

EXHIBIT NO. 1

14
2-28-01

City of Alexandria, Virginia

MEMORANDUM

DATE: FEBRUARY 22, 2001

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *PS*

SUBJECT: CONSIDERATION OF CONTRACT BETWEEN THE CITY AND ANTONIO TOBIAS MENDEZ FOR THE CAPTAIN ROCKY VERSACE VIETNAM VETERANS PLAZA PROJECT

ISSUE: Consideration of contract between the City and Antonio Tobias Mendez for the Captain Rocky Versace Vietnam Veterans Plaza project.

RECOMMENDATION: That City Council authorize the City Manager to execute a contract with Antonio Tobias Mendez, in substantially the form presented to Council (Attachment 1), enabling Mr. Mendez to create the art work, order materials and complete the approved project for the Captain Rocky Versace and Vietnam Veterans Plaza at the Mount Vernon Recreation Center. The execution of the contract by the City Manager shall constitute conclusive evidence of his approval, and that of the City Attorney, of any and all changes in the contract presented to Council.

DISCUSSION: Upon completion of a design competition conducted with input from the Working Committee for the Captain Rocky Versace Vietnam Veterans Plaza, in accordance with the City's Policy for the Purchase of Works of Art, on December 19, 2000, the Alexandria Commission for the Arts recommended to Council that it approve Mr. Mendez's design proposal for the Captain Rocky Versace and Vietnam Veterans Plaza at the Mount Vernon Recreation Center. At its January 13 public hearing meeting, following a public hearing, Council approved Mr. Mendez's design proposal (Attachment 2), which includes a circular plaza, 65 feet in diameter with a sculpture in the center and limestone benches surrounding the plaza area and engraved with the names of Captain Versace and the other 61 Alexandria veterans who lost their lives in Vietnam. Once the contract is executed by the City Manager, the project will be initiated.

FISCAL IMPACT: The cost of the work is estimated to be \$250,000. The Friends of Rocky Versace will raise this amount and whatever other funds may be needed for the project. Additional funds for maintenance of the project will also be raised by the Friends of Rocky Versace and will be placed in escrow with the City.

ATTACHMENTS:

1. Contract between the City of Alexandria and Antonio Mendez.
2. January 13, 2001 Docket Item

STAFF:

Sandra Whitmore, Director, Recreation, Parks and Cultural Activities
Janet Barnett, Deputy Director, Recreation, Parks and Cultural Activities
Leslie Clark, Recreation Supervisor V, Recreation, Parks and Cultural Activities
Cheryl Anne Powalisz, Recreation Supervisor II, Recreation, Parks and Cultural Activities
Mark Jinks, Assistant City Manager for Fiscal and Financial Affairs

CITY OF ALEXANDRIA
SERVICE AGREEMENT
TO COMMISSION A WORK OF ART

THIS AGREEMENT ("Agreement") is made as of the ____ day of _____, 2001, by and between the CITY OF ALEXANDRIA, a municipal corporation of the Commonwealth of Virginia (the "City"), and ANTONIO TOBIAS MENDEZ (the "Artist").

WHEREAS, on September 8, 1987, the City Council of the City of Alexandria adopted the "Policy for the Purchase of Works of Art by the City of Alexandria" (the "Policy");

WHEREAS, upon the completion of a design competition conducted in accordance with the Policy, on December 19, 2000, the Alexandria Commission for the Arts ("Commission") recommended to City Council that the City approve the Artist's design proposal for the "Captain Rocky Versace and Vietnam Veterans Plaza" to be located at the Mount Vernon Recreation Center;

WHEREAS, on January 13, 2001, City Council accepted the recommendation of the Commission, and approved the Artist's design proposal;

WHEREAS, in accordance with the Policy, the City now desires to commission the final design and creation of the "Captain Rocky Versace and Vietnam Veterans Plaza;" and

WHEREAS, the Artist is qualified, able and willing to design and create the work of art which is described in this Agreement;

NOW, THEREFORE, the City and the Artist agree:

1. **Scope of Services.** The Artist shall perform the following "Services," which include all obligations required of the Artist by this Agreement, in a satisfactory and proper manner as determined by the City:

A. **Creation and Description of the Work of Art - Unique Work.** The Artist shall design, fabricate, install and document the work of art (the "Work"), substantially in accordance with the Design Proposal previously submitted to the City on or about August 4, 2000, a copy of which is attached as Exhibit "A" (the "Preliminary Design Proposal"). As used in this Agreement, the "Work" includes all physical components proposed in the Preliminary Design Proposal, including but not limited to, the plaza, the sculpture base, the exedra, and the sculpture, and all other components necessary to complete fabrication and installation. The Artist represents and warrants to the City that the Work to be produced is a unique, original work of art especially designed for the City, and an edition of one (provided the Artist may reproduce a portion of the sculpture without being deemed to have breached this representation and warranty), and does not infringe upon any copyright. The Artist further represents and warrants that the Work has not and shall not be substantially duplicated by the Artist without the prior

written permission of the City. Notwithstanding the foregoing representation and warranty, the Artist may reproduce a portion of the sculpture without the prior written permission of the City.

