00- R -1469

(Do Not Write Above This Line)

RESOLUTION BY COMMUNITY DEVELOPMENT/ HUMAN RESOURCES COMMITTEE

AUTHORIZING THE MAYOR TO ENTER INTO AN APPROPRIATE CONTRACTUAL AGREEMENT WITH THE ARTISTS BILL AND MARY BUCHEN/SONARC, INC. FOR THE PURPOSE OF COMMISSIONING ARTWORK OF THE ARTIST'S OWN DESIGN FOR THE PROPOSED ADAMSVILLE RECREATION CENTER, ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION AND CULTURAL AFFAIRS, BUREAU OF CULTURAL AFFAIRS.

ADOPTED BY

OCT 0 2 2000

COUNCIL

As Amended

- ☐ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☐ PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee

Date

Chair

Referred to

Committee	Committee
CD/HR	
Date	Date
9/27/00	
Chair	Chair
Action:	Action:
(Fav) Adv, Hold (see rev. side)	Fav, Adv, Hold (see rev. side)
Other:	Other:
as amended	
Members	Members
Refer To	Refer To

Committee	Committee
Date	Date
Chair	Chair
Action: Fav, Adv, Hold (see rev. side)	Action: Fav, Adv, Hold (see rev. side)
Other:	Other:
Members	Members
Refer To	Refer To

FINAL COUNCIL ACTION

☐2nd ☐1st & 2nd Readings ☐3rd

☑Consent ☐V Vote ☐RC Vote

CERTIFIED

CERTIFIED

OCT 2 2000

MUNICIPAL CLERK

CERTIFIED

OCT 0 2 2000

MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

OCT 1 0 2000

MAYOR

CITY COUNCIL
ATLANTA, GEORGIA

RESOLUTION BY COMMUNITY DEVELOPMENT/ HUMAN RESOURCES COMMITTEE **OCTOBER 2, 2000**

00- R -1469

AUTHORIZING THE MAYOR TO ENTER INTO AN APPROPRIATE CONTRACTUAL AGREEMENT WITH ARTISTS BILL AND MARY BUCHEN/SONARC, INC. **IN AN AMOUNT NOT TO EXCEED $80,000.00** FOR THE PURPOSE OF COMMISSIONING ARTWORK OF THE ARTIST'S OWN DESIGN FOR THE PROPOSED ADAMSVILLE RECREATION CENTER, ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION AND CULTURAL AFFAIRS, BUREAU OF CULTURAL AFFAIRS.

Whereas, the City of Atlanta supports the creation of public art programs by allocating certain funds for the establishment of artworks in public places and authorizing the making of payments for the design, execution, fabrication, transportation and installation of works of art and the support of an artist-selection process; and

Whereas, the City of Atlanta one percent-for-art funds program helps to beautify the City and provide opportunities for citizens to enjoy quality art and the art program also helps to make Atlanta a better place to live; and

Whereas, funds have been allocated for the selection, purchase and placement of artwork of the Artist's own design for the work at the proposed Adamsville Recreation Center, in an amount not to exceed $80,000.00, to be paid from account number 1B01 529002 N12D11D3A52A; and

Whereas, the Artists, Bill and Mary Buchen/SonArc, Inc. were selected by the City, through the procedures duly adopted by the Department of Parks, Recreation and Cultural Affairs, Bureau of Cultural Affairs, to design, fabricate, transport, execute and install the work for the site at the proposed Adamsville Recreation Center; and

Whereas, all parties wish to promote and maintain the integrity and clarity of the Artist's ideas and statements, as represented by the work.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1: That the Mayor be and is hereby authorized to enter into a contractual agreement with Artists, Bill and Mary Buchen/SonArc, Inc. for the purpose of commissioning artwork of the Artist's own design at the proposed Adamsville Recreation Center, on behalf of the Department of Parks, Recreation and Cultural Affairs, Bureau of Cultural Affairs.

Section 2: That the amount of this contractual agreement for the commission of artwork is not to exceed $80,000.00, and is to be paid from account number 1B01 529002 N12D11D3A52A.

Section 3: That the City Attorney be and is hereby directed to prepare an appropriate contractual agreement for execution by the Mayor, to be approved as to form.

Section 4: That this contractual agreement shall not become binding on the City, and the City shall incur no liability upon same, until such contractual agreement has been executed by the Mayor and delivered to the Artists, Bill and Mary Buchen/SonArc, Inc.

A true copy,
Rhonda Dauphin Johnson
Municipal Clerk, CMC

ADOPTED as amended by the Council OCT 02, 2000
APPROVED by the Mayor OCT 10, 2000

Amendment Incorporated by tcp 10/11/00

• **STATE OF GEORGIA**
COUNTY OF FULTON

AGREEMENT FOR COMMISSION OF PUBLIC ART WORK

THIS AGREEMENT, entered into this ____ day of _____, 2000, by and between the **City of Atlanta (the "City"),** acting by and through the Department of Parks, Recreation and Cultural Affairs and **Bill and Mary Buchen/SonArc Inc. (the "Artist")** residing at 223 E. 2nd St.,New York 10009.

