FUNDING AGREEMENT

This Agreement is by and between the CITY OF COLLEGE STATION, a Home Rule Municipal Corporation incorporated under the laws of the State of Texas (hereinafter referred to as the "City") and Keep Brazos Beautiful, Incorporated, a Texas Non – Profit Corporation (hereinafter referred to as "Agency").

WHEREAS, the City has the objective of supporting the joint landscape project between the City, the City of Bryan, and Texas A&M University entitled Unity Plaza, and

WHEREAS, Agency through its purpose shares this common goal with the City; and

WHEREAS, the City desires to assist Agency in providing artwork for display at Unity Plaza;

NOW, THEREFORE, IN CONSIDERATION of the performance of the mutual covenants and promises contained herein, City and Agency agree and contract as follows:

ARTICLE I
DEFINITIONS

1.1 The term "Agency" shall mean Keep Brazos Beautiful, Incorporated, a Texas Non-profit Corporation.

1.2 The term "City" shall mean the City of College Station, in the County of Brazos, and the State of Texas.

1.3 The term "Contract Quarter" shall refer to any quarter of the contract year in which this Agreement is in force. Contract Quarters will end on December 31st, March 31st, June 30th, and September 30th, of each contract year.

1.4 The term "Financial Activity Report" shall mean a report which includes a summary of revenues and expenditures, and a summary of assets and liabilities to be submitted to the City on the form attached herein as Exhibit A.

1.5 The term "Narrative Summary of Activity Report" shall mean a report of the activities of Agency including a summary of how funds from City have been utilized to accomplish the Statement of Work to be submitted to the City on the form attached herein as Exhibit B.

1.6 The term "Performance Measure Report" shall mean a report to determine the levels of service that are being provided by Agency to be submitted to the City on the form attached herein as Exhibit C.

1.7 The term "Public Art" shall mean the seven (7) foot bronze sculpture entitled "Children of Peace" casting number eleven (11) of thirty (30) by Gary Lee Price, which will be located at Unity Plaza and is the property of the City on loan to the Agency for public display.

Contract No. _____

1.8 The term "Unity Plaza" shall mean the location of the joint landscape project between the City of College Station, the City of Bryan, and Texas A&M University located at 10 Texas Avenue in College Station, Texas.

1.9 The term "Waiver" shall mean the document attached herein as Exhibit D used by Agency on behalf of the City to obtain the waiver of artist's or artists' rights.

ARTICLE II
STATEMENT OF WORK

2.1 Agency shall purchase Public Art on behalf of the City for display at Unity Plaza. Agency shall contact artist and shall make arrangements for the purchase and delivery of Public Art. Agency shall have the artist and creator of Public Art sign the waiver on the form attached herein as Exhibit D. Agency understands and agrees that the Public Art shall remain the property of the City and that the Public Art is on loan to Agency for public display.

2.2 Agency shall host an unveiling event of Unity Plaza. Agency shall promote Unity Plaza through the use of promotional flyers and media ads. Agency shall purchase supplies, equipment and services as needed for hosting the unveiling event. Such event shall be open to the public.

2.3 Agency shall state in all published material, announcements and advertising regarding Unity Plaza that the activity was made possible in part through funding from the City of College Station through the Agency. If there is not published activity material, a sign must be displayed and a verbal announcement must be made at the time of the unveiling event.

ARTICLE III
PAYMENT

3.1 For and in consideration of the activities to be satisfactorily performed by Agency under this Agreement, City shall provide funding in the amount of **TWENTY SEVEN THOUSAND AND NO/100 DOLLARS ($27,000.00)** to be paid as follows:

A. The total amount of TWENTY ONE THOUSAND THREE HUNDRED FORTY AND N0/100 DOLLARS ($21,340.00) will be paid from the Brazos Valley Solid Waste Management Authority (BVSWMA) Fund for Public Art on behalf of City for display at Unity Plaza. Agency shall present an invoice to City requesting payment for Public Art. Payment will be dependent upon the City receiving the original executed waiver from artist and creator of Public Art as described in 2.1. Upon invoice and waiver, payment shall be made within thirty (30) days of receipt.

