Power and Data is preferable. Power and Data will run from the control panel to two data injectors located in the sculpture pedestal.
8. There are sixteen lights on four poles located at the edge of the plaza that illuminate the top portion of the sculpture. Pole lights are located at the edge of the plaza keeping the green space open. The structure of the sculpture is open and therefore light will enter its volume from all directions. There are no lights inside the sculpture. All illumination is from outside the sculpture.

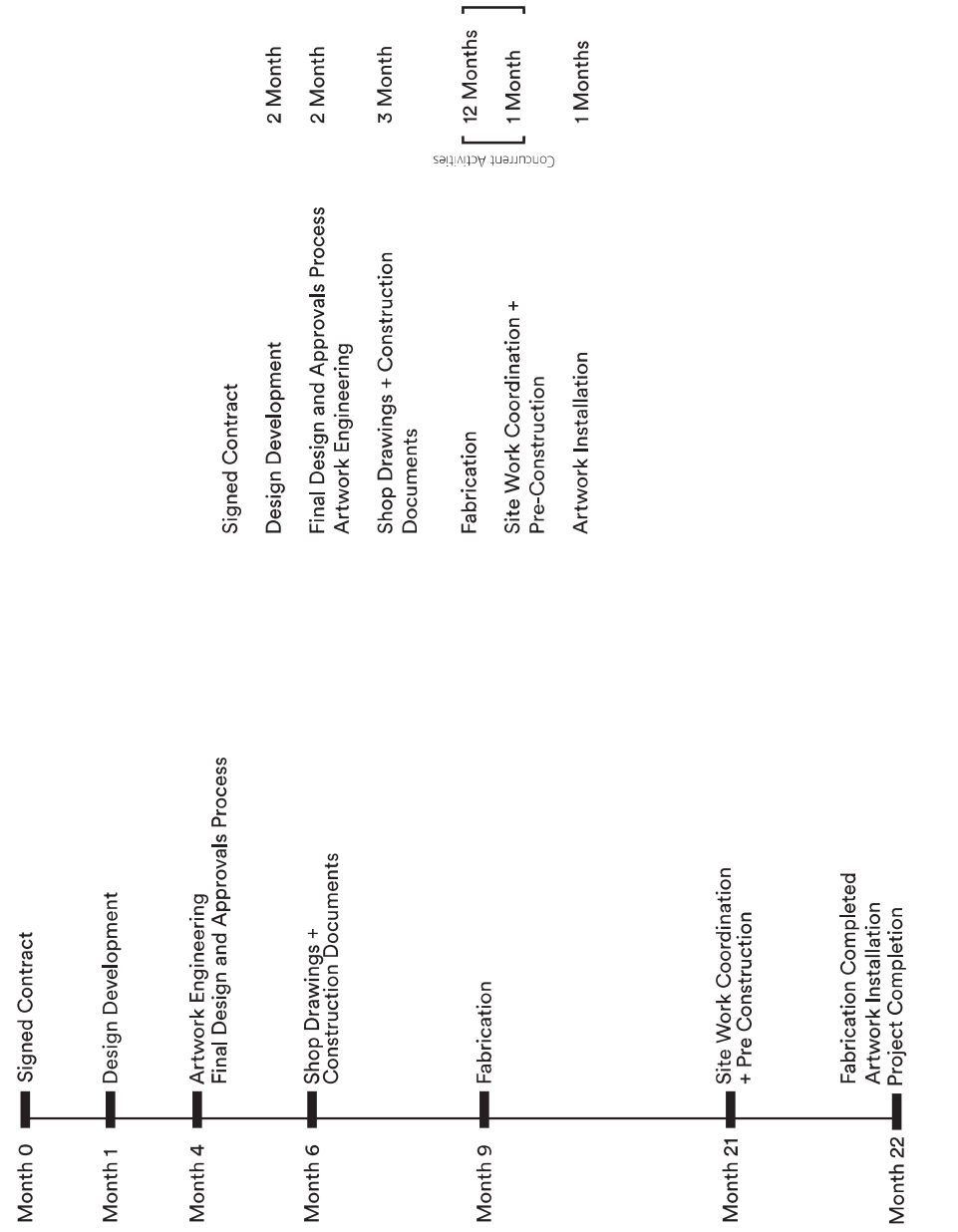


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Department of Park, Recreation and
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J. Maintenance Plan and Recommendations

Response Attachment 1
Section 2 - J

Stainless Steel Sculptures: Material, Finish, Care and Maintenance

The sculptures are the result of 20 years of experience making stainless steel sculptures of a similar structure. They are some of the lowest maintenance sculptures that you can find and their structures are very difficult to damage. The sculptures are made of 3/8" 304L stainless steel rod, and laser cut 304L stainless steel sectional plates and a mounting structure, which is also stainless-steel. The sculptures are hand finished with a 7447 maroon Scotch Brite pad. If the sculpture has random surficial scratching through public use, these areas can be hand rubbed on site with a 7447 pad and brought back to the original surface. Unlike other finishes, this surface can be spot repaired to match the existing surface without removing and/or refinishing the entire piece.

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Cleaning once a year has been our standard maintenance program, even in high traffic areas, but some sculptures are on a five-year cleaning program. We have developed our own conservation techniques for stainless steel sculptures, now in use by other public art agencies, such as the San Francisco Arts Commission. Airborne chemicals and particulate will vary according to your location, and you must adapt your cleaning frequency to your local environment. During the first year of installation the sculptures should be monitored for effects of air pollution and particulate, in order to determine your regular cleaning schedule.

