

CENTRE CITY DEVELOPMENT CORPORATION & CITY OF SAN DIEGO

**CALL FOR ARTISTS / REQUEST FOR QUALIFICATIONS (RFQ)**

*Asian Pacific Historic District Gateway*  
☞ Chinese Japanese Filipino Pacific Islander ☞

INTRODUCTION

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**An artist or artist team is sought to design, fabricate and install an artwork or artworks to serve as the gateway for the Asian Pacific Historic District in downtown San Diego.**

Per Council Policy 900-11 *Inclusion of Public Art in Selected Capital Improvement Program and Redevelopment Agency Projects*, funding for the artwork(s) is provided by the Redevelopment Agency of San Diego through the Centre City Development Corporation (CCDC). The City of San Diego (City) Commission for Arts and Culture (Commission) is assisting CCDC in the administration of the process for artist selection and artwork development. The artwork(s) resulting from this process will become the property of the City and will be accessioned into the Civic Art Collection.

ELIGIBILITY

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Any artist\*<sup>1</sup> or artist team authorized to work in the United States is eligible to apply. Teams may include cross-disciplinary members (architects, landscape architects, etc.), but an artist must serve as the team leader. The CCDC/City encourage artists who work in all media and whose artworks are representative of all schools and styles and artists who represent diversity in gender, age, socio-economic class, geographic location, religion, sexual orientation, skills and abilities, ethnicity, among other qualities to apply. Individuals with conflicts of interest are not eligible for contract award under this solicitation. For more details, see the *Conditions for Submission* herein.

*\*Throughout this document, the singular term "artist" also means artist teams.*

*<sup>1</sup>The CCDC/City adhere to the definition of "artist" which is contained in San Diego Municipal Code section 26.0701 et seq.*

BUDGET

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Estimated \$300,000 for artwork design, fabrication, and installation. The budget is all-inclusive and must cover all costs associated with the conceptualization and realization of the artwork(s). Artists are responsible for travel expenses including travel to interviews, if invited.

TIMELINE

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March 19, 2010

RFQ released

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|--------------------|---|
| April 14, 2010     | Question cut-off date                           |
| May 14, 2010       | Application deadline                            |
| May - June 2010    | Short listing and final selection of one artist |
| June - July 2010   | Agreement negotiation and execution             |
| Fall - Winter 2010 | Design development and approval phases          |
| Early Spring 2011  | Fabrication and installation phases             |
| Late Spring 2011   | Completion                                      |

## SITE

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The Asian Pacific Historic District (APHD) includes eight blocks bounded by Second Avenue, Market Street, Sixth Avenue and J Street. Two priority areas are identified as the focus for public improvements within the APHD: 1) Third Avenue (from Market Street to J Street); and 2) Island Avenue (from Second Avenue to Sixth Avenue). The APHD includes twenty historic structures which were constructed between 1883 and 1930 and acts as a passage from the Convention Center to the commercial/retail/civic core of San Diego. The site for the gateway artwork has been identified as the south side of the Third Avenue and Market Street intersection.

## OVERVIEW

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A Master Plan for the APHD was adopted by the Redevelopment Agency in 1995. The objective of the Master Plan is to stimulate the revitalization of the APHD and to support the preservation and enhancement of Asian Pacific cultural heritage in San Diego. Surprisingly, San Diego is the only large metropolitan area in the western U.S. that does not have a thriving historic Asian District. The vision for the APHD is to become the social and cultural center of various Asian Pacific ethnic groups within San Diego, reestablishing the district as the cultural destination point within the region. The establishment of the APHD's identity is crucial to the long term revitalization of the area, and the Master Plan establishes which public improvements are necessary to create this identity: corridors, streetscape improvements such as landscaping and enhanced paving, lighting and preservation of significant historic buildings. The key ingredients to the Master Plan are as follows:

1. Re-establish the APHD as the social and cultural destination for the Asian Pacific community within San Diego
2. Undertake adaptive reuse and preservation of historic buildings
3. Establish Island Avenue as the unifying east/west street promenade
4. Create a APHD identity by the use of special sidewalk patterns, street lighting, gateway elements, historic building markers, banners, colors, street and business signage, and an Asian Pacific flag plaza; and
5. Identify future development opportunities.

The public improvements on Third and Island Avenues will create an identity for the APHD so that the public can recognize when they have arrived, and that such a district exists. This identity will be created through a variety of physical and visual elements including: gateways, banners and signage;

festival spaces; hardscape tapestry; landscape; public art; and lighting.

Currently, CCDC has employed a consultant team to finalize design and construction documents for the public improvements to the APHD. It is anticipated that construction on the improvements may begin as soon as late summer 2010. The artist who is awarded a contract through this competitive process will create artwork proposals and create the artwork(s) with the input of CCDC's design/construction consultants.

**Historical Significance of San Diego's Asian Pacific Historic District**  
**by Murray K. Lee, Curator of Chinese American History, San Diego Chinese Historical Museum**

*The Chinese had a significant presence in the early history of San Diego. They had a fishing and shipbuilding industry based at Point Loma dating from the 1860s. After Alonzo Horton founded "New Town," the Chinese established another fishing village along San Diego's harbor at the foot of Third Street. This move helped in the formation of a Chinatown in the adjacent area. When the California Southern Railroad was built with the help of Chinese labor, the fishermen were in the path of the rails and had to move back to Point Loma. By this time, there was a sufficient base for a viable Chinese community in the area south of Market to the harbor and between Second and Sixth Streets. The Chinese in San Diego began to establish businesses in the Chinatown area and became a significant part of the city's service industry. Many were employed in the households of prominent San Diego families as cooks, houseboys, and gardeners. The Chinese were active in the service industry with laundries, tailor shops, barbershops, herbal stores, and produce businesses. San Diego had a shortage of construction labor and the Chinese filled this need by supplying workers for the clearing of land and the construction of the Del Coronado Hotel. Besides supplying labor for the construction of the California Southern Railroad, they worked on the San Diego Flume as well as projects involving dams, flood control, mining, and irrigation. They began to farm areas in Mission and Sweetwater Valleys and to sell their produce door to door in the city.*

*The Exclusion Laws of 1882 and 1892 forced the Chinese out of the fishing and shipbuilding industry and seriously limited the growth of the Chinese community. It was the first of several negative impacts. In the late 1800s, Japanese immigrants began to come into San Diego. They established small businesses alongside the Chinese in an area centered on Fifth and Island. They took over the fishing industry vacated by the Chinese and also entered the market gardening business. The second negative impact on the community was the cleanup campaign primarily directed at the Stingaree (red light district) prior to the 1915 Panama-California Exposition. Chinatown lost much of its housing and many businesses. By the 1930s the area began to recover and slowly the bachelor society gave way to the growth of families. The Chinese had their own social organizations, such as kinship and benevolent associations. They also had the Chinese Mission, which under the tutelage of their pastor became a positive influence in the lives of the youth. The newly arrived immigrant men were allowed to live in the church dormitories until they could learn English and get better jobs. Early businesses such as Woo Chee Chong, Gim Wing, and David's produce had a stabilizing effect on the community.*

*The "Fifth and Island" center of the Japanese community began to radiate out from this area. They included pool halls, restaurants, barbershops, merchandising stores, groceries, and food processing. The Filipino presence in the area was primarily a bachelor society. They had barbershops, pool halls,*

restaurants, and eventually fraternal organizations. As an example, the block bounded by Market, Island, Fourth, and Fifth Avenues had on Market Street Uichiro Obayashi's Sun Cafe, a Filipino pool hall, and a barbershop. On Fourth Avenue was the Hop Lee Chong Laundry, a place where many new Chinese immigrants got their start. On Fifth was the Pacific Hotel, which housed many Japanese and had on its ground floor Nippon Co. a large Japanese goods store. The 1930 census clearly showed that this block and the one to the east, which are today part of the Asian Pacific Historic District and the Gaslamp Quarter, had the most ethnically diverse population in San Diego. There were Chinese, Japanese, Filipino, Hawaiian, Black, White, Mexican, and Native American. Many of the White population were foreign born. Almost all of the families in the area were Chinese and Japanese, primarily because they had little choice in where they could live. The others living in the area were lodgers in hotels and boarding houses. Adequate housing in the area was in short supply and many of the Asian families lived in cramped quarters with many children, relatives, and lodgers. Some of their quarters were above or behind their businesses and others were in crowded row houses, deficient in amenities. The children went to school together and shared a unique period in the growth of the city. The community had a lot in common.

The next negative impact on the area came in 1942 at the beginning of World War II. The Japanese community ceased to exist as their members were sent into detention camps. The Chinese and Filipino young men went into the military service. After the war the area was gradually abandoned as returning veterans sought better housing and employment. As downtown San Diego changes it needs to remember its past, when life was different, people were different, but their desire to attain the "American Dream" and a better life for their children, remain a constant. San Diego's unique ethnically diverse roots need to be preserved. This is a significant aspect of city's history and cultural heritage.