B. The total amount of FIVE THOUSAND SIX HUNDRED SIXTY AND NO/100 DOLLARS ($5660.00) will be paid from the Brazos Valley Solid Waste Management Authority (BVSWMA) Fund for the promotion of Unity Plaza. Agency shall submit and

obtain approval from the City Manager or his delegate for the supplies, equipment and services to be used with the promotion of Unity Plaza. Upon written approval by City Manager or his delegate, Agency shall then submit invoice to City requesting payment for the approved purchase of supplies, equipment and services for the promotion of Unity Plaza. Upon written approval and invoice, payment shall be made within thirty (30) days of receipt.

3.2 Agency understands and agrees that all promotional items and services are to be approved in advance by City. City Manager or his delegate shall provide written approval prior to the implementation of promoting Unity Plaza. Funds not utilized within the fiscal year remain in possession of City.

3.3 The City shall receive all reports required herein from the Agency no later than thirty (30) days after the end of each Contract Quarter (no later than January 30th, April 30th, July 30th, October 30th of each contract year).

3.4 City may require Agency to return funds if City determines that Agency's expenditures deviate materially from their Statement of Work or if the reports required herein are not submitted in a complete and timely manner.

ARTICLE IV
RECORDS AND REPORTS

4.1 Agency shall maintain financial records and supporting documents in the form of receipts, canceled checks, payroll records, employee time sheets and other documentation to verify all expenditures of funds under the terms of this Agreement. Said documentation shall conform to the City's accounting practices.

4.2 Agency shall maintain written records and supporting documents as required under this Agreement for all applicable, generally accepted, and required administrative and operating policies. Agency shall maintain such records, accounts, reports, files or other documents for a minimum of three (3) years after the expiration of this Agreement. City's right to access Agency's files shall continue during this 3-year period and for as long as the records are retained by Agency.

4.3 Agency shall provide the City reasonable access during regular business hours to books, accounts, records, reports, files or other papers related to this Agreement belonging to or in use by Agency. Agency understands and accepts that all such financial records and any other records relating to this Agreement shall be subject to the Public Information Act, TEX. GOV'T CODE, ch. 552, as hereafter amended.

4.4 **Quarterly reports.** Agency shall submit the following to the City on a quarterly basis as provided in this Agreement:

A. Financial Activity Report.

B. Narrative Summary of Activity Report.

C. Performance Measure Report.

Agency shall respond promptly to any request from the City Manager of City, or designee, for additional information relating to the activities performed under this Agreement.

4.5 The Financial Activity Report, Narrative Summary of Activity Report and Performance Measure Report shall be submitted to the City within thirty (30) days of the end of each Contract Quarter (no later than January 30th; April 30th; July 30th; and October 30th of each contract year).

4.6 A copy of the Agency financial audit shall be made available to City no later than thirty (30) days following Agency's receipt of same.

4.7 If requested, Agency shall make an annual report and presentation to the City Council.

4.8 The City shall conduct a monitoring review of the Agency as deemed necessary by the City so as to evaluate Agency's compliance with the provisions of this Agreement. Said monitoring may consist of on-site monitoring reviews.

ARTICLE V
AGENCY BOARD OF DIRECTORS

5.1 The City shall have the option to recommend one appointee for any one vacancy that occurs on the Board of Directors of the Agency during the program year. This provision shall not apply if the City is otherwise authorized to appoint members to the Board under the Agency's Bylaws.

5.2 Agency shall provide the City with an agenda of all regular and non-regular Board meetings five (5) days prior to the meeting with information as to the date, time and place of meeting. If a non-regular meeting is scheduled, Agency shall immediately notify the City of non-regular meeting. Said notification should be in writing via facsimile or e-mail; or orally by telephone, depending on Agency's own notification of the Board meeting.

5.3 Agency shall submit minutes of each Board of Directors meeting and Executive Committee meeting to the City within ten (10) days after approval of the minutes.

ARTICLE VI
TERM AND TERMINATION

6.1 Term. The term of this Agreement shall commence on October 1, 2005, and terminate at midnight on October 31, 2006. However, the program period shall commence on October 1, 2005,

and terminate at midnight on September 30, 2006. Only those expenditures authorized under the Statement of Work, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures or unspent funds shall be forfeited to City upon termination of the Agreement.