Yearly cleaning will make cleaning much easier as time passes. Some of our sculptures in the public realm have been cleaned every 5 years with no detrimental surface effects. Cleaning the upper reaches of the sculpture requires a lift. To clean the sculptures, use Stellar Solutions, Citrisurf, 77 Plus, and Passivator Spray, <https://citrisurf.com/citrisurf-77/>. This is a citrus based cleaner and is not toxic like other cleaners. Use a portable, 1-5-gallon weed sprayer and fill it with enough of the 77 Passivator Spray to fully cover all sections of the sculpture. The sprayer will allow coverage of the inner sculpture structure which is not accessible by hand. The surfaces do not have to be rubbed unless there is staining. Choose a cloudy day that is not too hot or windy, because you want the layer of Passivator Solution sprayed onto the sculpture to sit without drying for 15 minutes. After 15 minutes wash the Passivator Solution from the surface

with a garden hose with sprayer head or a power wash fan sprayer. Wash thoroughly. Surficial dirt stain and rust will wash away and the original finish of the sculptures will return. We do not recommend graffiti coating or clear lacquer for our stainless steel. Paint thinner will remove paint after which, the Passivator Cleaner works better directly on the stainless steel itself. We have proven this method of maintenance throughout the U.S., even in marine environments, such as Juneau, AK. Welded or heat affected areas may show a bluish of staining during the first year outdoors as the metal weathers. This is normal. A cleaning with the 77 Plus, Passivator Spray will remove this staining.

Lighting System, Care and Maintenance

Accessing the LED lights – Sixteen lights are positioned on four poles surrounding the sculpture which illuminate the top of the sculpture. These sixteen lights (four per pole) must be accessed from a lift.

Cleaning Lenses - Remove pedestal tops and wipe down the lenses depending upon the airborne dust and particulate present once a year or as site conditions dictate. Some light is lost when dust and particulate build up on the lens. Adjust aiming, if necessary, not likely.

Fixture Life - After 60,000 hours, based on laboratory tests the fixtures will lose 30% of their brightness or what the industry calls L70. With a 12 hour burn rate per day the fixtures will not burn out but lose 30% of their brightness after 14 years. All light fixtures have a five-year warranty. This warranty follows the fixtures when the client takes title to the artwork. CGS does not warrant equipment made by other manufacturers. If a fixture fails, it must be sent back to the manufacturer for repair. CGS has provided the highest quality equipment available. The likelihood of failure is low after the fixtures burn for 3 months. Over the last 15 years our experience has been that if a fixture fails it will fail during the first three months of burn and this will most always be a bad solder connection on the circuit board, not LED diode failure.

Operations Manual and On-Site Training - The Artist will provide an operations manual and on-site training to your personnel. There is a three-month establishment period after this training

J. Maintenance Plan and Recommendations *continued*

Response Attachment 1
Section 2 - J

takes place, and the lighting should be monitored to make sure everything is working properly after the onsite training. This training will be done by our Systems Integrator. Personnel will be trained to load a new program, to reset the DMX controller and in procedures for basic trouble shooting of the system. We will field questions about systems operation during training/trial period. It will work best if someone is assigned to monitor the lighting system from maintenance facilities or an on-site manager.

DMX Controller and its Operation -The LED fixtures are programmed through the DMX controller housed in the utility closet of an adjacent building. The program that runs the lighting show resides in the controller. This program created by the Artist will be uploaded to the computer by our Systems Integrator before the training and establishment period. The curated light shows provided by the Artist are specific to this piece and are stored on a micro-SD memory card, a copy of which will be provided to the city. Once uploaded the light shows will be stored in the controller and do not have to be added again. The DMX controls are reset manually. The controller is a touch pad system and if the lighting show stops cycling or there is a surge or power outage, the DMX controller will need to be rebooted from the touch pad. A desktop computer needs to be periodically rebooted and this system is no different and not more complicated.

The Artist will work with the owner to adapt these shows to special events or holidays, as long as the Artist selects the colors for these events. We find personalizing the light show to the facilities programs allows for a better development of the artwork to the site.

Fixtures and Maintenance of LED, DMX Lighting System, Lighting Warranty - We intend to use Lumascape for flood light fixtures on the poles. The fixtures we use are generally IP66-IP67,

tested to IP68, in other words waterproof, but not submersible. The fixtures are individually addressed and dimmable, this allows for complex programming of the lights for the Artist curated light shows. The Lumascape fixtures will allow us to keep all of the light on the sculpture with minimal spill light even when aiming from the pole lights 40 ft from the sculpture. The lights have an internal sensor for thermal management, a proprietary technology called, "Cooldrive". I want to emphasize that this is important in the desert heat of Nevada. The lighting system will be on an astrolological clock with the lighting system of the Plaza and burn from dusk to whatever time is appropriate to the Plaza lighting system.

The fixtures carry a 5-year warranty, which transfers to the owner during Artwork title transfer. All fixtures are "sealed fixtures", epoxied shut with a marine grade epoxy exterior finish. Our experience over the last 10 years is that unless there is a failure of the fixture in the first three months, (which is generally from a faulty solder on the circuit board and will be replaced under warranty) they will burn for 50-70,000 hours before the LED's dim and need replacement, approximately 8-10 years on a ¾ illumination schedule.

Cliff Garten Studio does not warrant lighting equipment. The owner is covered by the manufacturer's warranty which transfers to the owner when the owner takes title to the Artwork. If a fixture is bad, it must be returned to the manufacturer. Deinstallation and reinstallation of lights is the responsibility of the owner under manufacturer's warranty. If any portion of the electrical installation becomes submerged in water the warranty on the electrical system and its parts is void.



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Section 3 - Exemptions to the Sample Contract



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Exemptions to the Sample Contract

Page omitted in final contract. Reference contract for negotiated contract terms.