WITNESSETH:

WHEREAS, the City supports the creation of public art program by allocating certain funds for the establishment of artworks in public places and authorizes the making of payments for the design, execution, fabrication, transportation and installation of works of art and the support of an artist-selection process; and

WHEREAS, the City of Atlanta one percent-for-art funds Program helps to beautify the city, and provide opportunities for citizens to enjoy quality art. The art program also helps to make Atlanta a better place to live; and

WHEREAS, the funds have been allocated for the selection, purchase and placement of **artwork of the Artist's own design (the "Work")** for **Adamsville Recreation Center (the "Site")**. The Work is to be substantially similar to the approved proposal as described in *Exhibit "A"*. The amount of this commission is not to exceed **$80,000** to be taken from account number **1B01 529002 N12D11D3A52A**; and

WHEREAS, the Artist was selected by the City through the procedures duly adopted by the Bureau of Cultural Affairs ("Bureau"), to design, execute, fabricate, transport, and install the work for the site; and

WHEREAS, both parties wish to promote and maintain the integrity and clarity of the Artist's ideas and statements as represented by the Work; and

WHEREAS, by Resolution adopted by the Atlanta City Council, Atlanta, Georgia, on the _____, day of _____, 2000, and approved by the Mayor on the _____, day of _____, 2000, hereto marked as Exhibit C and made a part hereof by reference; the Mayor is authorized to enter into an appropriate contractual agreement with the artist to perform the Work.

ARTICLE 1. SCOPE OF SERVICES

1.1 General

The Artist shall perform all services and furnish all supplies, materials, and equipment as necessary for the Work's design, execution, fabrication, and transportation. The Artist shall determine the artistic expression, scope, design, color, and material, which shall be, approved by the Bureau of Cultural Affairs, and subject to review and acceptance by the City as set forth in this agreement. The artist is required to have a Georgia certified engineer review and seal the drawings related to fabrication and installation of the Work.

1.2 Proposal

a. Within two weeks after the execution of this Agreement (or as agreed upon with Cultural Affairs), the Artist shall carry out such reasonable site inspections, interviews, and research as may be necessary, including meetings with the Bureau of Cultural Affairs in order for the Work to receive final approval. The City shall make available to the Artist blueprints and photographs related to the site and information related to the installation of the work and where applicable a written program of requirements and specifications for the work and the plans for the underlying project **(the "Project")**. It is the intent of the parties that the plans for the Artist establish a close and cooperative consultation throughout the duration of this Agreement.

b. The Artist may be responsible for meeting with representatives from the Atlanta Urban Design Commission, when appropriate, in order for the Artist to learn their concerns. Urban Design has responsibility for review and comment.

c. Within thirty (30) days of the execution of the Agreement, the Artist shall prepare and submit a final proposal ("Proposal") to the City. If the Proposal varies significantly from the Work as defined in Exhibit A the artist shall specify such materials, dimensions, weight, finish, preliminary maintenance recommendations and proposed installation method and include such drawings, documents and models as required to present a meaningful representation of the concept and design of the proposed Work. The city reserves the right to reject such changes and/or terminate the contract at this point.

d. The proposal shall include a budget (not to exceed $80,000) that covers cost for all designs, materials, fabrication/execution, transportation and installation of the artwork; and artist's fees, including all sales tax, insurance costs, and travel expenses related to the project. The City shall notify the Artist of its approval or disapproval within fourteen days following the review of such proposal. During this period the Artist shall be available as reasonably required to meet with the City to discuss the Proposal.

e. The Artist shall be given an opportunity to resolve what the City determines are minor problems in the proposal. If the City determines that the proposal has major problems and the proposal is therefore disapproved, it shall provide the Artist with a statement in writing of its reason for such disapproval. In such event, the Artist shall be afforded an opportunity either to submit a second Proposal for the Work within a reasonable period of time as specified by the City, or to terminate this Agreement. Within fourteen (14) days following submission of the second proposal by the Artist, after a meeting of the review panel, the City shall notify the Artist in writing whether it approves or disapproves the Proposal. If the City determines that the second is disapproved, it shall provide the Artist with a statement in writing of its reasons for disapproval, whereupon this Agreement shall terminate.

f. In the event of termination of this Agreement pursuant to paragraph (f), the Artist shall retain the Proposal, and neither party shall be under any further obligation to the other in respect the subject matter thereof.