B. Final Design Proposal. Upon execution of this Agreement, the Artist shall further develop the Preliminary Design Proposal in consultation with staff of the City and the Commission, and, if requested by the City, designated citizen groups. Subsequent to such consultations, the Artist shall prepare a final design proposal (the "Final Design Proposal) which shall include the following:

- 1) Plans and specifications of the Work, in sufficient detail to obtain necessary permits and which show limits of the Work Site, preparation and staging areas, and areas for the installation of a construction fence;
- 2) Final cost estimates for the Work;
- 3) A schedule for completion of the Work;
- 4) Construction drawings of the Work certified by an engineer licensed by the Commonwealth of Virginia;
- 5) A photograph of the sculpture arrangement proposed by the Artist;
and
- 6) Samples of materials to be used in the Work, including, without limitation, finishes for stone, paving, sculpture, carvings and other visual elements.

Within sixty (60) days of execution of this Agreement, the Final Design Proposal shall be submitted to the City for its review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. The Artist shall further proceed with the Work only upon receipt of written approval by the City of the Final Design Proposal.

C. The Work shall be installed at the location indicated on the attached Exhibit "B" ("Work Site").

D. Change in Design. The parties recognize that the shift in scale from preliminary drawings and/or maquettes to a full-scale work may require artistic judgments. The Artist reserves the right to make minor adjustments to the Work as the Artist deems aesthetically and structurally necessary. Any substantial change in the scope, design or material of the Work must be approved in writing and in advance by the City before the Artist may continue the Work and receive any additional Compensation.

E. Preparation of Work Site. The Artist is responsible for preparation of the Work Site for the installation of the Work, including any necessary demolition, in accordance with the Final Design Proposal.

F. Maintenance of Work Site. The Artist shall protect properties and buildings adjacent to the Work Site from excessive dust, dirt, rubbish or other nuisances which result from the Services performed under this Agreement. The Artist shall maintain the Work Site in an orderly manner. Upon completion of the Services under this Agreement, and as a condition of Final Payment by the City to the Artist, the Artist shall remove from the Work Site all equipment and waste materials.

G. Delivery and Installation of the Work. As part of the Services, the Artist shall be responsible, and shall pay, for delivery of all components of the Work to the Work Site, and installation of all such components. The Artist, or an employee or subcontractor of the Artist, shall be present on the Work Site for each delivery of components of the Work to the Work Site, to ensure proper handling and storage of such components on the Work Site. The Artist shall coordinate with the City the dates and methods of delivery and installation prior to the time the components are delivered to the Work Site.

H. Identification Plaque. The Artist shall provide and pay for an identification plaque for the Work which is acceptable to the City. The Artist shall install and pay for installation of the plaque at the location at the Work Site required by the City. The written contents of the plaque shall include at least the following information: title of the Work, name of the Artist, the year that the Work was commissioned by the City, and a statement of the City's ownership of the Work.

I. Compliance with Laws. The Artist shall perform the Services in compliance with all applicable local, state or federal laws, ordinances, statutes, codes, regulations or requirements. The Artist, at his expense, shall obtain all permits, licenses and inspections required for the performance of the Services under this Agreement. The City shall make available staff to provide reasonable assistance to the Artist in his efforts to obtain such permits, licenses and inspections. The fee for permits required by the City shall be waived.

J. Additional Services. The Artist may be required to provide "Additional Services" under the terms and conditions of this Agreement, if the parties agree in writing to the scope of such services and the amount and method of compensation before the Additional Services are performed. Submittal of a proposal and acceptance by the City in the form of a letter of written authorization from the City's project manager shall constitute an amendment to this Agreement and the Additional Services performed shall be subject to the terms and conditions of this Agreement as amended by those documents. The City shall execute an Additional Services supplement summarizing the changes to contract terms and provide a copy to the Artist. Additional Services may include:

1) Providing the services of a consultant for the purpose of providing professional services necessary to accomplish the Services described in Section 1.

2) Making revisions in designs, drawings, specifications or other documents when such revisions are due to causes not within the control of the Artist or the Artist's employees, agents or contractors.

3) Other related and appropriate Additional Services as authorized by the City and required to accomplish the Services described in Section 1.

4) Lighting and landscaping design and installation services.

2. Compensation and Method of Payment.

A. Compensation. For the Artist's Services, the City agrees to pay the Artist up to a total of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) ("Compensation"). The Compensation includes any applicable taxes which must be paid by the Artist. The Compensation constitutes full and complete compensation for the Artist's Services under this Agreement and includes all expenditures made and expenses incurred by the Artist in performing the Services.

