

AGREEMENT FOR COMMISSION OF PUBLIC ARTWORK

THIS AGREEMENT is entered into this ____ day of _____, 2024, by and between the Lexington-Fayette Urban County Government, whose address is 200 East Main Street, Lexington, KY 40507 (hereinafter the “LFUCG”) and Benjamin Ball, Ball-Nogues Studio, whose address is 3533 East Olympic Blvd., Los Angeles, CA 90023 (hereinafter the “Artist”).

RECITALS

WHEREAS, in preparation for the 250th anniversary of the founding of the City of Lexington, Kentucky (“250 LEX”), the Mayor identified new public art as a priority for the 250LEX anniversary; and

WHEREAS, and the vision for the 250LEX public art project is to create an environment, through public art, that encourages conversation and action, inspires thought and reflection, and encourages social interaction in the heart of downtown Lexington at the front of the Robert Stephens Courthouse Plaza; and

WHEREAS, the Artist is a professional artist whose work and qualifications make the Artist uniquely qualified to create the Artwork; and

WHEREAS, LFUCG has selected the Artist based upon the Artist’s work and qualifications; and

WHEREAS, the Artist and LFUCG wish to perform under the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions hereinafter set forth, the parties agree as follows:

The above recitals are incorporated herein by reference as if fully stated.

- a. “Artist” shall mean: Benjamin Ball, Ball-Nogues Studio.
- b. “Artwork” shall mean the work of art designed by Artist for the Site under the terms of this Agreement, as described and currently defined in the Artist Proposal, which is attached hereto as **Exhibit B** and terms and conditions are incorporated herein. Requirements for the final design of the Artwork are described in Section 1.3 of this agreement.
- c. “Site” shall mean the Robert Stephens Courthouse Plaza.
- d. The following documents are incorporated by reference herein as if fully stated and are attached hereto as exhibits: Request for Qualifications/Request for Proposals Finalist Details (**Exhibit A**), Artist’s Response Proposal (**Exhibit B**), Payment Schedule (**Exhibit C**), and Artist’s Certificate of Insurance (**Exhibit D**).

Article 1 Scope of Services

1.1 Artist’s Obligations

- a. The Artist agrees to provide, and LFUCG agrees to purchase, the following services: a site-specific public artwork for the Site (as defined in the RFP).

- b. The Artist will cause to be fabricated and installed an Artwork (tangible medium created for this project, not including the copyright embodied therein, referred to as "Artwork" herein) in accordance with the Artist's Final Design Proposal ("Proposal").
- c. Once the Proposal has been approved by LFUCG, the Artist must submit a detailed description in writing of any significant changes in the Artistic expression, design, dimension, and materials for the Artwork that is not permitted by nor in substantial conformity with the already approved design. (A significant change in any changes which materially affects installation, scheduling, site preparation, maintenance or the concept of the Artwork as represented in the Proposal, and may include alterations necessary for safety, strength, structural integrity, compliance with laws, or as requested by LFUCG to address LFUCG's concerns with risk.) Such changes are subject to the written approval of LFUCG.
- d. The Artist shall perform all services and furnish, at Artist's sole expense, all supplies, material and/or work equipment necessary for the design, fabrication, transportation, and installation of the Artwork. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- e. The Artist shall determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by LFUCG and any regulatory agencies with project oversight, as set forth in this Agreement. The Artist will do so in a manner that ensures that the Artwork as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, safety devices and procedures, and other needs and functions of the site as defined by LFUCG and/or ordinance prior to the development of a design by the Artist.
- f. The Artist shall prepare the design concept described in Section 1.3 of this Agreement.
- g. The Artist shall complete the fabrication, transportation, and installation of the Artwork by the scheduled dates as provided Section 1.5 of this Agreement.
- h. The Artist shall secure all required licenses, permits and similar legal authorizations at the Artist's expense as may be necessary for the installation of the Artwork at the Site.
- i. Artist shall provide required insurance in amounts and limits specified in Article 5, and terms and conditions are incorporated herein.
- j. Artist shall provide a list of all subcontractors used in connection with the design, fabrication, transportation, and installation of the Artwork. The Artist shall be fully responsible to LFUCG for all acts and omissions of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of services in connection with the design, fabrication, transportation, and installation of the Artwork under a direct or indirect contract with the Artist just as the Artist is responsible for the Artist's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between LFUCG and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of LFUCG to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.
- k. Artist shall provide a set of "as built" drawings if there is significant deviation from approved and permitted construction documents.
- l. Artist shall be available with reasonable advance notice for meetings, ceremonies and like events in Lexington, KY, as necessary. Artist will conduct at least two artist talks or lectures during his regular visits for design development, installation and/or dedication.

- m. Through the date of public dedication of the Artwork, the Artist agrees to be photographed or videoed for the purposes of promoting the Artwork. The Artist grants LFUCG permission to use their likeness in photographs, video, or other digital reproduction in any and all of its publications, including website entries, without additional payment (beyond this contract) or any other consideration.
- n. The Artist understands and agrees that these materials will become the property of LFUCG and the Artist hereby irrevocably authorizes them to edit, alter, copy, exhibit, publish or distribute photo/videos/digital content for purposes of publicizing its programs, this Artwork or for any other lawful purpose.

1.2 LFUCG's Obligations

- a. LFUCG shall pay to the Artist a total sum not to exceed Eight Hundred and Fifty Thousand and 00/100 Dollars (\$850,000.00).
- b. LFUCG shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data, if any, which is needed by Artist to perform.
- c. LFUCG shall be responsible for compliance with all applicable laws and regulations, including but not limited to zoning or environmental regulations, and prior to Artist's development of design, shall provide to the artist in writing an explanation of any specific limitations imposed by such laws and/or regulations that may impact the Artwork including the policies, guidelines and approvals required by regulatory or oversight agencies such as a cultural affairs office.
- d. LFUCG will provide site preparation as agreed upon by both the Artist and LFUCG prior to the installation of the Artwork.
- e. LFUCG shall provide traffic mitigation during the Artwork installation.
- f. LFUCG shall not use the Artist's name or misuse the Artwork which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Artwork.

1.3 Design

- a. Conceptual/Schematic Design
 - i. The Artist submitted a Conceptual/Schematic design (the "Design") which was selected and approved by LFUCG for continued development. The Conceptual/Schematic Design contained in the Artist's Response is attached to this Agreement as **Exhibit B**.
 - ii. Final Schematic Design will be approved by the LFUCG.
- b. Design Development Documents
 - i. Design Development Materials and Documents shall incorporate the further development and refinement of the Proposal and must be approved by the LFUCG and the Public Art Commission before moving forward.
 - ii. LFUCG shall review and approve the location and orientation of the Artwork on the site during Design Development. LFUCG's approval of the Plans shall not release the Artist of the responsibility for the correction of mistake, errors or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved.
 - iii. Artist and Artist's structural engineer and fabricator shall review all Design Development drawings, materials and documents for consistency and constructability, and promptly report any engineering, structural concerns,

or constructability concerns to LFUCG. Modifications to the design necessitated by this review shall be submitted and approved by LFUCG prior to beginning the production of Construction Documents and incorporated therein.

- iv. Design Development shall include presentation quality materials, which shall include colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artwork and how it will be installed at the Site, final color and materials samples, proposed fabrication methods, feasibility studies and final written cost estimates from fabricators, suppliers, and other subcontractors at design completion. When used in reference to the proposed Artwork, Design Development Documents shall fix and describe the size and character of the Artwork with respect to its relationship to the site, including architectural, structural, mechanical, and electrical systems, materials and other elements as may be appropriate. The Design must provide sufficient detail to permit LFUCG to ensure compliance with applicable local, state, or federal laws, ordinances and/or regulations.
- v. Maintenance Plan. At the time Artist submits Artist's design for review by LFUCG and as part of the Design Development Documents, Artist shall provide LFUCG with a General Maintenance Plan for the Artwork, with a detailed description of future anticipated maintenance requirements; a recommended maintenance schedule; anticipated and required care and/or replacement/upgrade of any part of the Artwork and associated moving parts or equipment including any staff time involved in displaying or operating artwork and the frequency of such staff involvement; and written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the Artwork. Artist shall also provide LFUCG with a description of all equipment and or machinery needed to operate the project (if applicable) and any anticipated or required staffing, supervision, or operational needs. The Artwork must be durable, taking into consideration that the Site is an unsecured public space that will be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Artist shall ensure that all maintenance requirements will be reasonable in terms of time and expense. The Artist shall be responsible for making any updates or clarifications to this Maintenance Plan if the maintenance requirements and estimates change over the course of the design, fabrication and/or installation of the Artwork.

c. Final Design

- i. Upon approval of the Design Development Documents by LFUCG, Artist is authorized to proceed with Final Design which shall include the following: presentation quality materials, which shall include colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artwork and how it will be installed at the Site, mock-ups, final color and materials samples, proposed fabrication methods, and final cost estimates at design completion. When used in reference to the proposed Artwork, Final Design Documents shall fix and describe the size and character of the Artwork with respect to its relationship to the site, including architectural, structural, mechanical, and electrical systems, materials and other elements as may be appropriate.

- ii. The Final Design shall address structural considerations, surface integrity, & permanence.
- d. Final/Construction Documents
 - i. Prior to fabrication of the Artwork, the Artist shall provide LFUCG with structural drawings detailing every physical feature of the construction of the Artwork and its integration with the Site (the "Plans"). These drawings will be prepared, signed, and stamped by a qualified engineer, licensed by the state of Kentucky and fully compensated by the Artist. These drawing and supplementary documents shall include information relating to the construction, integration, and maintenance of the Artwork. The Artist shall also cause the appropriate third party to provide as-built drawings, certifying that the Artwork was installed in compliance with the structural drawings, except as alterations were necessary for strength and structural integrity. These drawings will be prepared, signed and stamped by a qualified engineer, licensed in the state of Kentucky, and fully compensated by the Artist.
 - ii. Artist shall submit Construction Documents for construction and/or installation of the proposed Artwork as approved, which must be signed and stamped by design professionals licensed in the Commonwealth of Kentucky, as required by the Kentucky Building Code and any local government amendments to the Building Code. Construction Documents shall include drawings and specifications for the concrete foundation, concrete pedestal, and anchor bolt design. The documents shall contain the electrical design associated with the lighting.
 - iii. The Artist shall provide structural drawings certified by a qualified engineer, licensed by the Commonwealth of Kentucky and paid by the Artist as part of the design cost. Such drawings will conform to all applicable federal, state, and local laws and regulations. Drawings must comply with standards as defined by permitting authorities as required or be redesigned and resubmitted at no additional cost to LFUCG.
 - iv. Artist shall deliver a rendering and color and material samples to LFUCG.
 - v. Artist shall provide a detailed description of future maintenance requirements for the Artwork including needs and anticipated costs and may reflect issues such as the longevity of the materials used and the life span of the project.
 - vi. Artist shall comply with the schedule for completing the Artwork outlined in Section 1.4.

1.4 Budget, Payment, and Deliverables Schedule

- a. Budget
 - i. The Artist shall prepare a budget (the "Budget"), which shall include all goods, services and materials related to the design, fabrication, transportation, and installation of the Artwork with such costs itemized.
 - ii. If the Artist incurs costs in excess of the amount listed in the Budget, the Artist shall pay such excess from the Artist's own funds at no expense to LFUCG_unless the Artist obtains approval in writing for such additional costs from LFUCG.
 - iii. Artist's completion milestones and payment schedule is as set forth in **Exhibit C**, the Payment Schedule, which is incorporated herein by reference.

- iv. The Artist shall invoice LFUCG no more frequently than once a month or for the satisfactorily and accurately delivered/performed products and/or services, whichever is less frequent. LFUCG will make reasonable efforts to make payments within 30 days of receipt of invoice.

1.5 Schedule and Progress Reports

- a. The Artist shall notify LFUCG of the anticipated schedule for the design development, fabrication, transportation, and installation of the Artwork, including a schedule for the submission of progress reports and inspections if any required by LFUCG or permitting agency. The Payment Schedule may be amended by written agreement signed by both parties. The Schedule must identify September 10, 2025, as the Final Completion Date and is included in **Exhibit C**.
- b. The Artist shall inform the client of the progress of each phase of work completed under the Agreement.
- c. The Artist shall make every reasonable effort to complete the Work in accordance with the phases set forth in Exhibit C. Each party shall promptly inform the other of any delays to the project. The parties shall discuss the effect of any delays in good faith under the circumstances and adjust the schedule of phases and the completion date as may be necessary.
- d. The schedule can be revised with agreement between LFUCG and the Artist. Once submitted, the amended schedule may not be amended again except by mutual written agreement of the Parties, as provided herein.
- e. The completion date of September 10, 2025, may be extended, with the approval of LFUCG, in the event of delays caused by events beyond the control of the Artist. Such delays shall include, but not be limited to, acts or neglect by LFUCG or others performing additional work as contemplated by Section 1.2, or to fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God or in the event that the Artist or other individual responsible for the design and fabrication of the Work on behalf of the Artist becomes disabled by illness, preventing progress of the Work. 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.

1.6 Fabrication Stage

- a. The Artist shall fabricate and install the Artwork in substantial conformity with the Design. The Artist may not deviate from the approved design without prior written approval of LFUCG.
- b. If the Artwork is being constructed on site, the Artist shall avoid creating nuisance conditions arising out of the Artist's operations.
- c. LFUCG shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice.
- d. If LFUCG, upon review of the Artwork, determines that the Artwork does not conform to the approved Final Design, LFUCG reserves the right to notify the Artist in writing of the deficiencies and that LFUCG intends to withhold the next budget installment within (15) days of the determination as in paragraph (g) below.
- e. The Artist will have (30) days to cure LFUCG's objections and will notify LFUCG in writing of completion of the cure. LFUCG shall promptly review the Artwork, and upon approval shall release the next budget installment. If the Artist disputes LFUCG's determination that the Artwork does not conform, the Artist shall promptly submit reasons in writing to LFUCG within (15) days of LFUCG's prior notification to the contrary. LFUCG and the Artist shall make reasonable efforts to resolve the

dispute in good faith. However, the final determination as to whether the Artist has complied with the terms of this Agreement shall remain with LFUCG.

