

1 **BILL NO. S-21-12-23**

2  
3 SPECIAL ORDINANCE NO. S- 1-22

4 AN ORDINANCE approving AN AGREEMENT  
5 FOR COMMISSION OF SCULPTURE FOR THE  
6 MARTIN LUTHER KING JR. PUBLIC MONUMENT  
7 between the City of Fort Wayne, Indiana, by and  
8 through its Community Development Division and  
9 RE:site Studio, LLC

10 **NOW, THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL**  
11 **OF THE CITY OF FORT WAYNE, INDIANA:**

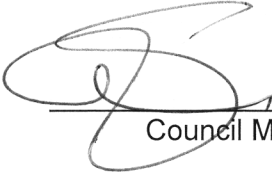
12 **SECTION 1.** That the AGREEMENT FOR COMMISSION OF  
13 SCULPTURE FOR THE DR. MARTIN LUTHER KING JR PUBLIC MONUMENT  
14 between the City of Fort Wayne, by and through its Community Development Division  
15 and RE:site Studio, LLC FOR THE CREATION OF A SIGNIFICANT SCULPTURAL  
16 WORK OF ART, THE SUBJECT OF WHICH WILL BE THE RELATIONSHIP OF DR.  
17 MARTIN LUTHER KING, JR. TO THE CITY OF FORT WAYNE (the "Artwork") TO BE  
18 LOCATED WITHIN A DEFINED SPACE AT THE NORTHWEST CORNER OF EWING  
19 STREET AND WEST BERRY STREET", is hereby ratified, and affirmed and approved  
20 in all respects, respectfully for:

21 RE:site Studio, LLC shall perform all services and furnish  
22 all supplies, materials, and equipment which are required  
23 for the design, construction, fabrication, transportation,  
24 delivery and installation of the Artwork on the Site ("the  
25 Artist's Services"). The Artist's Services shall be performed  
26 in a professional manner and in strict compliance with all  
27 terms and conditions of this Agreement;

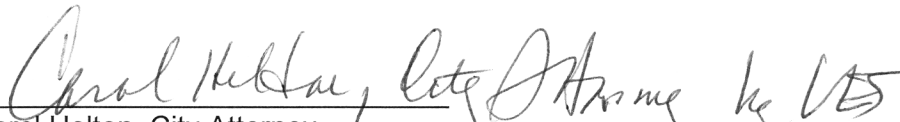
28 Involving a total cost of NOT TO EXCEED TWO HUNDRED FIFTY THOUSAND AND  
29 00/100 DOLLARS (\$250,000). A copy of said Agreement is on file with the Office of the  
30 City Clerk and made available for public inspection, according to law.

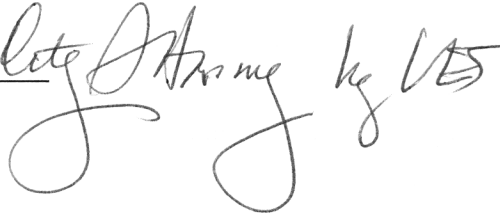
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**SECTION 2.** That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

  
\_\_\_\_\_  
Council Member

APPROVED AS TO FORM AND LEGALITY

  
\_\_\_\_\_  
Carol Helton, City Attorney



## **AGREEMENT FOR COMMISSION OF SCULPTURE**

THIS AGREEMENT, is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between THE CITY OF FORT WAYNE, INDIANA, an Indiana municipal corporation, by and through its Community Development Division (hereinafter the “Owner”) with offices at 200 East Berry Street, Suite 320, Fort Wayne, Indiana 46802 and RE:site Studio, LLC, a Texas limited liability company, (“Artist”) with offices at 5615 Briarbend Houston, TX 77096. Owner and Artist are sometimes referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS, Owner desires the creation of a significant sculptural work of art, the subject of which will be the relationship of Dr. Martin Luther King, Jr. to the City of Fort Wayne (the “Artwork”) to be located within a defined space at the corner of Ewing Street and West Berry Street” in Fort Wayne, Indiana as more particularly described in Exhibit A attached hereto and incorporated herein by reference (hereinafter the “Site”); and

WHEREAS, Artist is an established professional artist and sculptor whose qualifications and prior work make Artist uniquely qualified to create the Artwork; and

WHEREAS, Owner has selected Artist based upon Artist’s prior sculptural creations and upon Artist’s proposal for the Artwork as more particularly described and defined in Exhibit A attached hereto and incorporated herein by reference (“Proposal”).

WHEREAS, Artist and Owner wish to be bound by the terms and conditions of this Agreement in the performance of their respective obligations and covenants hereunder.

NOW, THEREFORE, in consideration of the above-stated premises and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

### **ARTICLE 1 SCOPE OF SERVICES**

#### **1.1 Artist’s Obligations**

a. Artist shall perform all services and furnish all supplies, materials, and equipment which are required for the design, construction, fabrication, transportation, delivery and installation of the Artwork on the Site (“the Artist’s Services”). The Artist’s Services shall be performed in a professional manner and in strict compliance with all terms and conditions of this Agreement.

b. Artist shall determine the artistic expression, design, dimensions, materials and colors for the Artwork, subject to review and approval by Owner and any regulatory agencies having jurisdictional oversight of any component of the Artwork in accordance with this Agreement. Artist will perform the Artist’s Services in a manner that ensures

that the installed Artwork shall (i) complement and augment the other intended uses for the Site; (ii) not disturb or restrict vehicular and pedestrian traffic flow around the Site, or interfere with the operation of signals and safety devices and procedures, and (iii) not impede other operational requirements, functions and activities on or about the Site as determined by Owner and communicated to Artist prior to and during Artist's performance and delivery of the Artist's Services hereunder.

c. Artist has prepared the design/schematic of the Artwork described in Article 1.3 of this Agreement ("Preliminary Design/Schematic"), and more fully set forth on Exhibit B attached hereto and make a part hereof. Any material change by Artist to the Preliminary Design/Schematic shall require the prior written approval of Owner. Additionally, Owner may require revisions to the Design/Schematic as provided in Article 1.3(b) hereof.

d. Artist shall design, construct, fabricate, transport, deliver, and install the Artwork on the Site on or prior to the scheduled dates set forth in the Completion Milestones and Deliverables Schedule described in Article 1.4(b) of this Agreement, all at Artist's cost.

e. Artist shall secure all licenses, permits and authorizations required for the design, construction, fabrication, transportation, delivery, and installation of the Artwork on the Site at Artist's cost.

f. Artist shall prepare the Site for acceptance and installation of the Artwork in accordance with specifications developed by Artist, which shall incorporate any recommendations provided by Owner with respect to preparation of the Site ("Artist's Site Specifications"). Artist shall complete the Site preparations on or prior to the scheduled installation date as provided in Article 1.4(b) of this Agreement or promptly inform Owner in advance of any delays in such Site preparation, the reasons for such delays, and the measures to be taken by Artist to circumvent or eliminate such delays. All such Site preparations, including any additional site preparation required but not described in Artist's Specifications, shall be at Artist's cost.

g. Prior to the installation of the Artwork on the Site, Artist shall personally inspect the Site to ensure that the Site is in proper condition for acceptance and installation of the Artwork in accordance with Artist's Site Specifications. In the event such inspection reveals that additional Site modifications are required to satisfy Artist's Site Specifications, Artist shall make such Site modifications at Artist's cost prior to the installation of the Artwork.

h. Artist and Artist's qualified and licensed professionals and subcontractors shall perform the design, construction, fabrication, transportation, delivery, and installation of

the Artwork on the Site in accordance with all applicable federal, state and local laws, rules and regulations.

i. Concurrently with the execution of this Agreement by the Parties, Artist shall provide the insurance required hereunder, in such amounts and upon such terms as are specified in Article 5. A detailed description of such required insurance is set forth in Exhibit D attached hereto and incorporated herein by reference.

j. Concurrently with the execution of this Agreement by the Parties, Artist shall provide Owner a list of all subcontractors engaged by Artist to design, construct, fabricate, transport, deliver, and install the Artwork on the Site. Owner may, in its discretion, inspect the work performed by Artist's subcontractors to confirm compliance of the Artwork with the terms of this Agreement.

k. Prior to the installation of the Artwork, Artist shall provide Owner with a detailed maintenance and preservation manual which contains both a description of all materials, processes and products utilized in the design, construction and fabrication of the Artwork and specific instructions and additional recommendations for the required short-term and long-term maintenance and preservation of the Artwork.

l. Artist shall provide a set of "as built" drawings for the Artwork in a format acceptable to Owner if Owner determines there is significant deviation of the Artwork from the Preliminary Design Schematic.

m. Artist shall provide photographic documentation of the Artwork in a format acceptable to Owner when and as requested by Owner prior to the installation of the Artwork.

n. At Owner's request, Artist shall be available upon reasonable advance notice for electronic or in-person meetings requested by Owner to discuss the Artwork and the performance of the Artist's Services with Owner and to coordinate the design, construction, fabrication, transportation, delivery and installation of the Artwork on the Site.

o. As a component of Artist's Services, Artist shall collaborate with Owner in the design, location, construction, installation and messaging of an interpretive panel to be constructed in the immediate vicinity of the Site which shall: (i) inform the public of Dr. Martin Luther King, Jr.'s relationship with the City of Fort Wayne; (ii) include a list of patron support for the Artwork; and (iii) credit Artist for the design and construction of the Artwork.

## **1.2 Owner's Obligations**

Owner shall use reasonable efforts to inform Artist regarding the municipal laws, rules, regulations, licenses and permits applicable to the delivery and installation of the Artwork. Owner shall provide Artist with a written explanation of any specific limitations known by Owner which are imposed by any such laws, rules regulations, licenses and permits that may impact the delivery and/or installation of the Artwork on the Site.

### **1.3 Design/Schematic**

#### **a. Design/Schematic**

Artist has previously submitted to Owner the Preliminary Design/Schematic for the Artwork attached hereto as Exhibit B which has been preliminarily approved by Owner.

#### **b. Approval**

Following the execution of this Agreement, Owner shall provide Artist written notification of any revisions to the Preliminary Design/Schematic required by Owner. Artist shall incorporate such revisions which, upon approval by Owner, shall become the final Design/Schematic for the Artwork (the "Final Design/Schematic").

#### **c. Final Engineering/Construction Documents**

Following approval of the Final Design/Schematic by Owner, Artist shall submit to Owner for approval, signature and stamping the preliminary construction documents for the design, construction, fabrication, transportation, delivery and installation of the Artwork in accordance with the Final Design/Schematic prepared by design professionals as required by the Indiana State Building Code and any local building codes ("the Preliminary Engineering/Construction Documents").

i. Owner shall review the Preliminary Engineering/Construction Documents to confirm the accuracy thereof with Artist's Proposal and the Final Design/Schematic and provide Artist with written corrections or revisions thereto. Artist shall incorporate such corrections or revisions into the Preliminary Engineering/Construction Documents which, upon approval by Owner, shall become the Final Engineering/Construction Documents.

ii. Concurrently with the submission of the Preliminary Engineering/Construction Documents, Artist shall prepare and deliver to Owner for Owner's approval a maquette of the Artwork (computer model or otherwise as agreed upon by the Parties) which shall include color and material samples selected by Artist for the Artwork

### **1.4 Budget, Completion Milestones, Deliverables, Progress Reports and Payment Schedule**

a. Budget

i. Artist has prepared a budget for the Artist's Services, which itemizes the cost of all goods, materials and services to be utilized in the design, construction, fabrication, delivery and installation of the Artwork (the "Budget"). The Budget is attached to this Agreement and incorporated herein as Exhibit E.

ii. As used herein, Budget shall mean a specific and detailed document identifying the cost of performing all of Artist's Services under this Agreement, including a contingency for any modifications and revisions. Budget shall include all design fees and costs, preliminary and final engineering requirements, materials and labor for fabrication, including Artist's and subcontractors' costs, consultants' costs, (including engineers and specifications writers), transportation, delivery and installation of the Artwork on the Site, and required insurance and sales tax (if any). The total Budget for the Artist's Services provided hereunder shall not in any event exceed the sum of Two Hundred and Fifty Thousand and 00/100 Dollars (\$250,000.00), which shall be the maximum compensation payable by Owner to Artist for the performance and delivery of Artist's Services hereunder.

b. Completion Milestones and Deliverables Schedule

Artist has prepared a Completion Milestones and Deliverables Schedule, a copy of which is attached hereto and made a part hereof as Exhibit C. Any changes to the Completion Milestones and Deliverables Schedule shall be subject to Owner's prior written approval. Artist shall provide Owner with periodic progress reports describing the progress of each phase of work being performed pursuant to the attached Completion Milestones and Deliverables Schedule.

c. Payment Schedule

Artist's Payment Schedule for the Artist's Services is attached hereto and incorporated herein as Exhibit F ("Payment Schedule"). Owner shall pay Artist for Artist's Services in accordance with the Payment Schedule pursuant to the terms and conditions of this Agreement, subject to Owner's right to delay or withhold payment as provided herein.

