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April 26, 2015

Mayor Oscar Leeser
Via Email: mayor@elpasotexas.gov

Representative Ann Morgan Lilly
Via Email: district1@elpasotexas.gov

Representative Larry Romero
Via Email: district2@elpasotexas.gov

Representative Emma Acosta
Via Email: district3@elpasotexas.gov

Representative Carl L. Robinson
Via Email: district4@elpasotexas.gov

Representative Dr. Michael Noe
Via Email: district5@elpasotexas.gov

Representative Claudia Ordaz
Via Email: district6@elpasotexas.gov

Representative Lily Limon
Via Email: district7@elpasotexas.gov

Representative Courtney Niland
Via email: nilandcc@elpasotexas.gov

City of El Paso
300 N. Campbell
El Paso, Texas 79901

Re: Service Agreement, dated October 2, 2012, between the City of El Paso (the
"City") and Margarita Cabrera ("Ms. Cabrera")

Dear Mayor Leeser and City Representatives:

I represent Margarita Cabrera. This letter is an Application for Remedy Prerequisite to Suit Against the City that is being presented pursuant to Section 1.5 of the Charter of the City of El Paso. This claim is founded on the referenced Service Agreement, which is hereafter referred to as the Contract.

On October 12, 2012, the City entered into the Contract with Ms. Cabrera to design, fabricate, and install a metal sculpture in the roundabout located between Country Club Road and Memory Lane, El Paso, Texas. The Contract price was \$70,000. The Contract is extraordinarily detailed and provides for a series of design and fabrication approvals before installation can take place. Ms. Cabrera obtained all of the required approvals for her sculpture and otherwise complied with the terms of the Contract in every respect. As of this date, Ms. Cabrera has been paid approximately 85% of the contract price.

After extensive delays due to the reconstruction of Country Club Road, Ms. Cabrera was allowed to begin the process of installing the sculpture in the roundabout in March 2015. The Contract expressly provides in Section 2.2.4 that the "City shall be responsible for structural support, footing or base required for the installation of the work."

During the week of March 9, 2015, Ms. Cabrera took her children to Mexico on a short Spring Break trip. On Friday, March 13, 2015, she received a telephone call from her studio manager to the effect that the City was cutting up her sculpture and hauling it away. Ms. Cabrera then checked her email and found that at approximately 1:30 pm, Pat Dalbin, the City's Public Art Program Manager ("Ms. Dalbin") had sent her the following email:

Margarita,

It has come to our attention that your art piece "Uplift" currently being installed at the Country Club roundabout does not conform to the design accepted by the City of El Paso. Your final approved documents (attached) indicated that the metal shavings would be tossed into the concrete foundation but this is not the case you have significantly altered the design by adding actual guns to the work and compromised the structural integrity. You are to cease and desist all work and meet with us first thing Monday morning to discuss this matter. Please let us know as soon as possible at what time you will be at in our offices to discuss. Thank you

Ms. Cabrera attempted to reach Mr. Dalbin numerous times by telephone on March 13, 2015, but never received a return call in spite of leaving voice mails. Ms. Cabrera later reached Ms. Holguin who was at the site and asked her to walk over to Ms. Dalbin, who was also at the site and ask her to speak to Ms. Cabrera on Ms. Holguin's phone. Ms. Dalbin refused to speak to Ms. Cabrera.

A photo of Ms. Cabrera's sculpture as it existed on March 13, 2015, before being removed is attached to this letter. Ms. Cabrera's sculpture was cut up and removed on March 13, 2015, without her knowledge or consent. On March 13, 2015, the City did not own Ms. Cabrera's sculpture. Section 2.8.2 of the Contract expressly provides that: "Title to the Artwork passes to the City upon final acceptance by the City and final payment by the City to Artist." Instead of providing Ms. Cabrera with an opportunity to discuss the design or even an opportunity to remove the sculpture herself, the City essentially destroyed the sculpture. Ms. Cabrera has not even been allowed to retrieve what is left of the sculpture that she stills owns.