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Section 4 - Pricing Proposal



Project Budget

Las Vegas NV, Downtown Civic Center Plaza Public Art Project, Approximate Cost Estimate, Cliff Garten Studio		No.	Cost
Sculptures			
Materials + Fabrication- Lasercutting, construction of rotating armature, Shaping and Welding rods and Assembly of sculpture			\$520,012.00
Sub Total Sculpture Fabrication			\$520,012.00
Installation of Sculpture and Hardware (By Las Vegas Crane and Riggers under Artist's direction)			\$40,000.00
Crating and Shipping to Site			\$15,000.00
Total City and State Sales Tax (Not Applicable)			N/A
Sub Total Installation, Shipping			\$55,000.00
Total Sculpture Shipping, and Tax			\$575,012.00
Footings and Site work			
Concrete Footings and Sculpture Pedestal		by City	
Site Work Paving and Landscaping Surrounding Sculpture		by City	
Total Sculpture Footing and Site Work		by City	
LED, Light Fixtures and Electrical			
Data Injector Lumascape PowerSync		2	\$1,164.00
Cables			\$1,213.00
LED Fixtures Floods Q4 Lumascape, RGBW DMX		16	\$25,840.00
Poles for Fixtures (By City)		4	(By City)
Color Matching for Fixtures			\$700.00
DMX Controller (with Basic Programming)			\$4,000.00
Sub Total of Fixtures and Lighting Equipment			\$32,917.00
Shipping of Fixtures and Lighting Equipment			\$5,000.00
Sales Tax		10.25%	\$3,373.99
Sub Total Shipping and Tax			\$8,373.99
Subtotal Electrical Fixtures and Shipping			\$41,290.99
Electrical Installation			\$60,000.00
Total Light Fixtures and Electrical, Tax and Shipping			\$101,290.99

Engineering Fees			
Structural Engineering for Sculpture and Engineering for Ceiling Mounting			\$5,000.00
Electrical Engineering			\$5,000.00
Total Engineering			\$10,000.00
Miscellaneous			
Insurance on work until Installation, studio overhead			\$8,000.00
Welding Inspection			\$3,500.00
Travel (includes foundry visits in Salt Lake, Utah and travel to Las Vegas)			\$5,000.00
Total Miscellaneous			\$16,500.00
Artist Fee			
Artist Fee (Licensing)		20%	\$194,600.00
Sub-total Project Costs			\$887,402.99
Contingency		4%	\$35,897.01
Total Project Costs Plus Contingency			\$923,000.00
Total Project Budget \$923,000.00			\$923,000.00



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Suggested Payment Schedule

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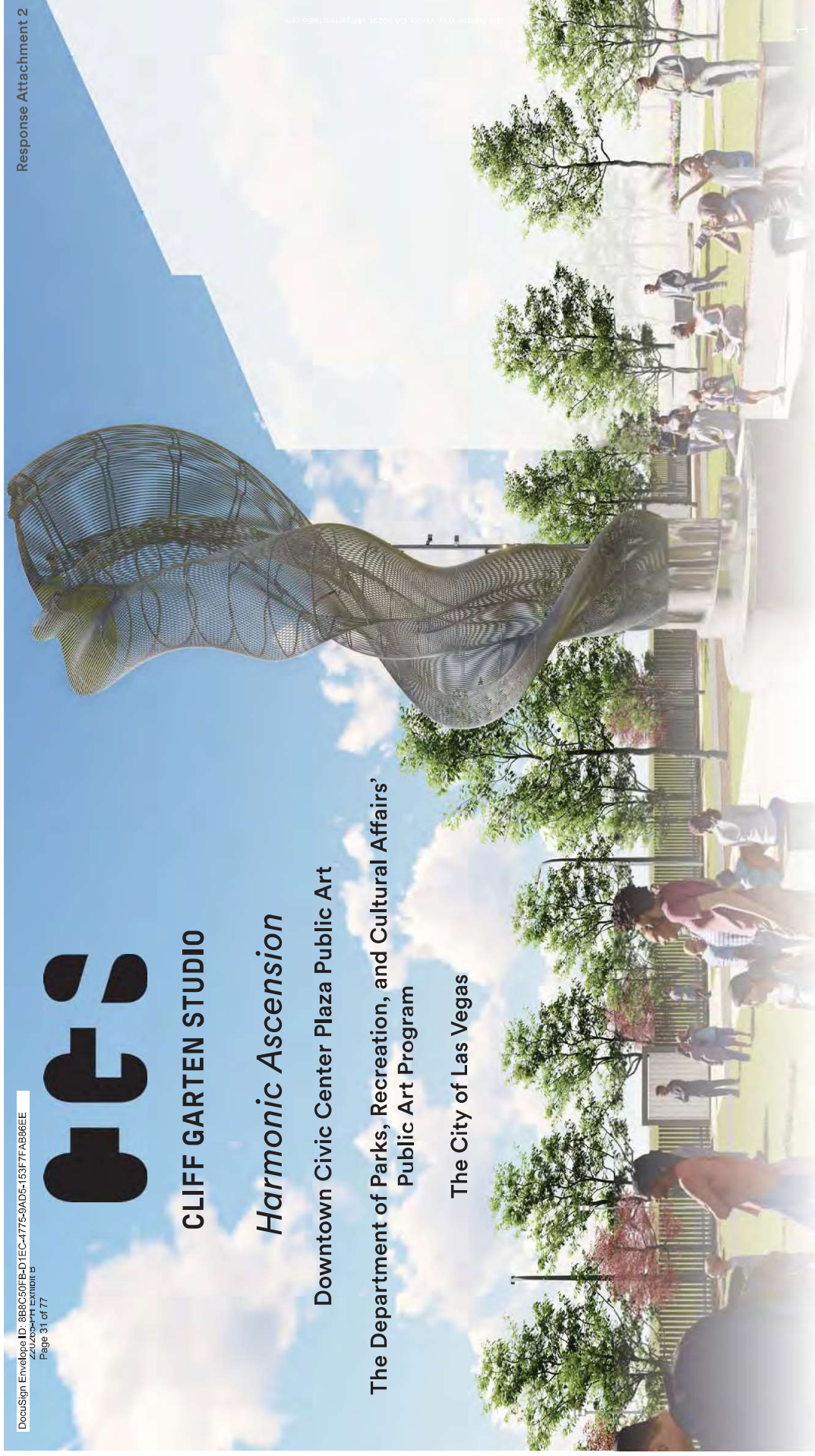
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Harmonic Ascension