**1.5 Fabrication Stage**

a. Artist shall design, construct, fabricate, transport and deliver the Artwork to the Site in conformity with the Final Design/Schematic. Any deviation from the Final Design/Schematic by Artist shall require the prior written approval of Owner.

b. Owner shall have the right to inspect the Artwork or to request pictures or other likenesses of the Artwork be provided to Owner at reasonable times during the fabrication stage upon reasonable advance notice to Artist.

c. If Owner, during any review of the Artwork during the fabrication stage, determines that the Artwork does not conform to the Final Design/Schematic, Owner shall notify Artist in writing, within five (5) days following such determination of non-conformities that additional payments by Owner to Artist under the Payment Schedule shall be withheld subject to correction of such non-conformities by Artist.

d. Artist shall correct the non-conformities identified by Owner to Owner's satisfaction and will notify Owner of completion of the same. Upon Owner's approval of such corrections, payments to Artist shall resume under Payment Schedule. If Owner and Artist cannot resolve the course of action required for the correction of such non-conformities, the final determination for correcting such non-conformities shall be made by Owner and performed by Artist.

e. Artist shall notify Owner in writing when fabrication of the Artwork has been completed and that the Artwork is ready for delivery to the Site in accordance with the attached Completion Milestone and Deliverables Schedule.

f. Prior to the transportation of the fabricated Artwork to the Site, Owner shall have the right to inspect the Artwork or request receipt of pictures or other likenesses of the Artwork to: (a) determine that the Artwork conforms with the Final Design/Schematic and Final Construction Documents; (b) provide final approval of the fabricated Artwork; and (c) authorize Artist's delivery of the fabricated Artwork to the Site. In the event that Owner withholds final approval and authorization of delivery of the fabricated Artwork to the Site, Owner shall provide Artist with a written list of non-conformities in the fabricated Artwork within five (5) days following such inspection and shall withhold additional payments under the Payment Schedule subject to correction of the non-conformities by Artist. Artist shall have thirty (30) days from the date of Owner's notice of non-conformities to correct such non-conformities to Owner's satisfaction or to submit written objections to Owner's notice of non-conformities in the fabricated Artwork within five (5) days following Artist's receipt of Owner's notice of non-conformities. Owner and Artist shall use good faith efforts to resolve any such dispute; however, the final determination as to whether such non-conformities exist and have been cured by Artist to Owner's satisfaction, or whether Owner agrees to waive such non-conformities, shall be made by Owner.

g. Owner shall promptly notify Artist of any delays impacting the scheduled transportation, delivery and installation of the Artwork. Any additional storage and insurance costs incurred by Artist as a result of such delay shall be borne by Artist unless such delay is caused by Owner.

h. Artist shall protect and preserve the integrity of the Artwork with the application of a protective sealant, patina or anti-graffiti coating, if applicable, which is not injurious to the Artwork, subject to informing Owner of the requirements for future reapplications of

the protective sealant in advance of its application in order for Owner to review and either accept or reject the same.

## **1.6 Installation**

a. Upon Owner's final approval of the fabricated Artwork Artist shall deliver and install the completed Artwork on the Site in accordance with Article 1.4(b).

b. Owner shall be present at the Site to observe and coordinate the installation of the Artwork on the Site by Artist.

c. Upon installation of the Artwork to the Site and acceptance thereof by Owner as provided in Article 1.7 hereof, the Artwork shall be deemed to be in Owner's custody for purposes of Article 3 and Article 5 of this Agreement, and, except as otherwise provided herein, Owner thereafter shall assume liability for any damage to the Artwork or injury to persons or property caused by the existence of the completed and accepted Artwork on the Site.

## **1.7 Approval and Acceptance**

a. Artist shall notify Owner in writing upon the completion of the Artist's Services, the delivery and installation of the completed Artwork on the Site in conformity with the Final Design/Schematic, the Final Engineering/Construction Documents, and this Agreement.

b. Owner shall notify Artist in writing of Owner's final acceptance of the installed Artwork and confirmation that the Artist's Services have been performed in conformity with the Final Design/Schematic, the Final Engineering/Construction Documents, and this Agreement within seven (7) days after Artist's submission of the written notice pursuant to Article 1.7(a) above. The effective date of Owner's final acceptance and confirmation shall be the date upon which Owner issues written notice thereof to Artist. Owner's final acceptance and confirmation shall be deemed to mean that Owner confirms: (a) completion of the Artwork in conformity with the Final Design/Schematic, the Final Construction Documents, and this Agreement; (b) delivery and installation of the Artwork on the Site; and (c), and the satisfactory completion and delivery of the Artist's Services by Artist under this Agreement. Title to the Artwork shall transfer from Artist to Owner upon final acceptance of the Artwork by Owner and final payment by Owner to Artist pursuant to the Payment Schedule, all as provided herein. If the Artwork requires the approval of a regulatory authority, obtaining such approval by Artist will be a precondition to Owner's final acceptance of the Artwork.

c. If Owner disputes (a) the design, construction, fabrication, delivery and installation of the Artwork to Owner in accordance with the Final Design/Schematic, the Final Construction Documents or this Agreement, or (b) the performance and delivery of

the Artist's Services in accordance with this Agreement, Owner shall so notify Artist in writing within five (5) days after Artist's submission of written notice pursuant to Article 1.7(a) above, which notice from Owner shall describe in reasonable detail Owner's issuance of the nature of the non-conformity of the Artwork or Artist's default in the performance and delivery of the Artist's Services.

d. Artist may elect to correct such non-conformities and/or cure the default or defaults described in Owner's notice by correcting such non-conformities and/or curing such default or defaults to Owner's satisfaction within fifteen (15) days from the date of Owner's described notice in Article 1.7(b). Alternatively, Artist may submit written objections to Owner within five (5) days following Owner's notice issued under Article 1.7(b) identifying the non-conformities in the Artwork and/or the default in the performance and delivery of Artist's Services. Owner and Artist shall make commercially reasonable and good faith efforts to resolve any such disputes within thirty (30) days following Artist's issuance of written objections under this Article 1.7(c). However, final determination as to whether such disputes have been resolved shall be made by Owner.

e. Upon the resolution of any disputes that arise under Article 1.7(b) and (c), Owner shall notify Artist of Owner's final acceptance of the Artwork and confirmation of Artist's performance and delivery of the Artist's Services pursuant to Article 1.7(a).

f. In the event Owner determines not to waive such non-conformities, if any, the amount of Owner's payment obligations hereunder shall be reduced by an amount equal to the corresponding reduction in value of the Artwork attributable to such non-conformities. Such reductions shall be determined by agreement of the Parties or, alternatively, pursuant to the terms of Article 14 hereof.

## **ARTICLE 2 TERM OF AGREEMENT**

### **a. Duration**

This Agreement shall be effective on the date that this Agreement has been executed by the Parties, and, unless earlier terminated as provided hereunder, shall continue until final acceptance by Owner under Article 1.7(b), or submission of final payment to Artist by Owner under Exhibit F, whichever shall later occur. Artist may request an extension for time of performance hereunder for good cause which may be granted in Owner's discretion and thereafter memorialized by the written agreement of the Parties. Such agreement shall be attached to the Completion Milestones and Deliverables Schedule described in Article 1.4(b) hereof.

### **b. Force Majeure**

Owner shall grant to Artist a reasonable extension of time in the event that a condition or conditions beyond Artist's control render timely performance of Artist's Services impossible or unduly burdensome. All such performance obligations shall be suspended for the duration of the condition or conditions. Both Parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations due to conditions beyond either Artist' reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions and provided Artist shall diligently take efforts to avoid or remove such conditions which are the cause of Artist's delay in the performance and delivery of Artist's Services hereunder. In the event of a force majeure event that continues for a period of greater than one hundred eighty (180) days notwithstanding Artist's diligent and good faith efforts to remove or avoid the condition or conditions causing Artist's delay, either Party may terminate the Agreement upon ten (10) days written notice to the other Party and, in such event, Artist shall deliver to Owner all of the drawings, designs, maquettes, models and other work prepared by Artist in connection with the Artwork as of such effective date of termination.

### **ARTICLE 3. RISK OF LOSS**

Artist shall bear the risk of loss or damage to the Artwork until installation of the Artwork at the Site and final acceptance thereof by Owner pursuant to Article 1.7(b). Artist shall at all times take such commercially reasonable and appropriate measures as are necessary to protect the Artwork from any loss or damage. Owner shall bear the risk of loss or damage to the Artwork prior to final acceptance thereof only if, during such period prior to final acceptance, the Artwork is in the exclusive custody, control and supervision of Owner or its agent(s) for the purposes of receiving the Artwork on the Site.

### **ARTICLE 4 ARTIST'S REPRESENTATIONS AND WARRANTIES**

#### **4.1 Warranties of Title.**

Artist represents and warrants that:

- a. The Artwork is solely the result of Artist's artistic efforts;
- b. Except as otherwise disclosed in writing to Owner, the Artwork is unique and original and does not infringe upon or misappropriate any copyright or proprietary rights of any person;
- c. Neither the Artwork nor any substantial likeness thereof has been offered for sale elsewhere;

- d. Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted to Owner pursuant to this Agreement;
- e. The Artwork is, and upon delivery and installation thereof on the Site, shall be free and clear of any liens and encumbrances from any source whatsoever.
- f. The Artwork created by Artist under this Agreement, whether created by Artist alone or in collaboration with third parties, shall be wholly original with Artist and shall not infringe upon or violate the rights of any third party.
- g. Artist has the full power to enter into and perform this Agreement and to grant the rights and perform the covenants and obligations contained in this Agreement, without obtaining consent, approval, or waiver from any third party.
- h. The Artist's Services shall at all times be performed in compliance with all applicable federal, state and municipal laws, rules, regulations and ordinances.
- i. The representations and warranties contained in this Article 4.1 shall survive the expiration or earlier termination of this Agreement for any reason.

#### **4.2 Warranties of Quality and Condition**

- a. Artist represents and warrants that all work performed in connection with the design, construction, fabrication and delivery of the Artwork will be in accordance with professional, workmanlike standards and will be free from defective or inferior materials and workmanship (including any defects consisting of qualities or conditions that cause, contribute to, accelerate, or result in the deterioration of the Artwork).
- b. Artist represents and warrants that the Artwork and the materials used in the construction and fabrication thereof are not currently known to be harmful to public health and safety under applicable federal or state law.
- c. Artist represents and warrants that maintenance and preservation of the Artwork will not require procedures materially in excess of those described in the maintenance and preservation instructions prepared by Artist for Owner pursuant to Article 1.1.(i).
- d. If within one (1) year following final acceptance of the Artwork Owner observes any breach of warranty described in this Article 4.2, Owner shall notify Artist with reasonable promptness and Artist shall cure the breach promptly, satisfactorily and consistent with professional conservation standards, at Artist's expense. However, if the breach is not curable by Artist or if Artist elects not to cure such breach, Artist shall forthwith reimburse Owner for any damages, expense and loss incurred by Owner resulting from such breach, including the cost incurred by Owner to cause such breach to be cured.

e. If within one (1) year following final acceptance of the Artwork Owner observes any breach of warranty described in this Article 4.2 that is curable by Artist, Owner shall contact Artist regarding the cure required by such breach. Artist shall have the right to cure such breach at Artist's costs. In the event Artist is unable or unwilling to cure such breach, Owner may cause such breach to be cured by a qualified third party selected by Owner at Artist's expense.