B. Method of Payment. The Compensation shall be paid to the Artist in the following installments within a reasonable period of time after completion of the Services described below:

1) Twenty Thousand and No/100 Dollars (\$20,000.00) following the City's execution of this Agreement, for payment of start-up materials supplies and overhead;

2) Twenty-Five Thousand and No/100 Dollars (\$25,000.00) following the Artist's completion of clay figures ready for mold making by foundry, which amount includes the foundry's first deposit;

3) Twenty Thousand Seven Hundred and No/100 Dollars (\$20,700.00) following the foundry's completion of the wax casting, which amount includes the foundry's second deposit;

4) Twenty-Two Thousand Nine Hundred and No/100 Dollars (\$22,900.00) following the foundry's completion of the bronze casting;

5) Five Thousand Five Hundred and No/100 Dollars (\$5,500.00) following delivery of the sculpture to the Work Site, in satisfactory condition;

6) Monthly payments not to exceed in the aggregate One Hundred Fifty-Five Thousand Nine Hundred and No/100 Dollars (\$155,900.00) for construction of the Work (other than the components of the sculpture) in an amount based on the percentage of such Work in place, in accordance with the cost schedule attached as Exhibit "C";

7) Twenty Thousand and No/100 Dollars (\$20,000.00), which in combination with the Final Payment is at least ten percent (10%) of the total Compensation, following completion of the Work as required in this Agreement and issuance of the Notice of Acceptance by the City; and

8) Five Thousand and No/100 Dollars (\$5,000.00) following the City's receipt of (a) photographic documentation suitable for publication; (b) a final description of the Work; (c) maintenance instructions for care of the Work; and (d) a catalogue worksheet furnished by the City ("Final Payment").

The payments which are described in subparagraphs 1 through 6 above shall be made subject to a retainage of ten percent (10%), which retained amounts shall be paid to the Artist pursuant to the terms of subparagraphs 7 and 8 above.

The payments which are described in this Section shall be made to the Artist within thirty (30) days of receipt by the City of a request for payment, accompanied by a detailed progress report, and upon the condition that the Artist has performed the Services described and all other requirements of this Agreement to the satisfaction of the City.

The City shall determine when the Work has reached a given payment stage or percentage of completion.

3. Time of Performance. The Artist's Services shall begin on the date of execution this Agreement and shall be undertaken and completed in a sequence which shall assure timely completion of the Services. In any event, the Artist shall complete all Services and requirements of this Agreement no later than the date which is eleven (11) months after the date of full execution of this Agreement. The Artist agrees that time is an essential and important element of this Agreement.

4. Workmanship and Material. The Artist represents and warrants to the City that the fabrication and installation of the Work shall be performed in a good and workmanlike manner and that the Work shall be free of defects in workmanship or materials, including "inherent vice" or other qualities which cause or accelerate deterioration of the Work. For a period of three years from the date of acceptance by the City, as evidenced by the Notice of Acceptance issued by the City, the Artist shall repair any defects due to faulty workmanship or materials, or inherent vice or other qualities which cause or accelerate deterioration of the Work. Any and all such repairs completed by the Artist shall be consistent with professional conservation standards.

5. Documentation and Description. Following completion of the Work and the issuance of the Notice of Acceptance by the City, but prior to the Final Payment, the Artist shall furnish the City with four (4) unmarked, good quality 35 mm color slides of the Work and a full written narrative description of the Work.

6. Maintenance Instructions and Maintenance. Following completion of the Work and issuance of the Notice of Acceptance by the City, but prior to Final Payment, the Artist shall supply the City with written maintenance instructions for the Work. The instructions shall include information in sufficient detail regarding care, repair and maintenance of the Work. The Artist represents and warrants that reasonable maintenance of the Work shall not require procedures substantially in excess of those described in the maintenance instructions to be supplied by the Artist to the City under this Agreement.

The maintenance of the Work shall be carried out by the City with the intention of protecting the value, integrity and authenticity of the Work.

For a period of ten (10) years after Final Payment to the Artist, and at no charge to the City, the Artist shall provide advice concerning problems relating to maintenance of the Work, unless otherwise agreed upon in writing by both the Artist and the City. Subsequent to expiration of the ten-year period, the Artist shall make a reasonable effort to provide such advice for a reasonable fee, to include reimbursement of reasonable expenses incurred by the Artist in the provision of such advice.

7. Formal Acceptance and Ownership of the Work. Within thirty (30) days after the Artist has informed the City that the Work has been completed, the City shall inform the Artist in writing that either: (A) the Work has been completed according to the terms of this Agreement, and the City formally accepts the Work ("Notice of Acceptance"); or (B) issues remain which prevent the issuance by the City of a Notice of Acceptance, in which case such issues shall be described. At such time as the City issues the Notice of Acceptance and makes Final Payment to the Artist, the City shall become the sole owner of the Work, which the Artist warrants shall be free of all liens or encumbrances of any kind.