PROPOSAL FORMAT

The Artist must submit:

(1) One board (20" x 30") that depicts the entire artwork in relation to the architecture or site. If several locations are involved, one board should be submitted for each location. The board should include the dimensions and actual colors of the artwork.
(2) A drawing that includes details of the work, with the appropriate information on the manner of installation.
(3) Material samples for the artwork and any relevant building materials applicable.
(4) Written statement (2 page maximum) that includes:
    (a) location
    (b) dimension
    (c) materials
    (d) artist's intent
    (e) budget
    (f) fabricator's name (if applicable)
    (g) maintenance specifications
    (h) detailed timetable of major milestones in fabrication

(5) Slides or photographs of past work, current resume. In all cases the Artist shall submit the required information. However, the Artist may be required to submit additional supportive information if deemed necessary by the Bureau of Cultural Affairs.

1.3 Structural Design Review.

a. The City may require the Artist to make such revisions to the Proposal as are necessary for the Work to comply with applicable statutes, ordinances or regulations of any governmental regulatory agency having jurisdiction over the project.

b. The City may also request revisions for other practical (non-aesthetic) reasons.

c. Within fourteen (14) days after its receipt of the Artist's submission, pursuant to this Section 1.3, the City shall notify the Artist of its approval (or disapproval) of such submission and of all revisions made in the Proposals as a result thereof. Revisions made pursuant to this Section 1.3 become a part of the Proposal.

1.4 Execution of the Work.

a. After written approval of the submissions and revisions made pursuant to Section 1.3, the Artist shall, within fourteen (14) days, furnish to the City a tentative schedule for completion of fabrication of the Work, including a schedule for the submission of written progress reports. After written approval of the schedule by the City, the Artist shall fabricate, transport and supervise the installation of the Work in accordance with such schedule.

b. The City shall have the right to review the Work at reasonable times during the fabrication thereof. The Artist shall submit to the City progress reports in accordance with the schedule provided for in section 1.4(a).

c. The Artist shall complete the fabrication of the Work in substantial conformity with the Proposal.

d. The Artist shall present to the City in written notification for further review and approval, any significant changes in the scope, design, color, size, material or texture of the Work not permitted by or not in substantial conformity with the proposal. A significant change is any change in the scope, design, color, size, material, texture or location on the site of the work which affects installation, scheduling, site preparation or maintenance for the Work; or the concept of the Work as represented in the Proposal.

1.5 Delivery and Installation.

a. The Artist shall notify City in writing when fabrication of the Work is completed and is ready for delivery at the Site.

b. The Artist shall deliver the Work at the Site in compliance with the schedule approved pursuant to Section 1.4.

c. Unless otherwise stipulated and amended in written agreement the installation of the work shall be the responsibility of the artist. The artist shall complete the installation of the work in substantial conformity with the proposal.

1.6 Post-Installation

a. Within thirty (30) days after the installation of the Work, the Artist shall furnish the City with the following photographs of the Work as installed: two sets of three 35 mm color slides of the completed Work; one glossy black and white print, and negative of the Work.

b. At the City's expense when appropriate, the artist shall be available at such time or times as may be agreed to by the City and the Artist to attend any dedication or presentation ceremonies relating to the transfer of the Work to the City. Expenses shall be provided for artists residing outside of Atlanta and shall cover travel and hotel costs, and a fixed per diem for food and in-town transportation.

c. Upon installation of the Work, the Artist shall provide to the City final written instructions for appropriate maintenance and preservation of the completed Work. Instructions should include specific information on materials utilized, material suppliers, techniques and a schedule for annual maintenance.

1.7 Final Acceptance

a. The Artist shall advise the City in writing when all services required prior to those described in Section 1.6 (b) have been completed in substantial conformity with the Proposal.

b. The City shall notify the Artist in writing of its final acceptance of the Work.

c. Final acceptance shall be effective as of the first to occur (1) the date of the City's notification of final acceptance or (2) the 30th day after the Artist has sent the written notice to the City required under Section 1.7 (a) unless the City, upon receipt of such notice and prior to the expiration of the 30-day period, gives the Artist written notice specifying and describing the services which have not been completed.

1.8 Risk of Loss.

The Artist understands and agrees that he/she shall bear the risk of loss or damage by fire, theft, vandalism, or any other cause during the period from date of the execution of this Agreement to the date of final acceptance. The Artist further agrees that should the work be lost, stolen damaged, or destroyed in any way, he/she shall, at the City's option, repair or reproduce the work at his/her own expense or return all payments received from the City within sixty (60) days. The Artist no longer bears responsibility for the work once the work has been installed in accordance with procedures agreed upon by the City and the Artist and accepted by the City.