Downtown Civic Center Plaza Public Art

The Department of Parks, Recreation, and Cultural Affairs'
Public Art Program

The City of Las Vegas





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Renderings



"Harmonic Ascension"
Sculpture













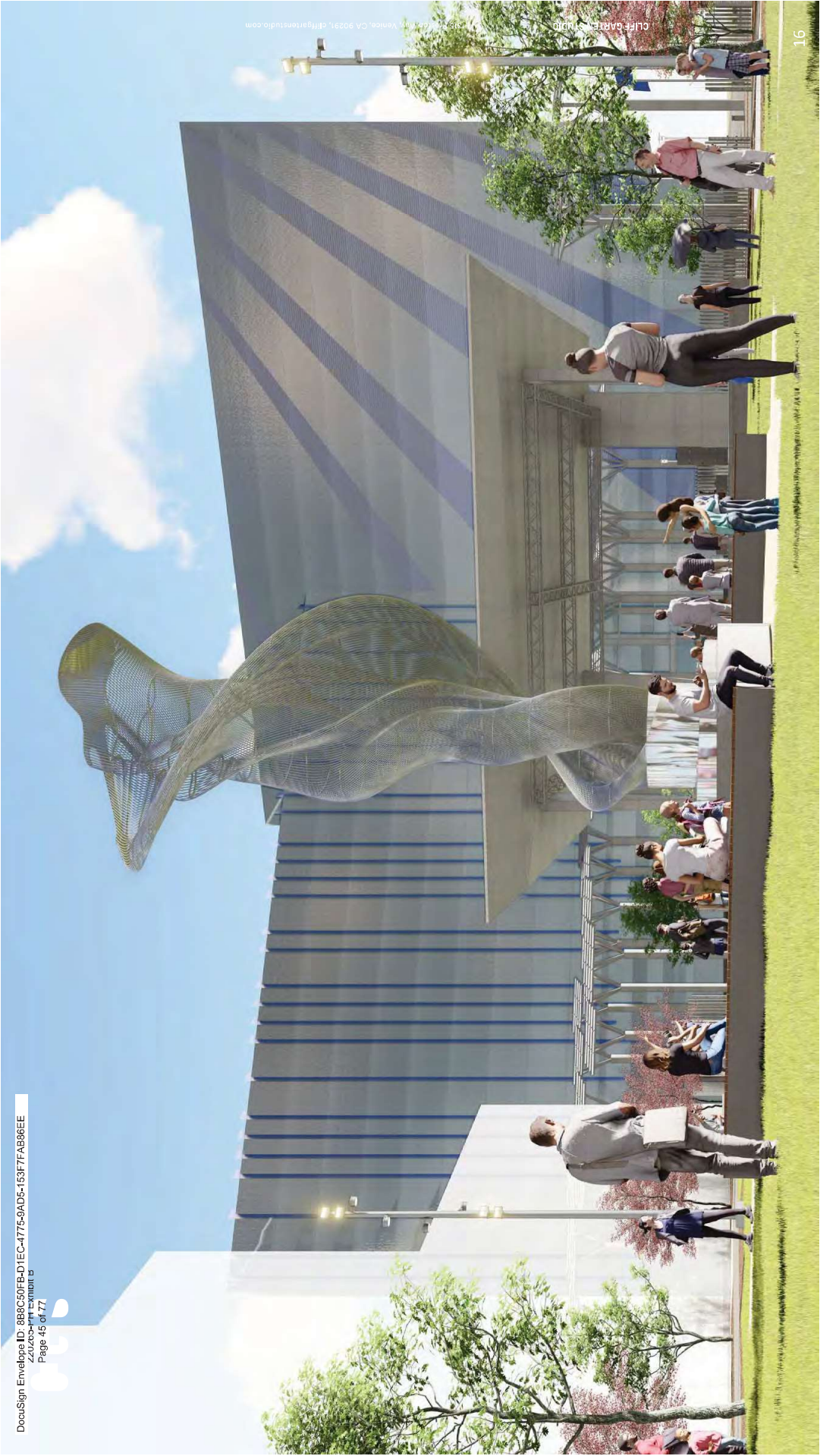
























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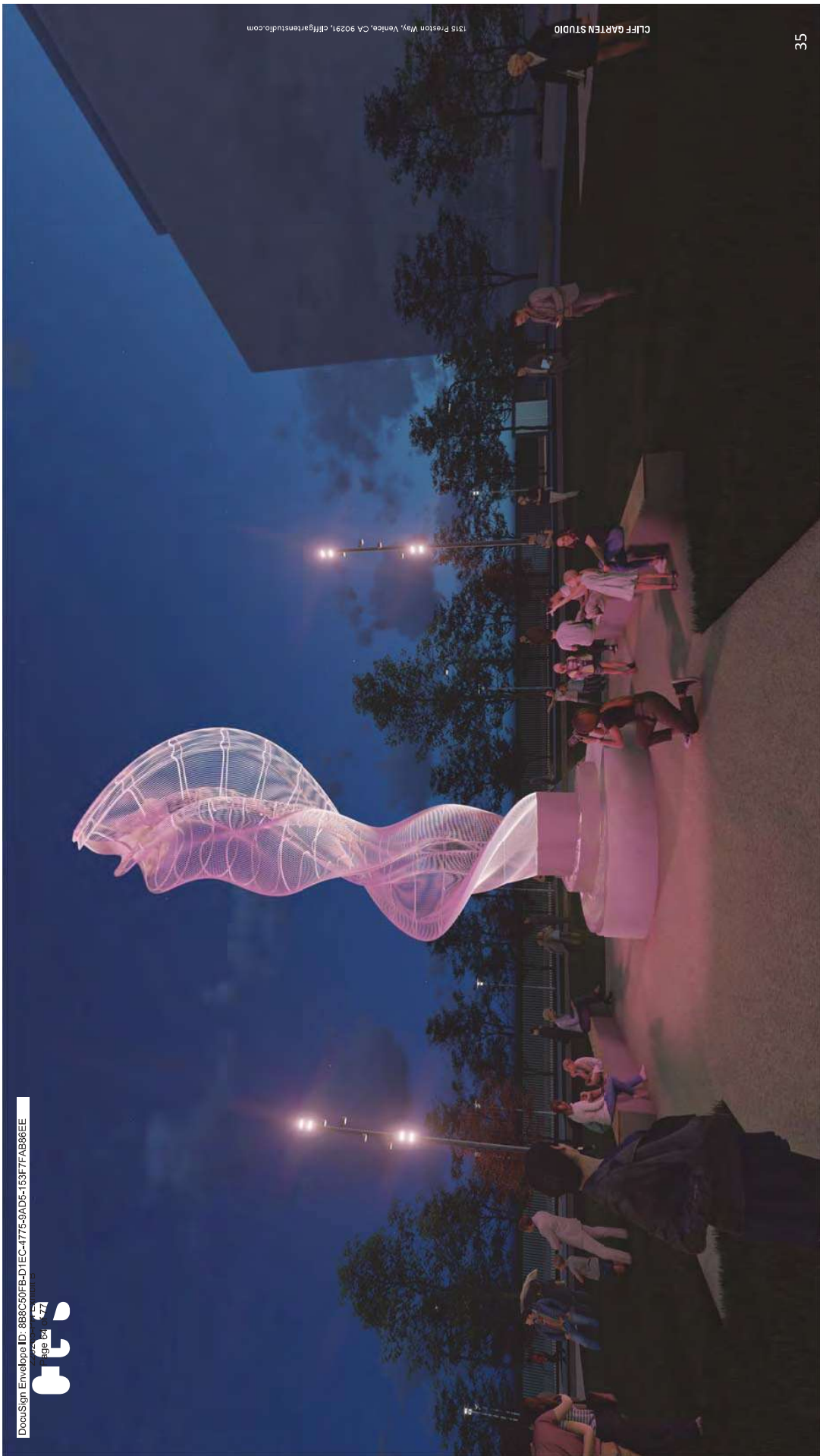