- f. The Artist shall notify LFUCG in writing when fabrication of the Artwork has been completed, and that the Artwork is ready for delivery and installation at the Site.
- g. Prior to the transportation and installation of the Artwork, the Artist shall provide color photographs of the Artwork that clearly describe the quality of the Artwork or LFUCG may choose to visually inspect the Artwork on site. LFUCG shall give final approval of the fabricated Artwork and authorize the installation of the Artwork at the site. LFUCG shall not unreasonably withhold final approval of the fabricated Artwork. In the event LFUCG does withhold final approval, LFUCG shall submit the reasons for such disapproval in writing within (15) days of examining the fabricated Artwork. The Artist shall then have (15) days from the date of LFUCG's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. The Artist shall not be penalized for any delay in the delivery and installation of the Artwork to the Site unless the Artist has willfully and substantially deviated from the Design without the prior approval of LFUCG. The Artist shall then be held solely responsible for any expenses incurred in correcting such deviation.
- h. LFUCG shall promptly notify the Artist of any delays impacting installation of the Artwork. Any additional storage and insurance costs incurred by the Artist shall be borne by LFUCG to the extent that the delay is caused by LFUCG.
- i. The Artist shall be required to coordinate with the LFUCG and to inspect the Site prior to the transportation and installation of the Artwork and shall notify LFUCG of any adverse Site conditions that will impact the installation of the Artwork, and which need correction. Failure to do so by the Artist shall be deemed as an acceptance of the Site conditions.
- j. The Artist shall take reasonable measures to protect or preserve the integrity of the Artwork with the application of a protective sealant, patina, or anti-graffiti coating, if applicable, unless LFUCG specifically disapproves of such.

1.7 Installation

- a. Upon LFUCG's final approval of the fabricated Artwork as being in conformity with the Design, the Artist shall deliver [and install] the completed Artwork to the Site in accordance with the schedule provided for in Section 1.5.
- b. The Artist shall provide LFUCG notice and contact information for any designated representatives during installation of Artwork.
- c. The Artist shall arrange for the transportation and installation of the Artwork in coordination with LFUCG. If the Artist does not install the Artwork himself, Artist shall supervise and approve the installation. All work shall be performed by qualified professionals and by licensed contractors as required by law.
- d. The Artist is responsible for timely installation of the Artwork. Artist may not install the Artwork until authorized to do so by LFUCG.
- e. The Artist shall maintain a neat appearance of the work at the Site. After completion of installation, the Artist shall be responsible for any clean-up of the Site made necessary by the installation of the Artwork, including removal of equipment, materials and the repair of any portion of the Site or surrounding area damaged by the Installation of the Artwork.
- f. The Artist shall be present to supervise the installation of the Artwork.
- g. Upon installation and final approval of the Artwork by LFUCG, the Artwork shall be deemed to be in the custody of LFUCG for purposes of Article 6 of this Agreement.

- h. Upon completion of the installation of the Artwork, the Artist shall provide LFUCG with written instructions for the future maintenance and preservation of the Artwork. LFUCG is responsible for the proper care and maintenance of the Artwork.

1.8 Approval and Acceptance

- a. The Artist shall notify LFUCG in writing when all services as required of both Parties by this Agreement prior to this paragraph have been completed in substantial conformity with the Design and Contract Documents.
- b. Prior to receipt of final payment, the Artist shall provide a maintenance manual with a description of all materials, products and fabrication methods used in the Artwork and the required care and upkeep involved, including:
 - i. Product data sheets for any material or finish used;
 - ii. the names and contact information of relevant manufacturers or producers; and
 - iii. to the extent the Artwork incorporated products covered by a manufacturer's warranty, the Artist shall provide copies of such warranties. The Artist warrants that reasonable maintenance of the Artwork will not require procedures in excess of those described in the recommended maintenance manual. LFUCG's final acceptance of the Artwork shall include acceptance of the maintenance manual. Repairs and maintenance of the Artwork, if any, are to be distinguished from maintenance of the Artwork.
- c. LFUCG shall promptly notify the Artist in writing of its final acceptance of the Artwork within (7) days after the Artist submitted written notice pursuant to paragraph (a) above. The effective date of final acceptance shall be the date LFUCG submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that LFUCG acknowledges completion of the Artwork in substantial conformity with the Design, and that LFUCG confirms that all services as required of both Parties by this Agreement prior to paragraph (c) of this section have been completed. Title to the Artwork to LFUCG passes upon final acceptance of the Artwork and final payment by LFUCG to Artist. If a regulatory agency must approve the completed artwork, LFUCG should move promptly to gain such approval as it will be a precondition to LFUCG's ability to accept and approve the finished artwork from the Artist.
- d. If LFUCG disputes that all the services have been performed, LFUCG shall notify the Artist in writing of those services the Artist has failed to perform within (7) days after the Artist submitted written notice pursuant to paragraph (a) above. The Artist shall promptly perform those services indicated by LFUCG.
- e. If the Artist disputes LFUCG's determination that not all services have been performed, the Artist shall submit reasons in writing to LFUCG within (7) days of LFUCG's prior notification to the contrary. LFUCG shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, the final determination as to whether all services have been performed shall remain with LFUCG.
- f. Upon the resolution of any disputes that arise under paragraphs (c) and (d) of this Section, LFUCG shall notify the Artist of its final acceptance of the Artwork pursuant to paragraph (c).

Article 2. Terms of Agreement

- a. Duration

This Agreement shall be effective on the date that this contract has been signed by both parties, and, unless terminated earlier pursuant to such provisions in the Agreement, shall extend until final acceptance by LFUCG

under Section 1.8(c), or submission of final payment to the Artist by LFUCG under Exhibit C, whichever is later. Extension of time of performance hereunder may be granted upon the request of one party and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall be in writing, signed by both parties, and attached to the schedule described in Section 1.5.

b. **Force Majeure**

LFUCG shall grant to the Artist a reasonable extension of time in the event conditions beyond the Artist's control render timely performance of the Artist's services impossible or unduly burdensome. All such performance obligations shall be suspended for the duration of the condition. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. 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 3. Risk of Loss

The Artist shall bear the risk of loss or damage to the Artwork until the Artwork has been fully installed and until LFUCG has finally accepted the Artwork. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. LFUCG shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, partially or wholly completed Artwork is in the custody, control, or supervision of LFUCG or its agent(s) for the purposes of transporting, storing, installing, or performing other services to the Artwork.

Article 4 Artist's Representations and Warranties

4.1 Warranties of Title

The Artist represents and warrants that:

- a. the Artwork is solely the result of the artistic effort of the Artist;
- b. except as otherwise disclosed in writing to LFUCG, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;
- c. the Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- d. the Artist has not sold, assigned, transferred, licensed, granted, encumbered, or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
- e. the Artwork is free and clear of any liens from any source whatsoever;
- f. all Artwork created by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party, the Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;
- g. all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence;
- h. these representations and warranties shall survive the termination or other extinction of this Agreement.

4.2. Warranties of Quality and Condition

- a. The Artist represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for (1) year after the date of final acceptance by LFUCG under Section 1.8.
- b. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.
- c. The Artist represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist.
- d. If within (1) year LFUCG observes any breach of warranty described in this Section, the Artist shall cure the breach promptly, satisfactorily, and consistent with professional conservation standards, at no expense to LFUCG. LFUCG shall give notice to the Artist of such breach with reasonable promptness. However, if Artist did not disclose this risk of breach in the Proposal and Maintenance and Conservation manual, and if the breach is not curable by Artist, the Artist is responsible for reimbursing LFUCG for damages, expenses and loss incurred by LFUCG as a result of the breach of warranty. However, if the Artist disclosed the risk of this breach in the Proposal and maintenance and conservation manual and LFUCG accepted that it may occur, as indicated by the written final acceptance of the artwork, it shall not be deemed a breach for purposes of this Section 4.2 of this Agreement.
- e. If after (1) year LFUCG observes any breach of warranty described in this Section 4.2 that is curable by the Artist, LFUCG shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist's lifetime. The Artist shall have the right of first refusal to make or supervise repairs or restorations. Should the Artist be unavailable or unwilling to accept reasonable compensation under the industry standard, LFUCG may make or supervise repairs or restorations itself or using any third party.
- f. The foregoing warranties are conditional and shall be voided by the failure of LFUCG to maintain the Artwork in accordance with the Artist's specifications and the applicable conservation standards. If LFUCG fails to maintain the Artwork in reasonably good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.
- g. All warranties shall be transferable from the original LFUCG to any assignee.
- h. Title assignees shall be obligated to maintain the Artwork as described in this section.

Article 5 Insurance

5.1 General

- a. The Artist acknowledges that until written notice of final acceptance of the Artwork by LFUCG, any injury to property or persons caused by the Artist's Artwork or any damage to, theft of, vandalism to, complete destruction of, or acts of God or nature affecting the Artist's Artwork are the sole responsibility of the Artist, including by not limited to, any loss occurring during the creation, storage, transportation or delivery of the Artist's Artwork regardless of where such loss occurs.
- b. The Artist agrees to maintain the following insurance coverage:

CGL (including Products/Completed Operations	\$1 million per occurrence
	\$2 million aggregate

- | | |
|---------------------------|----------------------------|
| Commercial Auto Liability | \$1 million per occurrence |
| Worker's Comp. | Statutory Limits |
| Employers Liability | \$100,000.00 |
| Excess/Umbrella Coverage | \$1 million per occurrence |
- c. The Artist agrees to list LFUCG as an additional insured on his Certificate of Insurance, which is attached as **Exhibit D**.

5.2 Indemnity

- a. The Artist shall indemnify LFUCG, its respective officers, agents, and employees from any claims brought arising out of the breach of this Agreement or any negligent occurrence which occurs pursuant to the performance of this Agreement by the Artist, its subcontractors, agents, or employees.
- b. The Artist shall immediately notify LFUCG of any written claim regarding any matter resulting from or relating to its obligations under this Agreement. Each Party shall cooperate, assist, and consult with the other in the defense or investigation of any such claim arising out of or relating to the performance of this Agreement.
- c. The indemnification shall include reasonable attorneys' fees and costs.
- d. This indemnification shall survive the termination or expiration of this Agreement.
- e. Notwithstanding any provision of this Agreement to the contrary, no Party shall recover from a Party to this Agreement in an action, of whatever nature, in contract or tort, any consequential or incidental damages, lost profits, or any type of expectancy damages.

Article 6 Ownership and Intellectual Property Rights

6.1 Title

Title to the Artwork shall pass to LFUCG upon LFUCG's written final acceptance and payment for the Artwork pursuant to Section 1.8. LFUCG has the right to transfer the Title of the Artwork to other entities at LFUCG's discretion without the consent of the Artist.

- a. LFUCG and title assignees shall notify the Artist of title transfers within (90) days of transfer.

6.2 Ownership of Documents

One set of presentation materials prepared by Artist and submitted to LFUCG under this Agreement shall be retained by LFUCG.

6.3 Copyright Ownership

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. §101 et seq., as the sole author of the Artwork for the duration of the copyright.

6.4 Reproduction Rights

- a. In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate [three]-dimensional reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of LFUCG. However, nothing shall prevent the Artist from creating works in the Artist's manner and style of artistic expression.
- b. The Artist grants to LFUCG and its assignees an irrevocable license to make two-dimensional reproduction of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publication provided that these rights are exercised in a tasteful and professional manner.
- c. All reproductions by LFUCG shall contain a credit to the Artist and a copyright notice in substantially the following form: © [XXXXXX XXXXXX, 2024].

- d. The Artist agrees that a reproduction of the Artwork made by the Artist for publicity purposes shall refer to "Lexington Fayette Urban County Government." LFUCG shall have the right to review and approve any public announcements or press releases generated by the Artist or Artist's sub-Artists regarding the artwork until the artwork has been publicly dedicated and final acceptance has been issued.
- e. The Artist shall, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright in the Artwork in the Artist's name.
- f. If LFUCG wished to make reproductions of the Artwork with Artist approval for commercial purposes including, but not limited to, tee shirts, postcards and posters, the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.

6.5 Filming of Artwork

The Artist understands and acknowledges that LFUCG, pursuant to applicable local laws, regulations, and policies, often issues film permits to persons and entities wishing to film in Lexington, whether still, motion picture, or otherwise. Notwithstanding any other provision of this Agreement, the Artist recognizes and permits LFUCG to issue such permits to persons and entities, to include the Artwork and surrounding site, and the Artist holds LFUCG harmless. The Artist will not hold or seek to hold LFUCG liable in any way for the acts of any person or entity utilizing such a film permit, or for their filming or use of the Artwork.

Article 7 Artist's Rights

7.1 General

- a. The Artist retains all rights under state and federal laws, including §106A of the Copyright Act of 1976.
- b. LFUCG agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first obtaining permission from the Artist. LFUCG further agrees to take reasonable measures to avoid these from occurring from the gross negligence of LFUCG, its representatives, or employees pursuant to the federal Visual Artists' Rights Act.
- c. If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies he/she may have in law or equity under this contract. No provision of this Agreement shall obligate LFUCG to alter or remove any such attributive reference printed or published prior to LFUCG's receipt of such notice. The Artist may take such other action as the Artist may choose in order to disavow the Artwork.

7.2 Alteration of Site or Removal of Artwork

- a. LFUCG shall notify the Artist of any proposed significant alteration of the Site that would affect the intended character and appearance of the Artwork. LFUCG shall consult with the Artist in the planning and execution of any such alterations. LFUCG shall make a reasonable effort to maintain the integrity of the Artwork.
- b. LFUCG agrees not to arbitrarily remove or relocate the Artwork without first obtaining the Artist's express permission to do so. The Artist shall not unreasonably withhold approval of removal or relocation of the Artwork. Should the Artist agree to such removal or relocation of the Artwork, the Artist shall provide LFUCG with written handling instructions. In the event the Artist is deceased or unable to otherwise give his consent, the then current LFUCG holder of the copyright of the Artwork shall not unreasonably withhold permission, keeping in mind the intentions of the Artist at the time of commission and fabrication.