1.9 Indemnity.

a. The Artist agrees to indemnify and hold harmless the City, its officer's agents and employees, from any and all losses, expenses demands and claims against the City, its officers, agents and employees, sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from the performance of work pursuant to the terms of this contract by or under the direction of the Contractor or any Sub-Contractor employed by the Contractor, or any of their officers, agents or employees. Including but not limited to violation of any third party claims for copyright or trade mark infringements.

b. The Artist is required to carry the insurance as outlined in Exhibit "B." The Artist must submit proof of insurance to the City within two weeks of approval by the City of the final proposal and upon the Artists receipt of the first payment as outlined in Article 2 (b).

1.10 Title.

Title to the Work shall be to the City upon final acceptance by the City and payment in full to the Artist.

1.11 Ownership of Documents, Models.

Upon final acceptance, all studies, drawings, designs, maquettes and models prepared and submitted under this Agreement shall be returned to the Artist and shall belong to the Artist. The City may select and the Artist shall convey to the city a copy of one of the original drawings submitted pursuant to Section 1.2 as part of the Proposal, the City representing that such drawing(s) will be used by it solely for exhibition and held by it in permanent safekeeping by the Department of Parks, Recreation and Cultural Affairs.

ARTICLE 2. PAYMENT SCHEDULE.

The total payment to the Artist shall not exceed $80,000_. The payment schedule for the Artist's services for travel, insurance, materials execution, fabrication, sales tax, transportation, installation and any other expenses related to the creation of the Work shall be as follows:

(a) $ 40,000 upon final approval of the proposal by the City.

(b) $ 24,000 upon the Artist's notification to the City that fifty percent of the required work has been completed. Within 14 days upon receipt of notification from the Artist, the City will verify that 50% of the work has been completed accordance with the Contract.

(c) $16,000 upon written notification by the Artist to the City that the work is complete and has been installed at the site and the site has been cleared of all debris and restored to its normal state. Within 14 days of receipt of notification from the Artist

the City will verify that the work has been completed and installed in accordance with the contract.

ARTICLE 3. TIME OF PERFORMANCE

3.1 Duration

The services to be required of the artist as set forth in Article 1 shall be completed in accordance with the schedule for completion of the Work as proposed by the Artist and approved by the City pursuant to Section 1.4.

3.2 Construction Delays.

If, when the Artist completes fabrication or procurement of the Work, and he/she is ready for installation, the Artist is delayed from installing the Work within the time specified in the schedule as a result of a delay in the construction of the Site, or the site is not sufficiently complete to reasonably permit installation of the work therein, the City shall promptly reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to reasonably permit installation of the Work.

3.3 Early Completion of Artist Services.

The Artist shall bear any transportation and storage costs resulting from the completion of his services hereunder prior to the time provided in the schedule for installation.

3.4 Time Extensions.

The City shall grant a reasonable extension of time to the artist in the event that there is a delay on the part of the city in performing its obligations under this Agreement or in completing the underlying capital project, or if conditions beyond the artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract; provided that such obligations shall be suspended only for the duration of such conditions.

ARTICLE 4. WARRANTIES

4.1 Warranties of Title.

The Artist represents and warrants that:

(a) the Work is solely the artistic effort of the Artist;
(b) except as otherwise disclosed in writing to the City, the Work is unique and original and does not infringe upon any copyright;
(c) the Work, or a duplicate thereof, has not been accepted for sale elsewhere;

(d) the Work is free and clear of any liens from any source whatever. All persons who labored on the Work will be required to warrant that the Work is free and clear of any liens from any source whatever.

4.2 Warranties of Quality and Condition.

The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with submission of the Proposal pursuant to section 1.2, that:

(a) the execution and fabrication of the Work will be performed in a workmanlike manner;

(b) the Work, as fabricated, will be free of defects in material and workmanship, including any defects consisting of "inherent vice" (e.g. peeling paint, defective patina, materials not suitable for environment) or qualities which cause or accelerate deterioration of the Work; and

(c) reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist to the City hereunder. The warranties described in this Section 4.2 shall survive for a period of three (3) years after the final acceptance of the Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re--fabrication of the Work).

ARTICLE 5. REPRODUCTION RIGHTS

5.1 General.

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. §§ 101 et seq., and all other rights in and to the Work except ownership and possession, except as such rights are limited by this Section and 5.2. In view of the intention that the Work in its final dimension shall be unique, the Artist shall not make any exact duplicate, (two or three) - dimensional reproductions of the final Work, nor shall the Artist grant permission to others to do so without the written permission of the City. The Artist grants to the City and its assigns an irrevocable license, at no charge, to make two - or three - dimensional reproductions of the Work for purposes of reproductions used for postcards, advertising, brochures, media publicity, and catalogues or other similar publications for the promotion of the Department of Parks, Recreation and Cultural Affairs.

5.2 Waiver of Rights.

Regarding said Work as identified in the premises herein above, and in Exhibit A; Artist specifically waives all of Artist's rights conferred by Visual Artist Rights Act of 1990, 17 USC §§ 106 A and 113 et seq., as amended. In the event that the City deems it necessary to remove, relocate, or de-accession the work, City shall have the right to do so. The City's shall make every effort to notify Artist pursuant to article 7.2 Alternation of the Work or the site.