## **ARTICLE 5. INSURANCE**

### **5.1 General**

a. Artist agrees that at all times prior to the delivery of the Artwork to the Site under Article 1.7, any damage to property or injury to persons caused by the Artwork or Artist's activities under or in connection with the Agreement, or any damage to, theft, of, vandalism to, or acts of God affecting the Artwork are the responsibility of Artist, including, but not limited to, any loss occurring during the creation, construction, storage, transportation, delivery and installation of the Artwork on the Site, regardless of where and how such loss occurs

b. Terms for the coverage and duration of insurance required to be carried by Artist under this Agreement are set forth in Exhibit D attached hereto and made a part hereof.

### **5.2 Release and Indemnity**

a. Artist forever releases and hereby agrees to indemnify Owner, its respective officers, members, agents, and employees, departments and divisions from and against any and all claims, both known and unknown and whether now existing or hereafter arising, made against or by Artist or made against Owner by Artist or any third party, which arises out of: (i) Artist's breach of any warranty, representation, covenant or obligation made or assumed by Owner under this Agreement or (ii) any negligent or intentional act or omission by Artist, its contractors, subcontractors, agents, employees vendors or licensees in connection with the performance of or failure to perform the Artist's Services under this Agreement by any such party.

b. Owner shall indemnify Artist, Artist's subcontractors, agents and employees from and against any and all claims arising out of: (i) the breach of any warranty, representation, covenant or obligation made or assumed by Owner under this Agreement or (ii) any grossly negligent or intentional act or omission by Owner, its officers, agents, or employees in connection with the performance, or failure to perform under or in connection with this Agreement by any such party.

c. Owner and Artist shall each immediately notify the other Party of any written claim regarding any matter resulting from or relating to Owner's or Artist's respective obligations under this Agreement. Owner and Artist shall cooperate, assist, and consult

with the other Party hereto in the defense or investigation of any such claim arising out of or relating to the performance of this Agreement by Artist or Owner, as the case may be.

d. The foregoing indemnification shall include reasonable attorneys' fees and legal costs directly related to such indemnification.

e. This indemnification shall survive the termination or expiration of this Agreement for any reason.

f. The foregoing indemnifications by Artist and Owner are limited to indemnification for direct damages and excludes indemnification for indirect, punitive, consequential and incidental damages.

## **ARTICLE 6. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS**

### **6.1 Title**

Title to the Artwork shall pass to Owner upon Owner's written final acceptance and payment for the Artwork pursuant to Article 1.4(c) and Article 1.7(b).

### **6.2 Ownership Documents**

One set of materials and documents shall be prepared by Artist and submitted to and retained by Owner under this Agreement.

### **6.3 Copyright Ownership**

Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. §101 et seq., as the sole author of the Artwork for the duration of the copyright.

### **6.4 Reproduction Rights**

a. In view of the intention that the final Artwork shall be unique, Artist shall not make any additional duplicate [three]-dimensional reproductions or likenesses of the final Artwork, nor shall Artist grant permission to third parties to do so except with the prior written permission of Owner.

b. Owner grants to Artist a revocable license to make two-dimensional reproduction of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publication provided that these rights are exercised in a tasteful and professional manner. All such reproductions shall be subject to the prior written approval of Owner.

c. All reproductions by Owner shall contain a credit to Artist and a copyright notice in substantially the following form: © [Artist's name, date of publication].

d. Artist shall, in any public showing, catalog, portfolio or resume, using the likeness of the Artwork, acknowledge Owner in substantially the following form: "An original of this artwork was commissioned and is owned by and located in the City of Fort Wayne, Indiana."

e. Artist shall, at Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright for the Artwork in Artist's name.

## **ARTICLE 7. ARTIST'S RIGHTS**

### **7.1 General**

a. Artist retains all rights under state and federal laws including §106A of the Copyright Act of 1976.

b. Owner agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first obtaining permission from Artist. Owner further agrees to take reasonable measures to avoid such acts from occurring as a result of the gross negligence of Owner, its representatives, or employees pursuant to the federal Visual Artists' Rights Act.

c. Should substantial alteration or damage to the Artwork occur, Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies Artist may have in law or equity under this Agreement. Upon Artist's written notice, Owner shall remove the identification plaque and all attributive references to Artist at Owner's expense within thirty (30) days of receipt of Artist's notice. No provision of this Agreement shall obligate Owner to alter or remove any such attributive reference printed or published prior to Owner's receipt of such notice from Artist.

### **7.2 Alteration of Site or Removal of Artwork**

a. Owner shall notify Artist of any proposed material alteration of the Site that would affect the intended character and appearance of the Artwork. Owner shall consult with Artist in the planning and execution of any such alteration. Owner shall make reasonable efforts to maintain the integrity of the Artwork in connection with and following such material alteration.

b. Owner agrees not to arbitrarily remove or relocate the Artwork from the Site without notifying Artist regarding such removal or relocation. Artist shall provide Owner with written handling instructions regarding such removal. In the event that Artist is deceased or unable to otherwise accept notice of the Artwork's removal or relocation,

Owner shall provide such notice to Artist's legal representative who shall be bound by the terms and conditions of this Agreement.

c. If Owner reasonably determines that the Artwork presents an imminent hazard to the public, other than as a result of Owner's failure to maintain and preserve the Artwork in accordance with Artist's written instruction, Owner may authorize the removal or relocation of the Artwork without the prior notice to Artist.

d. This Article 7.2 is intended to replace and substitute for the rights of Artist under the Visual Artists' Rights Act to the extent that any portion of this Agreement is in direct conflict with such rights. The Parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.

#### **ARTICLE 8. ARTIST AS AN INDEPENDENT CONTRACTOR**

Artist agrees to perform all work under this Agreement as an independent contractor and not as an employee, representative, or agent of Owner. Artist acknowledges and agrees that Artist shall not hold herself out as an authorized agent of Owner with the power to bind Owner in any manner. Artist shall provide Owner with Artist's Tax Identification number and any proof of such number as requested by Owner in the reasonable course of business.

#### **ARTICLE 9. ASSIGNMENT OF ARTWORK**

The performance and delivery of the Artist's Services are personal to Artist and shall not be assigned or transferred by Artist except as provided in this Article 9. Any attempt by Artist to assign this Agreement or any rights, duties or obligations of Artist arising hereunder shall be void and of no effect without the prior written consent of Owner. Owner may assign or transfer any and all of Owner's rights and obligations under this Agreement, if ownership of the Site is transferred by Owner.

#### **ARTICLE 10. TERMINATION**

a. Either Party may terminate this Agreement without recourse by the other Party hereto if performance by such terminating Party is rendered impossible or impracticable for reasons beyond such terminating Party's reasonable control including, but not limited to, acts of nature; war or warlike operation; superior governmental regulator or control; public emergency; or strike or other labor disturbances. Notice of termination of this Agreement shall be given to the non-terminating Party in writing not less than ten (10) days prior to the effective date of termination. In the event of such termination permitted under this Article 10(a) hereof, Owner shall pay Artist for the materials and services provided by Artist to or for the benefit of Owner under this Agreement as of the date of such termination hereunder as of the date of such termination in accordance with the terms and conditions of this Agreement and Artist shall deliver to Owner the

drawings, designs, maquettes and model(s) prepared and submitted or prepared for submission to Owner as of such date of termination.

b. Owner may terminate this Agreement without cause upon thirty (30) days written notice to Artist. In such event, Owner shall pay Artist for the materials and services provided by Artist to or for the benefit of Owner hereunder in accordance with the terms of this Agreement as of the date of such termination. Artist shall deliver to Owner the drawings, designs, maquettes and model(s) prepared and submitted or prepared for submission to Owner by Artist under this Agreement as of such date of termination.

c. If either Party to this Agreement shall fail to fulfill in a timely and proper manner, or otherwise violates any of the covenants, agreements or conditions material to this Agreement, the other Party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting Party of its intent to terminate specifying in reasonable detail the grounds for termination. The defaulting Party shall have fifteen (15) days following the date of the notice to cure the default or defaults identified in such notice of default. If such default or defaults are not timely cured, this Agreement shall terminate upon written notice to the defaulting Party from the non-defaulting Party. In such event, Artist shall deliver to Owner all of the drawings, design, maquettes, models and other work prepared by Artist in connection with the Artwork as of such effective date of termination.

d. If Artist defaults or is unable to perform her obligations hereunder for any reason including death or incapacity), Artist or Artist's representative shall immediately notify Owner of such default or inability to so perform and shall upon written notice to Owner, forthwith terminate this Agreement. Artist or Artist's representative shall return to Owner all funds provided to Artist by Owner in excess of the unpaid expenses directly related to the design, construction, fabrication, transportation, delivery and installation of the Artwork previously incurred by Artist, and Artist or Artist's representative shall provide an accounting of such expenses to Owner. All finished and unfinished drawings, sketches, designs, maquettes, photographs, models and other work products prepared and submitted to or prepared for submission to Owner by Artist under this Agreement as of such termination date shall be delivered to Owner and Owner shall have the right to complete the Artwork with no further obligation to Artist or Artist's representative hereunder.

#### **ARTICLE 11.NOTICES AND DOCUMENTS**

Notices under this Agreement shall be delivered personally, through the [registered or certified mail, return receipt requested] mail, postage prepaid, or by nationally recognized overnight delivery service (next day delivery guaranteed) to the addresses stated below, or to any other address as may be noticed by a Party:

For Owner:

City of Fort Wayne, Indiana  
Community Development Division  
ATTN: Sherese Fortriede  
200 East Berry Street, Suite 320  
Fort Wayne, Indiana 46802

For Artist:

RE:site Studio  
ATTN: Norman Lee  
5615 Briarbend  
Houston, TX 77096

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after the postmarked date.

#### **ARTICLE 12.WAIVER**

The Parties agree that a waiver of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

#### **ARTICLE 13.CONFLICT OF INTEREST**

Artist and Owner shall avoid all conflicts of interest or appearance of conflicts of interest in the performance of this Agreement

#### **ARTICLE 14.ARBITRATION**

If during the creation of the Artwork its transportation, delivery, installation and subsequent existence, either Party breaches this Agreement, each Party agrees to submit to arbitration upon the request of the other Party provided that the breach is not timely cured hereunder.

If an ambiguity or dispute arises regarding this Agreement which the Parties cannot resolve, or a dispute arises the Parties shall submit to arbitration. The Parties shall select the arbitrator who shall be professionally experienced in arbitrating the matter or matters at issue between the Parties. The cost of such arbitration shall be shared equally between the Parties.

Notwithstanding any provision of this Agreement to the contrary, any damage award to a party on account of a Party's breach of this Agreement, with the exception of Artist's duty under Article 5 to procure and maintain insurance, shall not exceed an amount equal to the total contract sum payment in Exhibit F.

All arbitrations to which the Parties shall submit under this Agreement shall be held in the City of Fort Wayne, Indiana.

**ARTICLE 15.AMENDMENT**

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by the Parties hereto.

**ARTICLE 16.CONFLICT WITH INDIANA LAW**

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction or arbitration panel to be in conflict with the laws, rules and/or regulations of the United States or the State of Indiana, invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby to the extent the remainder of the terms, covenants, conditions or provisions of this Agreement are capable of execution.

**ARTICLE 17.CHOICE OF LAW**

This contract shall be governed by the laws of the State of Indiana both as to interpretation and performance.

**ARTICLE 18.ENTIRE AGREEMENT**

This Agreement, including the exhibits, comprises all of the covenants, promises, agreements and conditions between the Parties. No verbal agreements or conversation between the Parties prior to the execution of this Agreement shall affect or modify and of the terms or obligation.

CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Garry Morr

  
\_\_\_\_\_  
Norman Lee

\_\_\_\_\_  
Date

11/19/2021  
\_\_\_\_\_  
Date

("OWNER")

("ARTIST")

EXHIBIT A

DESCRIPTION OF PROJECT

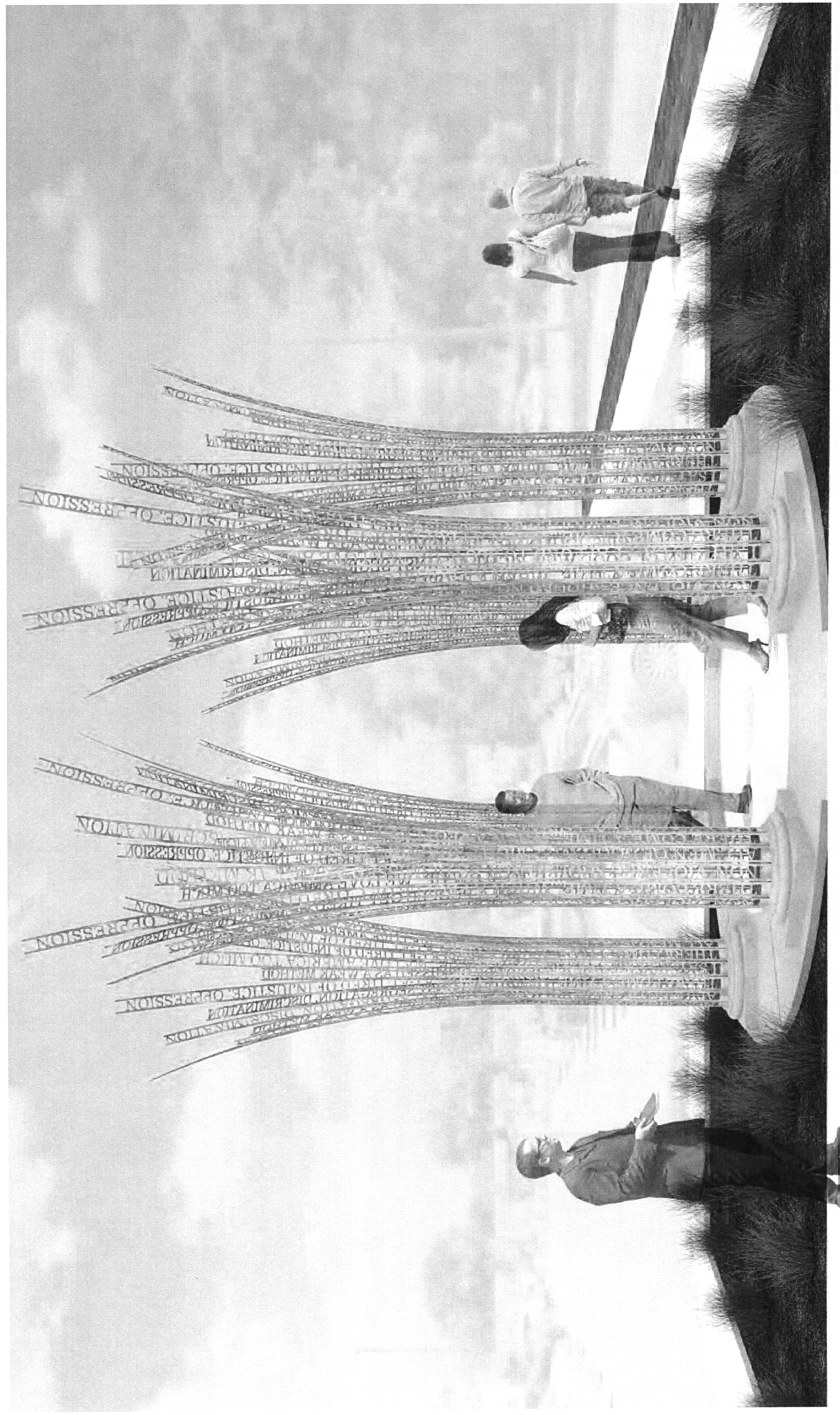
# PILLARS OF HOPE AND JUSTICE

DR. MARTIN LUTHER KING, JR. PUBLIC MONUMENT | PROPOSAL

RE:site | Shane Allbritton and Norman Lee



The monument features six pillars set in a circular configuration around a stone or concrete plaza. Each pillar will evoke both ancient architectural pillars and growing reeds of papyrus that emerge from the ground and bend outwards at the top. The organic form of papyrus reeds evokes Dr. Martin Luther King's vision of nonviolent resistance.



*Pillars of Hope and Justice* commemorates the historic visit of Dr. Martin Luther King, Jr. to Fort Wayne in June 1963, where he shared his vision of nonviolent resistance. The monument features six pillars set in a circular configuration around a stone or concrete plaza. Each pillar will evoke both ancient architectural pillars and growing reeds of papyrus that emerge from the ground and bend outwards at the top. The organic form of papyrus reeds evokes Dr. Martin Luther King's vision of nonviolent resistance. The sculptural, steel forms are waterjet cut with words from King's 1963 speech in Fort Wayne. The waterjet words dramatically arc over visitors, evoking King's statement, "The arc of the moral universe is long, but it bends toward justice."

The form resonates at multiple levels with Dr. Martin Luther King's vision of nonviolent resistance, bringing together ancient and contemporary. This contemporary sculpture gestures towards the ancient tradition of pillars carved in the form of papyrus reeds, originating four thousand years ago in Egypt. For Dr. King, the six pillars of nonviolent resistance were defined in opposition to the values of Egypt as told in the Exodus story. In the Hebrew and Christian scriptures, reeds are a metaphor of both *authority and vulnerability*: the tension at the heart of Dr. King's vision of social change. As Dr. King told Fort Wayne on June 5, 1963, "Non-violence should not be dismissed as a weak method. It works on the conscience. It enables us to stand before our most bitter opponents and meet their physical form with soul force." The papyrus reed was one of the first methods humanity used to record the spoken word, starting in 3,000 B.C.E., just as this memorial serves to preserve this historic speech for future generations.

The organic form of the reed honors Dr. Martin Luther King's relationships with clergy who worked for civil rights in Fort Wayne, as well as Protestant, Catholic, Jewish, and secular civic leaders who hosted the visit. The reed resonates with powerful tradition of Black preaching on the "New Exodus," drawing on the prophet Isaiah. In Isaiah 42:1-4, the reed is a metaphor for liberating leadership driven by compassion: "Here is my servant, whom I uphold...I was put my Spirit in him, and he will bring justice to the nations...A bruised reed he will not break, and a smoldering wick he will not snuff out. In faithfulness he will bring forth justice; he will not falter or be discouraged till he establishes justice on earth." This book Isaiah was deeply meaningful to Dr. King and many other Fort Wayne faith leaders, including his mentor Rev. Pius Barbour and fellow National Baptist minister Rev. Clyde Adams.

Finally, the organic form speaks to grassroots democracy in Indiana, America's Heartland, and the service of all local civic leaders who sowed seeds for Dr. King's visit and reaped the harvest after he departed, in schools, business, and public life. Dr. King's vision of nonviolent revolution was never about his own leadership, but about inspiring the leaders who carried on his legacy after the March on Washington and his assassination in 1968. The six pillars of nonviolent resistance must be continually taught and passed down across the generations.

When viewed the pillars are viewed together and from afar, the arced gestures echo the lambrequin arches of the nearby USF Performing Arts Center, creating a dialogue with the building. At the center of the circular plaza is interpretive text that details MLK's appearance in Fort Wayne and his speech at Scottish Rite Auditorium on June 5, 1963 and the meaning of the six sculptural pillars. Within each pillar is a light that dramatically illuminates the structures at night, creating six radiant beacons of hope and justice. The arc of the moral universe is long, and we pass on the legacy of Dr. Martin Luther King to "bend the arc" for justice in our time.

As artists, we draw on a site's cultural landscape to generate strong narrative concepts that resonate with local meanings, but also transform and transcend the familiar. Our work is about making connections between themes that are not typically seen as related, but in fact have deep resonances that converge in a site-specific context. Our proposal for the Dr. Martin Luther King Jr. Public Monument, *Pillars of Hope and Justice*, embodies this approach.

## Inspiration | Six Pillars of Nonviolent Resistance

*Pillars of Hope and Justice* commemorates the historic visit of Dr. Martin Luther King, Jr. to Fort Wayne in June 1963, where he shared his vision of nonviolent resistance. Our concept resonates at multiple levels with Dr. Martin Luther King's vision of nonviolent resistance, bringing together ancient and contemporary. We were very inspired by King's Six Pillars of Nonviolent Resistance and the Ancient Greek Notion of "Agape."

1. Nonviolence is a way of life for courageous people. It is active nonviolent resistance to evil.
2. Nonviolence seeks to win friendship and understanding. The end result of nonviolence is redemption and reconciliation.
3. Nonviolence seeks to defeat injustice, not people. Nonviolence recognizes that evildoers are also victims.
4. Nonviolence holds that suffering can educate and transform. Nonviolence willingly accepts the consequences to its acts.
5. Nonviolence chooses love instead of hate. Nonviolence resists violence to the spirit as well as the body. Nonviolence love is active, not passive. Nonviolence love does not sink to the level of the hater. Love restores community and resists injustice. Nonviolence recognizes the fact that all life is interrelated.
6. Nonviolence believes that the universe is on the side of justice. The nonviolent resister has deep faith that justice will eventually win.

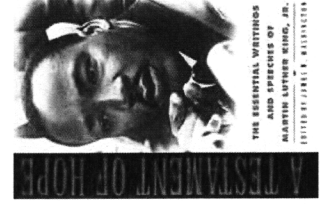
## An Experiment in Love: Martin Luther King, Jr. on the Six Pillars of Nonviolent Resistance and the Ancient Greek Notion of 'Agape'

"Along the way of life, someone must have sense enough and morality enough to cut off the chain of hate. This can only be done by projecting the ethic of love to the center of our lives."

BY MARIA POPOVA

Although Dr. Martin Luther King, Jr. (January 15, 1929–April 4, 1968) used Christian social ethics and the New Testament concept of "love" heavily in his writings and speeches, he was as influenced by Eastern spiritual traditions, Gandhi's political writings, Buddhism's notion of the interconnectedness of all beings, and Ancient Greek philosophy. His enduring ethos, at its core, is nonreligious — rather, it champions a set of moral, spiritual, and civic responsibilities that fortify our humanity, individually and collectively.

Nowhere does he transmute spiritual ideas from various traditions into secular principles more masterfully than in his extraordinary 1958 essay "An Experiment in Love," in which he examines the six essential principles of his philosophy of nonviolence, debunks popular misconceptions about it, and considers how these basic tenets can be used in guiding any successful movement of nonviolent resistance. Penned five years before his famous *Letter from Birmingham City Jail* and exactly a decade before his assassination, the essay was eventually included in the indispensable *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.* ([public library](#)) — required reading for every human being with a clicking

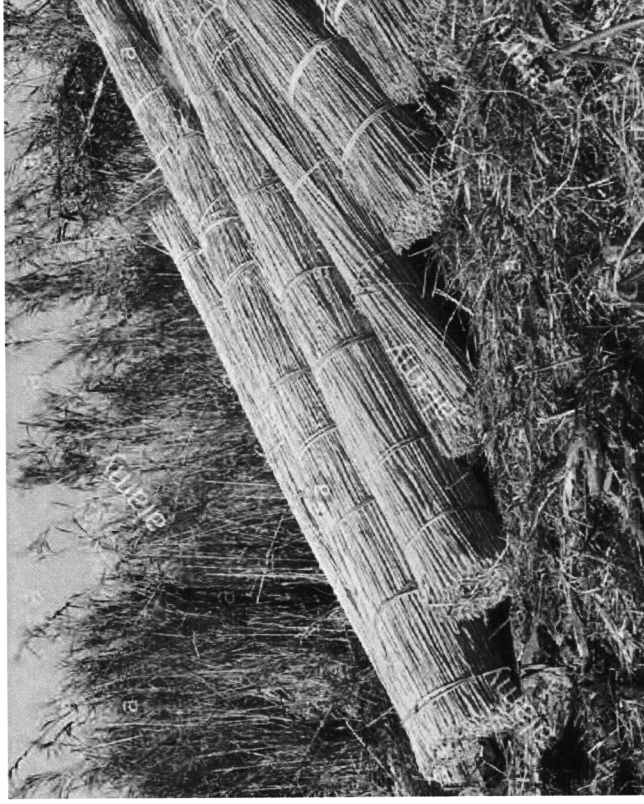


mind and a ticking heart.

