

AN ORDINANCE 2013-12-05-0849

**AUTHORIZING AN ART INSTALLATION AGREEMENT WITH  
THE BRISCOE WESTERN ART MUSEUM TO PLACE A  
SCULPTURE ON THE RIVER WALK.**

\* \* \* \* \*

**WHEREAS**, on May 19, 2005, City Council approved Ordinance 100921, which authorized the lease of the old Main Library Building, aka the Hertzberg Circus Museum at 106 W. Market Street, to the National Western Art Foundation dba Briscoe Western Art Museum; and

**WHEREAS**, following several years of fundraising, a new structure was built connected to the east side of the former library and significant renovation to the former library was completed; and

**WHEREAS**, in October 2013, the Briscoe Western Art Museum opened to the public; and

**WHEREAS**, in 2012, the Briscoe Western Art Museum proposed installing a bronze sculpture in a River Walk flower bed south of their premises; and

**WHEREAS**, as proposed, Three Longhorns and Vaquero by artist T.D. Kelsey will have a foundation attached to three inch diameter steel piles to provide adequate capacity and minimize the impact to the roots of the nearby cypress tree; and

**WHEREAS**, a certified arborist conducted an inspection of the proposed location to assure the sculpture installation can occur without damage to the adjacent cypress tree; Certified Arborist Jordy Hagen, owner of Tree Wise Men Tree Service, wrote in his report that the proposed three inch diameter pipe would pose no threat to the health of the tree in the correct locations and would not be an invasive process; and

**WHEREAS**, the City is requiring the Briscoe Western Art Museum's insurance to cover any claims associated with the sculpture and its installation, including damage to the cypress tree; and

**WHEREAS**, per the terms of the agreement, the Briscoe Western Art Museum shall be responsible for all costs associated with the sculpture installation and removal, which shall include restoration of the River Walk area to a condition equal to or better than its condition existing prior to installation; and

**WHEREAS**, the Briscoe Western Art Museum will be responsible for repairing damage to the sculpture, removing graffiti, conducting weekly monitoring to remove accumulated dirt and debris, and completing annual washing and surface treatment; and

**WHEREAS**, on July 19, 2013, the San Antonio Public Art Board approved the proposed installation, as did the Historic and Design Review Commission on August 21, 2013; and

**WHEREAS**, the proposed installation period shall be no less than ten years; and

**WHEREAS**, after 10 years, the City may require the sculpture to be removed; **NOW THEREFORE**:

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

**SECTION 1.** The City Manager or her designee or the Interim Director of the Downtown Operations Department or his designee, is authorized to execute an art installation agreement with the Briscoe Western Art Museum to place a sculpture on the River Walk. A copy of the agreement is attached hereto and incorporated herein for all purposes as **Attachment I**.

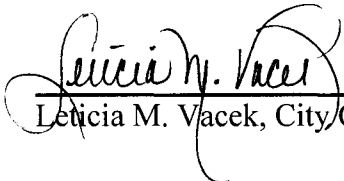
**SECTION 2.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 3.** This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

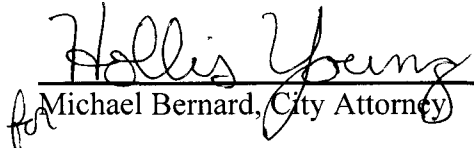
PASSED AND APPROVED this 5th day of December, 2013.

  
M A Y O R  
for Julián Castro

**ATTEST:**

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
for Michael Bernard, City Attorney

<b>Agenda Item:</b>	19 ( in consent vote: 7, 8, 9, 10, 11, 12A, 12B, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 31, 32, 34, 36, 37, 38, 39, 40, 41, 42, 43A, 43B, 43C, 43D )
<b>Date:</b>	12/05/2013
<b>Time:</b>	10:02:38 AM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	An Ordinance authorizing an art installation agreement with the Briscoe Western Art Museum to place a sculpture on the River Walk. [Ed Belmares, Assistant City Manager; Jim Mery, Interim Director, Downtown Operations]
<b>Result:</b>	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x			x	
Joe Krier	District 9		x				
Carlton Soules	District 10		x				

**PUBLIC ART INSTALLATION AGREEMENT**  
**City of San Antonio**

**NAME OF ARTWORK:**

Date: September 20, 2013

Owner: Briscoe Western Art Museum

Contact: Steven Karr, Executive Director

Address: 210 West Market Street

City: San Antonio

State: Texas

Zip: 78212

Telephone: 210-299-4499

E-Mail: [skarr@briscoemuseum.org](mailto:skarr@briscoemuseum.org)

In accordance with the conditions contained herein, the Artwork listed below may be installed on the San Antonio River Walk adjacent to the Briscoe Western Art Museum, to be placed within the landscaped planter located between the Briscoe Western Art Museum's River Walk stairwell and the Bald Cypress Tree.