8. Assignment of the Work. The Services described in this Agreement shall be performed by the Artist and shall not be assigned, subleased or transferred without the prior written consent of the City. This Section does not prohibit the Artist from employing or subcontracting with qualified personnel who shall work under the Artist's supervision; provided, that such employing or subcontracting shall not affect the originality, design, appearance or visual quality, or any other approved characteristics, of the Work.

9. Independent Contractor. The Artist, which for purposes of this Section includes but is not limited to its officers, members, volunteers, employees, agents, contractors and subcontractors, if any, are not employees of the City for any purpose whatsoever. The Artist is an independent contractor at all times the Artist is performing the Services. The Artist shall

furnish all supervision, labor, materials, equipment, supplies and other incidentals, as well as provide related Services, as required by this Agreement.

10. Indemnity. The Artist agrees to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against such parties for or on account of any matter arising from or out of the obligations performed pursuant to this Agreement by the Artist and the Artist's volunteers, employees, agents and contractors.

11. Insurance. The Artist shall procure and maintain at the Artist's expense, during the term of this Agreement, insurance in the kinds and amounts hereinafter provided, with insurance companies authorized to do business in the Commonwealth of Virginia, covering all operations under this Agreement, whether performed by the Artist or Artist's volunteers, employees, agents or contractors. Prior to the commencement of the Services under this Agreement, the Artist shall furnish to the City a certificate or certificates of insurance in a form which is satisfactory to the City showing that the Artist has complied with this Section. All certificates of insurance shall provide that written notice be given to the Risk Manager, Office of the City Attorney, P.O. Box 178, Alexandria, Virginia 22313, at least thirty (30) days before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. If the City wishes to review a binder or policy in addition to a certificate of insurance, the Artist shall deliver a copy of the requested document to the City before commencement of the work for which the coverage is required. The kinds and amounts of insurance required are:

A. Commercial General Liability Insurance. A commercial general liability insurance policy with combined limits of liability for bodily injury.

\$1,000,000 Per Occurrence

\$1,000,000 Policy Aggregate

\$1,000,000 Products Liability/Completed Operations

\$1,000,000 Personal and Advertising Injury

\$ 50,000 Fire, Legal

\$ 5,000 Medical Payments

Such policy of insurance must include coverage for all operations performed for the City by the Artist, and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

The City shall be named an additional insured and the coverage afforded shall be primary with respect to the operations provided. If equivalent coverages are provided and the form is approved by the City, the Artist may provide a commercial general liability policy in a form different from that described above.

B. **Automobile Liability Insurance.** An automobile liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Such policy of insurance must include coverage for the use of all owned, non-owned, hired automobiles, vehicle and other equipment both on and off the Work Site. The City shall be named an additional insured and the coverage afforded shall be primary with respect to operations provided.

C. **Transportation/Cartage Insurance.** All-risk transportation/cartage insurance coverage in a form acceptable to the City which covers physical damage to or destruction of the Work, or any components of the Work, up to the total value of the Work. Coverage must include loading, transportation and unloading of the components of the Work. The City shall be named an additional insured. The certificate of insurance must be delivered to and approved by the City before components of the Work are loaded. If components of the Work are to be loaded, transported or unloaded by a person or entity other than the Artist, that person or entity must provide the City with an acceptable certificate of insurance, binder or policy evidencing both (1) transportation/cartage coverage which meets the requirements of this Section 11.C; and (2) commercial general liability and comprehensive automobile coverage which meets the requirements of Sections 11.A and 11.B above. Thirty (30) days written notice to the City is required before a policy providing transportation/cartage coverage is canceled, materially changed or not renewed.

D. **All Risk Installation Insurance.** If installation is required of the Artist, all risk installation insurance coverage in a form acceptable to the City which covers physical damage to or destruction of components of the Work up to the total value of the Work. Coverage must include all phases of installation. The City shall be named an additional insured. The certificate of insurance must be delivered to and approved by the City before beginning installation of any components of the Work. If any component of the Work is to be installed by a person or entity other than the Artist, that person or entity must provide the City with an acceptable certificate of insurance, binder or policy evidencing both (1) all risk installation insurance which meets the requirements of this Section 11.D; and (2) commercial general liability and comprehensive automobile coverage which meets the requirements of Sections 11.A and 11.B above. Thirty (30) days written notice to the City is required before a policy which provides all risk installation coverage can be canceled, materially changed or not renewed.

E. **Workers' Compensation Insurance.** Workers' compensation insurance policy for the Artist's employees in accordance with the provisions of the Virginia Workers' Compensation Act (the "Act"). If the Artist employs fewer than three employees and has determined that the Artist is not subject to the Act, the Artist shall certify, in a signed statement,

that the Artist is not subject to the Act. The Artist shall notify the City and comply with the Act if the Artist employs three or more persons during the term of this Agreement.

F. **Increased Limits.** If, during the term of this Agreement, the City requires the Artist to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Compensation shall be made.