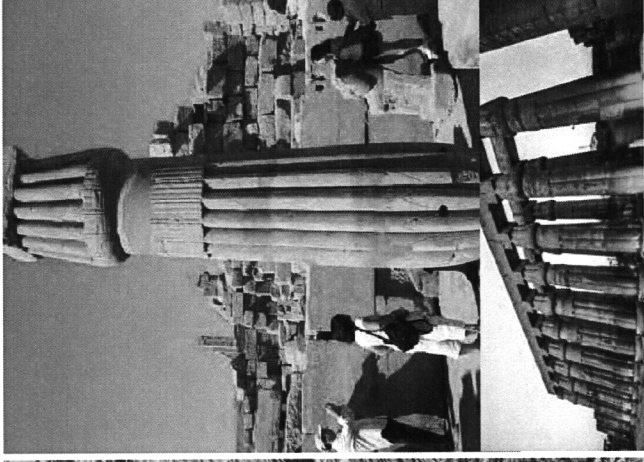
## Inspiration | Pillar Forms

3

This contemporary sculpture gestures towards the ancient tradition of pillars carved in the form of papyrus reeds, originating four thousand years ago in Egypt. For Dr. King, the six pillars of nonviolent resistance were defined in opposition to the values of Egypt as told in the Exodus story. In the Hebrew and Christian scriptures, reeds are a metaphor of both *authority and vulnerability*: the tension at the heart of Dr. King's vision of social change. As Dr. King told Fort Wayne on June 5, 1963, "Non-violence should not be dismissed as a weak method. It works on the conscience. It enables us to stand before our most bitter opponents and meet their physical form with soul force."



Papyrus Reed Bundles



Egyptian Pillars



Greek Influenced Pillars

## Inspiration | *Papyrus Reed Symbolism and the Winds of Change*

The reed resonates with powerful tradition of Black preaching on the “New Exodus,” drawing on the prophet Isaiah. In Isaiah 42:1-4, the reed is a metaphor for liberating leadership driven by compassion: “Here is my servant, whom I uphold...I was put my Spirit in him, and he will bring justice to the nations...A bruised reed he will not break, and a smoldering wick he will not snuff out. In faithfulness he will bring forth justice; he will not falter or be discouraged till he establishes justice on earth.” This book Isaiah was deeply meaningful to Dr. King and many other Fort Wayne faith leaders, including his mentor Rev. Pius Barbour and fellow National Baptist minister Rev. Clyde Adams. The organic form of the reed honors Dr. Martin Luther King’s relationships with clergy who worked for civil rights in Fort Wayne, as well as Protestant, Catholic, Jewish, and secular civic leaders who hosted the visit.



Papyrus Reed Bundles



Papyrus Plant

## Inspiration | Papyrus Reed Symbolism and Memory

The papyrus reed was one of the first methods humanity used to record the spoken word, starting in 3,000 B.C.E., just as this memorial serves to preserve this historic speech for future generations.



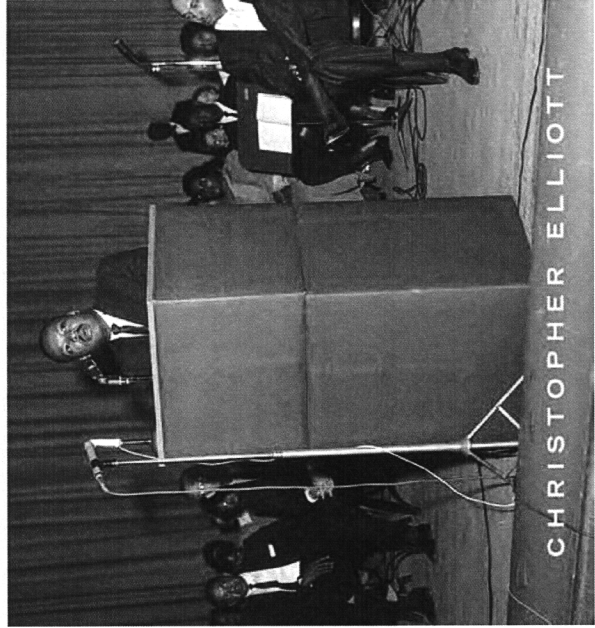
Papyrus Paper

Indiana News Broadcast

The design's organic form speaks to grassroots democracy in Indiana, America's Heartland, and the service of all local civic leaders who sowed seeds for Dr. King's visit and reaped the harvest after he departed, in schools, business, and public life. Dr. King's vision of nonviolent revolution was never about his own leadership, but about inspiring the leaders who carried on his legacy after the March on Washington and his assassination in 1968. The six pillars of nonviolent resistance must be continually taught and passed down across the generations.

# BEFORE THE DREAM

MARTIN LUTHER KING'S 1963 SPEECH, AND CIVIL RIGHTS STRUGGLES IN FORT WAYNE, INDIANA



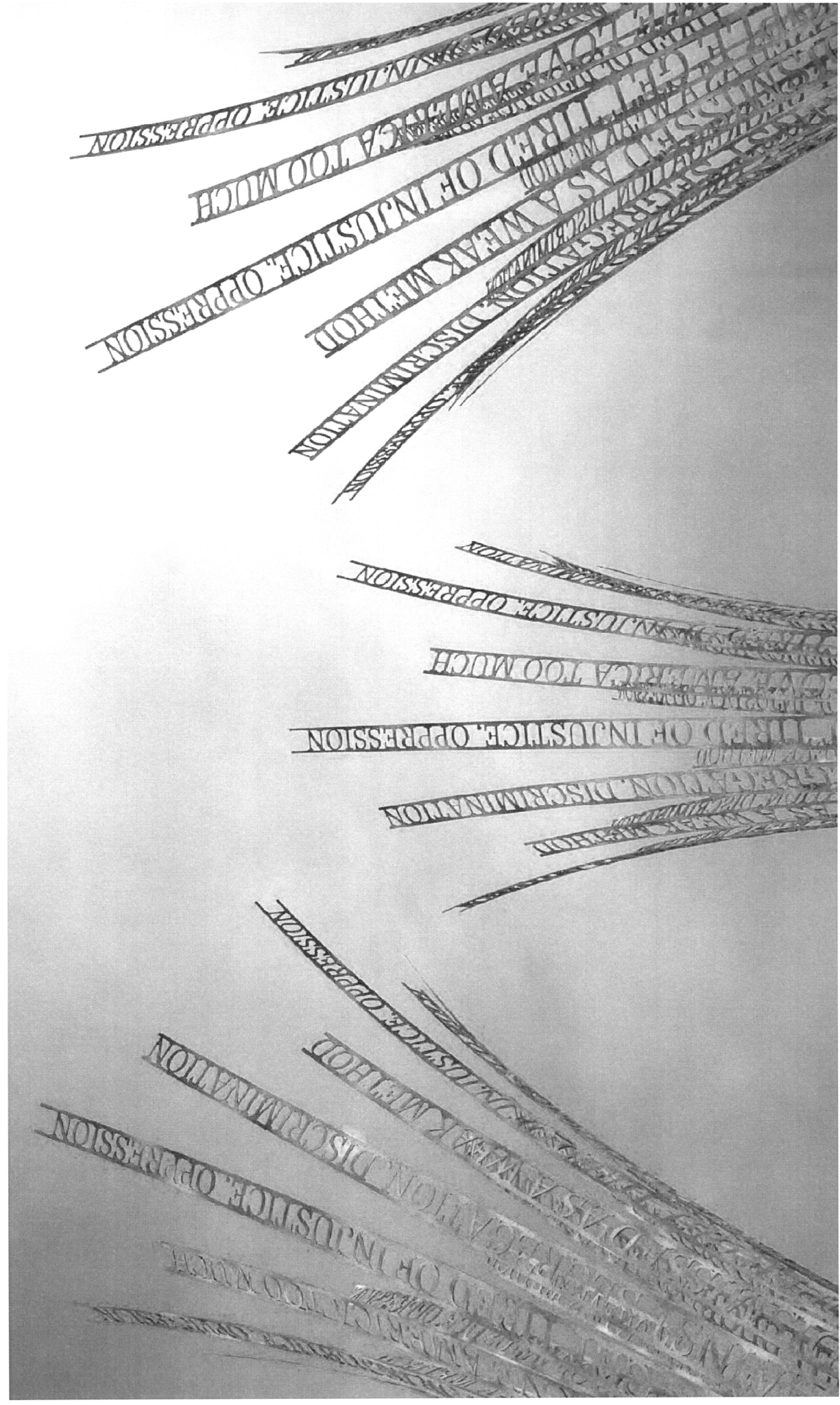
Corn Field



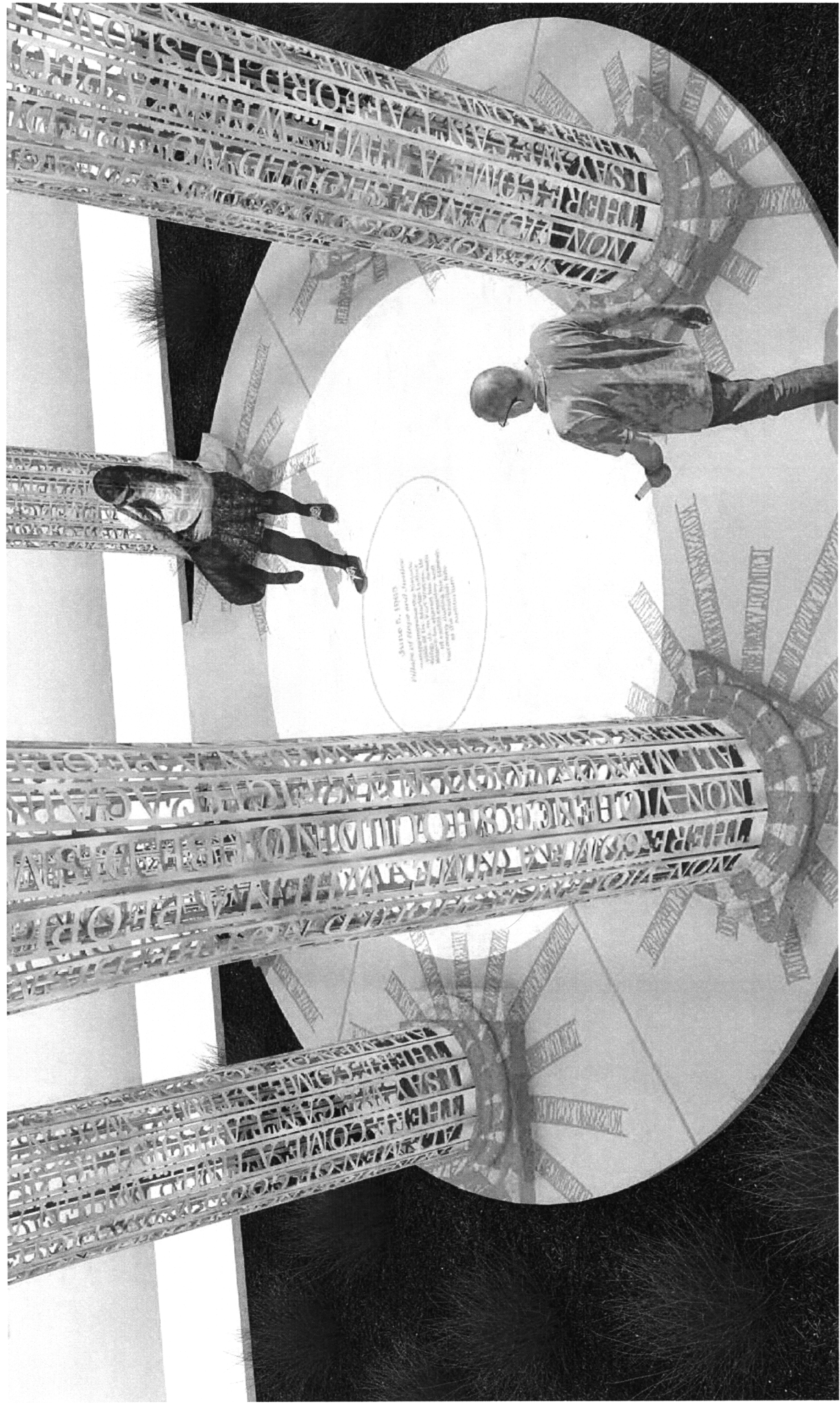
Corn Harvest

**EXHIBIT B**  
**PRELIMINARY DESIGN/SCHEMATIC**

The sculptural, steel forms are waterjet cut with words from King's 1963 speech in Fort Wayne. The waterjet words dramatically arc over visitors, evoking King's statement, "The arc of the moral universe is long, but it bends toward justice."