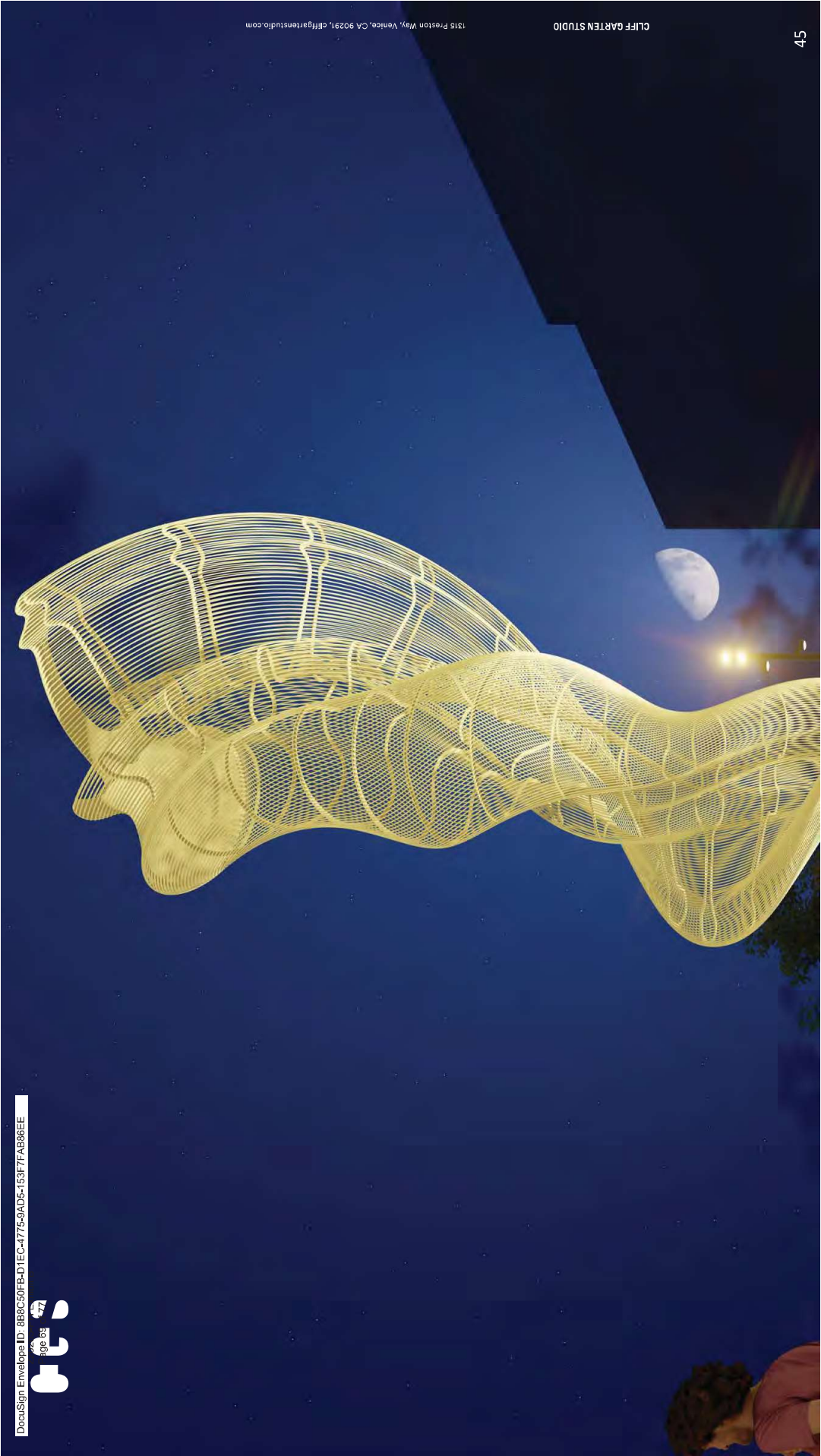




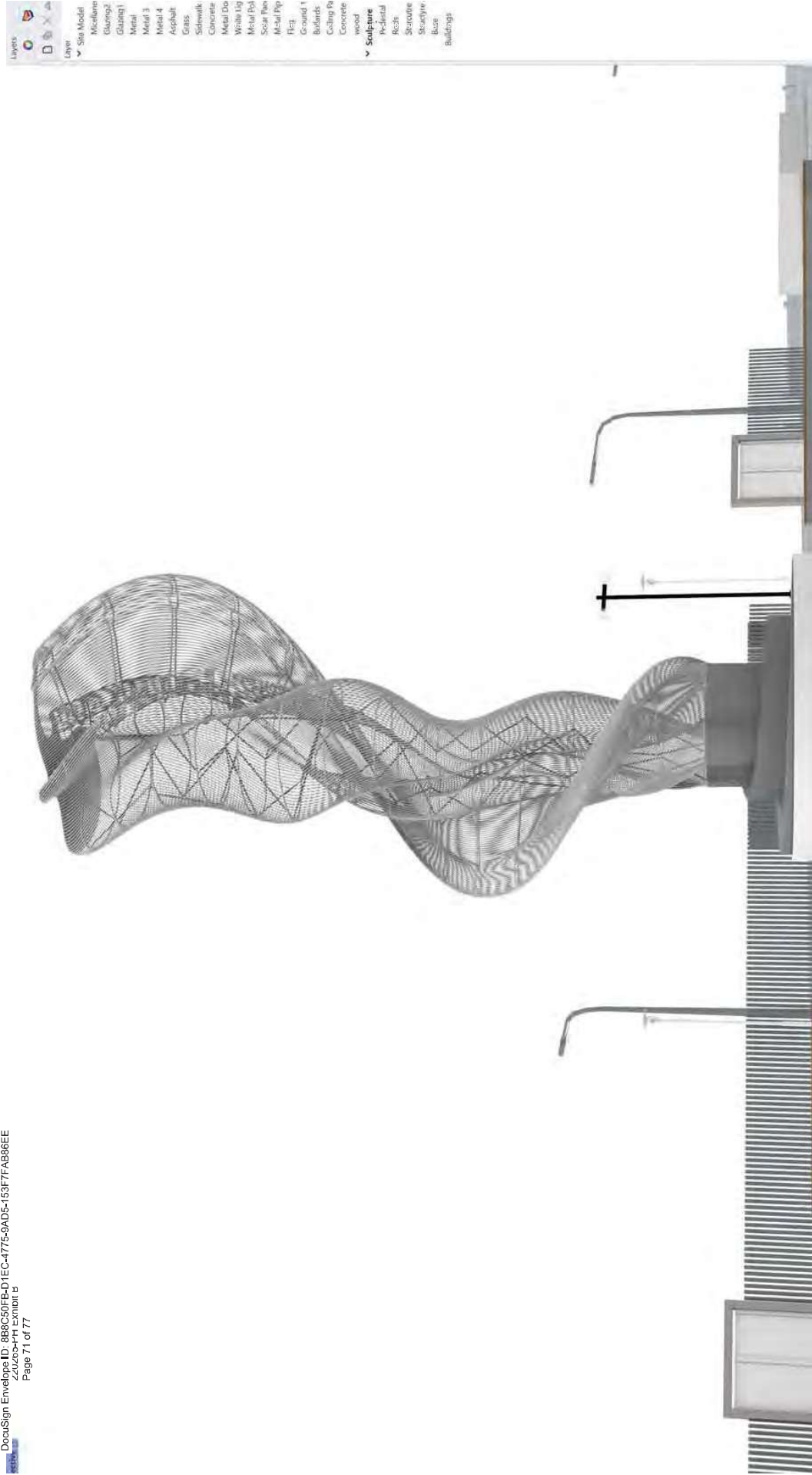


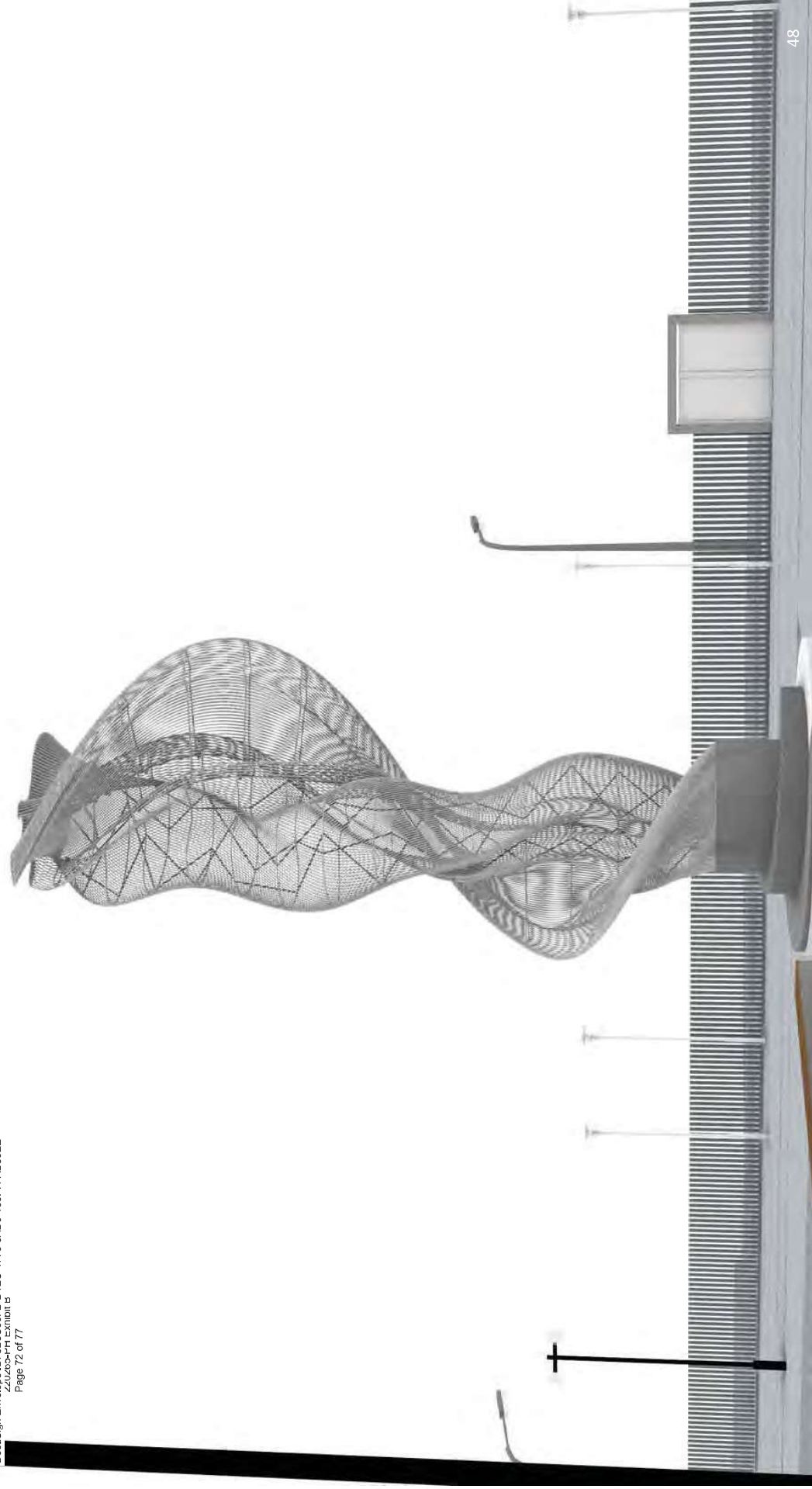