5.3 Notice

All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: Copyright ©, date of publication.

5.4 Credit to City.

The Artist shall use his/her best efforts to give a credit reading substantially: "an original work commissioned by the City of Atlanta, Department of Parks, Recreation and Cultural Affairs" in any public showing under the Artist's control of reproductions of the Work.

ARTICLE 6. ARTIST'S RIGHTS

6.1 Identification.

The City shall, at its sole expense, prepare and install at the Site, a plaque identifying the Artist, the title of the Work and the year of completion The City shall maintain such plaque in good repair.

6.2 Maintenance.

The City recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. The City shall reasonably assure that the work is properly maintained and protected, taking into account the instructions of the Artist provided in accordance with section 1.6 c., and shall reasonably protect and maintain the Work against the ravages of time, vandalism and the elements.

ARTICLE 7. REPAIRS AND RESTORATION

7.1 General

a. The City shall have the right to determine, when and if repairs and restorations to the Work will be made. During the Artist's lifetime, the Artist shall have the right to consult with the City regarding any repairs or restorations, the City shall have the right to make necessary repairs or restorations. To the extent practical, the Artist, during the Artist's lifetime, shall be given the opportunity to make or to personally

supervise significant repairs and restorations and shall be paid a reasonable fee for any artist's services, provided that the City and the Artist shall agree in writing, prior to the commencement of any significant repairs or restorations, upon the Artists fee for such services. The City shall notify artists of the need to repair and restore the work. The artist shall be allowed to submit a fee proposal for such repairs and restoration. The City reserves the right to complete the repairs and/or restorations if the fees exceed the City's recommended budget.

b. All repairs and restorations shall take into consideration recognized principles of conservation.

7.2 Alteration of the Work or of the Site.

a. The City agrees that it will not intentionally damage, alter, modify or change the Work.

b. The City shall notify the Artist of any proposed alteration of the site that would affect the intended character and appearance of the Work and shall take into consideration the Artist's concerns in the planning and execution of any such alteration and shall make a reasonable effort to maintain the integrity of the Work.

c. Not withstanding the provisions contained in section 5.2, nothing in this Section 7.2 shall preclude any right of the City (1) to relocate the Work or (2) to remove the Work from public display. In the event the City moves the Work to a different site, the City agrees to no longer represent the Work as that of the Artist upon receipt of written request from the Artist. If the City at any time decides to destroy the Work, it shall, by written notice to the Artist, offer the Artist a reasonable opportunity to recover the Work at no cost to the Artist except for an obligation of the Artist to indemnify and reimburse the City for the amount by which the cost to the City of the recovery exceeds the cost the City of the proposed destruction. The cost for any storage fees, necessitated by the time allotment for recovery of the work, will be borne by the Artist. The Artist shall make arrangements to recover the Work within thirty days following notice of the City's offer of recovery.

7.3 Records.

The City shall maintain a record of this agreement and of the location and disposition of the Work at the Department of Parks, Recreation and Cultural Affairs. (copy to the finance department)

7.4 Artist's Address.

The Artist shall notify the City of changes in his/her address as set forth in Article 18 below . The failure to do so, if such failure prevents the City from locating the Artist, shall be deemed a waiver by the artist of the right subsequently to enforce those provisions of this Article 7 that require the express approval of the Artist.

Notwithstanding this provision, the City shall make every reasonable effort to locate the Artist when matters arise relating to the Artist's rights.

7.5 Surviving Covenants.

The covenants and obligations set forth in this Article 7 shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferees and all their successors in interest, and the City's covenants do attach and run with the Work and shall be binding to and until twenty (20) years after the death of the Artist. However, the obligations imposed upon the City by Sections 7.1(a) and 7.4 shall terminate on the death of the Artist. The City shall give any subsequent owner of the Work notice in writing of the covenants herein, and shall cause each such owner to be bound thereby.

7.6 Additional Rights and Remedies.

Nothing contained in this Article 7 shall be construed as a limitation on such other rights and remedies available to the Artist under the law which may now or in the future be applicable.

ARTICLE 8. ARTIST AS INDEPENDENT CONTRACTOR

The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9. ASSIGNMENT, TRANSFER, SUBCONTRACTING

9.1 Assignment or Transfer of Interest.

The Artist shall not assign or transfer any interest in this Agreement, provided, however, that artists claims for money due from or to become due from the City under this Agreement may be assigned to a financial institution upon written notice to the Department of Parks, Recreation and Cultural Affairs.

9.2 Subcontracting by Artist.

The Artist may subcontract portions of the services to be provided hereunder at the Artist's expense provided that said subcontracting shall not affect the design, appearance or visual quality of the Work, shall be carried out under the personal supervision of the Artist, and the intentions to subcontract be provided in writing to the City.