## ARTWORK OBJECTIVE

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The artist who is awarded this contract should use as **points of departure** the tradition of Chinatown gateways in places such as San Francisco and Los Angeles as well as the tradition of neighborhood gateway signs in San Diego and the resulting gateway should aim to meet all the following goals:

- Contribute to the infusion of authenticity back into the district
- Emphasize the cultural aspect of the district
- Contribute to a sense of place
- Have both a day and night presence
- Elevate the standard for San Diego's neighborhood gateways

The gateway should **NOT**:

- Be a literal listing or portrayal of Chinese, Japanese, Filipino and Pacific Islander cultures
- Be an environmental graphic solution

## ARTIST SELECTION PROCESS, PANEL, AND CRITERIA

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Artists are asked to submit applications containing the specific materials listed later in this document. A panel appointed by the Commission will review the eligible applications and create a short-list of at least three of the most qualified artists utilizing the selection criteria given below. The panel may be comprised of community members and visual art/design experts. The panel may interview short-listed artists. It is mandatory that the designated lead artist attend any such interview. Artists who accept an invitation to interview will not be expected to develop proposals. However, in the interviews, artists will be expected to discuss past approaches and working methods as well as answer questions relating to working on projects of this nature. Based on these evaluations, the panel will recommend one artist for the contract award.

Criteria used to evaluate artists will be:

- Sophisticated conceptual skills, unique vision and strong imagination
- Competence and skill with conveying meaning through art and with creating a sense of place through art
- Demonstrated interest in and understanding of the project
- Strength of professionalism and communication skills
- Proven ability to self-direct, self-motivate and conduct business without excessive oversight
- If applicable, cohesiveness of team members
- If applicable, past performance on contracts with the CCDC/City

When the panelists evaluate the applicants, they typically use a four-point ranking system:

- **Ranks of 4 (4 and 4-)** designate an applicant as the most qualified. Applicants ranked with a 4 meet all the review criteria to the highest degree possible. If there are no applicants who meet all the review criteria, no 4 ranking should be given; this is not a grading curve but a rarified achievement of near perfection given the criteria.
- **Ranks of 3 (3+, 3, and 3-)** are considered good. These applicants mostly meet the criteria in a strong or solid way, but may still need some improvement.
- **Ranks of 2 (2+, 2 and 2-)** are considered marginal. These applicants have some merit, but do not meet the criteria in a strong or solid way.
- **Rank of 1** is not qualified under any circumstance; inappropriate for the award.

In Round One of the evaluation process, panelists give each applicant a rank. The panelists' ranks are then averaged for a single, initial score per applicant. In Round Two, applicants are clustered by rank from highest to lowest. Rank adjustments may occur when the panel agrees that an applicant is out of place within the clusters. Meetings of the panel are open to the public, including applicants, or applicants may request to learn their ranks following the panel meetings. An applicant may appeal under the circumstances provided in *Council Policy 000-29* which is located at <http://www.sandiego.gov/city-clerk/officialdocs/legisdocs/index.shtml>

After the selected artist has entered into an agreement with the CCDC/City and undertaken the design process, the criteria the Commission will use to approve the selected artist's artwork proposal(s) will include all or some of those given under "Accession Criteria" in the *Department Instruction for the City of San Diego Commission for Arts and Culture – Civic Art Collection Management Policy*.

## SCOPE OF WORK

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The selected artist will enter into an agreement with CCDC/City for the following services:

- A. Conduct research, which includes examining the site, reviewing pertinent documents, meeting with the CCDC/City staff, consultants to the CCDC/City, members of the community, etc.
- B. Create artwork proposal(s)
- C. Prepare verbal, written and visual presentations to show schematic and final artwork proposal(s) to stakeholders. Presentations should include:
  - 1. A preliminary depiction of the proposed artwork(s) in the form of a to-scale drawing accompanied by either a three-dimensional rendering or a three dimensional model, if applicable
  - 2. A narrative description of the sources and methodology used to develop the proposal(s) which may include research, findings and/or input from the community and key stakeholders plus information about the scale, location, context, relationship of components, materials, operating requirements, maintenance requirements, and fabrication and installation methods
  - 3. A site plan
  - 4. A photographic survey of the site and other images depicting the site context
  - 5. Material samples, if available
  - 6. Documentation of compliance with ADA requirements, if necessary
  - 7. An outline of the anticipated budget for full design, fabrication, installation, maintenance and operating expenses
- D. Participate in approximately three in-person meetings/presentations with stakeholders (excluding the interview and any meetings solely with the design team) and respond to feedback.
- E. Engage subcontractors, if necessary.
- F. Create and submit engineer-approved construction documents, if necessary
- G. Obtain building permits and obtain all final inspections and approvals as required by the City and CCDC.
- H. Perform site preparation, if necessary
- I. Fabricate, transport, and install artwork(s)
- J. Submit documentation images and a maintenance/operations report

- K. Participate in ribbon-cutting ceremony and/or outreach to press, if requested
- L. Coordinate with the CCDC/City staff and consultants to the CCDC/City, as required

Some meetings may be conducted remotely, as necessary and as solely determined by the CCDC/City staff.

## APPLICATION MATERIALS

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Artists who wish to be considered must submit the following materials:

- Digital images of past work, including stills and/or videos with annotations
- A letter of interest
- A professional résumé for each artist/team member with three professional references for each artist/team member

The City utilizes a Microsoft operating system. Applicants are responsible for ensuring the compatibility of their submissions with the City's operating system.

### **Digital Images of Past Work with Annotations**

Submit examples of past work containing a maximum of 10 still images and/or videos showing a range of different artworks. (That's **NOT** 10 still images and 10 videos for a total of 20 examples. Submit a maximum of 10 total examples.)

- Submit digital still images in .jpg format with a maximum resolution of 300 dpi and maximum dimensions of 1024 x 768 pixels.
- Submit digital NTSC format videos in .mpg or .mov format with a maximum resolution of 720 x 480 pixels. The total combined running time of all your digital videos may not exceed three minutes.
- When submitting examples of art proposals that have not been built and installed in the public realm, such as images of models or computer-generated images, please clearly indicate as such.
- An LCD projector will be used to display artists' images and videos for the panel. The City is not responsible for distortion or alteration of images or videos as they appear on monitors or as projected.
- Provide annotations in .pdf format for each example of past work included in your application.

### **Letter of Interest**

Submit a brief, written narrative in .pdf format describing your passion for and comprehension of the purpose of the project as well as a description of your methodology for conceptualizing and creating art. Please do not use this letter as a forum for reiterating information already contained in your

résumé. This is your opportunity to convey your understanding of what we're looking for, why you're well-matched for the project, what is distinctly "you" in your approach to creating art, what excites you about this project, and what the panel can't tell about your qualifications and your art just from looking at your résumé and examples of past work.

The letter must prominently include the name, address, telephone number, and e-mail address of the applicant. At the end of the letter, be sure to create a statement that specifies you "have read, understand, and agree to all the *Conditions for Submission*" in this *Call for Artists*. Your letter must also contain your signature either by executing a "wet-ink" signature and then scanning the document or inserting an "electronic signature." In either case, it should be your recognizably handwritten signature, not just an italicized font.

### **Professional Résumé with References**

Please submit a current professional résumé in .pdf format for each artist/team member. In addition, please submit the names, addresses, current telephone numbers and/or email addresses for three authorities on each artist's/team member's past work and qualifications. Do not send letters of recommendation. We do call references, so please double-check to ensure that the contact information for your references is correct.

### **Tips for Submitting a Competitive Application**

- ✓ Read everything in this document and follow the directions.
- ✓ Ask questions in writing before the cut-off date if you are unsure about the directions given.
- ✓ Verify your ability to use technology to submit the application as required before the due date.
- ✓ Communicate crisply, avoiding off-point or repetitive information.
- ✓ Present information in an organized, easy-to-understand style and format.
- ✓ Tailor your application to be relevant to this specific project.
- ✓ Present still images and videos of a quality that really does justice to your work.
- ✓ Keep the annotations brief. Provide a narrative only for that which is not self-evident.
- ✓ When you formulate your application, put yourself in the mindset of a panelist who may review dozens of applications in one day as well as in the mindset of the person who will process all the applications. Make things clear and simple.
- ✓ Submit materials which are accurate and up-to-date.
- ✓ Put your first name, last name and email address on everything you submit.
- ✓ Test your files to verify that they will open within a Microsoft operating system.
- ✓ Submit your application well in advance of the due date and time.

### **DIRECTIONS AND DEADLINE FOR SUBMISSION**

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Please submit your application either via email or by delivering a CD.