6.2 Termination Without Cause.

(a) This Agreement may be terminated by either party, with or without cause, by giving the other party sixty (60) days advance written notice.

(b) In the event this Agreement is terminated by either party pursuant to Section 6.2(a), City agrees to reimburse Agency for any contractual obligations of Agency undertaken by Agency in satisfactory performance of those activities specified hereinabove. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Article I above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

(c) Further, upon termination pursuant to §6.2(a), Agency will provide City: 1) Within thirty (30) days, a full accounting of all expenditures not previously reviewed by City; 2) Within five (5) business days of a request from City, a listing of expenditures that have occurred since the last required reporting period; 3) a final accounting of all expenditures on the day of termination. Agency will be obligated to return any unused funds or funds determined to be used improperly. Any use of remaining funds by Agency after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Article II above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

6.3 Automatic Termination. This Agreement shall automatically terminate upon the occurrence of any of the following events:

(a) The termination of the legal existence of Agency;

(b) The insolvency of Agency, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by Agency for the benefit of creditors;

(c) The continuation of a breach of any of the terms or conditions of this Agreement by either City or Agency for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party; or

(d) The failure of Agency to submit quarterly reports which comply with the reporting procedures required herein and generally accepted accounting principles within thirty (30) days from the date the City notifies Agency of such breach.

6.4 Right to Immediate Termination Upon Litigation. Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

6.5 In the event that this Agreement is terminated pursuant to §§6.3 or 6.4, Agency agrees to refund any and all unused funds, or funds determined by City to have been used improperly, within thirty (30) days after termination of this Agreement.

ARTICLE VII
INDEMNIFICATION AND RELEASE

7.1 Agency agrees to indemnify and hold harmless the City, its officers, agents, and employees from and against any and all loss, costs, or damage of any kind, nature, or description that may arise out of or in connection with this Agreement whether or not the claim or cause of action results from any negligence of the City or any of its officers, agents, or employees.

7.2 Agency assumes full responsibility for the work to be performed and services to be provided hereunder, and hereby releases, relinquishes and discharges the City, its officers, agents, and employees from any and all claims, demands, causes of action of every kind and character, including the cost of defense thereof, for any injury to, including death of, any person (whether employees or agents of either of the parties hereto or third persons) and any loss of or damage to property (whether the property is that of either of the parties hereto or of third parties) that is caused by or alleged to be caused by, arising out of, or in connection with the Agency's work or services provided hereunder whether or not said claims, demands, or causes of actions are covered in whole or part by insurance.

ARTICLE VIII
GENERAL PROVISIONS

8.1 Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by Agency with another private entity, person, or organization for the performance of those services described in Article II above. In the event that Agency enters into any arrangement, contractual or otherwise, with such other entity, person or organization, Agency shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the agreed payments.

8.2 This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of City and Agency and their respective successors and assigns.

8.3 The City and Agency attest that, to the best of their knowledge, no member of the City of College Station City Council and no other officer, employee or agent of the City, who exercises any function or responsibility in connection with the carrying out of the terms of this Agreement, has any personal interest, direct or indirect, in this Agreement.

8.4 Agency covenants and agrees that, during the term of this Agreement, it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or disability. Agency will take affirmative action to ensure that applicants who are employed are treated, during employment, without regard to their race, color, religion, sex, national origin or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection. Agency agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination requirement.

8.5 Agency expressly agrees that, in all solicitations or advertisements for employees placed by or on behalf of Agency, there will be a statement that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or disability.

8.6 Agency certifies that it will not limit services or give preference to any person assisted through this Agreement on the basis of religion and that it will provide no religious instruction or counseling, conduct no religious worship or services, and engage in no religious proselytizing in the provision of services or the use of facilities or furnishings assisted in any way under this Agreement.

8.7 The parties to this Agreement agree and understand that Agency is an independent contractor and not an agent or representative of the City and that the obligation to compensate its employees and personnel furnished or used by Agency to provide the services specified in Article II shall be the responsibility of Agency and shall not be deemed employees of the City for any purpose.

8.8 No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.

8.9 This Agreement has been made under and shall be governed by the laws of the State of Texas.

8.10 Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

8.11 Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective organizations.

8.12 Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

8.13 The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

8.14 This Agreement and the rights and obligations contained herein may not be assigned by any party without the prior written approval of the other party to this Agreement.