Article 8 Artist as an Independent Contractor

The Artist agrees to perform all work under this Agreement as an independent contractor and not as an employee of LFUCG. The Artist acknowledges and agrees that the Artist shall not hold himself out as an authorized agent of LFUCG with the power to bind in any manner.

The Artist shall provide LFUCG with the Artist's Tax Identification number and any proof of such number as requested by LFUCG.

Article 9 Assignment of Artwork

The work and services required of the Artist are personal and shall not be assigned, sublet, or transferred. Any attempt by the Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by LFUCG. LFUCG shall have the right to assign or transfer any and all of LFUCG's rights and obligations under this Agreement, subject to the Artist's consent, if LFUCG ownership of the Site is transferred; if the Artist refuses to give consent, this Agreement shall terminate.

Article 10 Termination

- a. Either Party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as, but not limited to, acts of nature; war or warlike operation; superior governmental regulation or control; public emergence; or strike or other labor disturbances. Notice of termination of this Agreement shall be given to the non-terminating party in writing not less than (30) days prior to the effective date of termination.
- b. LFUCG may terminate this Agreement without cause upon (30) days written notice to the Artist. LFUCG shall pay the Artist for services performed and commitments made prior to the date of the termination, consistent with the schedule of payments set forth in Exhibit C of this Agreement. The Artist shall have the right to an equitable adjustment in the fee for services performed and expenses incurred beyond those for which the Artist has been compensated to date under Exhibit C with allowance for documented lost opportunities unless the parties come to a settlement otherwise. The Artist shall retain possession and title to the [studies, drawings, designs, maquettes, and models] already prepared and submitted or prepared for submission to LFUCG by the Artist under this Agreement prior to the date of termination.
- c. 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 the effective date of the notice to cure the default. If it is not cured by that time, this Agreement shall terminate.
- d. If the Artist defaults for cause other than death or incapacitation, the Artist shall return to LFUCG all funds provided by LFUCG in excess of the expenses already incurred. The Artist shall provide an accounting of these expenses. 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 be retained by the Artist. LFUCG shall retain the right to have the Artwork

fabricated or executed. However, the Artist shall retain the copyright in the Artwork and all rights under Article 7 and Article 8.

- e. Upon notice of termination, the Artist and his subcontractors shall cease all services affected.

Article 11 Death or Incapacity

- a. If the Artist becomes unable to complete this Agreement due to death or incapacity, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the Artist for purposes of Article 10.
- b. In the event of incapacity, the Artist shall assign his obligations and services under this contract to another artist provided that LFUCG approves of the new artist and so agrees in writing. If LFUCG does not agree, LFUCG may elect to terminate this Agreement. The Artist shall retain all rights under Article 6 and Article 7. The Artwork and any reproductions thereof shall contain a credit to the Artist and a copyright notice in substantially the following form: © [Artist's name, date of publication].
- c. In the event of death, this Agreement shall terminate effective the date of death. The Artist's heirs shall retain rights under Article 6 and Article 7. The Artist's executor shall deliver to LFUCG the Artwork in whatever form or degree of completion it may be in at the time. Title to the Artwork shall then transfer to LFUCG. However, the Artwork shall not be represented to be the completed work of the Artist unless LFUCG is otherwise directed by the Artist's heirs. In the event of death, the Artist gives permission to construct the Artwork with the chosen fabricator.

Article 12 Payment Requests

At least ten (10) days before each progress payment is scheduled, the Artist shall submit to LFUCG an invoice as appropriate for the next phase of work in accordance with Exhibit C.

Article 13 Change of Contract Price

- a. Without invalidating the Agreement, LFUCG may, at any time or from time to time, order mutually agreed upon additions, deletions, or revisions in the Work; these will be authorized by a Change Order. Upon receipt of such notice, the Artist shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- b. The Artist shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents.

Article 14 Change of Contract Time

- a. The Contract Time may only be changed by a mutually agreed upon Change Order. Any claim for an extension or shortening of the Contract Time shall be based on written notice delivered to LFUCG promptly (but in no event later than 7 days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within 30 days after such occurrence (unless LFUCG in its sole discretion allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has

reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by LFUCG in accordance with paragraph 8.11. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 14(a).

- b. The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of Artist if a claim is made therefore as provided in Section 1.5.
- c. All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 14 shall not exclude recovery for damages (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) for delay by either party.

Article 15 Nondiscrimination

The Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

Article 16 Notices and Documents

Notices under this Agreement shall be delivered personally or through the [registered or certified mail, return receipt requested] mail, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a Party:

For LFUCG:

Lexington-Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507
Attn: Heather Lyons, Director, Arts & Cultural Affairs, Mayor's Office

For the Artist:

Benjamin Ball
Ball-Nogues Studio
3533 East Olympic Blvd.
Los Angeles, CA 90023

Notice shall be deemed effective on the date personally delivered or, if mailed, (3) days after the postmarked date.

Article 17 Waiver

The Parties agree that a waiver of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

Article 18 Conflict of Interest

The Artist and LFUCG shall avoid all conflicts of interest or appearance of conflicts of interest in the performance of this Agreement.

Article 19 Amendments

No alteration change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto.

Article 20 Conflict with the Law

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction to be in conflict with the laws, rules and/or regulations of the United States or the Commonwealth of Kentucky, invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby to the extent the remainder of the terms, covenants, conditions or provisions of this Agreement are capable of execution.

Article 22 Choice of Law

This contract shall be governed by the laws of the Commonwealth of Kentucky both as to interpretation and performance.

Article 23 Entire Agreement

This Agreement, including the exhibits, comprises all the covenants, promises, agreements and conditions between the Parties. No verbal agreements or conversation between the Parties prior to the execution of this Agreement shall affect or modify any of the terms or obligation.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement at Lexington, Kentucky,
the day, and year first above written.

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

BENJAMIN BALL

BY: _____
LINDA GORTON, MAYOR

BY: _____
BENJAMIN BALL, ARTIST
BALL-NOGUES STUDIO

ATTEST:

ATTEST:

Abigail Allan
Clerk of the Urban County Council
DATE: _____

WITNESS: _____
DATE: _____

**AGREEMENT FOR COMMISSION OF PUBLIC ARTWORK
WITH BENJAMIN BALL, BALL-NOGUES STUDIO**

EXHIBIT B



The Woven Path

(working title)

Previous Work



This project relates to another sculpture titled *Cradle* from 2010. Installed in Santa Monica, California.



A Newton’s cradle, the inspiration for the piece, is a device that demonstrates conservation of momentum and energy using a series of swinging spheres and is named after Sir Isaac Newton.



Cradle is made of durable 316 mirrored stainless steel that has withstood years of salty coastal air and harsh sunshine. It requires little maintenance yet remains in beautiful condition today.







Concept

The Woven Path (working title)

The Woven Path welcomes citizens of Lexington as a poignant symbol of unity and connection, inviting viewers to contemplate what binds us together as members of a community. It is a lacework of dynamic curves crafted from strings of mirror-polished stainless-steel spheres and supported by an array of thin wire ropes that form an abstract geometric composition.

Passages can be powerful symbols of transition and connection, reminiscent of the iconic Gateway Arch in St. Louis or the Gateway of India in Mumbai. This sculpture is an open passageway that invites viewers to traverse the space beneath it. It stands as a monument framed by the sky. At the heart of *The Woven Path* is a motif of interlacing lines. Like intersecting pathways or roads, these represent the diverse journeys and shared experiences of people of all walks of life who use Main Street each day by car, bike, or on foot. Like knotted threads of a tapestry converging and diverging, they represent a weaving together of cultures and aspirations of those who pass beneath.

The weaving image is a poignant metaphor across cultures. Weaving symbolizes unity and connection and embodies themes of reconciliation and longevity. In America, it often represents commitment and strength. These are just a few examples, but from whatever cultural perspective one looks, they will find positive meanings associated with the form of this piece.

While some citizens of Lexington will see the pathways and weaving that are described above, it is not my aim to firmly fix the meaning of the project for the viewer but to allow each to compose their own narrative. Some may see roadways and fences rolling over Kentucky hills. What is important to me is that the work is a playground for the mind, a place for each person who encounters the work to engage their imagination and momentarily escape the hustle and bustle of city life.

The material of the artwork contributes to its enigma by inviting the participation of the viewer. As viewers walk beneath it, their own reflections greet them, dancing across the shining surfaces of the spheres. Each sphere acts as an anamorphic mirror that captures and reflects the space of Main Street. The reflections serve as another poignant reminder of our interconnectedness, inviting viewers to see themselves and others in the artwork itself. Through its form and evocative symbolism, *The Woven Path* celebrates the diverse tapestry of the Lexington community.

Thin cables individually suspend each sphere from three poles extending above the curves. In aggregate, the cables give a sense of lightness, delicacy, and ascent. This technique relates to another sculpture titled *Cradle* (see images in the proposal deck) from 2010. A Newton's cradle, the inspiration for the piece, is a device that demonstrates conservation of momentum and energy using a series of swinging spheres and is named after Sir Isaac Newton. Installed in Santa Monica, California, *Cradle* is made of durable 316 mirrored stainless steel that has withstood years of salty coastal air and harsh sunshine. It requires little maintenance yet remains in beautiful condition today.

The Woven Path invites viewers to take a journey of introspection and connection with fellow citizens. It reminds us of the importance of embracing our differences and celebrating our shared humanity. Its curved threads embrace the people below it. Each citizen is reflected, bound to their neighbor, person to person, woven together, one weave at a time.



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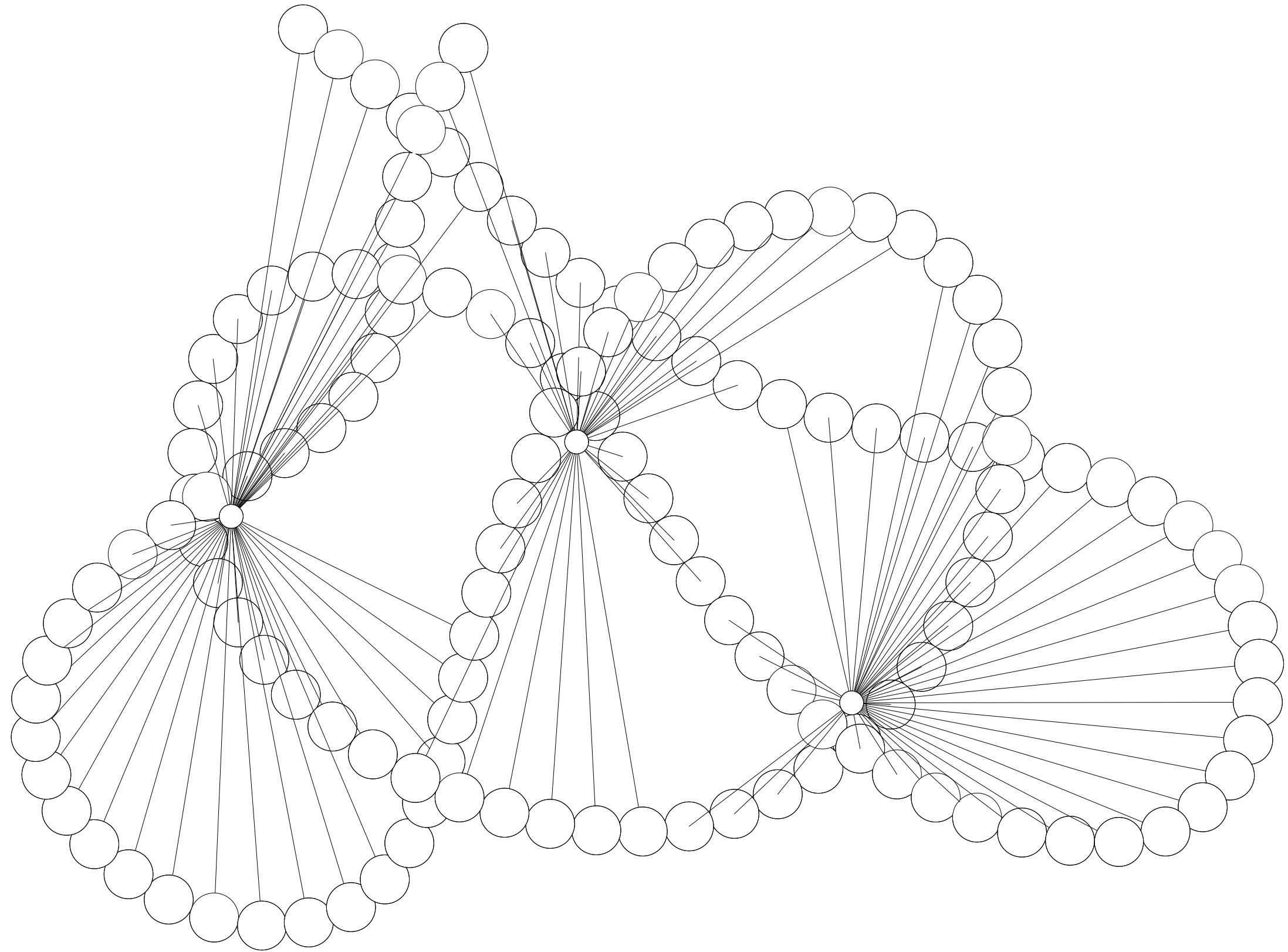


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Please Play Movie File:
1_BNS_The Woven Path