#### Submitting via email:

- Put all the required application materials in a folder. Label the folder with the artist's last name and compress it.
- Email the folder as an attachment to dsprings@sandiego.gov with subject line: "Gateway – [Insert Last Name of Artist]"
- Email with attachments up to approximately 20 MB can be received.

#### Submitting a CD via delivery:

- Put all the required application materials in a folder. Label the folder with the artist's last name and burn it on to a CD.
- Label the CD clearly with the artist's name and email address. Please do not include the name of the artist's gallery, assistant, or representative on the label.
- Mail or hand-deliver CDs to:  
Commission for Arts and Culture  
ATTN: Dana Springs  
1200 Third Avenue, Suite 924  
San Diego, CA 92101

Applications must be received no later than 4:00 p.m. on Friday, May 14, 2010. Acknowledgement of the CCDC/City's receipt of an application will be sent to each applicant via email. The CCDC/City is not obligated to notify applicants when applications are late, incomplete, inaccessible or otherwise ineligible.

#### Did you remember to:

- Include up to 10 examples of past work such as still images and/or videos in the required format and size/length?
- Include annotations for each example of past work in the required format?
- Include a Letter of Interest with the required "Conditions of Submission" statement, with the required signature and in the required format?
- Include a professional résumé for each team member in the required format?
- Include three professional references for each team member in the required format?
- Test the files in your application to verify that they will open within a Microsoft operating system?
- Submit your application before the due date and time?

#### QUESTIONS?

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After reading this entire *Call for Artists*, please submit questions in writing by April 14, 2010 to Dana Springs at dsprings@sandiego.gov. Questions will not be taken after April 14, 2010. If questions lead

to an addendum to this *Call for Artists*, the addendum will be posted on the Commission's website at [www.sandiego.gov/arts-culture/publicart.shtml](http://www.sandiego.gov/arts-culture/publicart.shtml)

## CONDITIONS FOR SUBMISSION

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### **Rights Pertinent to This Solicitation**

The Redevelopment Agency of San Diego (Agency)/CCDC/City reserves the right to reject, in whole or in part, any responses to this solicitation that do not meet the selection criteria. Failure to provide the required application materials in the required formats shall be cause for the submission to be rejected as non-responsive.

The Agency/CCDC/City reserves the right to cancel this solicitation, in whole or in part, at any time without prior notice and makes no representation that any agreement will be awarded to any applicant. Additionally, the Agency/CCDC/City expressly reserves the right to postpone opening responses to this solicitation for its own convenience, and/or to waive minor informalities or irregularities in the responses received.

The Agency/CCDC/City reserves the right to revise this solicitation by addendum. The Agency/CCDC/City is bound only by what is expressly stated in this solicitation and any authorized written addenda thereto. Addenda will be posted on the City's website at <http://www.sandiego.gov/arts-culture/publicart.shtml>. It shall be the applicant's responsibility to check the website up to the final submission date for any possible addenda.

The Agency/CCDC/City accepts no financial responsibility for any costs incurred by the applicant. All submissions may be kept by the Agency/CCDC/City and may be subject to the California Public Records Act.

The Agency/CCDC/City reserves the right to propose minor modifications to the scope of work during the contract negotiation phase between the Agency/CCDC/City and the contract awardee.

The Agency/CCDC/City is not responsible for the loss or damage of any materials submitted.

The Agency/CCDC/City reserves the right to award contracts to more than one applicant.

The Agency/CCDC/City reserves the right to change the timeline.

### **Contact With Personnel**

Questions regarding this solicitation shall be directed in *writing* to:

Dana Springs, Public Art Program Manager  
City of San Diego City for Arts and Culture  
1200 Third Avenue, Suite 924  
San Diego, CA 92101  
[dsprings@sandiego.gov](mailto:dsprings@sandiego.gov)

### **Formal Approval of Contract**

The applicant understands that issuance of this solicitation does not commit the Agency/CCDC/City to award a contract, or to pay any costs incurred in the preparation of a response to this solicitation. The applicant should note that the execution of any contract pursuant to this solicitation is contingent on approval by the Agency, the Mayor (or his designee), or the City Council, as required by law.

### **Public Disclosure**

The applicant understands that as a general rule any information received with a submission is a public record subject to disclosure. Therefore all submissions shall be made available for public inspection according to applicable disclosure rules and regulations. If the applicant considers his or her submission as proprietary and/or otherwise exempt from disclosure, he or she may mark such portions of his/her proposal as "confidential." If the Agency/CCDC/City's legal counsel determines that marked portions are legally exempt from disclosure, those portions will be withheld from public inspection.

### **Confidential Solicitation**

The Agency/CCDC/City will not share the details of individual responses to this solicitation with competing applicants during the selection process. After the selection process ends and prior to final approval of the contract, all solicitations become public information (except portions otherwise deemed confidential).

**News Releases**

The applicant agrees that, if selected, the Agency/CCDC/City will review and approve all news releases pertaining to this solicitation and/or subsequent agreement(s). All news releases will be submitted in writing to the staff member listed above. Staff will review and provide feedback and/or approval in a timely manner.

**Examination of Solicitation**

The applicant understands that the information provided herein is intended solely to assist the applicant in preparation of a submission. By submitting a response to this solicitation, the applicant represents that the applicant has thoroughly examined and become familiar with work required in the solicitation and is capable of performing quality work and to achieve the objectives of the Agency/CCDC/City.

**Eligibility Restrictions**

Elected officials, commissioners, board members, committee members, agents, officers and employees of the Redevelopment Agency of San Diego, the Centre City Development Corporation and the City of San Diego and their business partners or their immediate family members are not eligible for a contract award under this solicitation. Designers, consultants or contractors associated with the Asian Pacific Historic District project and their business partners or their immediate family members are not eligible for a contract award under this solicitation.

**Use of Information**

Contact information for each applicant may be entered into a database and used to advertise future calls for artists issued by the Agency/CCDC/City or the Agency/CCDC/City's affiliates. In general, the contents of the database are intended for use in advertising paid opportunities for artists.

**Definition of "Artist"**

The issuance of this solicitation means that Agency/CCDC/City intends to contract with an artist as defined in San Diego Municipal Code Section 26.0701 et seq.

**Equal Opportunity Contracting Program:** The Agency/CCDC/City endeavors to do business with applicants committed to equal opportunity and will not do business with any applicant that discriminates on the basis of gender, age, socio-economic class, geographic location, religion, sexual orientation, skills and abilities, ethnicity, and political persuasion, among other qualities.

**Insurance Requirements:** Any applicant selected to enter into contracts with the Agency/CCDC/City may be asked to obtain, at the applicant's sole cost and expense, all insurance required by the Agency/CCDC/City. The applicant may be asked to refrain from working until such insurance has been approved by the Agency/CCDC/City. Insurance required by the Agency/CCDC/City may include but is not limited to Comprehensive General Liability, Automobile Liability and Worker's Compensation coverage in accordance with the laws of the State of California. The Agency/CCDC/City may require that the Agency/CCDC/City be named as additional insured on all insurance policies except Worker's Compensation coverage.

**Business Tax License:** Any applicant selected to enter into contracts with the Agency/CCDC/City may be asked to obtain, at the applicant's sole cost and expense, a City of San Diego business tax license.

**Contract Requirements**

A version of the boilerplate agreement below will be issued to the artist who is recommended for the award.

---End of RFQ---



## AGREEMENT BETWEEN THE CITY OF SAN DIEGO

AND **(ARTIST NAME)**

### FOR CONSULTING SERVICES

THIS Agreement, and the incorporated exhibits A-F, is made and entered into between the City of San Diego, a municipal corporation [City], and **(ARTIST NAME)** [Artist] for the Artist to provide consulting services to the City.

#### ARTICLE I SCOPE OF SERVICES

**1.1 Scope of Services.** At the direction of the City, the Artist shall provide services to the City, as described in Exhibit A, for **(DESCRIPTION OF SERVICES)** in connection with **(NAME OF WBS PROJECT, IF ANY)**, the Project.

#### ARTICLE II DURATION OF AGREEMENT

**2.1 Term of Agreement.** This Agreement shall be effective on the date it is executed by the last party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be effective until completion of the Scope of Services or **(COMPLETION DATE)** whichever is the earliest but not to exceed five years unless approved by City ordinance.

**2.2 Time of Essence.** Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement.

**2.3 City's Right to Terminate for Convenience.** The City may, at its sole option and for its convenience, terminate all or any portion of the Scope of Services agreed to pursuant to this Agreement by giving written notice of such termination to the Artist. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Scope of Services shall be effective upon receipt of the notice by the Artist. Artist will be entitled to fair and reasonable compensation for all services completed in compliance with this Agreement prior to the notice of termination.

**2.4 City's Right to Terminate for Default.** If the Artist fails to satisfactorily perform any obligation required by this Agreement, the Artist's failure constitutes a default. A default includes the Artist's failure to adhere to the Schedule of Work given in Exhibit D. If the Artist fails to satisfactorily cure a default within ten calendar days of receiving written notice from the City specifying the nature of the default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Artist, and any person claiming any rights by or through the Artist under this Agreement. The rights and remedies of the City enumerated in this section are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Artist.