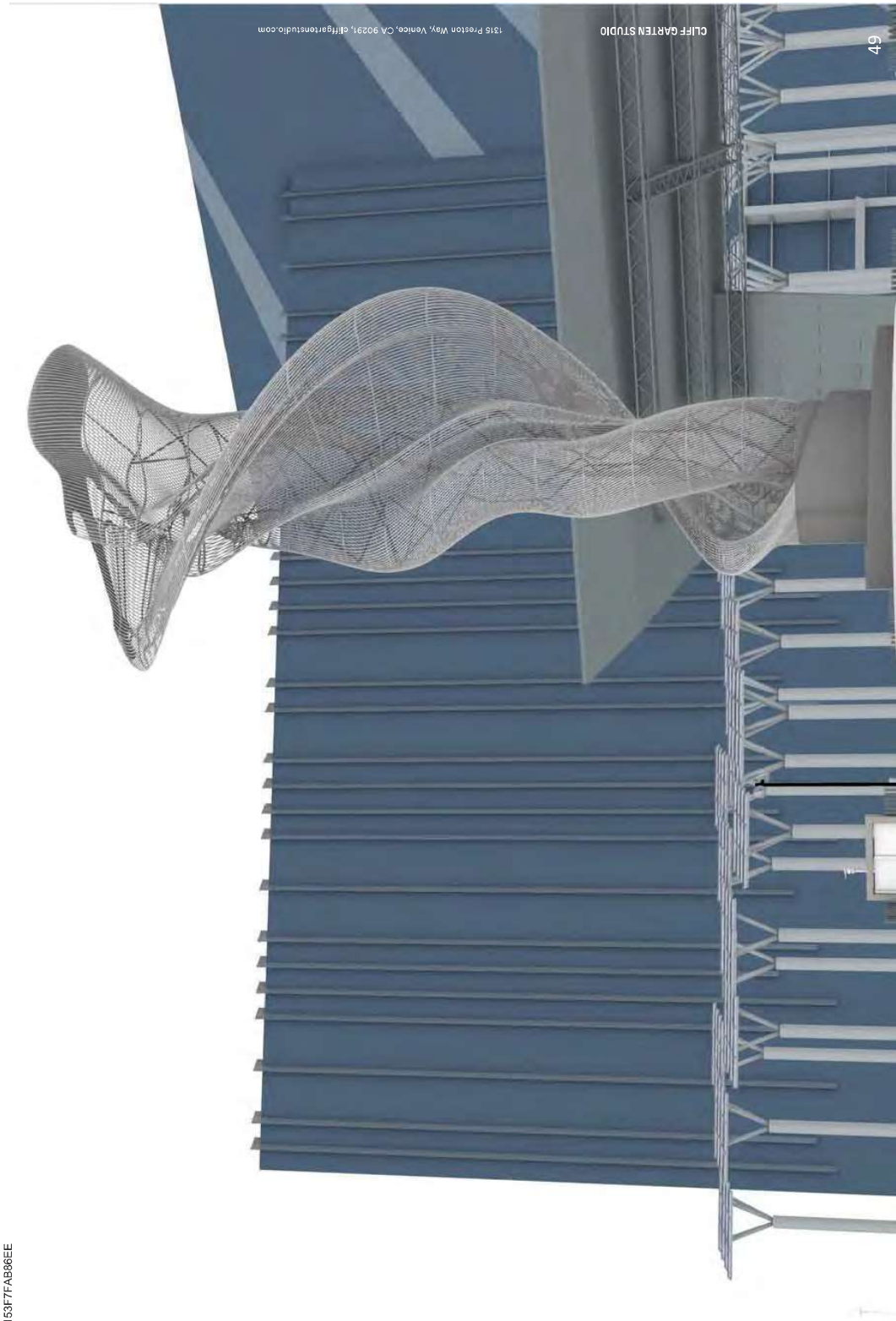






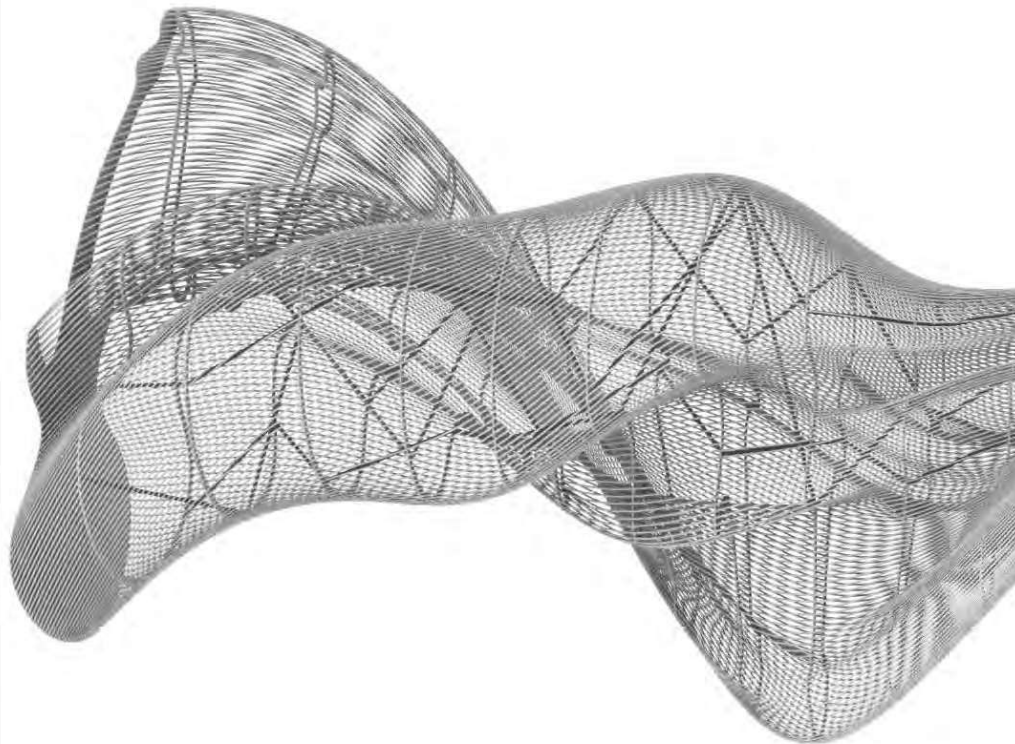


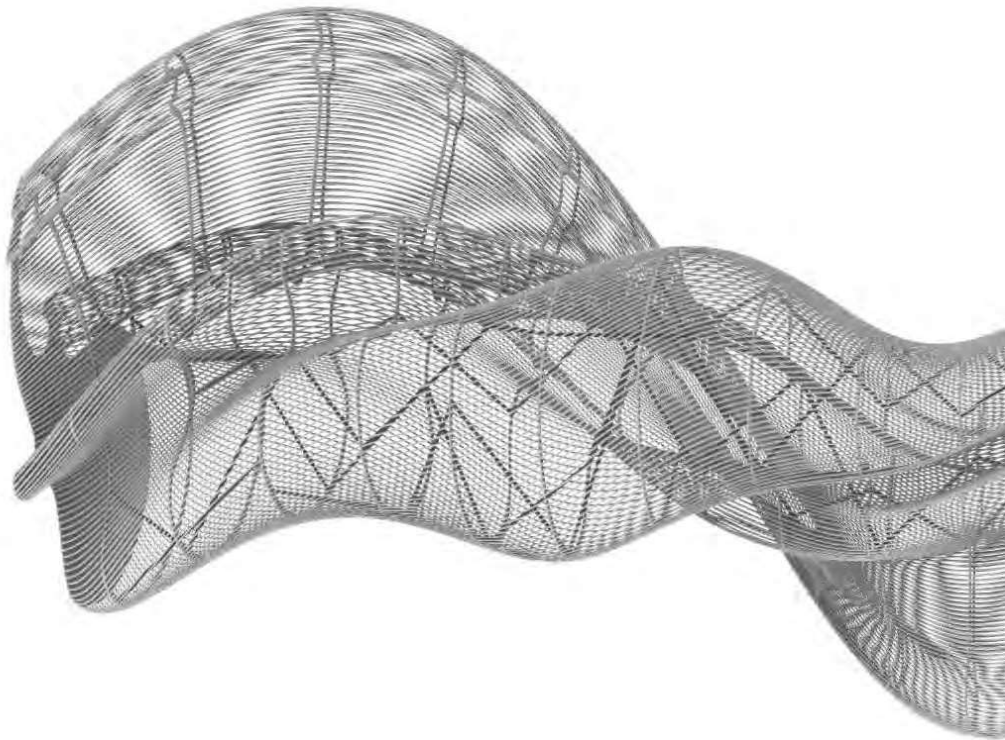




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Model - *Harmonic Ascension*



Harmonic Ascension, © Cliff Garten Studio, Scale $\frac{1}{8}'' = 1'$, Nylon, Selective Laser Sintering (SLS)



Model - *Harmonic Ascension*



Harmonic Ascension, © Cliff Garten Studio, Scale $\frac{1}{8}$ " = 1', Nylon, Selective Laser Sintering (SLS)