G. **Risk to Artist.** The Artist understands and agrees that, until the Work is accepted by the City, as evidenced by the Notice of Acceptance, and Final Payment is made to the Artist, any injury to or loss of the Work is the sole liability of the Artist. The City shall not provide the Artist with any insurance coverage against such risks.

The Artist further understands and agrees that, until the Work is accepted by the City, as evidenced by the Notice of Acceptance, and Final Payment is made to the Artist, any injury to property or persons caused by the Work or the Services is the sole liability of the Artist, and the City shall not provide the Artist with any insurance coverage against such risks.

12. **Taxes.** The City imposes a business license tax on any person or entity engaging in business in the City. The tax may be imposed by the City on the Compensation received for the Services under this Agreement, unless exempted or excluded by local ordinance or state law. The Artist shall insert his social security number below the Artist's signature block on this Agreement before signing and returning copies of this Agreement to the City.

13. **Personnel.** The Artist has, or shall secure at Artist's expense, all personnel required to perform Artist's Services. If any of the individuals performing the Services are City employees or have any contractual relationship with the City, the Artist shall provide written details to the City before the Agreement is signed by the parties. The Artist agrees to submit to the City for its prior, written approval any changes to the team members identified by the Artist in the Preliminary Design Proposal.

14. **Supervision.** The City is under no obligation to supervise the Artist's performance of Services which are described in this Agreement, except as expressly provided in this Agreement. The Artist's duty to defend, indemnify and hold harmless the City applies to any claim alleging that the City failed to supervise the Artist's actions.

15. **Termination for Cause.** If the Artist fails to fulfill any of the Artist's obligations under this Agreement in a timely or proper manner, or if the Artist violates any other term of this Agreement, the City thereupon shall have the right to terminate this Agreement by giving the Artist written notice of termination at least ten (10) days before the effective date of termination. The termination date shall be stated in the notice.

If termination for cause occurs, at the option of the City, all finished or unfinished drawings, specifications, models, portions of the Work, supplies, or other objects which have

been prepared by the Artist under this Agreement, shall become the City's property, and the City shall be entitled to have the Work completed and displayed, but the Artist shall not be named on the plaque. The Artist shall be entitled to receive just and equitable compensation for any Work completed by the Artist under this Agreement to the satisfaction of the City. The City shall have the option of either owning and keeping the Work as it exists on the date of termination for cause, or requiring the Artist to remove the Work, at the Artist's expense, by the deadline stated in a written notice to the Artist given by the City.

Notwithstanding the above, 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 withhold any payments to the Artist for the purposes of set-off until such time as the exact amount of any damages due the City from the Artist is determined.

16. Termination by the City Not for Cause.

A. Generally. The City may terminate this Agreement at any time by giving at least thirty (30) days notice in writing to the Artist. If the Agreement is terminated by the City as provided herein, the Artist shall be paid an amount which bears the same ratio to the total Compensation as the Services actually performed to the satisfaction of the City bear to the total Services of the Artist which are required by this Agreement, less Compensation payments previously made.

B. Incapacity or Death of Artist. In the event of the incapacity or death of the Artist, the City may terminate this Agreement by giving the Artist or the Artist's estate written notice of termination at least ten (10) days before the effective date of termination. The termination date shall be stated in the notice. If the Agreement is terminated as provided herein, the Artist or the Artist's estate shall be paid an amount which bears the same ratio to the total Compensation as the Services actually performed to the satisfaction of the City bear to the total Services of the Artist which are required by this Agreement, less Compensation payments previously made and additional costs which shall be incurred by the City by reason of such termination.

17. Reimbursement of Payments. If this Agreement is terminated, the City shall be entitled to full reimbursement of any amount paid to the Artist which is in excess of just and equitable compensation for the Work completed to the satisfaction of the City by the Artist as of the date of termination.

18. Review of Progress and Reports. At reasonable times and with advance notice to the Artist, the City shall have the right to review the Work in progress and to require and receive written progress reports from the Artist.

19. Copyright and Reproduction Rights.

A. **General Reservation.** The Artist expressly reserves every right available to the Artist under the Copyright Act of 1976, as amended, to control the making and dissemination of copies or reproductions of the Work, except as those rights are limited by this Agreement. The City agrees to make no public display or commercial use of the design of the Work, including models, or any copy or facsimile of the Work, without the Artist's written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

B. **License to City.** Notwithstanding anything to the contrary contained in this Agreement, the Artist grants to the City an irrevocable, non-exclusive license to reproduce, distribute and display two dimensional reproductions of the Work.

C. **Credit to Artist.** If the City reproduces the Work, as expressly authorized by this Agreement or as otherwise permitted by the Artist, all reproductions of the Work by the City shall contain a credit to the Artist and copyright notice substantially in the following form: "copyright, (artist's name), (year of publication)."