On Monday, March 16, 2015, Ms. Cabrera met with Laura Gordon, Tracey Jerome, and Ms. Dalbin and was told that Tommy Gonzalez, the City Manager, had ordered the sculpture to be removed because the design had been altered and because it was structurally unsound. Ms. Cabrera strenuously

denies that the sculpture was fabricated using a design that had not been approved. The City was aware of the fact that the sculpture included components from guns that had been confiscated by the Sheriff's Department. The sculpture has been named UPLIFT and its concept is best described by Ms. Cabrera in her own words:

UPLIFT is a true El Paso public art project; funded by the city for our community and created with many of members of the community from both sides of the border including school children, college students, to the sheriff's department, to local businesses and engineers, Mexican consulate, museums, and many more. In our creative making process we have set out to honored the unity of this border community, its cultural traditions, collective memories, histories and individual spirits.

UPLIFT represents a flock of birds at the moment when they begin to take flight. As they lift off, the birds experience pushing and pulling forces, aggression, competition, violence, strength, and desire as they so strongly long for flight and thus freedom and achievement.

UPLIFT's theme springs from the dynamic, violent realities of the US/Mexico border and the bright and creative future that is beginning to take flight. We invited the public from El Paso and Juarez to come together and create conversations about our violent histories here along our border community. The public encounters produced cultural symbols designs made by our community members (using papel picado traditions) that where subsequently transferred onto the wings of the birds. This creative process provided all of us who share this collective memory, a sense of ownership, a newly bonded community, and a different more intimate awareness of the challenges faced by our bi-national community with regard to violence.

In our border community of Juarez/El Paso, guns have contributed to our tragic history. We can attribute responsibility for death and injury to war, crime, drugs, corruption, and an insatiable quest for power.

We know the power of guns, a power that is defined through fear, intimidation, injury, and death. By integrating fragments of confiscated guns donated by our local Sherriff Wiles, UPLIFT opposes these elements with courage, honor, healing, and life, elements that we find when we work as a creative, artful, and wholesome community. We worked with the belief that we have the power to change a culture of violence into a community of hope.

The City's action in removing the sculpture without Ms. Cabrera's knowledge or consent is not only a breach of the Contract but also constitutes civil conversion of personal property. The employees of the City who knowingly participated in the unlawful decision to remove and essentially destroy the sculpture will be individually liable for all consequential damages suffered by Ms. Cabrera as well as the destruction of the sculpture itself. The sculpture has a market value in the private art market of more than \$200,000.

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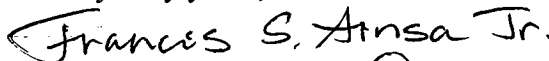
In spite of the City's breach of the Contract and the unlawful acts of its employees, Ms. Cabrera made several sincere approaches to the City in an effort to determine what might be done to resolve any issues with the design of the sculpture. All her efforts have been rebuffed. She recently received an email from Tracey Jerome containing some self-serving statements that the staff continues to work to resolve the issues with UPLIFT. This is an absurd communication since the staff has not contacted Ms. Cabrera to discuss the design or even offered to return her property to her.

It is now apparent that the City has elected to stand on its breach of the Contract. Consequently, Ms. Cabrera has no alternative but to seek to recover her damages for breach of contract. Ms. Cabrera has been damaged in the following respects: the sculpture that she still owns has been damaged; the sculpture that she still owns has been unlawfully converted by the City and its employees; her reputation as an artist has been severely damaged; she has incurred unreimbursed costs and expenses due to the City's delays in the installation process; and she has suffered pain and anguish as a direct result of the City's breach. Ms. Cabrera's damages amount to \$500,000 for which demand is hereby made.

Legal issues aside, the manner in which the City Manager and the City staff have treated Ms. Cabrera is appalling. Even if there were a design issue, which is not the case, Ms. Cabrera is entitled to be treated with courtesy. Instead of engaging in a constructive discussion with her, the City essentially destroyed her artwork and severely damaged her reputation as a public artist.

Please place this claim on the regular City Council meeting as soon as possible and respond to my demand.

Very truly yours,



Francis S. Ainsa Jr. (15)

FSA/lb
Enc.

cc: Laura Gordon
Richarda Momsen
Patricia Dalbin
Tracey Jerome
Tommy Gonzalez
Margarita Cabrera