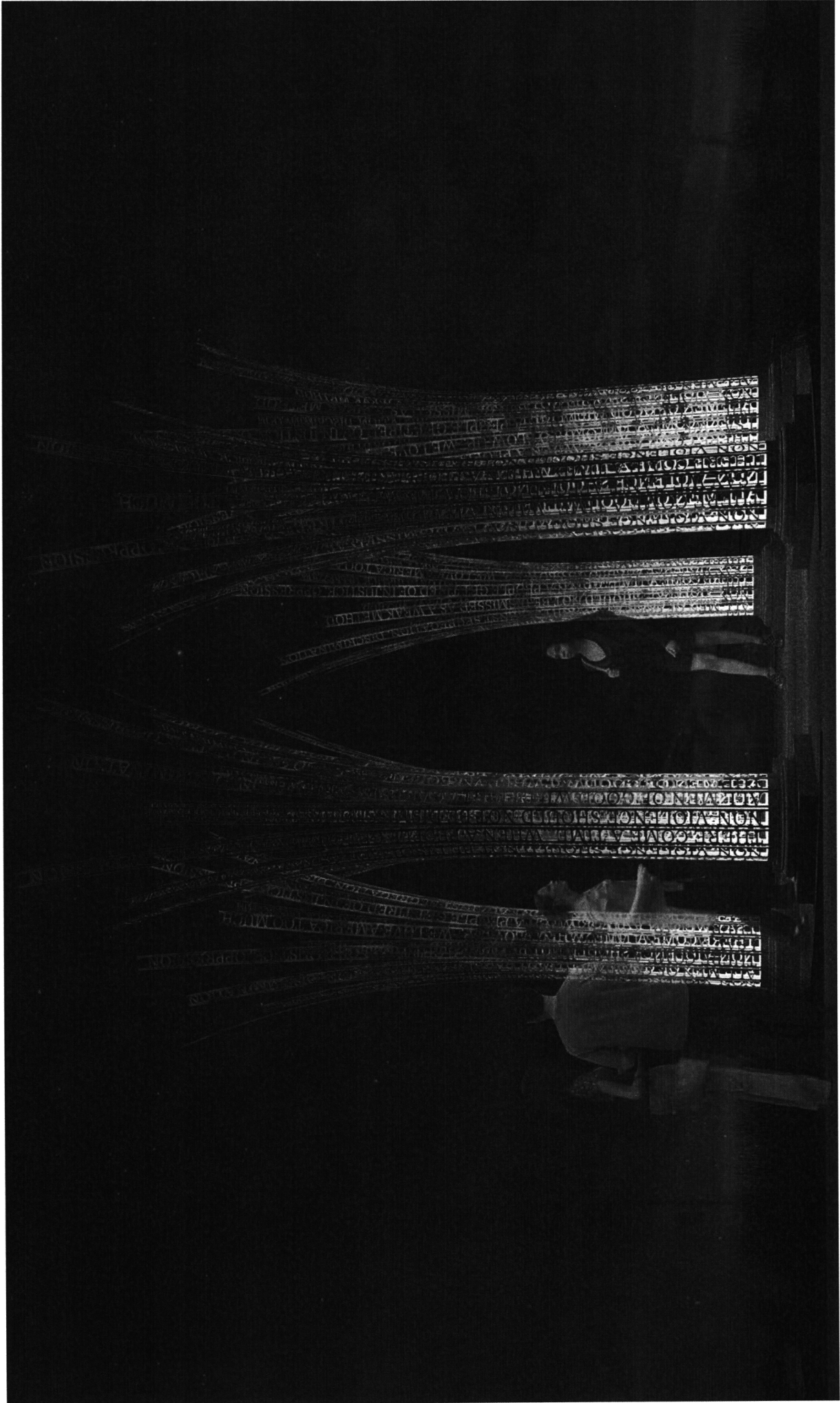
At the center of the circular plaza is interpretive text that details MLK's appearance in Fort Wayne and his speech at Scottish Rite Auditorium on June 5, 1963 and the meaning of the six sculptural pillars.



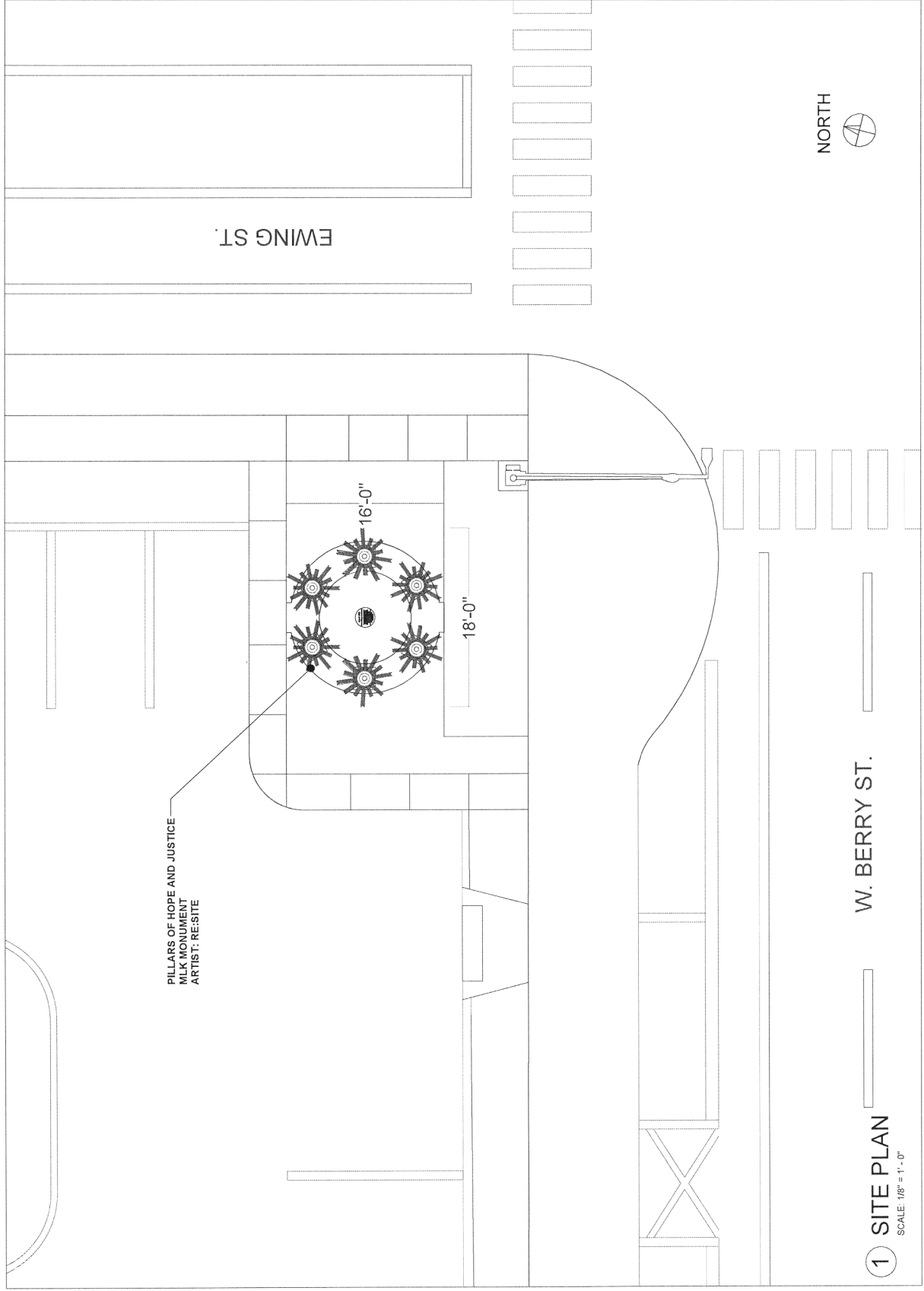
When viewed the pillars are viewed together and from afar, the arced gestures echo the lambrequin arches of the nearby USF Performing Arts Center, creating a dialogue with the building.



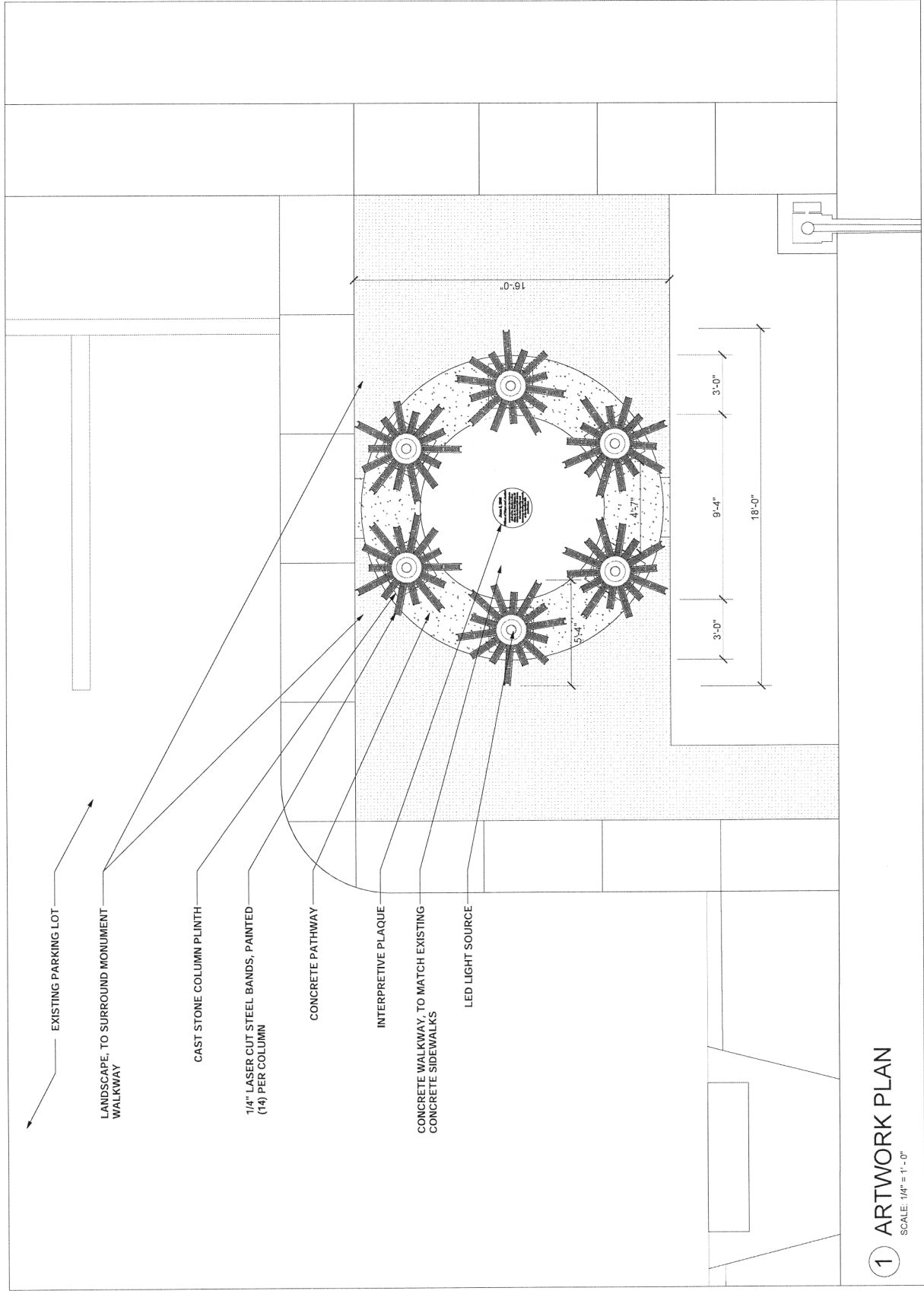
Within each pillar is a light that dramatically illuminates the structures at night, creating six radiant beacons of hope and justice. The arc of the moral universe is long, and we pass on the legacy of Dr. Martin Luther King to "bend the arc" for justice in our time.