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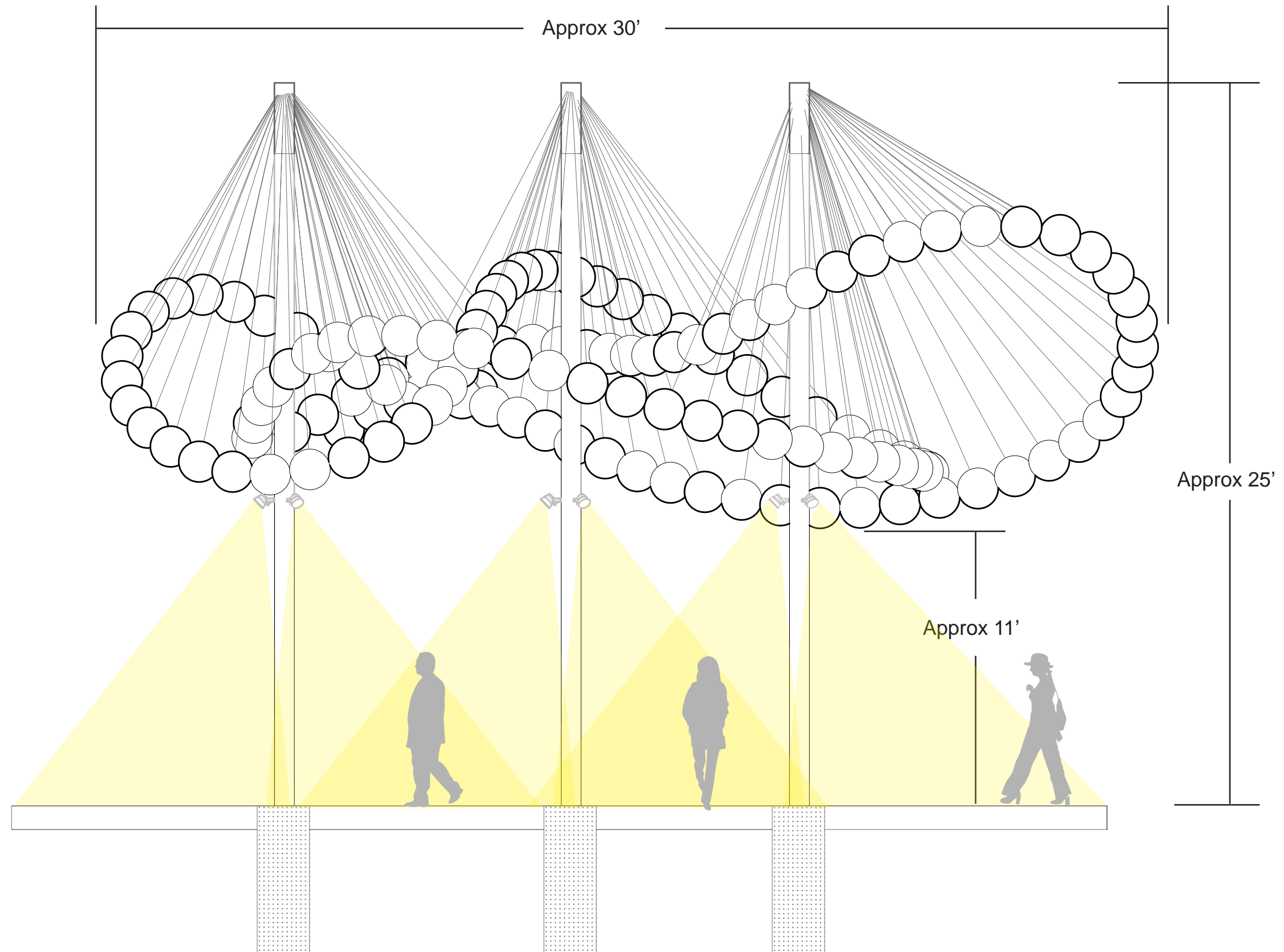


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Please Play Movie File:
2_BNS_The Woven Path



Thin cables individually suspend each sphere from three poles extending above the curves. In aggregate, the cables give a sense of lightness, delicacy, and ascent. With the lowest point at 11 foot, the art-work will remain out of reach.

Process



316 Stainless Spheres Ranging in Diameter



316 Stainless Fittings, Swags and Studs



316 Stainless Wire Rope



316 Stainless Tube / Top Connector

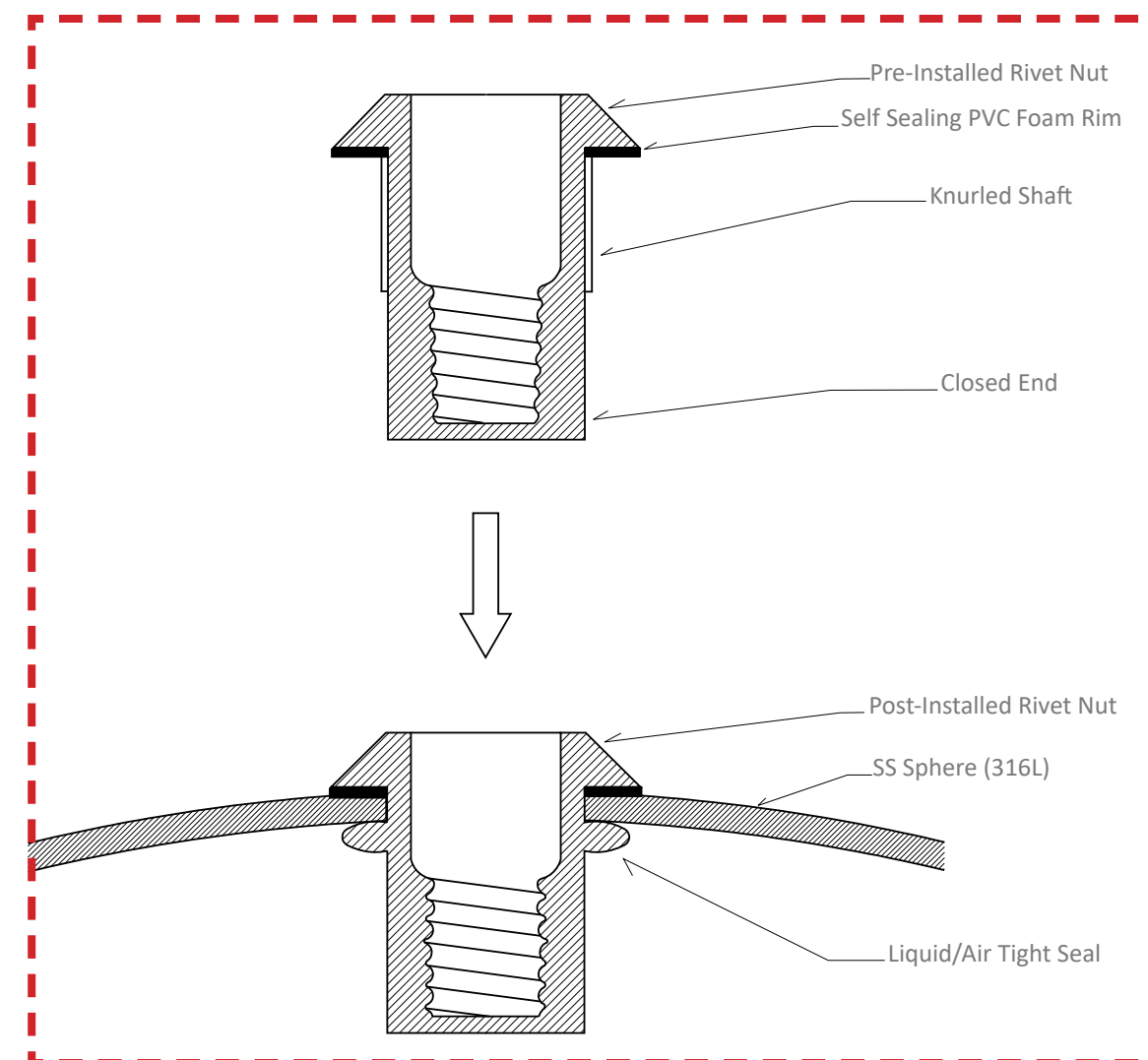
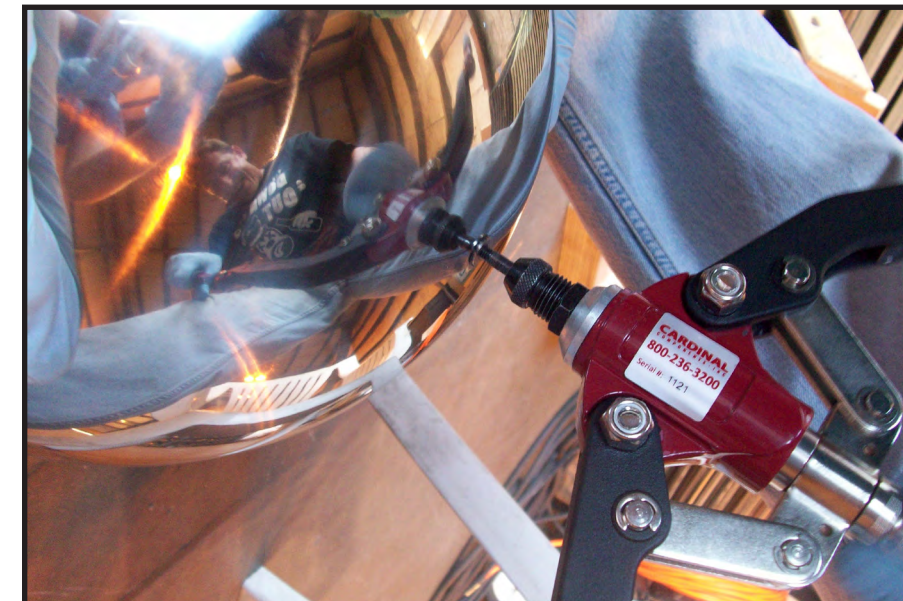
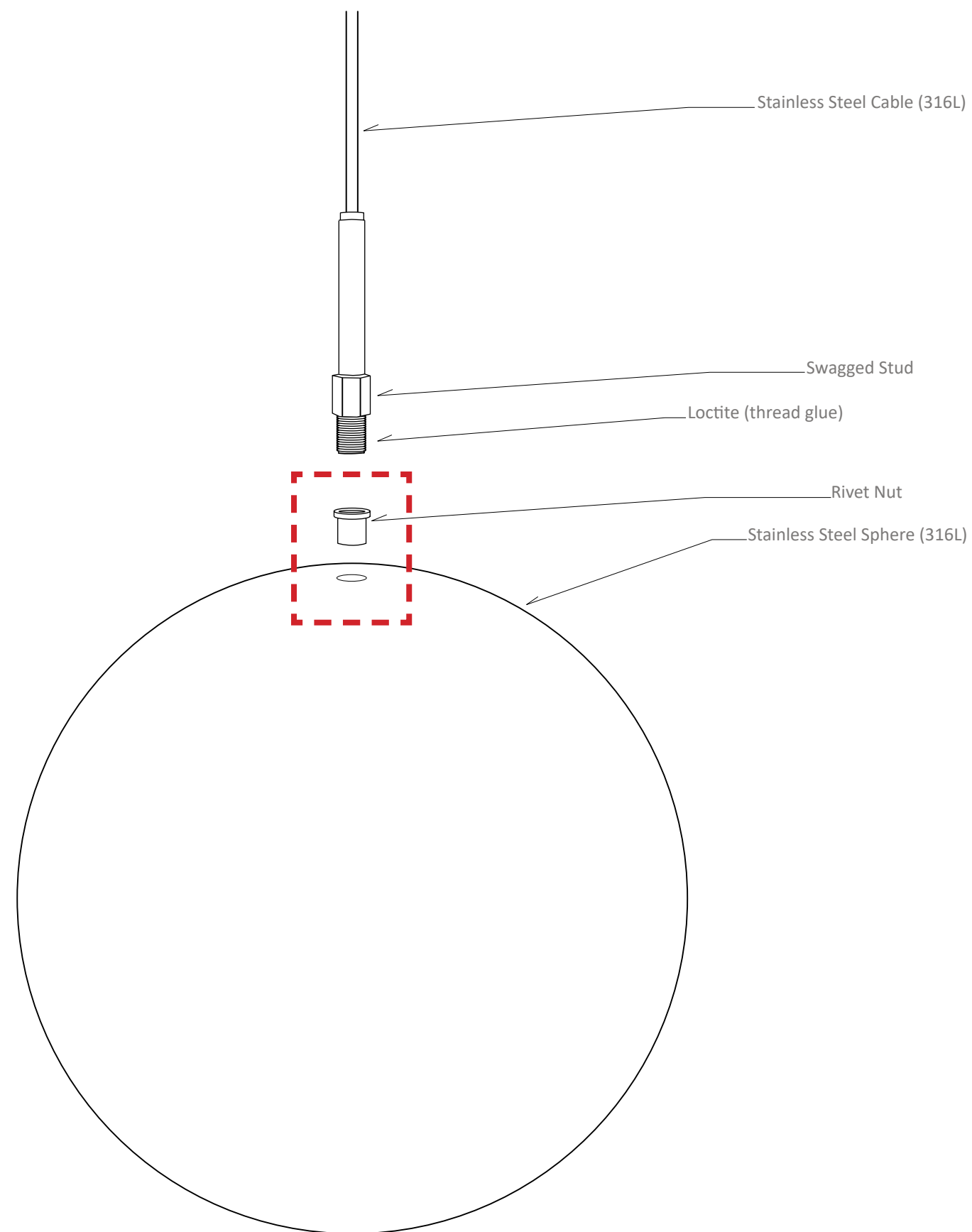


8" HSS pipe zinc primer and industrial top coat painted, Color TBD



Lighting 3 per pole

Materials overview



Assembly Detail - Cable to Sphere



Welding Detail





Similar Falsework.