### **ARTICLE III COMPENSATION**

**3.1 Amount of Compensation.** The City shall pay the Artist for performance of the Scope of Services rendered in accordance with Exhibit A, including reasonably related expenses for a total not to exceed \$( **TOTAL AMOUNT ALLOCATED FOR PERFORMANCE OF SCOPE OF SERVICES**).

**3.2 Additional Services.** The City may require that the Artist perform additional services beyond those described in the Scope of Services [Additional Services]. Prior to the Artist's performance of Additional Services, the City and the Artist must agree in writing upon a fee for the Additional Services, including reasonably related expenses.

**3.3 Manner of Payment.** The City shall pay the Artist according to the schedule outlined in Exhibit C. For the duration of this Agreement, the Artist shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in 3.1. The Artist shall submit invoices in accordance with Exhibit C which shall include a description of completed services. The City will pay undisputed portions of the invoice within 30 calendar days of receipt.

### **ARTICLE IV ARTIST'S OBLIGATIONS**

**4.1 Industry Standards.** The Artist agrees that the services rendered under this Agreement shall be performed in accordance with any standards, if such standards exist, customarily adhered to by an experienced and competent professional Artist using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City Council, Mayor, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Artist of responsibility for complying with all applicable laws, codes, and good consulting practices.

**4.2 Maintenance of Records.** The Artist shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of the Scope of Services, throughout the performance of the Scope of Services and for a period of 10 years following completion of the Professional Services for the Project. The Artist further agrees to allow the City to reasonably inspect, copy, and audit such books, records, documents and other evidence.

**4.3 Insurance.** The Artist shall not begin any work under this Agreement until the Artist has: (a) obtained, and upon the City's request provided to the City, insurance certificates reflecting evidence of all insurance required in below; however, the City reserves the right to request, and the Artist shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. The Artist's liabilities, including but not limited to the Artist's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and the Artist's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City. The Artist shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

**4.3.1 Types of Insurance.** At all times during the term of this Agreement, the Artist shall maintain insurance coverage as follows:

**Commercial General Liability.** Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$ 1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

**Commercial Automobile Liability.** For all of the Artist's automobiles including owned, hired and non-owned automobiles, the Artist shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

**Worker's Compensation.** For all of the Artist's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Artist shall keep in full force and effect, a Worker's Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the Artist shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

**4.3.2 Deductibles.** All deductibles on any policy shall be the responsibility of the Artist and shall be disclosed to the City at the time the evidence of insurance is provided.

**4.3.3 Acceptability of Insurers.** Except for the State Compensation Insurance Fund, all insurance required by this Agreement shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City. The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers

(LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

**4.3.4 Required Endorsements.** The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Agreement.

#### **Commercial General Liability Insurance Endorsements**

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an insured the City and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by the Artist or on the Artist's behalf, (b) the Artist's products, (c) the Artist's work, including but not limited to the Artist's completed operations performed by the Artist or on the Artist's behalf, or (d) premises owned, leased, controlled or used by the Artist.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City and its elected officials, officers, employees, agents and representatives as respects operations of the named insured. Any insurance maintained by the City and its elected officials, officers, employees, agents and representatives shall be in excess of the Artist's insurance and shall not contribute to it.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the Artist's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

#### **Automobile Liability Insurance Endorsements**

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an insured the City and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the Artist.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that Artist's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

#### **Worker's Compensation and Employer's Liability Insurance Endorsements**

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the named insured for the City.

**4.3.5 Reservation of Rights.** The City reserves the right, from time to time, to review the Artist's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Artist for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.

**4.3.6 Additional Insurance.** The Artist may obtain additional insurance not required by this Agreement.

**4.3.7 Excess Insurance.** All policies providing excess coverage to the City shall follow the form of the primary policy or policies including but not limited to all endorsements.

**4.4 Drug-Free Workplace.** The Artist agrees to comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference (Exhibit E).

**4.5 ADA Certification.** The Artist hereby certifies that the Artist agrees to comply with the City's Americans With Disabilities Act Compliance/City Contracts requirements set forth in Council Policy 100-04, adopted by San Diego Resolution R-282153 and incorporated into this Agreement by this reference.

**4.6 Compliance with the City's Equal Opportunity Contracting Program.** The Artist shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements. The Artist shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Artist shall provide equal opportunity in all employment practices. The Artist shall ensure that its sub-consultants comply with the City's Equal Opportunity Contracting Program Consultant Requirements. Nothing in this section shall be interpreted to hold the Artist liable for any discriminatory practice of its sub-consultants. The Artist's hiring or retaining of any sub-consultant to perform services is subject to prior written approval by the City. Should the Artist retain sub-consultants with the City's written approval, the Artist shall comply with all Equal Opportunity Contracting requirements. For applicable rules and forms see <http://www.sandiego.gov/eoc/index.shtml>.

**4.6.1 Non-Discrimination Ordinance.** The Artist shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of sub-consultants, vendors or suppliers. The Artist shall provide equal opportunity for sub-consultants to participate in sub-consulting opportunities. The Artist understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, and other sanctions. This language shall be in contracts between the Artist and any Sub-consultants, vendors and suppliers.

**4.6.2 Compliance Investigations.** Upon the City's request, the Artist agrees to provide to the City, within 60 calendar days, a truthful and complete list of the names of all sub-consultants, vendors, and suppliers that the Artist has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Artist for each subcontract or supply contract. The Artist further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code



sections 22.3501-22.3517.] The Artist understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in remedies being ordered against the Artist up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Artist further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

**4.7 Conflict of Interest.** The Artist is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et seq. and 81000, et seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

**4.8 Contractor/Vendor Registration Form.** All prospective Artists and sub-consultants, as well as existing Artists and sub-consultants, are required to complete and submit the online Contractor/Vendor Registration form. Registration will be a prerequisite for the following: submission of future Artist agreements or sub-consultant agreements for City projects; acceptance of all future Artist bills and invoices submitted to the City; and award of all future contracts issued by the City. The Artist can register at <http://www.sandiego.gov/purchasing/vendor/index.shtml>. Contractor/Vendor Registration shall remain valid for two years from the date the registration form is originally submitted.

**4.9 Business Tax License.** Any Artist doing business with the City is required to comply with Section 31.0301 of the San Diego Municipal Code regarding business tax. For more information, visit the City's website at <http://www.sandiego.gov/treasurer/> or call (619) 615-1500. The City requires the Artist to provide a copy of the Artist's business tax license, or a copy of the business tax license application receipt. Failure to provide the required documents with this Agreement may result in the Artist being declared non-responsive and rejected.

**4.10 Submittals.** Failure to provide the required submittals listed below with the Agreement shall delay completion of the Agreement, and therefore, commencement of the Scope of Services and payments to Artist.

- Complete insurance certificates with all endorsements per Section 4.3.4;
- Completed Drug Free Workplace form (Exhibit E);
- Completed Vendor Registration form per Section 4.8;
- Business Tax License per Section 4.9; and
- Taxpayer Identification Number (W-9) as specified in City of San Diego General Provisions, Section C, Paragraph 15, if not currently on file. <http://www.irs.gov/pub/irs-pdf/fw9.pdf>

## **ARTICLE V INDEMNIFICATION**

**5.1 Indemnification and Hold Harmless Agreement.** With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Artist, or Artist's employees, agents, and officers, arising out of any services performed under this Agreement, the Artist agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees

from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Artist, its employees, agents or officers, or any third party. The Artist's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees.

**5.2 Insurance.** The provisions of this article are not limited by the requirements of Section 4.3 related to insurance.

**5.3 Enforcement Costs.** The Artist agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in this article.

## **ARTICLE VI MISCELLANEOUS**

**6.1 Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.

**6.2 Independent Consultants.** The Artist and any Sub-consultants employed by the Artist shall be independent consultants and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Artist concerning the details of performing the Scope of Services, or to exercise any control over such performance, shall mean only that the Artist shall follow the direction of the City concerning the end results of the performance.

**6.3 Jurisdiction and Venue.** The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California.

**6.4 Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

**6.5 Notices.** In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed to in writing, notice to the City shall be addressed to: **(NAME, ADDRESS, MS #, PHONE AND EMAIL ADDRESS OF CITY CONTACT FOR THIS AGREEMENT);**

and notice to the Artist shall be addressed to:

**(NAME, ADDRESS, PHONE AND EMAIL ADDRESS OF ARTIST CONTACT FOR THIS AGREEMENT).**

**6.6 Product Endorsement.** The Artist shall conform to the City's Administration Regulation 95.65 concerning product endorsement which requires that any advertisement referring to the City as a user of a product or service will require the prior written approval of the Mayor.