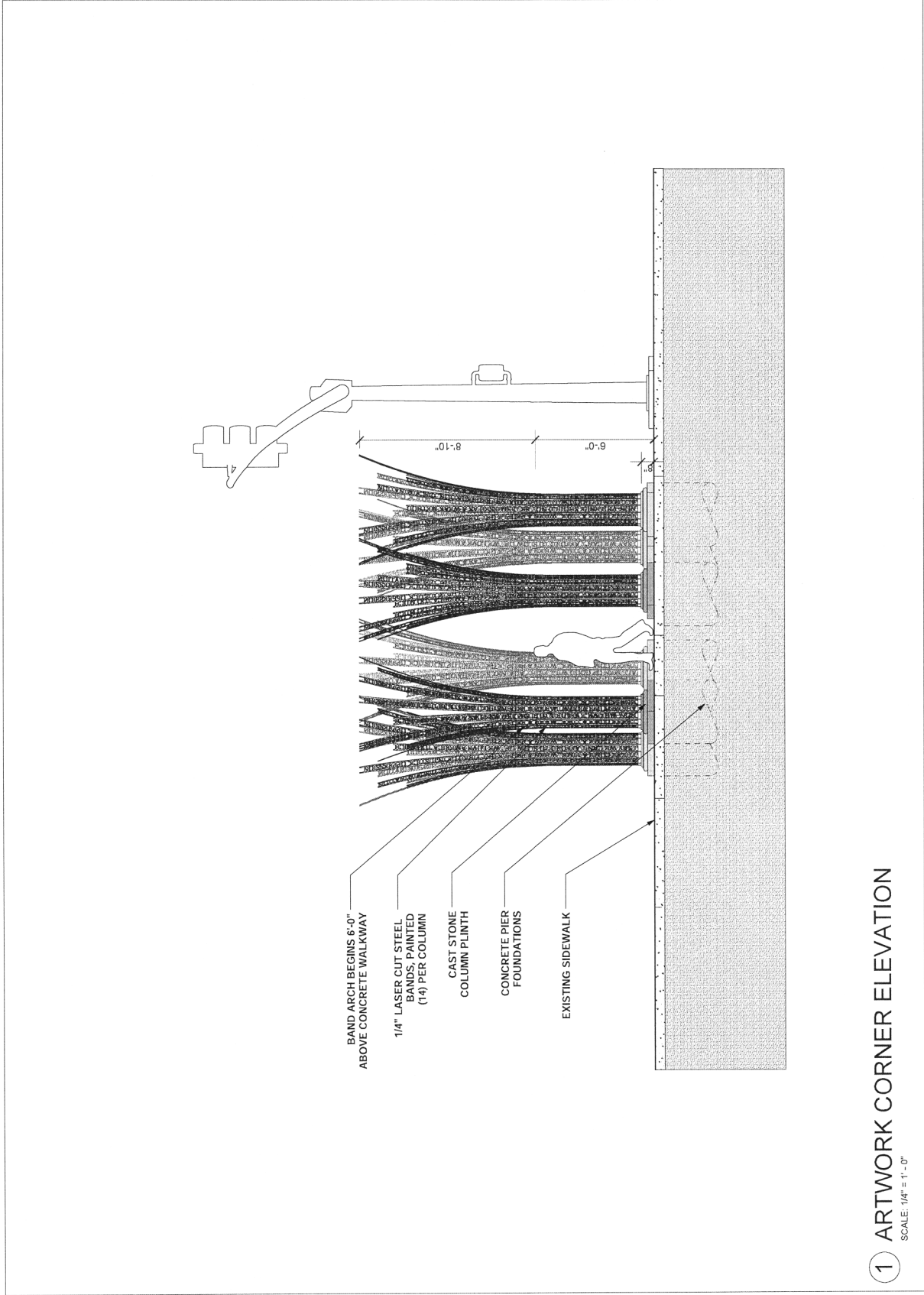


# Site Plan



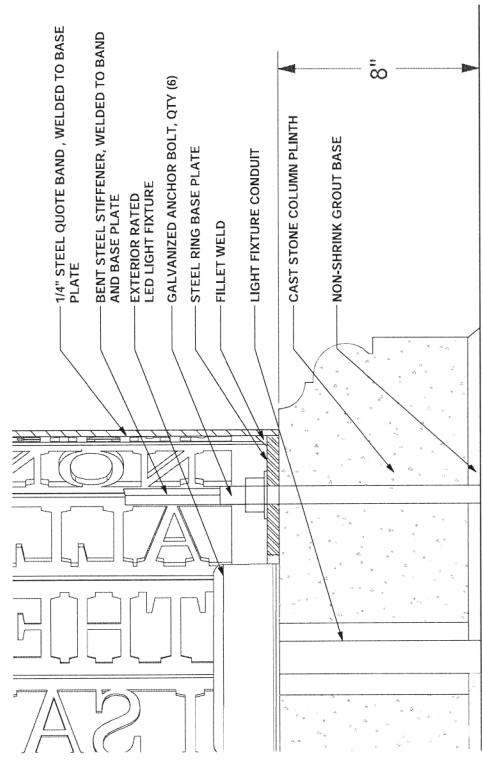
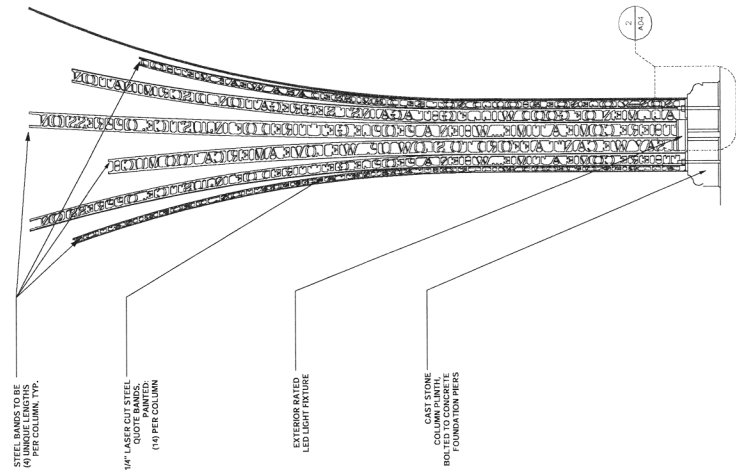
# Detailed Site Plan





## Fabrication

*Pillars of Hope and Justice* is composed of six unique pillars, each set on a cast stone plinth resembling a classical column. The plinth block will measure approximately 26" square with a circular profile transitioning to the column. Each column is composed of 14 individual "flutes" which are approximately 4" wide and contain the text of Dr. Martin Luther King's famous speech delivered near this site. The flutes are discretely welded together up to a height of approximately 8 feet, and then flare outward like shafts of papyrus bundles to a total height of approximately 14 feet. Each fluted section is cut from 1/4" thick steel, subject to review with our structural engineer. The columns will be fully welded and delivered as one piece (6 total), and will be finished with an industrial 3 coat urethane paint system, consisting of a zinc-based primer, a color coat, and a clear UV resistant topcoat. A small access hatch at the base of the columns will be hidden amongst the flutes and allow wrench access to a base plate flange that connects the column through the stone plinth to 6 embedded 3/4" galvanized anchor bolts. The access hatch will also allow for the installation and maintenance of 6 LED up light waterproof fixtures mounted to the stone plinth, pointing straight upward. The color temperature and beam spread of these fixtures will be carefully coordinated with our lighting consultant for optimum dramatic effect.



② COLUMN BASE DETAIL  
SCALE: 3/4" = 1'-0"

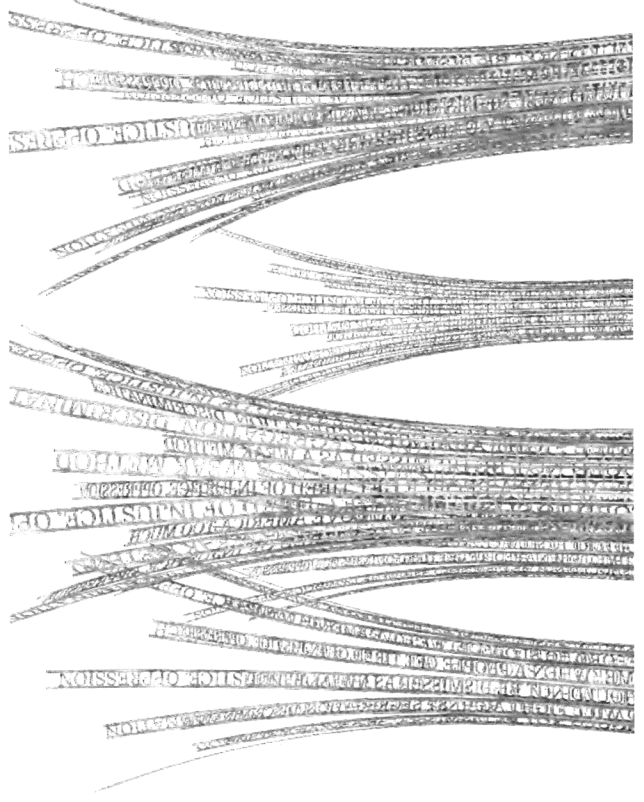
① COLUMN ASSEMBLY SECTION  
SCALE: 3/4" = 1'-0"

③ SAMPLE STEEL BANDS  
NTS

WE CAN'T AFFORD TO SLOW UP. WE LOVE AMERICA TOO MUCH.

The six *Pillars of Hope and Justice* will each rest a concrete poured footing. The design of this flooring (typically either a drilled shaft or spread footing) will depend upon the recommendations of the geotechnical report and out structural engineer. We will request a geotechnical report from previous work on this site if this is available. Each of the 6 footings will have 4-6 galvanized 3/4" diameter anchor bolts embedded, and accurately located using a CNC cut template. The anchor bolts and template will be shipped to our local concrete subcontractor prior to pouring, and we will send a project management representative to ensure accurate placement and layout. We would like to ask that the city or university prepare the site by removing plants, irrigation, and decorative rocks, which can be replaced or relocated outside of the circular artwork plaza.