8.15 It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

8.16 If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

8.17 It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.

8.18 Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein. Each party has the right to change its business address by giving at least thirty (30) days advance written notice of the change to the other party.

City: City of College Station
Attn: Finance and Strategic Planning
1101 Texas Avenue
College Station, Texas 77840

Agency: Keep Brazos Beautiful, Incorporated
1733 Briarcrest Drive, Ste. 202
Bryan, Texas 77802

Executed this the ____ day of _____, 2006.

KEEP BRAZOS BEAUTIFUL, INCORPORATED **CITY OF COLLEGE STATION**

By: Laura Tankersley-Glenn
Printed Name: LAURA TANKERSLEY GLENN
Title: Executive Director
Date: 12-27-05

By: _____
Ron Silvia, Mayor

ATTEST:

_____
Connie Hooks, City Secretary

APPROVED:

_____ _____
Glenn Brown, Interim City Manager Date

Angela M Dekuca _____
City Attorney Date

_____ _____
Jeff Kersten, Finance & Strategic Planning Director Date

STATE OF TEXAS)
) ACKNOWLEDGMENT
COUNTY OF BRAZOS)

This instrument was acknowledged before me on the 27th day of December, 2005 by Laura Tankersley-Glenn in his/her capacity as Executive Director of Keep Brazos Beautiful, Incorporated.

Cynthia Sciulli
Notary Public in and for
the State of Texas

CYNTHIA SCIULLI
NOTARY PUBLIC
State of Texas
Comm. Exp. 08-15-2009

Contract No. _____

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12/21/05

STATE OF TEXAS)
) ACKNOWLEDGMENT
COUNTY OF BRAZOS)

This instrument was acknowledged before me on the _____ day of _____ _____, 2006, by Ron Silvia, in his capacity as Mayor of the City of College Station, a Texas home-rule municipality, on behalf of said municipality.

_____
Notary Public in and for
the State of Texas

Exhibit A
Financial Activity Report

Agency Name:_____

Quarter:_____

Income Statement

Revenue Source	Agency Actual
Income	
Fees	
Net Sales	
Contributions	
Individual	
Board	
Foundations/trusts	
Special events	
Organizations	
Civic	
Corporate	
Government Revenue	
City of College Station	
City of Bryan	
Brazos County	
Federal	
State	
School district	
Other Local Sources	
Investment Income (div.,int.,cap gains)	
Other:	
In-kind contributions	
Total Income	

Exhibit A
Financial Activity Report

Agency Name:_____

Quarter:_____

Expense Report

Expense Account	Agency Actual
Salaries & Benefits	
Supplies	
Maintenance	
Purchased Services	
Capital Outlay	
Other:	
In-kind expenses	
Total operating Expenses	

Surplus (Deficit)

Fiscal Year	Agency actual
Income/ expenses =	

Explain income statement deficits on an attached sheet.

Exhibit A
Financial Activity Report

Agency Name:_____

Quarter:_____

	(current quarter as of)	(prior quarter as of)
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents		
Investments		
Receivables		
Prepaid expenses		
TOTAL CURRENT ASSETS		
Property and equipment		
Accumulated depreciation		
TOTAL PROPERTY AND EQUIPMENT		
OTHER ASSETS		
TOTAL ASSETS		

Exhibit A
Financial Activity Report

Agency Name:_____

Quarter:_____

LIABILITIES AND FUND BALANCE

	(current quarter as of)	(prior quarter as of)
CURRENT LIABILITIES		
Accounts payable		
Current portion of long-term debt		
Deferred revenue		
TOTAL CURRENT LIABILITIES		
LONG-TERM DEBT, less current portion		
TOTAL LIABILITIES		
FUND BALANCE		
Unrestricted		
Temporarily restricted		
Permanently restricted		
TOTAL FUND BALANCE		
TOTAL LIABILITIES AND FUND BALANCE		

("TOTAL ASSETS" MUST EQUAL "TOTAL LIABILITIES AND FUND BALANCE")

Note, please provide your most current balance sheet and indicate ending month. Also provide your balance sheet as of the end of your prior year.

Exhibit B
Narrative Summary of Activity Report

Please provide a narrative summary of the activities funded with the money from the City of College Station. Use additional sheets if more space is needed.