D. **Credit to City.** If the Artist reproduces the Work, all reproductions of the Work by the Artist shall contain a credit to the City substantially in the following form: "an original work owned and commissioned by the City of Alexandria, Virginia." Notwithstanding the foregoing, in the event the Artist reproduces only a portion of the sculpture, such reproduction need not contain a credit to the City.

20. Distortion, Mutilation and Destruction of Work. To the extent required by the Visual Artist's Rights Act of 1990, as amended (the "Visual Rights Act") or other applicable laws and regulations, during the Artist's lifetime the City shall not distort, mutilate or otherwise modify the Work in a manner which is prejudicial to the Artist's honor or reputation ("Modification"), nor shall the City destroy the Work during the Artist's lifetime. However, the Act allows the Artist to waive some or all of the Artist's rights described in this Section by signing a written instrument identifying the Work and the right waived. As provided in the Visual Rights Act, the Modifications shall not include modifications caused by the passage of time, the inherent nature of the materials or the result of conservation, lighting or placement in connection with public presentation, unless caused by the gross negligence of the City.

If any significant Modification occurs to the Work after the Work is formally accepted by the City, whether the change is intentional, unintentional or malicious, the Artist may make a written request to the City that the Work no longer be represented as a Work of the Artist. Thereafter, the Work shall no longer be represented as a work of the Artist.

After issuance of the Notice of Acceptance, if the Artist inspects the Work and, in the Artist's opinion, finds the Work to be in a state of substantial disrepair, and if the City and the Artist cannot agree whether or to what extent the Work should be repaired, the City shall make

the final decision regarding whether and to what extent the Work shall be repaired. If the Artist believes the Work requires repair, and the City does not repair the Work to the satisfaction of the Artist, the Artist may make a written request to the City that the Work no longer be represented on the plaque as the Work of the Artist, and the City shall comply with that request.

21. Repairs and Restoration. The City shall make a reasonable effort to consult with the Artist concerning substantial repairs to, and restoration of, the Work. To the extent the City determines it is appropriate, the Artist shall be given the opportunity to perform substantial repairs to, and restoration of, the Work for a reasonable fee.

22. Future Site Development. The parties understand that any substantial change in the immediate vicinity of the Work could change the intended appearance and character of the Work. If the City causes a substantial change in the immediate vicinity of the Work, the City shall comply with any later written request by the Artist that the Artist no longer be represented as the Artist of the Work.

23. Removal or Relocation. If for any reason the Work, or any portion of the Work, must be removed or moved from the Work Site to a new location, the City shall make a reasonable attempt to notify the Artist in writing. The Artist may advise or consult with the City regarding any such removal or moving of the Work. To the extent the removal or moving of the Work would otherwise violate any rights the Artist may have under state or federal law, including, without limitation, the provisions of the Visual Rights Act, the Artist waives such rights; provided, however, in such event the City shall comply with any written request by the Artist that the Artist no longer be represented as the Artist of the Work.

24. Ownership of Documents and Models. Drawings, specifications and models of the Work, or which relate to the Work, including all preliminary studies, shall be the property of the Artist both following the City's formal acceptance of the Work and following termination of this Agreement by the City not for cause, and shall not be used by the City in other projects, unless the Artist otherwise agrees in writing. The City shall have the right to reproduce drawings or specifications produced by the Artist solely for the purposes of publicity or exhibition, provided that any such reproduction is credited to the Artist.

25. Records. Records, reports and documents pertaining to the Work, including, but not limited to, the Artist's expenses and records of accounts between the City and the Artist (which shall be kept on a generally recognized accounting basis), shall be maintained by the Artist and made available to the City or its authorized representative for audit during normal business hours.

26. Force Majeure. The Artist shall not be responsible for failure to have fulfilled its obligations under this Agreement due to causes beyond his reasonable control.

27. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

28. Changes to the Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

29. Captions. The captions to the sections or paragraphs of this Agreement are not part of this Agreement and shall not affect the meaning or construction of any of its provisions.

30. Binding Effect. This Agreement is binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns of the parties.

31. Discrimination Prohibited. In performing any Services required under this Agreement, the Artist shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, marital status, age, physical handicap or disability.

32. ADA Compliance. The Work, and the Services performed by the Artist under this Agreement, shall comply with all applicable requirements of the Americans with Disabilities Act of 1990, as amended (the "ADA"). The Artist's responsibility to defend, indemnify and hold harmless the City, as provided in this Agreement, includes, but is not limited to, claims arising from the acts or omissions of the Artist, its volunteers, agents or employees in violation of the ADA.

33. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia, and the laws, rules and regulations of the City of Alexandria.

34. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, such holding shall not affect the validity or enforceability of any other part of this Agreement as long as the remainder of the Agreement is reasonably capable of completion.

35. Non-Waiver. The failure of either party to enforce any of the provisions of this Agreement or to require performance by the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of this Agreement or any part hereof, or the right of either party to thereafter enforce each and every provision.