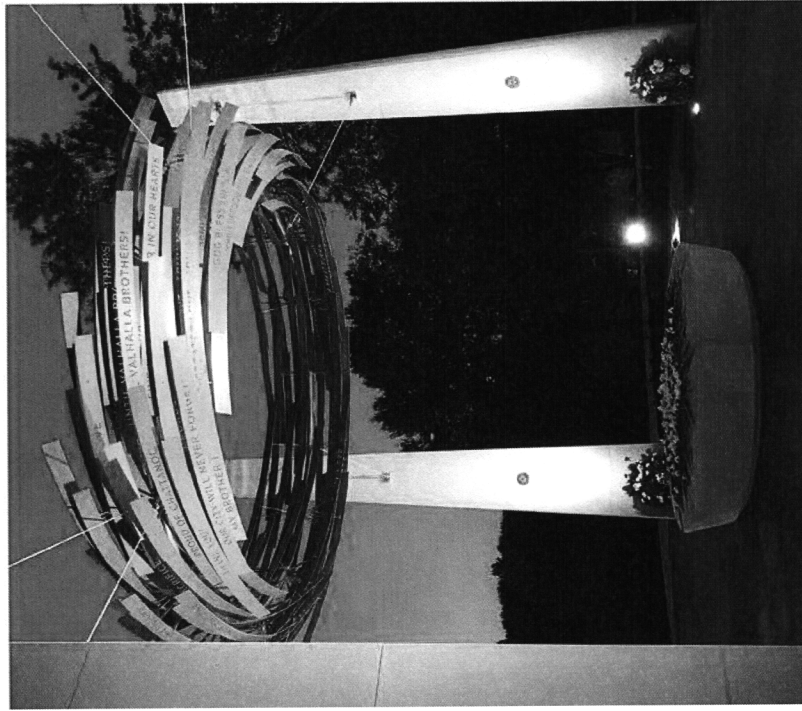
After pouring 6 footings, concrete team will return to pour a 15'-4" diameter circular plaza, which will intersect the existing sidewalk and back of parking lot curb with a 36" wide tangent pathway. The space between the columns is approximately 5 feet. The 6" tall by 26" stone plinths, will each be set over the anchor bolts, and be shimmed level with a 1/4-1/2" caulked joint at the plaza surface. Each plinth will also have a hole in the center for six electrical conduits. These 6 conduits will tie to LP-1 as indicated on the electrical plan provided and will replace the (2) existing LED lights currently on the site. The new LED fixtures will closely match the power draw of the existing 2 fixtures, and this work will be coordinated with the electrical engineer of record for the parking lot project and performed by a local licensed electrician. The columns will be placed with the access hatch removed to provide access to tighten washers and nuts over the 3/4" anchor bolts and conduit. After column placement, we will touch up paint if needed, and the electrical will install the 6 led up light fixtures and replace the access hatch.



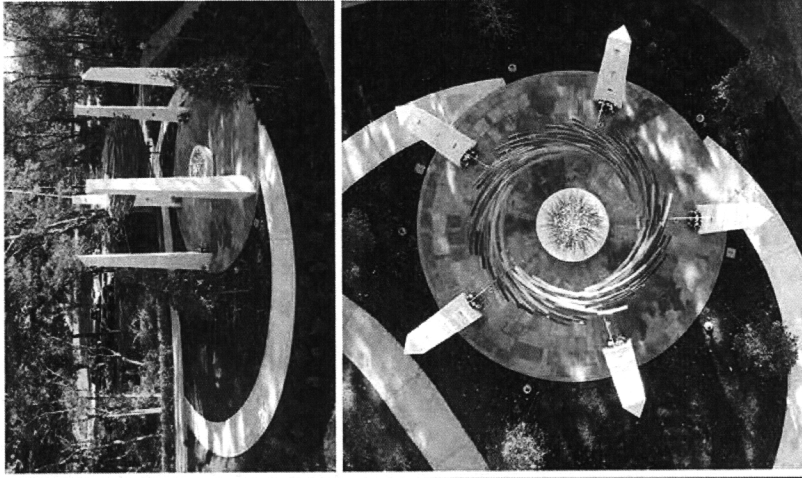
## Materials and Maintenance

17

Regular maintenance will be minimal and consists of an annual light -over wash of the plaza surface. Every 10-15 years, as needed, it is recommended that the clear UV topcoat be reapplied to limit fading of the paint. LED light fixtures are likely controlled by an existing photocell and/or timer and should last approximately 10 years without replacement.



*Wreath of Honor, Fallen Five Memorial*  
By RE:site



Reference cut steel letters

## Community Engagement Plan

18

We extensive experience with community engagement and it is an important part of our design process. In gathering input from different groups within a community, we discover that many of the perspectives are dramatically different. But when the perspectives intersect, they intersect in very unexpected and interesting ways. It is these intersection points that become the inspirational springboards for our work. Here is a community engagement plan that can be adapted for this project:

### Orientation & Research

Complete site visit and meetings with Project Team and community representatives. Independently research the site and project. Complete written report on findings and initial conceptual approach.

---

### Artwork Concept Proposal

Based on the information and input received, develop a proposal illustrating the initial concept for the Artwork. Artwork concept should be developed sufficiently to determine feasibility within the context of the site and the budget. Upon approval of the Artwork concept the Artist will receive a notice to proceed to further design development.

Artwork Concept Proposal should include a narrative and images that clearly illustrate the Artwork placement within the site, content, materials, and preliminary plan for execution. Proposal shall be suitable for a wide range of audiences.

---

### Refined Artwork Concept

Taking into account feedback received, Artist will continue to develop the conceptual design as approved. Artist will submit visual and written proposal for realization of the unique Artwork into the design. Artwork concept presentation materials suitable for public exhibition may be created, along with sample materials and appropriate mock-ups.

Complete refined proposal with a more developed visual description of the Artwork, placement, materials as well as draft engineering, attachment and electrical guidance drawings for the Artwork. This could include mock-ups, 3D models, or material samples.

---

### Final Artwork Design

The final design deliverable will include a fabrication and installation work plan, along with a final fabrication and installation budget, that will be used as a baseline to determine the need for materials and labor increases to the budget at the time the Artwork moves into the fabrication and implementation phase.



**EXHIBIT C**  
**COMPLETION MILESTONE AND DELIVERABLES SCHEDULE**

**FORT WAYNE DR. MARTIN LUTHER KING JR. PUBLIC MONUMENT  
ART FABRICATION AND INSTALLATION**

**SCHEDULE - \_\_\_\_\_ 2022**

**JANUARY - SEPTEMBER 2022**

Design Development  
Community Engagement

**SEPTEMBER 2022- JANUARY 2023**

Fabrication Documentation  
Construction documents, permitting

**JANUARY - April 2023**

Fabrication/Assembly

**MARCH - MAY 2023**

Site Work

**MAY 2023**

Shipping  
Onsite assembly and Installation  
Punch List/ Commissioning  
Project Management

**EXHIBIT D**

**INSURANCE**

Supplier shall maintain in full force and effect during the performance of the Services the following insurance coverage; provided, however, that if a High Risk Insurance Attachment is attached hereto, the requirements of the High Risk Insurance Attachment shall be substituted in lieu of the following requirements:

- |                                    |  |
|------------------------------------|--|
| (a) Worker's Compensation          | per statutory requirements *                             |
| (b) General Liability              | \$1,000,000 minimum per occurrence/\$2,000,000 aggregate |
| (c) Automobile Liability           | \$1,000,000 minimum per occurrence                       |
| (d) Products Liability             | \$1,000,000 minimum per occurrence                       |
| (e) Completed Operations Liability | \$1,000,000 minimum per occurrence                       |

\* Independent Contractors that hire others and indicate that they do NOT carry workers comp insurance must submit a valid Clearance Certificate approved by the Worker's Compensation Board of Indiana.

The Certificate of Insurance must show the City of Fort Wayne, its Divisions and Subsidiaries as an Additional Insured and a Certificate Holder, with 30 days notification of cancellation or non-renewal.

All Certificates of Insurance should be sent to the following address:  
City of Fort Wayne Purchasing Department  
200 East Berry Street, Suite 490  
Fort Wayne, IN 46802

## EXHIBIT E

### BUDGET

DESCRIPTION	VENDOR	CONTROL ESTIMATE
<b>ARTIST FEE</b>	RE:site	\$50,000
<b>DESIGN AND DOCUMENTATION</b>	METALAB	\$20,000
<b>PROJECT MANAGEMENT</b>	METALAB	\$36,000
<b>STRUCTURAL ENGINEERING</b>	TBD	\$3,000
<b>SCULPTURE</b> A36 Steel Column Structures	TBD	\$25,896
<b>SURFACE FINISH</b> 3 Coat Industrial Polyurethane Finish	TBD	\$12,000
<b>COLUMN BASES</b> Cast Stone Plinths: 26" Square, 8" Height	TBD	\$6,000
<b>Electrical Work</b> Electrical Service and Lighting	By Others	\$10,000
<b>SITE PREPARATION</b> Grading, Foundation, Plaza Finish	TBD	\$30,000
<b>LANDSCAPE</b> Landscaping, Irrigation	By Others	\$0
<b>INTERPRETIVE PLAQUE</b> Steel or Stone Descriptive Plaque	TBD	\$3,000
<b>HARDWARE / MISC.</b>	TBD	\$2,000
<b>SHIPPING &amp; TRANSPORTATION</b> Artwork Transport and Crating	TBD	\$8,000
<b>ASSEMBLY / INSTALLATION</b>	TBD	\$25,000
<b>TRAVEL</b>	TBD	\$5,000
	<b>FABRICATION COST</b>	<b>\$235,896</b>
	Contingency	\$14,104
	<b>PROJECT BUDGET</b>	<b>\$250,000</b>

## EXHIBIT F

### FORT WAYNE DR. MARTIN LUTHER KING JR. PUBLIC MONUMENT ART FABRICATION AND INSTALLATION

#### Payment Schedule Revised 10 AUGUST 2021

Owner shall pay Artist a fixed fee of \$250,000.00, which shall constitute full and complete compensation for all the services performed and material furnished by Artist under this Agreement. Payment shall be made in accordance with the following schedule installments, each installment representing full and final payment for all services and material provided prior to payment thereof:

**50K - Payment 1:** Upon final approval and execution of Agreement

**25K - Payment 2:** Upon City's approval of Artist's Final Design

**100K - Payment 3:** Upon City's approval of final construction and related documents

**50K - Payment 4:** Upon completion of fifty percent (50%) of the fabrication of Artwork

**25K - Payment 5:** Upon completion of Artwork Installation

**BILL NO. S-21-12-23**

**REPORT OF COMMITTEE ON FINANCE**

**January 11, 2022**

**Sharon Tucker Chair**

**Russ Jehl Co-Chair**

**All Council Members**

An Ordinance approving an agreement for commission of sculpture for the Martin Luther King, Jr. Public Monument between the City of Fort Wayne, Indiana, by and through its Community Development Division and RE: site Studio, LLC

*Involving a total cost of not to exceed \$250,000.00*

**COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance**

<u>COUNCIL MEMBER</u>	<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>
ARP			
CHAMBERS	(10)		
DIDIER	<i>T. Howard</i>		
ENSLEY			
FREISTROFFER	<i>[Signature]</i>		
HINES	<i>[Signature]</i>		
JEHL	<i>[Signature]</i>		
PADDOCK	<i>[Signature]</i>		
TUCKER	<i>[Signature]</i>		

**LANA R. KEESLING  
CITY CLERK**

*[Signature]*

Public Hearing Date: N/A

Read the first time in full and on motion by Councilperson Hines.

Read the second time by title and referred to the Finance Committee.

Read the third time in full and on motion by Councilperson Tucker, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CHAMBERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TUCKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: January 11, 2022


  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Special Ordinance No. S-21-12-23 on the 11th day of January, 2022

ATTEST:

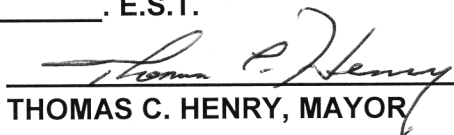
  
 \_\_\_\_\_  
 LANA R. KEESLING  
 CITY CLERK

  
 \_\_\_\_\_  
 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th of January 2022, at the hour of 9:45 o'clock A.M. E.S.T.

  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 12<sup>TH</sup> day of JANUARY 2022, at the hour of 3:00 o'clock PM E.S.T.

  
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 THOMAS C. HENRY, MAYOR