ARTICLE 10. TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner or otherwise violate, any of the covenants, agreements or stipulations

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 the grounds for termination. The defaulting party shall have (30) days after receipt of the notice to cure the default. If it is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Work shall pass to the City, and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due to City from the Artist is determined. Also if after thirty days, the Artist fails to cure the default they will be ineligible to participate in future Public Art Programs for a minimum of three (3) years.

ARTICLE 11. COMPLIANCE

The Artist shall be required to comply with Federal, State and City statutes, ordinances and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 12. ENTIRE AGREEMENT

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

ARTICLE 13. MODIFICATION

No alteration, change or modification of the terms of the Agreement shall be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the City.

ARTICLE 14. WAIVER

No waiver of performance by either party shall be construed as or operate as a waiver of any subsequent default of any terms, covenants and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or acceptance of defective performances.

ARTICLE 15. GOVERNING LAW AND VENUE

This Agreement, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of Georgia. Venue shall be deemed to be proper in the Fulton Superior Court for the State of Georgia and if applicable the U.S. District Court for the Northern District Atlanta Division.

ARTICLE 16. HEIRS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of the City and the Artist and their respective heirs, personal representatives, successors and permitted assigns.

ARTICLE 17. ARBITRATION

All disputes or controversies that may arise between the parties with respect to the performance, obligations or rights of the work or alleged breach there of, shall be settled by non-binding arbitration or mediation. The dispute shall be referred to a panel of three arbitrators, one to be selected by the Artist, one to be selected by the City and the third to be selected by the first two. If an agreement on the third arbitrator cannot be reached within thirty (30) days after the appointment of the second arbitrator, such arbitrator shall be appointed by a respected arts administrator to be agreed upon by both the City and Artist. The decision and award of the arbitrators, or that of any two of them, shall be final and binding on the parties, and judgment may be entered upon it in any court having jurisdiction thereof.

ARTICLE 18. NOTICES

All notices, requests, demands and other communications which are required or permitted to be given under this agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

a. If to the City: Director
Bureau of Cultural Affairs
675 Ponce de Leon Avenue
Atlanta, Georgia 30308

b. If to the Artist, at the address previously written with copies to:

IN WITNESS WHEREOF, the City by and through its duly authorized officers and the Artists,have executed this Agreement as of the date first written above.

ATTEST:

_____
Municipal Clerk

CITY OF ATLANTA:

_____
Mayor (Seal)

ATTEST:

_____
Notary Public

ARTIST:

_____
Bill and Mary Buchen/SonArc Inc.

APPROVED:

_____
Acting Commissioner, Department,
of Parks Recreation and Cultural Affairs

RECOMMENDED:

_____
Chief Operating Officer

APPROVED AS TO FORM:

_____
Assistant City Attorney

APPROVED:

_____
Director, Bureau of Purchasing
and Real Estate

APPROVED AS TO INTENT:

_____
Director, Bureau of Cultural Affairs

APPROVED:

_____
Chief Financial Officer, Department
of Finance

Exhibit A: Agreement for Commission of Artwork-Bill and Mary Buchen

Proposal:

Location - The location of the work will be at the Adamsville Recreation Center, 3201 Martin Luther King, Jr. Drive, Atlanta, GA.

Dimensions – 10 foot tall parabolic roof for Sound Pavilion, others to be determined.

Materials – Powder coated steel, galvanized and/or stainless steel

Artist's Intent
The vision for the Adamsville Recreation Center playground is a series of installations designed to "engage visitors in active participation and exploration of environmental forces, communal music-making and acoustic phenomena. Our intent is to create a diversity of experiences which create stimulating intergenerational activities and multi-age challenges." Bill and Mary Buchen formed Son Arc in 1980. Son Arc is a design firm specializing in interactive installations for children's museums, galleries and public sites throughout the United States. Large scale public works have included Sound Parks and Science Playgrounds for children of all ages, Wind Harps and designs for urban and park environments. Their pursuits, center on the study of environmental phenomena examined through anr application to science, architecture, ecology and diverse world cultures.

The Sound Playground at the Adamsville Recreation Center will include sound sculptures, paving, and seating. Children and adults will be able to create music and experiment with rhythm.

Budget

Drum Tables and Seats	$ 9,000
Sound Pavilion	45,000
Office Expenses (drawings, mailings, Phone, fax)	1,000
Administration/oversight	1,000
Insurance, liablility, artwork	1,500
Travel - 2 artists, 3 site visits Including lodging, food	2,500
Installation oversight	2,000
Artist fee	18,000
TOTAL	$80,000

Note: Installation provided by the Department of Parks, Recreation and Cultural Affairs (Park Design).