**INSTALLATION PERIOD:**

Indefinite, provided however, both parties agree that the Artwork shall not be removed prior to ten years after the date of its initial installation.

**ARTIST NAME:**

Artwork Title: Vaquero with Three Longhorns (working title)

Date: TBD

Description: An entirely bronze lifesize sculpture of a vaquero, circa late 1800s, driving 3 longhorns—which depict enduring symbols of the State of Texas, American Southwest and the West. This specific location is significant – marking among the oldest cattle river crossings in the City of San Antonio.

Artist: TD Kelsey.

Approximate Weight: Approximately 2 tons.

Dimensions: (Height x width x depth): Approximately 12 feet long, 6 feet wide and 6 feet tall, installed on a slight slope matching topography of site.

Insurance Value: (US Dollars): TBD

Condition of Artwork: New

**CONDITIONS GOVERNING ART INSTALLATION**

**CARE, PRESERVATION & EXHIBITION**

It is understood by the Owner and City of San Antonio that all tangible artworks are subject to gradual inherent deterioration for which neither party is responsible.

Owner shall be solely responsible for any necessary maintenance of the Artwork. Owner agrees to abide by the specific maintenance schedule and procedures below.

City of San Antonio will not be responsible for performing any alteration, restoration or repair to Artwork.

City of San Antonio retains the right to determine when, if, and for how long the Artwork will be exhibited, but in no case will this permission to exhibit the Artwork be withdrawn prior to ten years after its initial installation.

**MAINTENANCE SCHEDULE & PROCEDURES**

Graffiti shall be removed from Artwork within seven calendar days of its discovery.

Damage to Artwork will be repaired within 30 calendar days of its discovery.

Regular maintenance schedule and procedures shall be as follows:

Each summer, the Briscoe collections staff will hand-wash the sculpture with small amounts of dish soap and distilled water, which will be contained in small plastic buckets. After the piece is thoroughly dry (one day), a light coat of wax will be brushed on the entire surface. A weekly monitoring program will be implemented by Briscoe staff and any accumulated dirt and debris will be removed. The City agrees to maintain the landscaping around the Artwork at no cost to the Owner.

**TRANSPORTATION, INSTALLATION, AND REMOVAL**

Owner shall be solely responsible for transportation of the Artwork and its installation as approved by the appropriate city departments and boards including the Historic and Design Review Commission (HDRC) and the Public Art Board San Antonio (PASA). Owner certifies that a properly licensed and trained arborist shall be on hand to supervise the installation process in order to ensure that all due care is taken to protect the bald cypress tree adjacent to the installation site. Upon notice from City, Owner shall remove Artwork, but City shall not request removal prior to ten years after Artwork's initial installation. Owner shall be solely responsible for the removal of the Artwork and the restoration of the Exhibit Area to a condition equal to or better than its condition existing prior to installation, including removal of support structures and lighting, if any, and landscape and sidewalk restoration.

**INSURANCE**

The Artwork will be insured by Owner. Prior to installation, City of San Antonio must be supplied with certificates of insurance from Owner insuring the Artwork and from any contractors working for Owner. All such insurance certificates shall name the City of San Antonio as an additional insured. Owner understands and agrees that City shall look to Owner's and any of Owner's contractors' insurance for any claims associated with the installation of the Artwork, including claims based on damage to the bald cypress tree located adjacent to the installation site. All such insurance certificates must be approved by the City of San Antonio prior to the commencement of the Installation. Owner must continue to annually provide a valid Certificate of Insurance to cover the Artwork and indicating a commercially reasonable level of coverage against liability claims and naming the City as an additional insured. Owner agrees to defend, indemnify and hold harmless the City of San Antonio, its officers, employees and agents from any claim for damages that arise out of or in connection with action approved in this agreement.

**REPRODUCTION AND CREDIT**

City of San Antonio may photograph or reproduce the Artwork for educational, catalog and publicity purposes. Artwork may be photographed by the general public for non-commercial or private use. Whether individual labels are provided for artwork on display is at the discretion of City of San Antonio. Owner certifies that it has the legal right to assign the limited copyright as detailed above and will defend and hold harmless the City of San Antonio from any claims asserted by the creator of the Artwork for violations of the creator copyright.

**CHANGE IN OWNERSHIP AND/OR ADDRESS**

It is the responsibility of the Owner or its agent to notify City of San Antonio promptly in writing if there is any change in ownership of the Artwork or if there is a change in the identity or address of the Owner.

I have read and agree to the conditions listed above and certify that I have full authority to enter into this Agreement.

Signed B. M. Karr Executive Director Date 9-27-13  
Owner Briscoe Western Art Museum

Signed \_\_\_\_\_ Date \_\_\_\_\_  
Jim Mery, Director, Downtown Operations Department, City of San Antonio