**6.7 Integration/Amendments.** This Agreement represents the entire understanding of the City and the Artist as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both parties.

**6.8 Exhibits Incorporated.** All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

**IN WITNESS WHEREOF**, this Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, pursuant to San Diego City Charter Section 265 authorizing such execution, and by the Artist, **(NAME OF ARTIST)**.

I HEREBY CERTIFY that I can legally bind **(NAME OF ARTIST)** and that I have read all of this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**(ARTIST NAME)**

BY: \_\_\_\_\_  
ARTIST

DATE SIGNED \_\_\_\_\_

**CITY OF SAN DIEGO  
A MUNICIPAL CORPORATION**

BY: \_\_\_\_\_  
Contracting and Purchasing Department Director

DATE SIGNED \_\_\_\_\_

I HEREBY APPROVE the form and legality of the foregoing Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**Jan I. Goldsmith, City Attorney:**

By: \_\_\_\_\_  
Deputy City Attorney

DATE SIGNED \_\_\_\_\_

## **EXHIBIT A SCOPE OF SERVICES**

**A.1 Notice to Proceed with the Services.** The Artist shall not proceed with work on the Scope of Services until the Project Manager issues the Artist a notice to proceed.

**A.2 Artwork Definition.** The Artist acknowledges and agrees that the artwork created by the Artist under this Agreement will meet the definition of “artwork” contained in San Diego Municipal Code Section 26.0702. The City shall not be obligated to approve or accept artwork which does not meet the City’s definition of “artwork.”

**A.3 Fulfillment of City’s Collecting Mission.** The Artist acknowledges and agrees that the artwork created by the Artist under this Agreement will become part of the City’s Civic Art Collection. The mission of the City’s Civic Art Collection is to provide meaningful aesthetic and cultural experiences for San Diego’s residents and visitors. The City collects artworks that demonstrate the creativity and innovation practiced in the arts; that stimulate discussion and the exchange of ideas; that balance urbanization and development with humanizing elements; that honor the history and heritage of San Diego and its citizens; and/or that reflect the character and diversity of San Diego’s region while incorporating a global perspective. Therefore, the Artist shall be responsible for providing the Scope of Services described herein in a manner that meets the City’s collecting mission.

**A.4 Public Process.** It is understood that the process of developing, reviewing and approving an artwork for the City is an open and transparent process which may include public participation and scrutiny. The Artist acknowledges and agrees that the City may reasonably require documents and other materials relating to the development of the artwork to be made available to the public.

**A.5 Coordination.** The Artist acknowledges and agrees that coordination with City staff and other persons designated by the City who may be involved with the artwork, or the project, is essential. The Artist agrees to cooperate with the City’s designees in the completion of the Scope of Services under this Agreement. To facilitate this essential coordination, the Artist shall be available with reasonable advance notice for meetings, as necessary. The City shall provide the Artist at no cost to the Artist, copies of existing designs, drawings, reports, and other existing relevant data, if any, that the Artist needs in order to perform the Scope of Services under this Agreement.

**A.6 Meetings.** As determined by **(NAME OF CITY’S PROJECT MANAGER)**, the City’s Project Manager, in consultation with the Artist, the Artist shall attend public information meetings with the general public, attend design and construction coordination meetings with City staff, architects, general contractors, and other parties working on the design and construction of the Project, and attend presentations to approval authorities to communicate about the artwork and to ensure successful design, fabrication and/or installation of the artwork.

**A.7 Authorizations.** The Artist shall secure any and all required licenses, permits and similar legal authorizations at the Artist’s expense as may be necessary for completion of the Scope of Services.

**A.8 City’s Right to Inspect.** The Artist acknowledges and agrees that the City has the right to inspect the artwork at any time and the City may issue the Artist a notice of defects if the Project

Manager identifies discrepancies between the Artist's provision of the Scope of Services and the conditions in this Agreement.

**A.9 Remedy of Defects.** In the event that the City issues the Artist a notice of defects, the Artist shall promptly provide the Project Manager with a plan for remedying the defects. Upon the Project Manager's approval of the Artist's plan for remedying defects, the Artist shall promptly remedy the defects and issue the Project Manager a notice of completion for the defect remedy. The Artist shall not proceed with work on the Scope of Services until the Project Manager issues the Artist a notice of approval for the defect remedy.

**A.10 Schematic Artwork Proposal.** The schematic artwork proposal is a preliminary depiction of the proposed artwork. The schematic artwork proposal includes, but is not limited to, information about the content, scale, location, context, relationship of components, and materials of the proposed artwork. The Artist shall develop at least one schematic artwork proposal.

**A.10.1 Site Selection.** The Artist shall work in collaboration with City staff to identify appropriate areas as potential locations for the artwork in the Project.

**A.10.2 Research and Outreach.** Throughout the development of the artwork, the Artist shall meet with City staff in order to understand the programmatic uses of the Project, to define goals appropriate to the immediate physical, social and cultural environment of the artwork and to develop and refine imagery in the artwork.

**A.10.3 Elements of Schematic Artwork Proposal.** The Artist's submission of a schematic artwork proposal to the Project Manager for review and approval shall be of a quality appropriate for release to the press. The Artist agrees to supply any specific types of presentation materials required by the Project Manager. The schematic artwork proposal shall include, but not be limited to:

- a. A site plan;
- b. A photographic survey of the site to show context;
- c. Documentation of research and findings;
- d. Documentation of community and design team input, feedback and outcomes;
- e. A preliminary depiction of the proposed artwork in the form of a to-scale drawing accompanied by either a three-dimensional rendering or a three dimensional model;
- f. A written description of the proposed content, scale, location, context, and relationship of the components in the proposed artwork;
- g. Material samples;
- h. A preliminary ADA plan, which outlines proposed strategies for addressing ADA requirements;
- i. A preliminary budget, which demonstrates how the Artist proposes to expend the amount allocated for completion of the Scope of Services. The preliminary budget shall include, but not be limited to, the following items, as appropriate:
  1. Artist's fee
  2. Design development expenses including engineering services and/or construction documents
  3. Travel
  4. Insurance
  5. Subcontractors' fees (itemize all costs)
  6. Fee for art conservator's review

7. Administrative expenses (including postage, presentation materials, copyright registration, etc.)
  8. Materials and supplies (itemize all anticipated aspects and components with per unit and total cost estimates including applicable sales tax)
  9. Fabrication costs (itemize all portions of subcontracted work and work to be completed by Artist)
  10. Site preparation (do not include costs covered by the City or others)
  11. Transportation of materials or finished work to the site, storage, etc.)
  12. Installation costs (labor, equipment, base or mounting devices and components, traffic barricades/control, landscaping, site restoration, electrical modifications, etc.)
  13. Lighting (design, fixtures, bulbs, site preparation, and installation)
  14. Insurance
  15. Permits and taxes (sales tax, use tax, City permits, etc.)
- j. A preliminary fabrication plan, which includes a proposed list of materials, methods of fabrication, and
  - k. A preliminary transportation plan;
  - l. A preliminary installation plan, which outlines the proposed installation method, includes a timeline for the artwork installation that coordinates with other construction events at the Project, and identifies a schedule of relevant tasks that must be completed prior to, during and after installation; and
  - m. A preliminary maintenance plan, which includes descriptions of the Artwork's operational, routine maintenance and conservation requirements.

**A.10.4 Reviewing Bodies.** A group or groups of people representing the City and/or its constituents [Reviewing Bodies] will be assembled by the Project Manager to review and approve the artwork proposal and its requirements at various stages of development. The Reviewing Bodies include, but are not limited to, the City of San Diego Commission for Arts and Culture (Commission), its Public Art Committee, the City's Development Services Department and the City's Public Works Departments.

**A.10.5 Proposal Review Process.** The Project Manager and other members of City staff may review the schematic artwork proposal and require that the Artist make modifications to it before permitting its submission to the Reviewing Bodies. The Artist agrees to address the Project Manager's and City staff members' comments and modification requirements prior to submitting it to the Reviewing Bodies for approval. The Reviewing Bodies shall review and make recommendations about the schematic artwork proposal. The Reviewing Bodies may recommend approval, approval with conditions or disapproval of the schematic artwork proposal. In the event that the Reviewing Bodies recommend disapproval, or approval with conditions, the Artist, upon written notification from the Project Manager, shall respond to the Reviewing Bodies' comments in writing and submit a revised schematic artwork proposal to the Project Manager for review. The Reviewing Bodies shall review the revised schematic artwork proposal and make additional recommendations until the schematic artwork proposal is approved by the Reviewing Bodies.

**A.10.5.1 Notice of Approval for Schematic Artwork Proposal.** The Artist shall not proceed with work on the Scope of Services until the Project Manager has issued the Artist a notice of approval for the schematic artwork proposal.