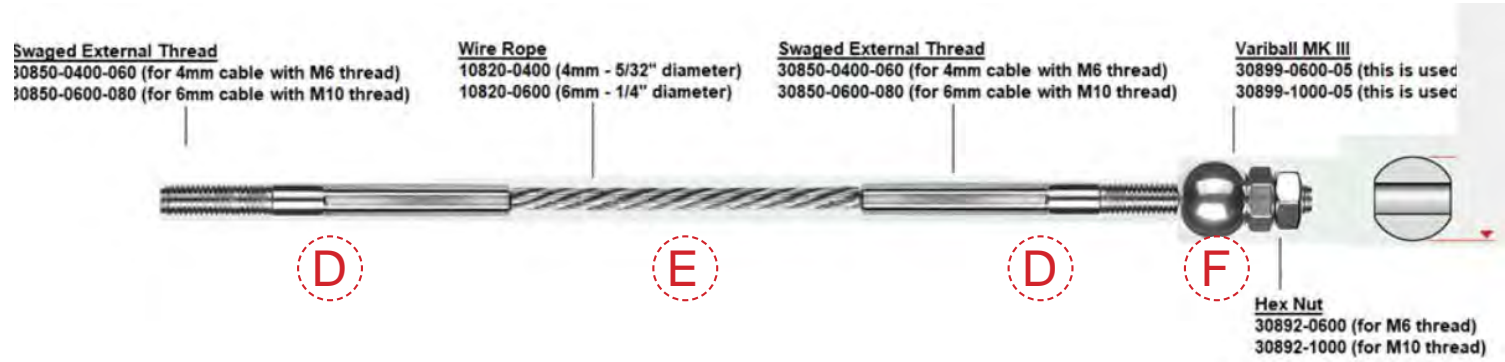
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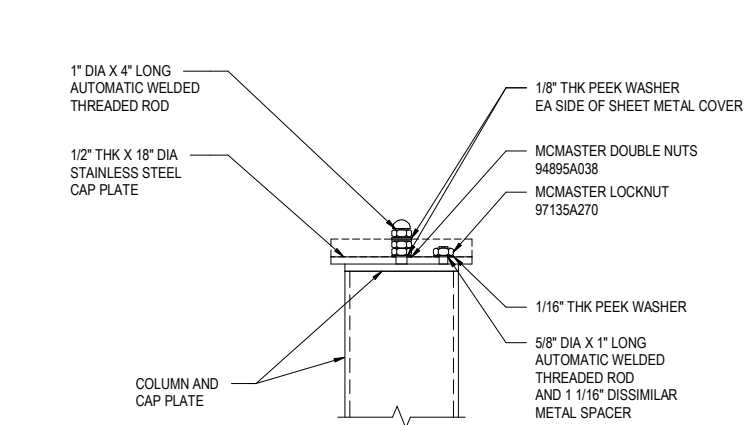
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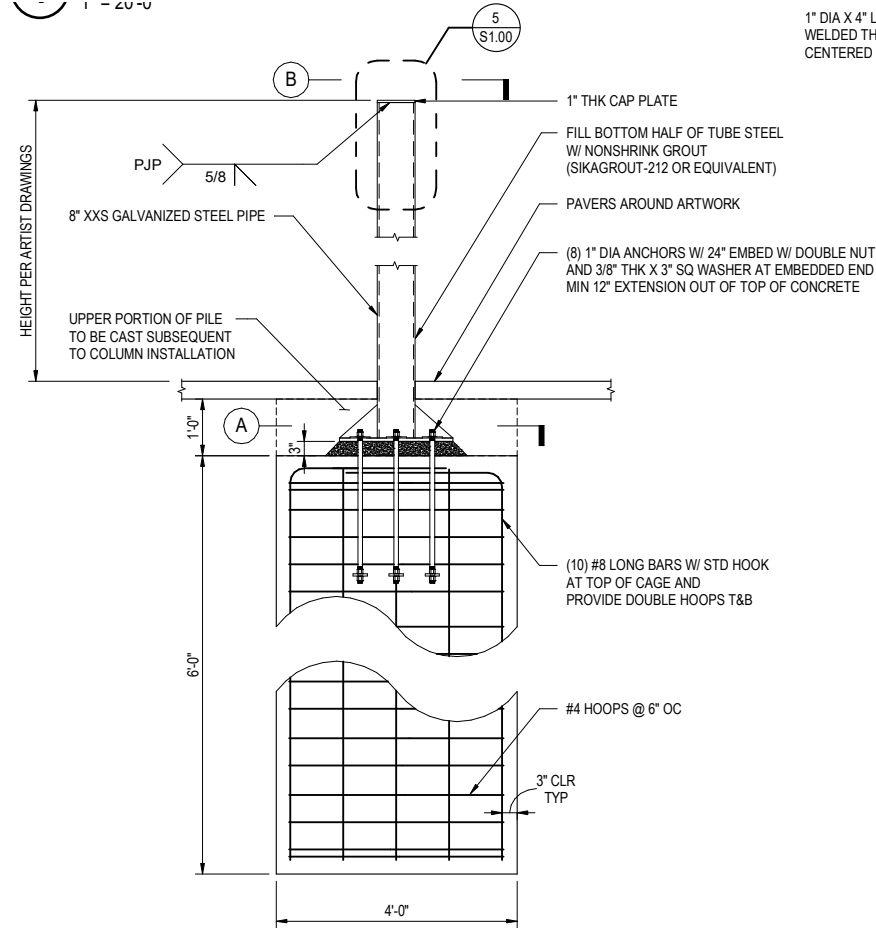
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Components

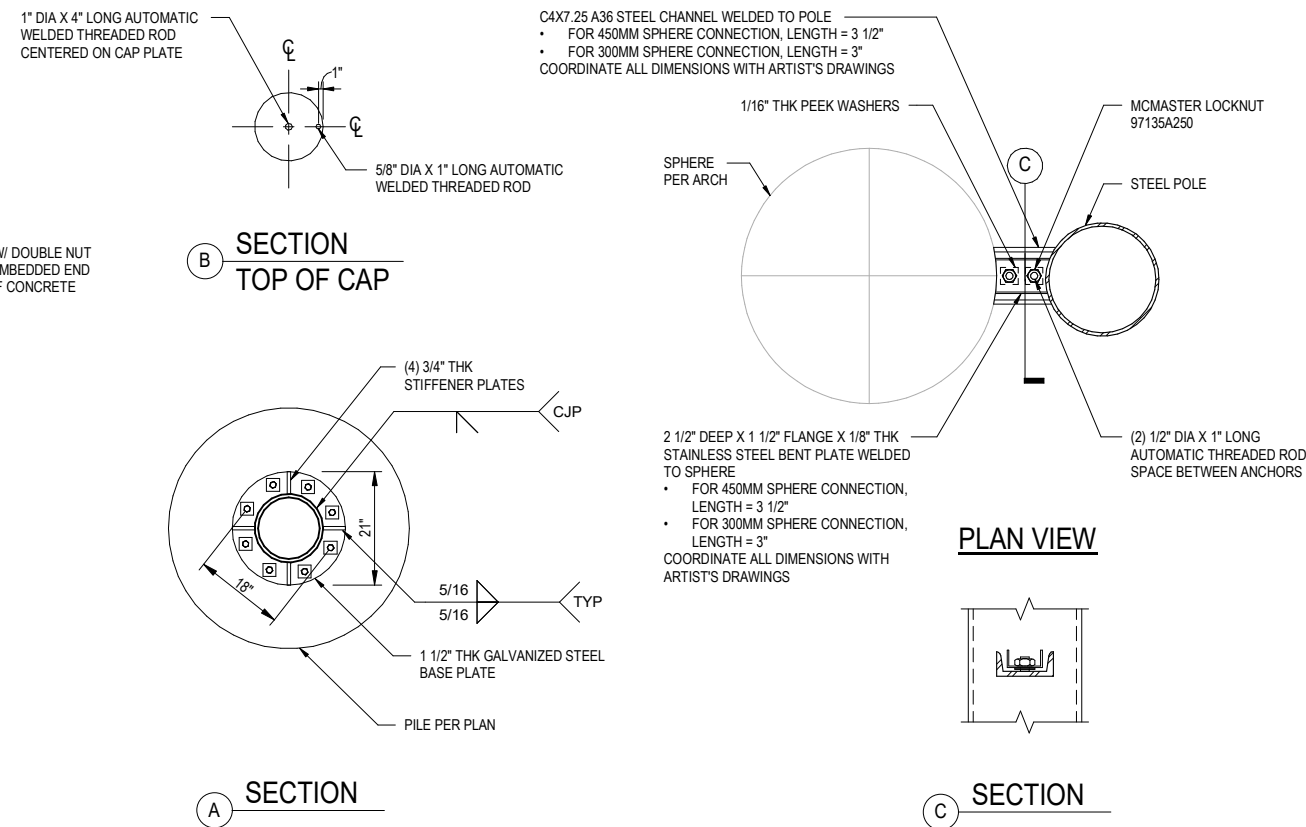


5 CAP CONNECTION
NOT TO SCALE



NOTES:
1. SEE ARTIST'S DRAWINGS FOR LOCATION OF SPHERE ATTACHMENT
HARDWARE, BENCH HARDWARE AND HOLE FOR LIGHTS.

4 PILE REINFORCEMENT & ARTWORK BASE ANCHORAGE
NOT TO SCALE



NOTES:
1. SEE ARTIST'S DRAWINGS FOR LOCATION OF SPHERE ATTACHMENT.

3 SPHERE CONNECTION DETAIL WHERE OCCURS
NOT TO SCALE

Drawings showing artwork connections to pole. Representational of means and method.

Routine Maintenance:

For 316 stainless steel: the surface of the should naturally repel dirt, but it may accumu-
late over time.

First try a low-pressure spray of water, and if ineffective, a spray mixture of water and
mild neutral soap. Work your way from the top of the art piece to the bottom with a mi-
cro fiber rag. Lastly try appliance grade stainless steel spray.

It is recommended that the artwork is cleaned at least once per year using a scissor lift
and work from top down on both sides with a water high pressure washer.

Stainless steel surfaces are sensitive to strong acidic or alkaline cleaners such as Bleach,
Tile Cleaners, CLR, Vinegar, or Masonry Cleaners and as such these should not be used.
They may cause the Stainless Steel to corrode or discolor prematurely.

Long Term Conservation:

The Artwork is made of 316 stainless Steel and will last for several decades without a
significant loss of vibrancy. 316 Stainless steel is also naturally resistant to oxidation that
would weaken it structurally.

Support poles are made of HHS zinc primered and high performance paint, a favored
method of protective coating due to its long maintenance-free service life.

Additional Considerations:

Graffiti:

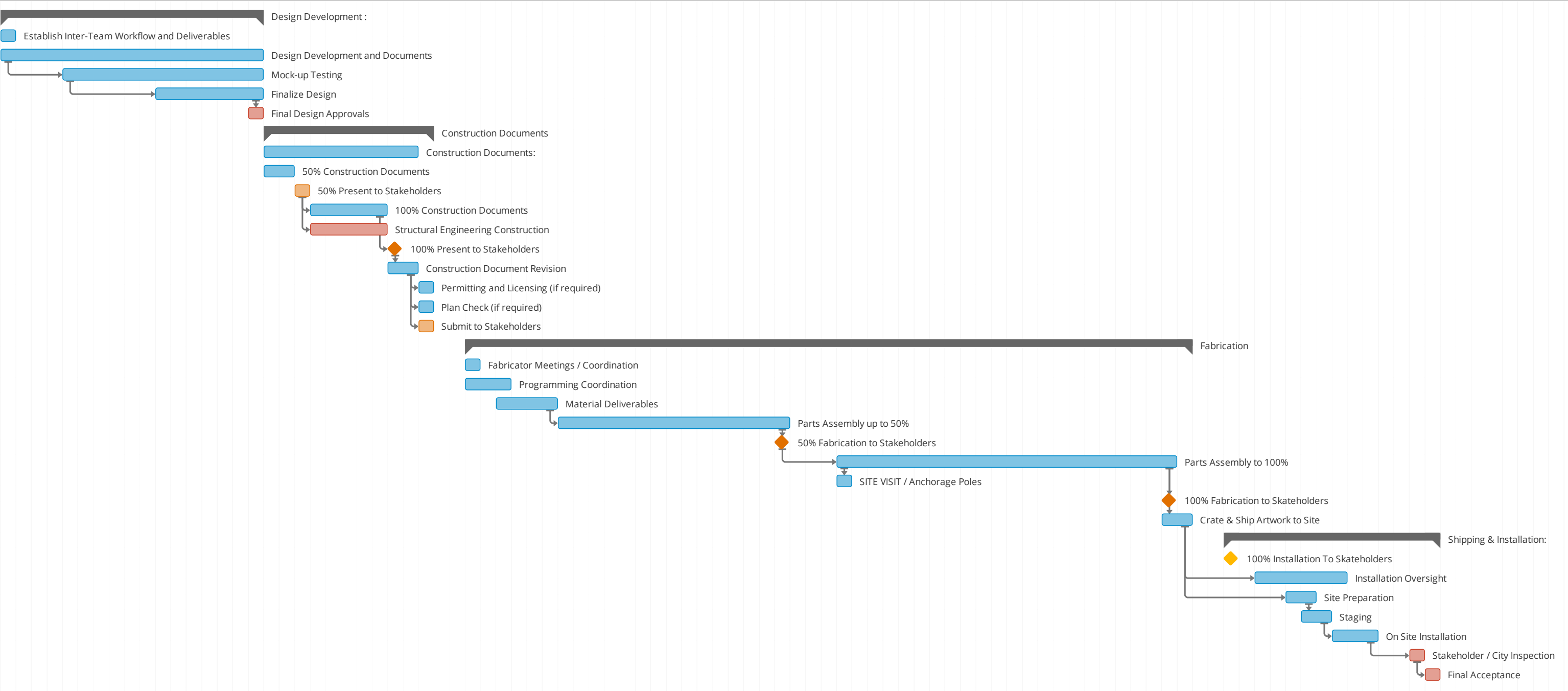
- 1. Graffiti should be removed as soon as possible.
- 2. Micro fiber cloth should be used to avoid scratching or damaging the sculpture.
- 3. Mild, non-abrasive solvents such as mineral spirits should be tested first in a non-conspicuous part.
- 4. Should a stronger solvent be needed, more aggressive solvents such as lacquer thin-
ner, or Matthews Paint reducers can be applied. TEST FIRST ON A SEPARATE PIECE OF
STAINLESS. DO NOT USE IF ANY FADING OF FINISH HAPPENS, Give it ten minutes after
applying to see final result.
- 5. When removing graffiti, start at the top and gently move downward. Repeat this
process as many times as needed to remove the graffiti.
- 6. Excess rubbing or pressure should be avoided in any one spot to avoid damaging the
stainless steel surface.

Low Pressure hand pump spray bottle for cleaning Using mild soap and micro fiber
rags. Lastly try appliance grade stainless steel spray.