Exhibit C
Performance Measure Report

Keep Brazos Beautiful, Incorporated

Description & Budget Explanation:
Keep Brazos Beautiful will purchase public art for display at Unity Plaza.

Yearly Budget Summary	FY 03 Actual	FY 04 Actual	FY 05 Actual	FY 06 Estimate
	$0	$0	$0	$27,000

Quarterly Budget Summary	Quarter 1 Actual	Quarter 2 Proposed	Quarter 3 Proposed	Quarter 4 Proposed
	$0	$0	$0	$0

Program Name: Keep Brazos Beautiful, Incorporated

Service Level:
Keep Brazos Beautiful will purchase public art for display at Unity Plaza.

Performance Measures:	Quarter 1 Actual	Quarter 2 Proposed	Quarter 3 Proposed	Quarter 4 Proposed
Status of artwork				
Number of events				

Exhibit D

ARTWORK WAIVER

This Agreement is by and between the CITY OF COLLEGE STATION, a Home Rule Municipal Corporation incorporated under the laws of the State of Texas (hereinafter referred to as the "City") and GARY LEE PRICE STUDIOS, INCORPORATED (hereinafter referred to as "Artist").

ARTICLE I
DEFINITIONS

1.1 The term "Artist" shall mean Gary Lee Price Studios, Incorporated.

1.2 The term "City" shall mean the City of College Station, in the County of Brazos, and the State of Texas.

1.3 The term "Artwork" shall mean the seven (7) foot bronze sculpture entitled "Children of Peace" casting number eleven (11) of thirty (30) by Gary Lee Price.

1.4 The term "Specified use" shall mean exhibition, installation, conservation and other activities in which the attribution rights and/or the integrity rights of the artist may be implicated.

ARTICLE II
WAIVER

2.1 Artist hereby acknowledges the rights of integrity and attribution conferred by the Visual Artists Rights Act, 17 U.S.C. §106A (a), paragraphs (2) and (3) and any other rights of the same nature granted by federal, state or international laws, and of his own free will hereby waive such rights with respect to the City's specified use of the Artwork including but not limited to the right to maintain, remove or destroy the Artwork.

2.2 The City has the absolute right to change, modify, destroy, relocate, move, replace, transport, repair or restore the Artwork which will be located at ten (10) Texas Avenue in College Station, Texas, in whole or in part, in City's sole discretion.

2.3 Artist's final design and all other work product (including the final Artwork itself) under this Contract shall become the property of the City, without restriction on future use. Artist may retain copyright and other intellectual property rights in and to the final design and the final artwork itself. By execution of this Contract, Artist grants to the City a perpetual, irrevocable license to graphically depict or display the final Artwork for any non-commercial purpose whatsoever; for purposes of this limitation, any graphic depiction or display of the final Artwork intended to promote or benefit the City, its public services or its public purposes, regardless of whether or not a fee is charged to the public, or whether revenue is

otherwise received by the City, shall be deemed a non-commercial purpose. Notwithstanding the above limitation, Artist agrees and understands that nothing in this paragraph shall affect or limit the City's absolute, unrestricted rights incidental to the City's full ownership of the final Artwork to alter, change, modify, destroy, remove, move, replace, operate, maintain, transport, sell or transfer, in whole or in part, the final Artwork when the City deems it necessary within its discretion, in order to otherwise exercise the City's powers and responsibility in regard to public works and improvements, in furtherance of the City's operations or for any other reason.

2.4 Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective organizations.

2.5 Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein. Each party has the right to change its business address by giving at least thirty (30) days advance written notice of the change to the other party.

City: City of College Station
Attn: Finance and Strategic Planning
1101 Texas Avenue
College Station, Texas 77840

Artist: Gary Lee Price Studios, Incorporated
38 West 200 South
Springville, UT 84663

Executed this the ____ day of _____, 2005.

GARY LEE PRICE STUDIOS, INCORPORATED

By:_____
Printed Name:_____
Title:_____
Date:_____

CITY OF COLLEGE STATION

By:_____
Glenn Brown, Interim City Manager

_____
City Attorney

_____
Date

_____
Jeff Kersten, Finance & Strategic Planning Director

_____
Date