**A.11 Final Artwork Proposal.** The Artist shall develop the final artwork proposal which shall address feedback provided to the Artist by the Reviewing Bodies during the review of the schematic artwork proposal and which shall be of a quality appropriate for release to the press. The Artist agrees to supply any specific types of presentation materials required by the Project Manager. The final artwork proposal shall include, but not be limited to:

- a. A site plan;
- b. A photographic survey of the site to show context;
- c. Documentation of research and findings;
- d. Documentation of community and design team input, feedback and outcomes;
- e. A final depiction of the proposed artwork in the form of a to-scale drawing accompanied by either a three-dimensional rendering or a three dimensional model;
- f. A written description of the proposed content, scale, location, context, and relationship of the components in the proposed artwork;
- g. Materials samples;
- h. A final ADA plan, which outlines strategies for addressing ADA requirements;
- i. A final budget, which demonstrates how the Artist proposes to expend the amount allocated for completion of the Scope of Services. The completed budget shall include, but not be limited to, the following items, as appropriate:
  1. Artist's fee
  2. Design development expenses including engineering services and/or construction documents
  3. Travel
  4. Insurance
  5. Subcontractors' fees (itemize all costs)
  6. Fee for art conservator's review
  7. Administrative expenses (including postage, presentation materials, copyright registration, etc.)
  8. Materials and supplies (itemize all anticipated aspects and components with per unit and total cost estimates including applicable sales tax)
  9. Fabrication costs (itemize all portions of subcontracted work and work to be completed by Artist)
  10. Site preparation (do not include costs covered by the City or others)
  11. Transportation of materials or finished work to the site, storage, etc.)
  12. Installation costs (labor, equipment, base or mounting devices and components, traffic barricades/control, landscaping, site restoration, electrical modifications, etc.)
  13. Lighting (design, fixtures, bulbs, site preparation, and installation)
  14. Insurance
  15. Permits and taxes (sales tax, use tax, City permits, etc.)
- j. A final fabrication plan, which includes a list of materials, methods of fabrication and material samples;
- k. A final transportation plan;
- l. A final installation plan, which outlines the installation method, includes a timeline for the artwork installation that coordinates with other construction events at the Project, and identifies a schedule of relevant tasks that must be completed prior to, during and after installation; and
- m. A final maintenance plan, which includes descriptions of the artwork's operational, routine maintenance and conservation requirements that are based on recommendations

from a qualified art conservator, and which includes the art conservator's report per Section A.11.1.

**A.11.1 Art Conservator's Review.** The Artist shall consult with a qualified art conservator to obtain recommendations for the proposed artwork's routine maintenance and conservation requirements prior to submitting the final artwork proposal to the Project Manager. At the Artist's request, the City will supply a list of qualified art conservators that the Artist may choose from. The Artist shall require the art conservator to provide a report assessing the longevity, safety and durability of materials, fabrication techniques, finishes and attachments along with recommendations for routine maintenance and conservation. As a result of the art conservator's assessment and recommendations, the Artist shall revise the preliminary fabrication plan, the preliminary installation plan, the preliminary budget and make any necessary design changes before submitting the final artwork proposal to the Project Manager.

**A.11.2 Proposal Review Process.** The Project Manager and other members of City staff may review the final artwork proposal and require that the Artist make modifications to it before permitting its submission to the Reviewing Bodies. The Artist agrees to address the Project Manager's and City staff members' comments and modification requirements prior to submitting it to the Reviewing Bodies for approval. The Reviewing Bodies shall review and make recommendations about the final artwork proposal. The Reviewing Bodies may recommend approval, approval with conditions or disapproval of the final artwork proposal. In the event that the Reviewing Bodies recommend disapproval, or approval with conditions, the Artist, upon written notification from the Project Manager, shall respond to the Reviewing Bodies' comments in writing and submit revised final artwork proposal to the Project Manager for review. The Reviewing Bodies shall review the revised final artwork proposal and make additional recommendations until the final artwork proposal is approved by the Reviewing Bodies.

**A.11.2.1 Notice of Approval for Final Artwork Proposal.** The Artist shall not proceed with work on the Scope of Services until the Project Manager has issued the Artist a notice of approval for the final artwork proposal.

**A.12 Construction Documents.** If the final artwork proposal which is approved by the City [Approved Artwork Proposal], is of the nature to require plans, structural engineering drawings and specifications to use in constructing the artwork [Construction Documents], the Artist shall create, or cause to be created, detailed Construction Documents. To the extent applicable, the Artist and/or the Artist's sub-consultants shall comply with the most current edition of the *Standard Specifications for Public Works Construction* (also referred to as "*The Green Book*") including the *Regional City of San Diego Supplement Amendments* and the *City of San Diego Standard Drawings* including all *Regional Standard Drawings*. (Copies of *The Green Book* and its supplements are available at the Artist's expense from the City Publications Center, Development Services Department.) References in *The Green Book* to "Contractor" shall be deemed to mean the Artist, including without limitation, the Artist's sub-consultants. To the extent that the information contained in *The Green Book* conflicts with the provisions set forth in this Agreement, this Agreement shall control.

**A.12.1 Consultation with City Departments.** The Artist and/or the Artist's sub-consultants shall work with the City's Development Services Department and the City's Public Works Departments, as directed by the Project Manager, in order to ensure that the Artist's Construction Documents comply with the standard specifications contained in *The Green Book* and/or meet the



City's requirements for construction of the artwork at the Project.

**A.12.2 Certification.** When applicable, the Construction Documents must be certified by a qualified engineer licensed by the State of California and must conform to all applicable federal, state and local laws and regulations.

**A.12.3 Review Process for Construction Documents.** The Project Manager and other members of City staff may review the Construction Documents and require that the Artist make modifications before permitting their submission to the Reviewing Bodies. The Artist agrees to address the Project Manager's and City staff members' comments and modification requirements prior to submitting it to the Reviewing Bodies for approval. The Reviewing Bodies shall review and make recommendations about the Construction Documents. The Reviewing Bodies may recommend approval, approval with conditions or disapproval of the Construction Documents. In the event that the Reviewing Bodies recommend disapproval, or approval with conditions, the Artist, upon written notification from the Project Manager, shall respond to the Reviewing Bodies' comments in writing and submit revised Construction Documents to the Project Manager for review. The Reviewing Bodies shall review the revised Construction Documents and make additional recommendations until the Construction Documents are approved by the Reviewing Bodies.

**A.12.3.1 Notice of Approval for Construction Documents.** The Artist shall not proceed with work on the Scope of Services until the Project Manager has issued the Artist a notice of approval for the Construction Documents.

**A.13 Fabrication.** The Artist shall fabricate the artwork in substantial conformity with the Approved Artwork Proposal and the approved Construction Documents.

**A.13.1 Unidentified Design Specifications.** The parties recognize and agree that certain specifications regarding the artwork, such as, but not limited to, the size, color, material (including grade of the material), of some of its elements are not identified in either the Approved Artwork Proposal or the approved Construction Documents. To the extent that any specification for the artwork is not identified in the Approved Artwork Proposal or the approved Construction Documents, the Artist shall seek the Project Manager's prior approval of these specifications before commencing or continuing with fabrication of the artwork.

**A.13.1.1 Artist's Right to Make Adjustments.** The parties recognize that the shift in scale from drawings and models to a full-scale artwork may require adjustments. The Artist reserves the right to make minor adjustments to the artwork as the Artist deems necessary.

**A.13.1.1.1 Adjustments Requiring Approval.** In no event may an adjustment increase the amount allocated for completion of the Scope of Services without prior written approval by the Project Manager. Nor shall the Artist shall make an adjustment which requires a modification of the Construction Documents without the prior written approval of the Project Manager.

**A.13.1.2 Material Deviation.** Any material deviation from the Approved Artwork Proposal or the approved Construction Documents in the scope, design, color, size, material, utility and support requirements, texture or location of the artwork must be approved in writing and in advance by the Project Manager before the Artist proceeds with completion of the artwork.

**A.13.1.2.1 Material Deviation Further Defined.** Without limiting the generality of the foregoing, material deviation also includes any change from the Approved Artwork Proposal or the approved Construction Documents which affects the fabrication, schedule of delivery or installation of the artwork, preparation of the site, or maintenance and/or operation of the artwork.

**A.13.2 Notice of Fabrication Completion.** Upon completion of the artwork fabrication and prior to transportation of the artwork to the site for installation, the Artist shall issue the Project Manager a notice of fabrication completion. Within 15 days of receipt of the Artist's notice of fabrication completion, the Project Manager will issue the Artist either a notice of defects or a notice to proceed with transport.

**A.13.3 Notice to Proceed with Transport.** Upon receipt of the City's notice to proceed with transport, the Artist shall transport the artwork to the site. The Artist shall coordinate with the Project Manager regarding the time and place for delivery of the artwork.