Executed
Contract
June 2024

Month 14



Lexington Public Artwork

Robert Stephens Courthouse Plaza - Preliminary Budget

\$750,000

GENERAL EXPENSES

Modeling, Drafting, and Management – Senior PM Staff, Modeling, Drafting, Admin	\$25,000
Professional Consultant Fees - Engineer, Conservator	\$15,000
Expenses - Travel	\$20,000
Insurance (WC, liability, business auto, umbrella) Fine Art Insurance	\$22,000
Documentation – Full Scale Mock Up, Models (Digital & or Physical), Shop Drawings	\$3,500

DESIGN FEE

Oversight during Design Development, Meetings, Fabrication and Installation	\$112,500
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FABRICATION

Labor – Senior PM Staff, Shop Tech, Subcontractors, Welders,	\$182,000
Materials – 316ss Spheres, 316ss Plate, 316ssCable, Hardware, Lighting Instruments	\$168,500
Space Rental and Storage – If additional space is needed	\$25,000
Tools and Equipment Purchases and Rental	\$8,500

INSTALLATION

Shipping	\$25,000
Installation Labor – Senior Staff, Shop Tech, Subcontractors,	\$35,000
Site Preparation – Landscape / Hardscape Protection	\$8,000
Equipment Rental	\$25,000

CONTINGENCY 10%	\$75,000
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Total Budget \$750,000

BNS Hourly Rates 1/2024

Benjamin Ball (Artist)	\$215	Senior Designer	\$143	Designer	\$110
Senior PM Staff	\$182	Shop Tech	\$83	Admin	\$72

*There is an additional \$100,000 allowance for site prep for the project. And additional \$50,000 will be designated to support future conservation and maintenance of the artwork.



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Cradle
Santa Monica
Maintenance schedule and current visual documentation.

Statement from Santa Monica Public Art

From: Naomi Okuyama <Naomi.Okuyama@smgov.net>
Sent: Thursday, April 23, 2020 12:08 PM
To: james@ball-nogues.com <james@ball-nogues.com>
Cc: joyce.locke@smgov.net; Allison Ostrovsky <Allison.Ostrovsky@SMGOV.NET>
Subject: Re: Cradle Project

Ah, we don’t have those departments – for Public Art it’s just myself. I reached out to Malina and our current Public Art consultant Lesley, and am waiting to hear back from Lesley. Malina has been gone from the job now for five+ years and she said that in its first five years there was no maintenance. If we had any other specifics they would be buried in paper files, which are un-reachable at the moment.

Malina let me know that Macerich did a power washing and painting of the wall behind it in 2012. We looked into doing a very light conservation of the balls at that time, it looks like we may have gotten a quote from a company to do a bristle brush cleaning, but ended up not doing it because they were in good shape.

It is probably time for us to contract with someone to do a cleaning, but I’m afraid in the current climate it may take a while. We would look for a company to do a light bristle brush treatment with soap and deionized water, and then go in deeper if needed.

I’m sorry I couldn’t be more helpful, I can write you something to the effect that they were so well made that they haven’t needed any conservation, but I am sure regular maintenance would be ideal.

Naomi

Statement from Ball-Nogues Studio

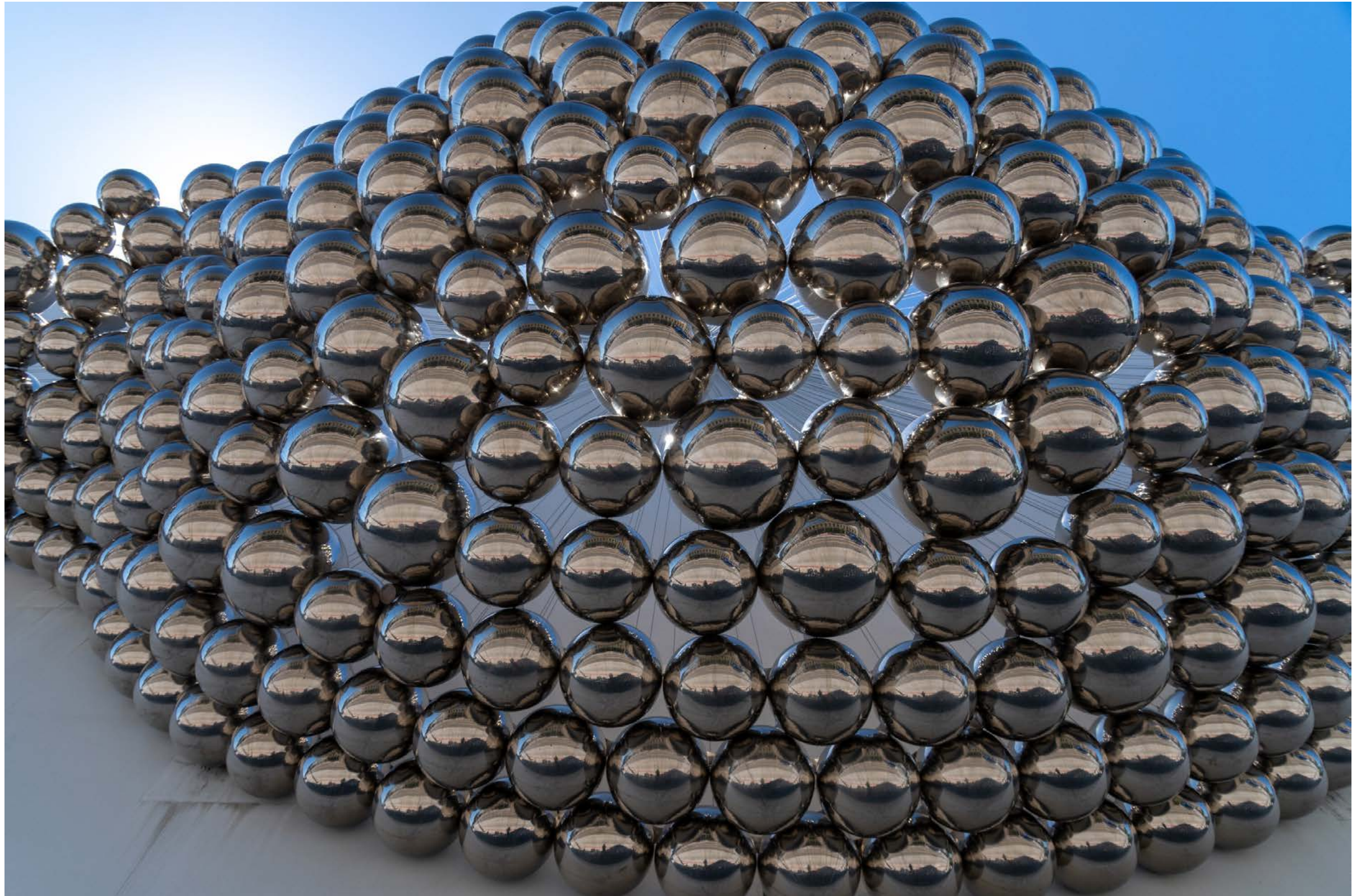
- *Cradle* artwork has performed above and beyond anyone’s expectations. It has required no maintenance in ten years.
- We used the highest grade stainless steel (316) available to us. I should note that mirror polished stainless is more corrosion resistant than textured stainless because there is very little surface texture to hold contaminants.
- Because it was subject to salty ocean air, for *Cradle*, we chose 316 stainless for the spheres and every single component including cables, stud swags, rivet nuts, welding rod, etc.
- The entire piece was electro-polished by hand – each and every weld was polished to prevent corrosion and match the polish of the spheres.
This was our first outdoor work and consequently we were particularly careful in designing, engineering, and constructing it and that same care and the same practices will be carried out here.
- As with *Cradle* , during our time on site, we will leave our scaffolding or lift in place for a few extras day to enable us to check whether there is any settling in the spheres or the cables need fine tuning. We did this for *Cradle* during installed that was the ONLY time in ten years tuning was necessary.
- Because we design but also build these pieces, our reputation is on the line when we leave a site. We have a great deal of pride in our craftsmanship and engineering which translates into the longevity work. I wouldn’t want to design something unless I knew it would hold up over time without the intervention of the owner.