36. Conflict of Interests; Ethics.

A. City Representatives. No officer, agent or employee of the City shall have any personal interest, direct or indirect, in this Agreement, or participate in any decision relating to this Agreement which affects that person's personal interest, the personal interest of his or her

spouse or minor child or the interest of any business in which he or she has a direct or indirect financial interest.

B. Artist. The Artist agrees that the Artist presently has, and shall acquire no, direct or indirect interest which conflicts in any manner or degree with the performance of the terms of this Agreement. The Artist shall not employ any person who has any such conflict of interest to assist the Artist in performing the Services.

C. Further Provisions. This Agreement and the Services provided hereunder shall be further subject to (i) the Conflict of Interest Policy adopted by the Commission on June 16, 1987, (ii) the Virginia State and Local Government Conflict of Interests Act, the Virginia Governmental Frauds Act, and Articles 2 and 3 of Chapter 10 of Title 18.2, all of the Code of Virginia, 1950, as amended, and (iii) Article I, Title 3, Chapter 3 of the Code of the City of Alexandria, 1981, as amended.

37. Notices. For purposes of written notice to the Artist, Artist's address is:

Antonio Tobias Mendez
19419 Frog Eye Road
Knoxville, Maryland 21758

For purposes of written notice to the City, the City's address is:

City of Alexandria
P.O. Box 178
1108 Jefferson Street
Alexandria, Virginia 22313
Attn: Director of Recreation, Parks
and Cultural Activities

Copies of all notices to the City also must be given to:

City of Alexandria
P.O. Box 178
301 King Street
Suite 3500
Alexandria, Virginia 22313
Attn: City Manager

Written notice must be made either personally or by certified mail, return receipt requested. If the notice is mailed, the notice shall be complete when deposited in the United States Mail, postage prepaid, and addressed as required in this Section.

Notice of change of address of the Artist or the City shall be given pursuant to this Section. Until the City gives its Notice of Acceptance, the Artist shall provide the City with notice of any change in the Artist's address within ten (10) days following such change. After the Final Payment, the Artist shall notify the City of any change in the Artist's address within thirty (30) days following such change.

38. Counsel Obtained; Signature Authority. The parties to this Agreement acknowledge that they have thoroughly read this Agreement, have sought and received whatever competent advice or counsel was necessary for them to form a full and complete understanding of all rights and obligations herein, and, having done so, hereby execute this Agreement. Each individual signing this Agreement warrants he or she has full authority to sign.

39. Required Signatures. This Agreement shall not be binding upon the City until all signatures required below have been obtained.

IN WITNESS WHEREOF, the parties have executed this Agreement or caused the same to be executed by their duly authorized representatives.

CITY:

CITY OF ALEXANDRIA

By: _____
Philip Sunderland,
City Manager

ARTIST:

ANTONIO TOBIAS MENDEZ
SSN: _____

APPROVED AS TO FORM:

Assistant City Attorney

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City of Alex

MEM

*Attachment
2*

7
1-13-01

DATE: JANUARY 8, 2001

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *ps*

SUBJECT: PUBLIC HEARING AND CONSIDERATION OF THE ACCEPTANCE OF THE DESIGN PROPOSAL FOR THE CAPTAIN ROCKY VERSACE PLAZA AND VIETNAM VETERANS PROJECT

ISSUE: Public hearing and consideration of the acceptance of the design proposal for the Captain Rocky Versace and Vietnam Veterans Plaza.

RECOMMENDATION: That City Council: 1) hold the public hearing; and 2) following the public hearing, approve the design proposal (Attachment 1A) for the Captain Rocky Versace and Vietnam Veterans Plaza as recommended by the Alexandria Commission for the Arts and the Park and Recreation Commission..

DISCUSSION: At the December 14, 1999 Council meeting, City Council's Naming Committee, which included Councilwoman Pepper, Councilman Speck and then-City Manager Vola Lawson, recommended that Council rename the plaza in front of the Mount Vernon Recreation Center as the Captain Rocky Versace and Vietnam Veterans Plaza. Council voted to rename the plaza, and the Mayor appointed a small working group to develop an appropriate design that would recognize Captain Rocky Versace and the 61 Alexandrians who served during the Vietnam War (Attachment 1).

Captain Humbert Roque ("Rocky") Versace distinguished himself as a hero in the Vietnam War during which he was seriously wounded, captured and gave his life in defense of his country and fellow prisoners. At the time of his capture, Captain Rocky Versace was just months short of completing his military tour and had been accepted into the Maryknoll order to become a priest. After his training, he planned to return to Vietnam as a missionary and work with the children of that country (Attachment 2).