**A.13.4 Notice of Artwork Delivery.** The Artist shall issue the Project Manager a notice of artwork delivery when the artwork arrives at the site. Within 15 days of receipt of the Artist's notice of artwork delivery, the Project Manager will issue the Artist either a notice of defects or a notice to proceed with installation.

**A.14 Installation.** The Artist shall be responsible for installing or supervising the installation of the artwork at the site, including without limitation, supervising the work of other City consultants, when applicable.

**A.14.1 Public Safety.** If during the course of the artwork installation, the City determines, in its sole discretion, that the Artwork must be modified in order to preserve public safety, the City shall have the authority to require the Artist to make such modifications to address the public safety issues.

**A.14.2 Appearance of Site.** The Artist shall maintain a neat appearance to the work at the site. The Artist shall be responsible for any clean-up of the site made necessary by the installation of the artwork, including without limitation, removal of equipment, materials and the repair of any portion of the site or surrounding area damaged by the installation of the artwork.

**A.14.3 Notice of Artwork Completion.** Upon completion of the artwork installation, the Artist shall issue the Project Manager a notice of artwork completion.

**A.15 Maintenance Manual.** As soon as possible following the completion of the Artwork installation, the Artist shall supply the City with a written maintenance manual for the artwork. The maintenance manual shall be based on the final maintenance plan contained in the Approved Artwork Proposal and shall include the art conservator's report acquired by the Artist pursuant to Section A.11.1. The maintenance manual shall take into account any and all modifications made during the fabrication and installation of the artwork and shall include product data sheets and available warranties for any material or finish used. The parties agree that the maintenance manual will be placed on file with the Commission.

**A.16 Documentation.** As soon as possible following the completion of the artwork installation, the Artist shall supply the City with no fewer than 20 digital images of the artwork, measuring at least 300 dpi and in JPG or RAW format, which are accurate in color and detail and fully

representative of each element of the artwork in its context. The parties agree that the digital images will be placed on file with the Commission.

**A.17 Transfer of Title.** As soon as possible following the completion of the artwork installation, the Artist shall provide the City with a transfer of title document in substantially the form attached hereto as Exhibit F.

**A.18 Notice of Artwork Acceptance.** Upon the City's receipt and approval of the notice of installation completion, the maintenance manual, the documentation and the transfer of title, the City will issue the Artist a notice of artwork acceptance. Following acceptance of the artwork, the City will provide and install signage on or near the artwork with a credit to the Artist.

**A.19 Risk of Loss.** Until the Artist receives an artwork acceptance notice from the City, any theft of, damage or vandalism to, or acts of God or nature affecting the artwork are the Artist's responsibility, including, but not limited to, any loss occurring during the fabrication, storage, transportation, delivery or installation of the artwork. Notwithstanding the foregoing, the Artist is not responsible for any damage to the artwork arising from the sole negligence or willful misconduct of the City, its agents, employees, representatives, and contractors.

**A.20 Errors and Omissions.** The City's acceptance of the artwork shall not release the Artist of the responsibility for the correction of errors or omissions the Approved Artwork Proposal, the Construction Documents or the artwork may contain, including any errors or omissions which arise from the Artist's errors or omissions, or the errors and omissions of the Artist's employees, agents, representatives or sub-consultants regardless of whether these errors or omissions were the result of circumstances unforeseen at the time these deliverables were developed or approved.

## **EXHIBIT B ADDITIONAL PROVISIONS**

**B.1 Incapacity or Death.** If the Artist becomes unable to complete this Agreement due to incapacitation or death, such incapacity or death will not be deemed a breach of this Agreement or a default on the part of the Artist. However, nothing in this section shall obligate the City to accept the artwork proposal or resulting artwork.

**B.1.1 Incapacity.** In the event of the Artist's incapacity, the City may elect to terminate this Agreement or the City shall assign the Artist's obligations and the Scope of Services under this Agreement to another Artist or consultant for completion, which shall be in accord with the designs and/or specifications previously approved by the City, if any, provided that the original Artist or the Artist's designee approves of the new Artist or consultant within a reasonable amount of time and the new Artist or consultant agrees in writing to comply with this Agreement. However, the artwork shall not be represented to be the completed artwork of the original Artist unless the City is otherwise directed by the original Artist or the Artist's designee. The original Artist shall retain all the Artist's rights under Exhibit B.

**B.1.2 Death.** In the event of the Artist's death, this Agreement shall terminate effective the date of death. At the City's request, the Artist's executor shall deliver to the City the artwork proposal and/or the artwork in whatever form or degree of completion either may be at the time. If the artwork proposal and/or fabrication and installation of the artwork are incomplete at the date of the Artist's death, the City shall assign the Artist's obligations and the Scope of Services under this Agreement to another Artist or consultant for completion, which shall be in accord with the designs and/or specifications previously approved by the City, if any, provided that the original Artist's executor approves of the new Artist or consultant within a reasonable amount of time and the new Artist or consultant agrees in writing to comply with this Agreement. However, the artwork shall not be represented to be the completed artwork of the original Artist unless the City is otherwise directed by the original Artist's estate. The original Artist's heirs shall retain all the Artist's rights under Exhibit B. If the artwork is in unfinished stages of fabrication or installation at the time of the Artist's death, the title to the artwork shall transfer to the City.

**B.1.3 Waiver of Claims.** The Artist agrees, for the Artist, the Artist's heirs, executors, administrators, successors, and assigns, and for all those claiming under or through the Artist, that the completion of the work by a new Artist as provided for herein shall not constitute a violation by the City of any rights held by the Artist under any California or Federal law. The Artist hereby waives any claims, known or unknown, against the City arising out of or related to the completion of the artwork.

**B.1.4 Credit for Completed Artwork.** However, the artwork shall not be represented to be the artwork of the original Artist unless the City is otherwise directed by the authorized representative of the Artist's estate.

**B.2 Artist's Representations and Warranties.** The Artist represents and warrants that: The artwork is solely the result of the artistic effort of the Artist; except as otherwise disclosed in writing to the City, the artwork is unique, original, shall be and shall remain an edition of one and does not infringe upon any copyright or the rights of any person; the artwork has not been accepted for sale elsewhere; 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; the artwork is free and clear of any liens from any source whatsoever; all artwork created or performed 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; and all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence.

**B.2.1 Defects in Workmanship.** The Artist represents and warrants that all work by the Artist and/or sub-consultants will be performed in accordance with professional 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 one year after the date of final acceptance by the City under Exhibit F.

**B.2.2 Inherent Defects.** If within four years from the date the artwork is formally accepted, the City observes any breach of warranty that is curable by the Artist, the Artist shall, at the request of the City, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the City. The City shall give notice to the Artist of such breach with reasonable promptness.

**B.2.3 Breach of Warranty.** If within one year the City observes a breach of warranty that is not curable by the Artist, the Artist is responsible for reimbursing the City for damages, expenses and loss incurred by the City as a result of the breach. However, if the Artist disclosed the risk of this breach and the City, through the artwork proposal review and approval process outlined in Exhibit A, accepted that it may occur, it shall not be deemed a breach for purposes of this Agreement.

**B.2.4 Hazardous Materials.** The Artist represents and warrants that the artwork and the materials used are not currently known to be hazardous or potentially hazardous to any plant life, animal life, human life or natural ecosystem.

**B.2.5 Public Safety.** The Artist represents and warrants that the artwork shall not constitute any threat to the safety of persons or property when used in the manner for which it is designed.

**B.2.5.1 Adjustments to Eliminate Hazards.** The Artist agrees to cooperate with the City in making or permitting adjustments to the artwork if necessary to eliminate hazards which become apparent after the artwork is accepted by the City. The Artist shall be notified in writing when an adjustment is necessary and the City shall consult with the Artist in accordance with Section B.9 of this Exhibit.

**B.2.6 Maintenance.** The Artist represents and warrants that reasonable maintenance of the artwork will not require procedures substantially in excess of those described in the maintenance plan submitted by the Artist pursuant to Exhibit A.

**B.2.7 Acceptable Standard for Display.** Artist represents and warrants that: General routine cleaning and repair of the artwork and any associated working parts and/or equipment will maintain the artwork within an acceptable standard for public display; foreseeable exposure to the elements and general wear and tear will cause the artwork to experience only minor repairable damages and will not cause the artwork to fall below an acceptable standard for public display; with

general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the artwork will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling; and to the extent the artwork incorporates products covered by a manufacturer's warranty, the Artist shall provide copies of such warranties to the City.

**B.3 Ownership of Documents.** All original designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine, originated or prepared exclusively for the City pursuant to this Agreement shall become the joint property of the City and the Artist. The Artist shall deliver such documents to the City whenever reasonably requested to do so by the City.

**B.3.1 Use by City.** The Artist agrees that the City may use the documents and materials submitted by the Artist for purposes related to the development, review and approval of the artwork proposal.