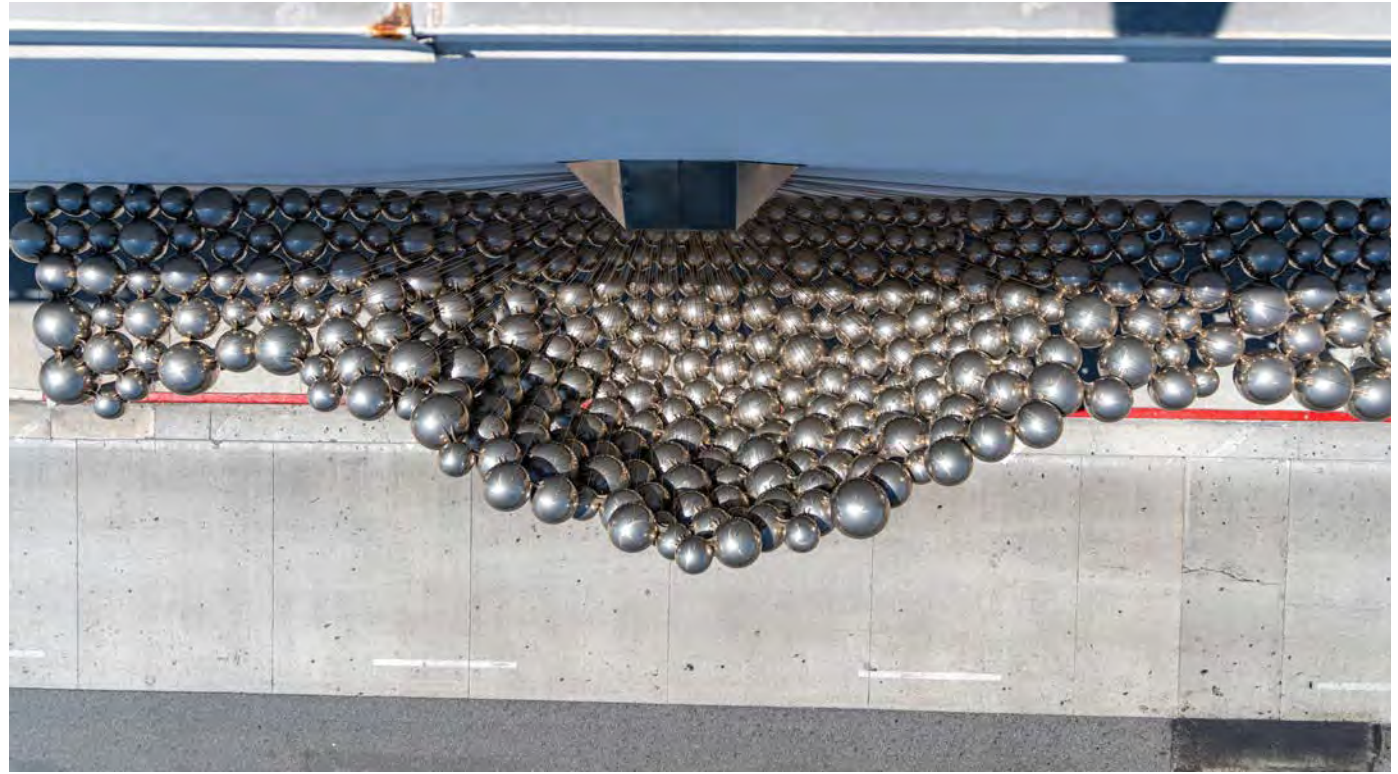
11/2010



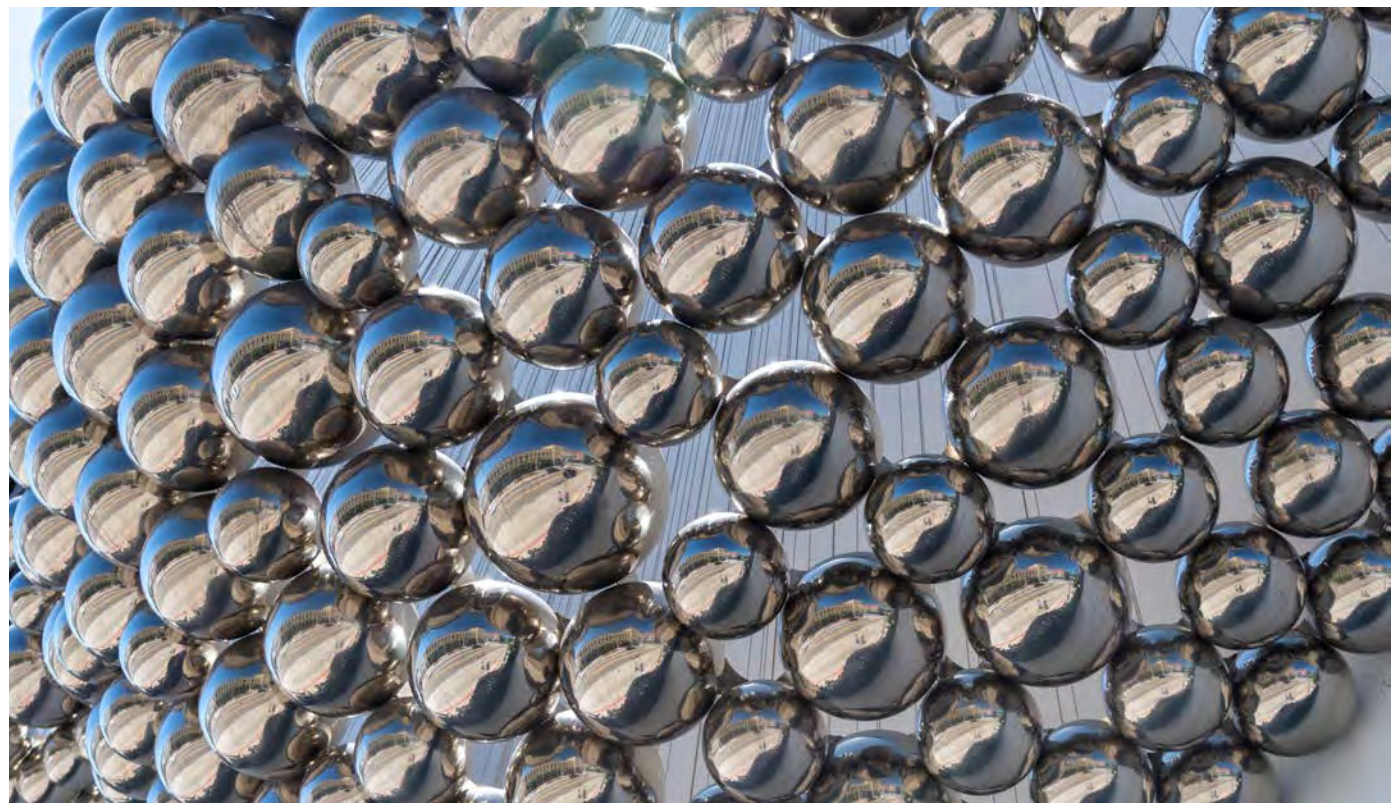
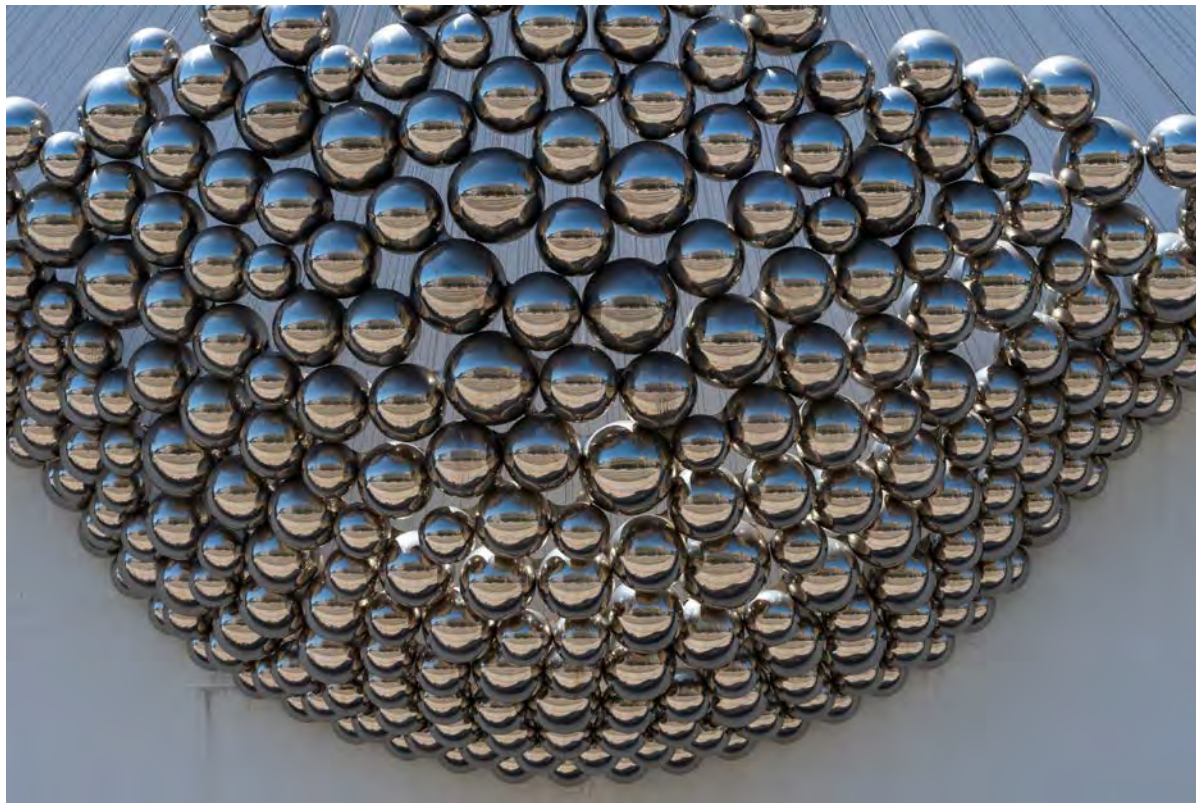
4/2020



4/2020



4/2020



Materials Cut Sheets

Specification Sheet: Alloy 316
(UNS S31600, S31603) W. Nr. 1.4401, 1.4404

An Austenitic Stainless Steel Containing Molybdenum Which is More Corrosion Resistant than the Conventional 304/304L Stainless Steel

Alloy 316/316L (UNS S31600/ S31603) is a chromium-nickel-molybdenum austenitic stainless steel developed to provide improved corrosion resistance to Alloy 304/304L in moderately corrosive environments. It is often utilized in process streams containing chlorides or halides. The addition of molybdenum improves general corrosion and chloride pitting resistance. It also provides higher creep, stress-to-rupture and tensile strength at elevated temperatures.

It is common practice for 316L to be dual certified as 316 and 316L. The low carbon chemistry of 316L combined with an addition of nitrogen enables 316L to meet the mechanical properties of 316.

Alloy 316/316L resists atmospheric corrosion, as well as, moderately oxidizing and reducing environments. It also resists corrosion in polluted marine atmospheres. The alloy has excellent resistance to intergranular corrosion in the as-welded condition. Alloy 316/316L has excellent strength and toughness at cryogenic temperatures.

Alloy 316/316L is non-magnetic in the annealed condition, but can become slightly magnetic as a result of cold working or welding. It can be easily welded and processed by standard shop fabrication practices.

Standards

- ASTM A 240
- ASME SA 240
- AMS 5524/5507
- QQ-S 766

Applications

- Chemical and Petrochemical Processing—pressure vessels, tanks, heat exchangers, piping systems, flanges, fittings, valves and pumps
- Food and Beverage Processing
- Marine
- Medical
- Petroleum Refining
- Pharmaceutical Processing
- Power Generation—nuclear
- Pulp and Paper
- Textiles
- Water Treatment

Chemical Analysis

Weight % (all values are maximum unless a range is otherwise indicated)

Element	316	316L
Chromium	16.0 min.–18.0 max.	16.0 min.–18.0 max.
Nickel	10.0 min.–14.0 max.	10.0 min.–14.0 max.
Molybdenum	2.00 min.–3.00 max.	2.00 min.–3.00 max.
Carbon	0.08	0.030
Manganese	2.00	2.00
Phosphorous	0.045	0.045
Sulfur	0.03	0.03
Silicon	0.75	0.75
Nitrogen	0.1	0.1
Iron	Balance	Balance

Physical Properties

Density	Specific Heat
0.285 lbs/in³	0.11 BTU/lb-°F (32–212°F)
7.90 g/cm³	450 J/kg-°K (0–100°C)
Modulus of Elasticity	Thermal Conductivity 212°F (100°C)
29.0 x 10 ⁶ psi	10.1 BTU/hr/ft²/ft/°F
200 GPa	14.6 W/m-°K
Melting Range	Electrical Resistivity
2450–2630°F	29.1 Microhm-in at 68°F
1390–1440°C	74 Microhm-cm at 20°C

Mean Coefficient of Thermal Expansion

Temperature Range		in/in/°F	cm/cm °C
°F	°C		
68–212	20–100	9.2 x 10 ⁻⁶	16.6 x 10 ⁻⁶
68–932	20–500	10.1 x 10 ⁻⁶	18.2 x 10 ⁻⁶
68–1832	20–1000	10.8 x 10 ⁻⁶	19.4 x 10 ⁻⁶

Mechanical Properties

At Room Temperature

	Typical*	ASTM	
		Type 316	Type 316L
0.2% Offset Yield Strength, ksi	44	30 min.	25 min.
Ultimate Tensile Strength, ksi	85	75 min.	70 min.
Elongation in 2 inches, %	56	40 min.	40 min.
Reduction in Area, %	69	—	—
Hardness, Rockwell B	81	95 max.	95 max.

*0.375 inch plate

Corrosion Resistance

ALLOY	Composition (Weight Percent)			PRE _N ¹	CCT ² °F (°C)	CPT ³ °F (°C)
	Cr	Mo	N			
Type 304	18.0	—	0.06	19.0	<27.5 (<-2.5)	—
Type 316	16.5	2.1	0.05	24.2	27.5 (-2.5)	59 (15.0)
Type 317	18.5	3.1	0.06	29.7	35.0 (1.7)	66 (18.9)
SSC-6MO	20.5	6.2	0.22	44.5	110 (43.0)	149 (65)

¹Pitting Resistance Equivalent, including Nitrogen, PREN = Cr + 3.3Mo + 16N
²Critical Crevice Corrosion Temperature, CCCT, based on ASTM G-48B (6% FeCl₃ for 72 hr, with crevices
³Critical Pitting Temperature, CPT, based on ASTM G-48A (6% FeCl₃ for 72 hr)

Lowest Temperature (°F) at Which the Corrosion Rate Exceeds 5 mpy

CORROSION ENVIRONMENT	Type 316L	Type 304	2205 (UNS S32205)	2507
0.2% Hydrochloric Acid	>Boiling	>Boiling	>Boiling	>Boiling
1% Hydrochloric Acid	86	86p	185	>Boiling
10% Sulfuric Acid	122	—	140	167
60% Sulfuric Acid	<54	—	<59	<57
96% Sulfuric Acid	113	—	77	86
85% Phosphoric Acid	203	176	194	203
10% Nitric Acid	>Boiling	>Boiling	>Boiling	>Boiling
65% Nitric Acid	212	212	221	230
80% Acetic Acid	>Boiling	212p	>Boiling	>Boiling
50% Formic Acid	104	≥50	194	194
50% Sodium Hydroxide	194	185	194	230
83% Phosphoric Acid + 2% Hydrofluoric Acid	149	113	122	140
60% Nitric Acid + 2% Hydrochloric Acid	>140	>140	>140	>140
50% Acetic Acid + 50% Acetic Anhydride	248	>Boiling	212	230
1% Hydrochloric Acid + 0.3% Ferric Chloride	77p	68p	113ps	203ps
10% Sulfuric Acid + 2000ppm Cl- + N ₂	77	—	95	122
10% Sulfuric Acid + 2000ppm Cl- + SO ₂	<<59p	—	<59	104
WPA1, High Cl- Content	<50	<<50	113	203
WPA2, High F- Content	≤50	<<50	140	167

ps = pitting can occur
ps = pitting/crevice corrosion can occur

WPA	P ₂ O ₅	Cl ⁻	F ⁻	H ₂ SO ₄	Fe ₂ O ₃	Al ₂ O ₃	SiO ₂	CaO	MgO
1	54	0.20	0.50	4.0	0.30	0.20	0.10	0.20	0.70

In most applications Alloy 316/316L has superior corrosion resistance to Alloy 304/304L. Process environments that do not corrode Alloy 304/304L will not attack this grade. One exception, however, is in highly oxidizing acids such as nitric acid where stainless steels containing molybdenum are less resistant. Alloy 316/316L performs well in sulfur containing service such as that encountered in the pulp and paper industry. The alloy can be used in high concentrations at temperatures up to 120°F (38°C).

Alloy 316/316L also has good resistance to pitting in phosphoric and acetic acid. It performs well in boiling 20% phosphoric acid. The alloy can also be used in the food and pharmaceutical process industries where it is utilized to handle hot organic and fatty acids in an effort to minimize product contamination.

Alloy 316/316L performs well in fresh water service even with high levels of chlorides. The alloy has excellent resistance to corrosion in marine environments under atmospheric conditions.

The higher molybdenum content of Alloy 316/316L assures it will have superior pitting resistance to Alloy 304/304L in applications involving chloride solutions, particularly in an oxidizing environment.

In most instances, the corrosion resistance of Alloys 316 and 316L will be roughly equal in most corrosive environments. However, in environments that are sufficiently corrosive to cause intergranular corrosion of welds and heat-affected zones Alloy 316L should be used because of its low carbon content.

Fabrication Data

Alloy 316/316L can be easily welded and processed by standard shop fabrication practices.

Hot Forming

Working temperatures of 1700–2200°F (927–1204°C) are recommended for most hot working processes. For maximum corrosion resistance, the material should be annealed at 1900°F (1038°C) minimum and water quenched or rapidly cooled by other means after hot working.

Cold Forming

The alloy is quite ductile and forms easily. Cold working operations will increase the strength and hardness of the alloy and might leave it slightly magnetic.

Welding

Alloy 316/316L can be readily welded by most standard processes. A post weld heat treatment is not necessary.

Machining

Alloy 316/316L is subject to work hardening during deformation and is subject to chip breaking. The best machining results are achieved with slower speeds, heavier feeds, excellent lubrication, sharp tooling and powerful rigid equipment.

Operation	Tool	Lubrication	CONDITIONS					
			Depth-mm	Depth-in	Feed-mm/t	Feed-in/t	Speed-m/min	Speed-ft/min
Turning	High Speed Steel	Cutting Oil	6	.23	0.5	.019	11–16	36.1–52.5
			3	.11	0.4	.016	18–23	59.1–75.5
			1	.04	0.2	.008	25–30	82–98.4
	Carbide	Dry or Cutting Oil	6	.23	0.5	.019	70–80	229.7–262.5
			3	.11	0.4	.016	85–95	278.9–312.7
			1	.04	0.2	.008	100–110	328.1–360.9
Cutting	High Speed Steel	Cutting Oil	Depth of cut-mm	Depth of cut-in	Feed-mm/t	Feed-in/t	Speed-m/min	Speed-ft/min
			1.5	.06	0.03–0.05	.0012–.0020	16–21	52.5–68.9
			3	.11	0.04–0.06	.0016–.0024	17–22	55.8–72.2
			6	.23	0.05–0.07	.0020–.0027	18–23	59–75.45
Drilling	High Speed Steel	Cutting Oil	Drill ø mm	Drill ø in	Feed-mm/t	Feed-in/t	Speed-m/min	Speed-ft/min
			1.5	.06	0.02–0.03	.0008–.0012	10–14	32.8–45.9
			3	.11	0.05–0.06	.0020–.0024	12–16	39.3–52.5
			6	.23	0.08–0.09	.0031–.0035	12–16	39.3–52.5
			12	.48	0.09–0.10	.0035–.0039	12–16	39.3–52.5
Milling Profiling	High Speed Steel	Cutting Oil			Feed-mm/t	Feed-in/t	Speed-m/min	Speed-ft/min
					0.05–0.10	.002–.004	10–20	32.8–65.6

The information and data in this product data sheet are accurate to the best of our knowledge and belief. but are intended for informational purposes only. and may be revised at any time without



ZincGard® 1500

ZincGard® 1500

Epoxy Zinc-Rich

Features

- High load epoxy zinc primer
- Provides excellent galvanic protection
- Meets Class “B” slip co-efficient and creep resistance criteria for use on bolted connection faying surfaces
- Excellent undercutting resistance
- VOC compliant
- Easy to topcoat
- Rapid and extended recoat windows
- Excellent adhesion to hand tool cleaned surfaces (SSPC-SP 11)

Typical Uses

ZincGard 1500 epoxy zinc rich primer is a rapid recoat primer that provides excellent corrosion protection and undercutting protection.