The working committee for the Versace Design Project conducted a search for artists/design teams within the Greater Washington Metropolitan region who were interested in competing for the project (Attachment 3). The design selection panel included representatives from the Del Ray Civic Association, the Commission for the Arts, the Park and Recreation Commission, the Mount Vernon Recreation Center's Parent Advisory Board, The Friends of Rocky Versace, the Mount Vernon

Community School, a graduate of the U.S. Military Academy, a member of City Council, City staff and a design professional from the community. The design panel evaluated each of the artists' qualifications and selected a list of semifinalists (Attachment 4). A design jury was also created to review the semifinalists' proposals and to select the final design for the project. The design jury consisted of the selection panel members, with the addition of a sculptor and a museum/visual arts professional (Attachment 5).

Seventeen entries of professional qualifications from artists and designers throughout the region were reviewed by the selection panel on Saturday, September 23, 2000. Three semifinalists were identified and were awarded a \$1,000 honorarium from private funds provided by the Friends of Rocky Versace to develop a design for the plaza.

Semifinalists' presentations were held on November 4 and Antonio Tabias Mendez, a sculptor from Knoxville, Maryland was selected by the design jury as the finalist for the Captain Rocky Versace and Vietnam Veterans Plaza design competition.

The proposed design for the memorial is a circular plaza, 65 feet in diameter. The design defines the plaza as an intimate, outdoor space. Limestone benches are semicircular in nature and embrace the circular plaza. The high back of the benches will be engraved with the name and branch of service of Alexandria's 61 Vietnam veterans. Above each veteran's name is a gold star which is hand carved into the stone and coated with gold leaf. The design reserves space for additional names. Two inscribed bands circle the center bronze statue of Captain Rocky Versace embraced by two children of Vietnam (Attachment 6).

The acceptance of art as a donation to the City of Alexandria falls under the City's "Policy on Acquired Art"(Attachment 7). To solicit public comment, the policy requires the Alexandria Commission for the Arts to hold a public exhibition of the proposed piece of art. The Commission's Public Art Committee then studies any materials presented by the donor; reviews the design; considers installation and maintenance issues associated with the proposed donation; and makes a recommendation to the Commission. The Commission then reviews the Public Art Committee's recommendation, and makes its recommendation to City Council.

The public exhibitions, held by the Alexandria Commission for the Arts for the design proposal, took place at the Mount Vernon Recreation Center and Lee Center from November 11 through December 8, 2000. Announcement of the public exhibitions and public hearings included flyers and paid advertisements in local newspapers (Attachment 8).

The Public Art Committee held a public hearing on December 14 at the Mount Vernon Recreation Center to review comments relating to the design proposal (Attachment 9) and to solicit additional comments from the public (Attachment 10). At this meeting, the Public Art Committee voted to "accept the design as presented and pass on the concerns to the Commission and City Council expressed this evening about the fairness of the site selection process" (Attachment 11).

On December 19, the Alexandria Commission for the Arts held a public hearing on the design proposal. The Commission voted to recommend that the Public Art Committee's recommendation be adopted and that the City Council accept the gift of the Rocky Versace and Vietnam Veterans Plaza project as proposed (Attachment 12).

In addition, at its November 16 meeting, the Park and Recreation Commission voted to support the recommended design for the Captain Rocky Versace and Vietnam Veterans Plaza (Attachment 13).

FISCAL IMPACT: The Friends of Rocky Versace will raise \$250,000 for the Captain Rocky Versace and Vietnam Veterans Plaza. Additional funds for maintenance of the project will also be raised by the Friends of Rocky Versace and will be placed in escrow with the City. This amount will be determined once estimates on the costs are received.

ATTACHMENTS:

1. List of Versace Memorial Committee Members
- 1A. Design Proposal
2. Article: "Never Give In," *Washingtonian Magazine*, March 2000.
3. "Call for Entries: Request for Qualifications," brochure.
4. List of Selection Panel Members for the Captain Rocky Versace Plaza and Vietnam Veterans Project.
5. List of Design Jury Members for the Captain Rocky Versace Plaza and Vietnam Veterans Project.
6. Antonio Tabias Mendez Design Proposal for the Captain Rocky Versace Plaza and Vietnam Veterans Project.
7. City of Alexandria's Policy on Acquired Art.
8. Paid Advertisements, *Alexandria Journal* and *Alexandria Gazette*.
9. Comments received Design Review Exhibition November 11-December 8, 2000 from Lee Center and Mount Vernon Recreation Center.
10. Comments received at December 14 Public Art Committee meeting.
11. December 14, Public Art Committee recommendation.
12. December 19, Alexandria Commission for the Arts recommendation.
13. December 18, 2000 Park and Recreation Commission letter to City Council.

STAFF:

Sandra Whitmore, Director, Recreation, Parks and Cultural Activities
Janet Barnett, Deputy Director, Recreation, Parks and Cultural Activities
Leslie Clark, Recreation Supervisor V, Recreation, Parks and Cultural Activities
Cheryl Anne Powalisz, Recreation Supervisor II, Alexandria Commission for the Arts
Recreation, Parks and Cultural Activities