Fabricator's Name – Son Arc Inc. of New York

Maintenance Specifications – No specific maintenance necessary.

Detailed Timetable

1. Travel to Atlanta to meet with architects, affiliated design professionals and community to include elements of design and siting of playground. 2 -3 days.

2. Development and completion of Final Design by artists based on site visit above. One month.

3. Approval of Final Design by Department of Parks.

4. Structural Engineering done by Parks Department based on Final Design. Two months.

5. Fabrication of Artwork elements.

6. Shipping of artwork elements to Atlanta. Two weeks.

7. Artists return to Atlanta for installation. One week.

8. Photographing and documenting Installation.

Schedule dependent upon construction of site of estimated time is 6 months for fabrication and installation after structural engineering completion (item 4).

Exhibit B:

INSURANCE/BONDING REQUIREMENTS

A. General Preamble

The following general requirements apply to any and all work under this contract. Compliance is required by all Contractors and Sub-contractors of any tier. Insurance/Bonding requirements are based on information received as of date of contract execution. The City of Atlanta reserves the right to adjust or waive any or all requirements based on receipt of additional information pertinent to this contract.

1. Evidence of Insurance Required Before Work Begins

No Contractor or Sub-contractor shall commence any work of any kind under this contract until all Insurance and Bond requirements contained in this contract shall have been complied with as outlined below, and until evidence of such compliance *satisfactory* to the City as to form and content has been filed with the City. The Acord Certificate of Insurance or a pre-approved substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute.

2. Minimum Financial Security Requirements

Any and all companies providing insurance required by this contract must meet certain minimum financial security requirements set forth below. These requirements conform to the ratings published by A.M. Best & Co. in. the current Best's Key Rating Guide - Property-Casualty. The ratings for each company must be indicated on the Acord Certificate of Insurance Form.

For all Contracts, regardless of size, companies providing Insurance or Bonds under this contract must have a current:

i) Best's Rating not less than A- and current
ii) Best's Financial Size Category not less than Class IX.
iii) Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia, furthermore, all bid, performance and payment bonds must be a U.S. Treasury Circular *570* listed company.

If the issuing company does not meet these minimum requirements, or for any other reason shall be or become unsatisfactory to the City, written notification shall be mailed by the City to the Contractor who shall promptly obtain a new policy or bond issued by an insurer acceptable to the City, and shall submit evidence of the same to the City as required herein.

Upon failure of the Contractor to furnish, deliver and maintain such insurance or bonds as herein provided, this contract, at the election of the City, may be declared forthwith suspended, discontinued or terminated. Failure of the Contractor to take out and/or to maintain any required insurance or bonds shall not relieve the Contractor from any liability under the contract, nor shall these requirements be construed to conflict with the obligation of the Contractor concerning indemnification.

3. Insurance Required for Duration of Contract

Any and all Insurance and Bonds required by this contract shall be maintained during the entire length of this contract, including any extensions thereto, and until all work has been completed to the satisfaction of the City. The City shall have the right to inquire into the adequacy of the insurance coverage set forth in this contract and to negotiate such adjustments as reasonable appear necessary.

4. Mandatory 30-Day Notice of Cancellation or Material Change

The City of Atlanta shall, without exception, be given not less than thirty (30) days notice prior to cancellation for other than non-payment of premium or for material change of any Insurance or Bond required by this contract. Non-payment of premium shall require ten (10) days notice of cancellation. Confirmation of this mandatory 30 days notice of cancellation shall appear on the Acord Certificate of Insurance and on any and all Bonds and Insurance policies required by this contract.

5. City of Atlanta as Additional Insured

The City of Atlanta shall be covered as Additional Insured under any and all Insurance and Bonds required by this contract, and such insurance shall be primary with respect to the Additional Insured. Confirmation of this shall appear on the Acord Certificate of Insurance, and on any and all applicable Bonds and Insurance policies. However, this requirement does not apply to Workers' Compensation, Professional Liability Insurance or Payment and Performance Bonds.

6. Mandatory Sub-contractor Compliance

Contractor shall incorporate a copy of these Insurance, Bond and Hold Harmless requirements in each and every contract with each and every Sub-contractor of any tier, and shall require each and every Sub-contractor of any tier to comply with all such requirements. Contractor agrees that if for any reason Sub-contractor fails to procure and maintain Insurance and Bonds as required, all such required Insurance and Bonds shall be procured and maintained by Contractor at Contractor's expense.

7. Authorization and Licensing of Agent

Each and every agent acting as Authorized Representative on behalf of a Company affording coverage under this contract shall warrant when signing the Acord Certificate of Insurance that specific authorization has been granted by the Companies for the agent

to bind coverage as required and to execute the Acord Certificate of Insurance as evidence of such coverage. City of Atlanta coverage requirements may be broader than the original policies, these requirements have been conveyed to the Companies for these terms and conditions.