Excellent for use in industrial, coastal, marine and freshwater environments. May be used on structural steel, steel tanks, offshore platforms, barges, refineries, petrochemical plants, power plants, railcars, pulp & paper mills and other areas as recommended. May also be used to field touch-up inorganic zinc and/or provide galvanic protection for properly prepared steel substrates.

Qualifications

ZincGard 1500 meets Class “B” requirements for slip co-efficient and creep resistance as set forth in the Specification for Structural Joints using A325 or A490 Bolts, in accordance with Research Council on Structural Connections, Appendix A.

Exceed requirements of SSPC-PS 12.00

Performance Data

Salt Spray (ASTM B 117) 7200 hours
Plane blistering or rusting: none

Physical Data

Abrasion Resistance (ASTM D 4060)	
1 kg. Load, 1000 cycles	weight loss
CS 17 wheel	225 mg
Impact Resistance (ASTM D 2794)	
Direct impact	80 in-lbs.
Temperature resistance (dry)	
Continuous	250°F
Non-continuous	300°F
Adhesion (ASTM D 4541)	3912 psi
Theoretical volume solids of mixed material (ASTM D 2697)	
Theoretical coverage of mixed gal. (1 mil)	66% ±1% 1060 sq. ft
Volatile Organic Content	
Unthinned	2.4 lbs./gal.
Reducer 1 @ 1 pint/gal.	3.3 lbs./gal.
Reducer 2 @ 1 pint/gal.	3.3 lbs./gal.
Zinc in dry film	80%

Resistance

ZincGard 1500 prevents rusting of steel in a corrosive environment with a pH range of 5 to 9. Topcoats should be used for pH beyond these limits. When topcoated, ZincGard 1500 effectively reduces undercutting from a damaged area. The following is a guide to the proper selection:

Exposure	Immersion	Splash & Spillage	Fumes
Acidic	NR	Good*	Excellent*
Alkaline	NR	Good*	Excellent*
Solvents	NR	Good*	Excellent*
Salt water	Excellent*	Excellent*	Excellent*
Water	Excellent*	Excellent*	Excellent*
NR=Not Recommended			
*With suitable topcoat			

Film Thickness (per coat)

Dry film thickness: 2 to 4 mils
Wet film thickness: 4 to 6 mils
Theoretical Coverage: 353 sq. ft. @ 3 mils

Substrates

ZincGard 1500 is applied directly to properly prepared steel as the primer. Direct contact with the steel substrate is required to provide optimal galvanic protection to the underlying steel surface.

Topcoats

ZincGard 1500 is an easy to coat primer using either an epoxy or urethane. EpoxyGrip 2000 is the recommended epoxy topcoat for a two-coat application. EpoxyGrip 2100 can be used as an intermediate coat when added protection is required. UreGrip 3300 is recommended as a direct topcoat to ZincGard 1500. UreGrip 3000 is recommended as the final coating over the epoxy or urethane intermediate when a high gloss finish is desired.

Color

ZincGard 1500 is supplied as a yellow Part A, which, when mixed with the zinc dust, produces a dark green color contrasting with gray blasted steel. The gloss is a matte finish.

Shipping Data

Packaging unit	1 gal.	5 gal.
ZincGard 1500 Part A	.36 gals.	1.8 gals.
ZincGard 1500 Part B	.36 gals.	1.8 gals.
ZincGard Filler	16 lbs.	80 lbs.

Shipping weights (approx.)		
ZincGard 1500 kit	25 lbs.	125 lbs.
	1 gal.	5 gal.
Reducer 1	8 lbs.	40 lbs.
Reducer 2	9 lbs.	45 lbs.

Flash Point: (Setaflash)

Part A	33°F
Part B	81°F
Reducer 1	53°F
Reducer 2	113°F

Shelf Life: 6 months for the Parts A and Part B with 1 years for the Zinc Filler when stored inside at 40°F to 110°F.

Surface Preparation

Remove oil and grease from the steel surface with solvent or a commercial cleaner, which does not leave a residue, according to SSPC-SP1. Abrasive blast to a Commercial finish per SSPC-SP 6 to obtain a 1-3 mil blast profile. For immersion, abrasive blast to a Near-white finish per SSPC-SP 10 to obtain a 1-3 mil blast profile. For field touch-up, prepare the substrate according to SSPC-SP 11.

Mixing

Power mix Part A and Part B components, then slowly blend ZincGard Filler into the Part A and mix until uniform. Avoid forming a dust cloud while adding powder. Do not mix partial kits.

	1 Gal. Kit	5 Gal. Kit
ZincGard 1500 Part A	.36 gallons	1.8 gallons
ZincGard 1500 Part B	.36 gallons	1.8 gallons
ZincGard Filler	16 pounds	80 pounds

Note: The Part B forms a soft crust on the surface, which is readily dispersed with power mixing. After mixing in the zinc filler, strain through a wire screen or cheesecloth.

Thinning

Thinning is not required for most applications. However, in hot windy conditions, ZincGard 1500 may be thinned up to 1 pint/gal. Reducer 1 is recommended for application temperatures below 70°F and Reducer 2 is recommended for application temperatures above 70 °F.

Pot Life

Six hours at 75° and less at higher temperatures.

Applications Conditions

	Material	Surface	Ambient
Minimum	50°F	50°F	50°F
Maximum	90°F	110°F	110°F

Special thinning and application procedures are required outside these temperatures. ZincGard 1500 should be applied to a dry surface. Surface temperature should be 5°F above dew point.

Application Equipment

Conventional Spray: Industrial sprayers such as DeVilbiss MBC gun with 2E or 704E cap, or a Binks18 gun with a 66SSx67PB nozzle setup having a double regulated pressure pot, 3/8 “ I.D. minimum material hose, 50’ maximum material hose length are recommended. An agitated pressure pot is recommended.
Airless Spray: Sprayer such a Graco’s Bulldog with a 30:1 ratio and a .017-.021 tip is recommended. A 30 mesh inline filter is recommended.
Power Mixer: Use only explosion proof power mixers.
Brush and roller: Use medium bristle brush and short nap roller for touchup and small areas only.

Drying Time

The following minimum times are based on a 3 mil DFT and adequate air ventilation. Higher thickness and reduced air ventilation increase drying times.

Surface Temperature	To Touch	To Handle or To Topcoat
50°F	12 hrs.	32 hrs.
60°F	6 hrs.	16 hrs.
70°F	3 hr.	8 hrs.
80°F	2 hrs.	5 hrs.
90°F	1 hr.	3 hrs.

ZincGard 1500 can be applied in a wet-on-wet manner with either EpoxyGrip 2000 or EpoxyGrip 2100, which eliminates the dry time between coats.

Cleanup

Cleanup with Reducer 1 or Reducer 2.

Rev. 7/16/16

CAUTION: Read and follow all caution statements on this product data sheet and on the Material Safety Data Sheet for this product. CONTAINS FLAMMABLE SOLVENTS. Vapors are heavier than air and will accumulate. Extinguish all flames and prevent all sparks. All electrical equipment and installations should be made and grounded in accordance with the National Electrical Code. Where explosion hazards exist workers are required to use non-sparking tools and wear non-sparking shoes.

HEALTH: In confined spaces workers must wear fresh airline respirators.

WARRANTY: Any recommendation of U.S. Coatings contained herein, covering use, utilization, chemical or physical properties and other qualities of the products sold is believed reliable; however U.S. Coatings makes no warranty or representation with respect thereto. Use or application is at the discretion of the Buyer without liability or obligation whatsoever of U.S. Coatings.

Specification Sheet

lumenbeam

Small

LBS


WHITE AND STATIC COLORS

Project Name

Qty

Type

Catalog / Part Number



Side view

Front view

Photometric Summary

Symmetric

	Delivered output (lm)	Intensity (peak cd)
XN (3°)	1,342	186,978
VN (6°)	906	47,949
NS (10°)	1,419	20,764
NF (20°)	1,238	12,472
M (30°)	1,297	7,185
FL (40°)	1,163	2,960
WFL (60°)	977	762

Asymmetric

NAS	947	14,011 (82.5°)
WW	1,106	3,013 (8.5°)

Based on 4000K configuration.

Photometric performance is measured in compliance with:

IESNA LM-79-08.

Description

The Lumenbeam Small is a compact, IP66-rated luminaire for lighting landscapes, trees, columns, monuments, and architectural details. It has numerous options, including optics for flood or accent lighting, a choice of color temperatures and colors, as well as various accessories, spread lenses, and controls. The luminaire also has an anti-corrosion option for use in harsh, chemical, or coastal environments.

Features

Color and Color Temperature	2200K, 2700K, 3000K, 3500K, 4000K, 5700K, Red, Green, Blue
Optics (Nominal Distribution)	XN (3°), VN (6°), NS (10°), NF (20°), M (30°), FL (40°), WFL (60°), NAS (Narrow Asymmetric), WW (Asymmetric Wallwash)
Optical Option	Linear Spread Lens Horizontal Distribution, Linear Spread Lens Vertical Distribution
Mounting Option	Stake Mounting, Knuckle Mounting, Canopy mounting option (for mounting on a standard round junction box)
Option	3G ANSI C136.31-2010 Vibration Rating for Bridge Applications Corrosion-resistant Coating for Hostile Environments
Cable Color	Black, White
Power Consumption	14 W
Warranty	5-year limited warranty

Performance

Maximum Delivered Output	1,419 lm (4000K, NS 10°)
Maximum Delivered Intensity	186,978 cd at nadir (4000K, XN 3°)
Illuminance at Distance	Minimum 1 fc at 434 ft (4000K, XN 3°)
Color Consistency	3 SDCM
Color Rendering	Minimum CRI 80

lumenpulse

1220 Mark-Victor Dr., Longview, TX 75601, USA

United States: 617.307.5700 | Canada: 1.877.937.3003 | 514.937.3003

F 514.937.6289

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JIC - R34

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250LEX Public Art Project



LEXINGTON

EXHIBIT

C



SCHEDULE OF PERFORMANCE

(June 2024 -- September 10, 2025)

The following are the anticipated timelines for the completion of the Work, subject to the terms and conditions of this Contract:

June – August, 2024	Design Development
September 1, 2024	Design Approval, Approval of Fabrication Cost Estimates, Order of Materials
October – November, 2024	Construction Documents – in progress
December, 2024	Receipt and Approval of Stamped / Engineered Construction Documents, and approval of Finalized Fabrication and Installation Timeline
January – July, 2025	Fabrication, Community Engagement Event (to be coordinated with artist visit to location)
July – August, 2025	Site Preparation, Crate and Ship
August – September 10, 2025	Installation, Completion of Project, Community Engagement Event



SCHEDULE OF PAYMENT

(June, 2024 – September 10, 2025)

LFUCG shall pay ARTIST an all-inclusive fixed fee not to exceed \$850,000, which shall constitute full compensation for all services, materials, travel, delivery, insurance, licenses, taxes, installation, site work (less than as agreed to by the LFUCG), and contingency fund, to be furnished under the terms of this Agreement. The parties hereto agree and acknowledge that ARTIST will obtain proposals from fabricators and installers based upon the initially approved schematic design. In the event of material increases in the proposals, estimates or invoices from the selected fabricators or installers of the Artwork after the initial bids/proposals resulting from increased materials and/or labor costs or resulting from design changes required by LFUCG or required as the result of materials shortages, the all-inclusive fixed fee shall not exceed \$850,000.

Such fee shall be paid in installments as follows:

PHASE I – Contract & Design Development

1st payment: \$75,000 To be paid upon execution of this contract by all parties, and an appropriate invoice from the ARTIST.

2nd payment: \$150,000 To be paid upon approval of schematic design and fabrication cost estimates and receipt of appropriate invoice from the ARTIST.

3rd payment: \$75,000 to be paid upon receipt of stamped engineered/structural drawings and receipt of appropriate invoice from the ARTIST.

PHASE II - Fabrication, Community Engagement, Installation and Project Closeout

4th payment: \$125,000 To be paid upon documentation of 50 % completion of fabrication, and receipt of an appropriate invoice from the ARTIST.

5th payment: \$125,000 To be paid upon completion of 100% fabrication and completion of one community engagement event.

6th payment: \$125,000 To be paid upon completion of site preparation and receipt of shipped work.

7th Payment: \$125,000 To be paid upon completion of all on-site work by the ARTIST, including final installation, landscaping, and site preparation, 2nd community engagement event, written notice of conditional acceptance of the project by LFUCG, and receipt of an appropriate invoice from the ARTIST.

8th payment: \$50,000 To be paid upon receipt of all final project documentation, including maintenance manual, photographic documentation, submissions of releases of claim or claim waivers from each subcontractor, supplier or other persons or entities who has or might have a claim against LFUCG, as-built drawings and receipt of an appropriate invoice from the ARTIST. All punch list items must be completed before final payment is issued. Upon inclusion in LFUCG fixed asset and insurance records and processing of all payments and not later than thirty (30) days after ARTIST has provided the above final project documentation, LFUCG will issue a written notice of final acceptance of the Artwork.