In addition, each and every agent shall warrant when signing the Acord Certificate of Insurance that the agent is licensed to do business in the State of Georgia and that the Company or Companies are currently in good standing in the State of Georgia.

B. General Liability Insurance

The contractor shall procure and maintain General Liability Insurance in an amount not less than $500.000 Bodily Injury and Property Damage combined single limit. The following specific extensions of coverage shall be provided and shall be indicated on the Acord Certificate of Insurance:

1. Comprehensive Form
2. Contractual Insurance - (Blanket or specific applicable to this contract)
3. Personal Injury
4. Broad Form Property Damage
5. Premises - Operations

C. Automobile Liability Insurance

The Contractor shall procure and maintain Automobile Liability Insurance with not less than $500,000 Bodily Injury and Property Damage combined single limit. The following extensions of coverage shall be provided and shall be indicated on the Certificate of Insurance:

I. Comprehensive Form
2. Owned, Hired, Leased and Non-owned vehicles to be covered.

In the event the Contractor does not own any automobiles in the corporate name, non-owned vehicle coverage shall apply and must be endorsed on either the contractor's personal automobile policy or the Comprehensive General Liability coverage (c) required under this contract.

D. Hold Harmless Agreement

The Contractor agrees to indemnify, hold harmless and defend the City of Atlanta from any and all losses, expenses, demands and claims against the City of Atlanta sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from the performance of work by the Contractor or any Sub-contractor employed by the Contractor, or any of their officers, agents or employees. The contractor further agrees that this agreement to indemnify, hold harmless and defend the City of Atlanta, shall not be limited to the limits or terms of the liability insurance, if any, required under this agreement.

COUNCIL PRESIDENT PROTEM DEBI STARNES PRESIDED.

RCS# 2255
10/02/00
1:44 PM

Atlanta City Council

Regular Session

CONSENT

Pages 1-17

RECONSIDER

YEAS:	13
NAYS:	0
ABSTENTIONS:	0
NOT VOTING:	1
EXCUSED:	0
ABSENT	2

SEE ATTACHED LISTING OF ITEMS ADOPTED/ADVERSED ON CONSENT AGENDA

Y McCarty	B Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	B Martin	Y Emmons
Y Bond	Y Morris	Y Maddox	Y Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

ITEM (S) REMOVED FROM CONSENT AGENDA

00-O-1390
00-O-1567
00-R-1480
00-R-1571
00-R-1574

CONSENT

COUNCIL PRESIDENT PROTEM DEBI STARNES PRESIDED.

RCS# 2286
10/02/00
4:58 PM

Atlanta City Council

Regular Session

CONSENT

Pages 1-17

RECONSIDERATION

YEAS:	13
NAYS:	0
ABSTENTIONS:	0
NOT VOTING:	1
EXCUSED:	0
ABSENT	2

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00-O-1390
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00-R-1574

CONSENT

		10/02/00 Council Meeting
ITEMS ADOPTED ON CONSENT AGENDA	**ITEMS ADOPTED ON CONSENT AGENDA**	**ITEMS ADVERSED ON CONSENT AGENDA**
1. 00-O-1393 2. 00-O-0758 3. 00-O-1341 4. 00-O-1453 5. 00-O-1326 6. 00-O-1327 7. 00-O-1328 8. 00-O-1329 9. 00-O-1301 10. 00-O-0263 11. 00-O-0979 12. 00-O-1311 13. 00-O-1418 14. 00-O-1566 15. 00-O-1417 16. 00-O-1114 17. 00-O-1561 18. 00-R-1486 19. 00-R-1490 20. 00-R-1524 21. 00-R-1525 22. 00-R-1572 23. 00-R-1483 24. 00-R-1484 25. 00-R-1552 26. 00-R-1310 27. 00-R-1466 28. 00-R-1467 29. 00-R-1469 30. 00-R-1563 31. 00-R-1549 32. 00-R-0977 33. 00-R-1297 34. 00-R-1495 35. 00-R-1461 36. 00-R-1464	37. 00-R-1470 38. 00-R-1471 39. 00-R-1472 40. 00-R-1476 41. 00-R-1477 42. 00-R-1481 43. 00-R-1497 44. 00-R-1498 45. 00-R-1499 46. 00-R-1500 47. 00-R-1501 48. 00-R-1502 49. 00-R-1503	50. 00-R-1504 51. 00-R-1505 52. 00-R-1506 53. 00-R-1507 54. 00-R-1508 55. 00-R-1509 56. 00-R-1510 57. 00-R-1511 58. 00-R-1512 59. 00-R-1513 60. 00-R-1514 61. 00-R-1515 62. 00-R-1516 63. 00-R-1517 64. 00-R-1518 65. 00-R-1519 66. 00-R-1520 67. 00-R-1521 68. 00-R-1522 69. 00-R-1523