**B.4 Copyright Ownership.** The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole Artist and Author of the artwork for the duration of the copyright. The Author is the person who exercises control over the artwork.

**B.4.1 Copyright Registration.** 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.

**B.5 Reproduction Rights.** In view of the intention that the final artwork shall be unique, the Artist shall not make any additional exact duplicate two or three-dimensional reproductions of the final artwork, nor shall the Artist grant permission to others to do so except with the written permission of the City. However, nothing shall prevent the Artist from creating future artworks in the Artist's manner and style of artistic expression.

**B.5.1 City's License to Reproduce.** The Artist grants the City, and other parties duly authorized by the City, a nonexclusive irrevocable and royalty-free license to use the artwork for all standard City educational, public relations, tourism and arts promotional purposes including, but not limited to, displaying artwork, lending the artwork, reproducing or preparing photographs, other two-dimensional reproductions, or digital reproductions of the artwork, and displaying, distributing, transmitting such reproductions or images to the general public. Such reproductions and transmissions may be magazines, books, newspapers, journals, brochures and pamphlets, exhibition catalogues, films, television, video, websites, slides, negatives, prints and electronic media, DVD, CD, computerized retrieval systems, and by all means or methods now known or hereafter invented in connection with standard City activities.

**B.5.2 Reproductions for Commercial Purposes.** If the City wishes to make reproductions of the artwork for commercial purposes, including, but not limited to, T-shirts, postcards or 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.

**B.5.3 Credit for Reproductions.** The City agrees that, unless the Artist requests to the contrary in writing, all formal references to, and reproductions of the artwork shall credit the Artist and the City.

**B.6 Acknowledging the City.** The Artist shall use the Artist’s best efforts in any public showing or on a résumé to give acknowledgment to the City in substantially the following credit line: “An artwork commissioned by the City of San Diego for the Civic Art Collection.”

**B.7 City Approval for Publicity.** The Artist shall not, during the performance of the Agreement, disseminate publicity or news releases regarding the Project, the Scope of Services or the artwork without prior written approval of the City.

**B.8 Intellectual Property Warranty and Indemnification.** The Artist represents and warrants that any materials or deliverables, including the artwork proposal and artwork, provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If the artwork proposal and artwork provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, the City shall have the right, in its sole discretion, to require Artist to produce, at Artist’s own expense, new artwork proposal and artwork as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Artist further agrees to indemnify and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any artwork proposals, materials, deliverables, supplies, equipment, services or artworks provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party [Third Party Claims of Infringement]. If a Third Party Claim of Infringement is threatened or made before the Artist receives payment under this contract, the City shall be entitled, upon written notice to the Artist, to withhold some or all of such payment.

**B.8.1 Enforcement Costs.** The Artist agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in this Agreement, including but not limited to, attorney’s fees.

**B.9 City’s Right to Repair and Conserve.** The City shall have the right to determine when and if repairs and restorative conservation to the Artwork will be made. Subject to Sections B.11- B.14 of this Exhibit, it is the policy of the City to consult with the Artist regarding repairs and restorative conservation which are undertaken up to five years after final payment has been made on this Agreement when practicable. In the event that the City makes repairs or restorative conservation not approved by the Artist, the Artist 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.

**B.9.1 Standards of Repair and Conservation.** All repairs and restorative conservation, whether performed by the Artist, the City, or by third parties responsible to the Artist or the City, shall be made in accordance with professional conservation standards and in accordance with the maintenance manual provided to the City by the Artist pursuant to Exhibit A.

**B.10 Sale or Donation of the Artwork by the City.** The City shall have the right to donate, sell, transfer or exchange the artwork or elements of the artwork at any time. Before exercising this right, the City, by written notice to the Artist at the Artist’s last known address, agrees to give the Artist the opportunity to purchase the artwork for the greater of the fair market value as determined by a qualified appraiser or the amount of any offer that the City has received for the purchase of the artwork, plus all costs associated with the removal of the artwork from the site, clean-up of the site and

delivery to the Artist. The Artist shall have 30 days from the date of the City's notice to exercise the option to purchase the artwork.

**B.11 Alterations, Modification or Removal of Artwork.** The City has the right to move, remove or otherwise alter or modify the artwork or elements of the artwork at any time, except that the City will not move, remove, or otherwise alter or modify the artwork solely for aesthetic reasons or solely in response to changes in public taste. The Artist and the City acknowledge that the Artist may have certain rights under the federal Visual Artists Rights Act of 1990 [VARA]. The Artist acknowledges and understands that the installation of the artwork may subject the artwork to destruction, distortion, mutilation, or other modification due to the acts of third parties or to its removal, repair, conservation, maintenance, storage, or transfer of ownership by the City, or its elected officials, officers, employees, agents, or representatives. If the artwork can be removed without causing the artwork destruction, distortion, mutilation, or other modification, then the City agrees to give the Artist 90 days' notice of its intended action affecting the artwork except in cases where a threat to public safety requires immediate removal.

**B.11.1 Limited VARA Waiver.** In consideration of the mutual covenants and conditions in this Agreement, and except as otherwise provided for in this Agreement, the Artist agrees to waive any right that the Artist may have under VARA to prevent the removal of the artwork, or the destruction, distortion, mutilation, or other modification of the artwork which arises from, is connected with, or is caused or claimed to be caused by the removal, repair, conservation, maintenance, storage, or transfer of ownership of the artwork by the City or its elected officials, officers, employees, agents, or representatives, or by the presence of the artwork at the site.

**B.12 California Civil Code Section 987 Waiver.** The Artist and the City acknowledge that the Artist may have certain rights under California Civil Code Section 987 which are not preempted by VARA. In consideration of the mutual covenants and conditions in this Agreement, the Artist waives any rights which the Artist or the Artist's heirs, beneficiaries, devisees, or personal representatives may have under California Civil Code Section 987 to prevent the removal, defacement, mutilation, alteration, or destruction of the artwork.

**B.13 Rights of Artist's Heirs, Successors and Assigns.** The Artist's VARA rights under this Agreement shall cease with the Artist's death and do not extend to the Artist's heirs, successors or assigns.

**B.14 Conflict.** This clause is intended to replace and substitute for the rights of the Artist under VARA and the California Civil Code Section 987 to the extent that any portion of this Agreement is in direct conflict with those rights. The parties acknowledge that this Agreement supersedes those laws to the extent that this Agreement is in direct conflict therewith.

**B.15 Sub-consultants: Ownership of Documents.** The Artist shall require each sub-consultant to agree that all original designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine, originated or prepared exclusively for the City pursuant to this Agreement shall become the joint property of the City, the Artist and the sub-consultant. The Artist or sub-consultant shall deliver such documents to the City whenever reasonably requested to do so by the City. This language shall be in contracts between the Artist and any sub-consultants.



**B.16 Sub-consultants: Transfer of Title.** The Artist shall require each sub-consultant to agree that title to the artwork shall pass to the City upon the City's written final acceptance and payment for the artwork pursuant to Exhibit A. This language shall be in contracts between the Artist and any sub-consultants.

**B.17 Sub-consultants: Copyright Ownership.** The Artist shall require each sub-consultant to agree that the Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole Artist and Author of the artwork for the duration of the copyright. The Author is the person who exercises control over the artwork. This language shall be in contracts between the Artist and any sub-consultants.

**B.18 Sub-consultants: Reproduction Rights.** In view of the intention that the final artwork shall be unique, the Artist shall require each sub-consultant to agree not make any additional exact duplicate two or three-dimensional reproductions of the artwork, nor shall the sub-consultant grant permission to others to do so except with the written permission of the Artist and the City. This language shall be in contracts between the Artist and any sub-consultants.

**B.19 Sub-consultants: City's License to Reproduce.** The Artist shall require each sub-consultant to agree that the City, and other parties duly authorized by the City, shall be granted a nonexclusive irrevocable and royalty-free license to use the artwork for all standard City educational, public relations, tourism and arts promotional purposes including, but not limited to, displaying artwork, lending the artwork, reproducing or preparing photographs, other two-dimensional reproductions, or digital reproductions of the artwork, and displaying, distributing, transmitting such reproductions or images to the general public. Such reproductions and transmissions may be magazines, books, newspapers, journals, brochures and pamphlets, exhibition catalogues, films, television, video, websites, slides, negatives, prints and electronic media, DVD, CD, computerized retrieval systems, and by all means or methods now known or hereafter invented in connection with standard City activities. This language shall be in contracts between the Artist and any sub-consultants.

**B.20 Sub-consultants: Credit for Reproductions.** The Artist shall require each sub-consultant to agree that all formal references to, and reproductions of the artwork shall credit the Artist and the City. This language shall be in contracts between the Artist and any sub-consultants.

**EXHIBIT C**  
**COMPENSATION AND FEE SCHEDULE**

The following amounts shall be paid to the Artist within 30 days of the City's receipt of an invoice from the Artist indicating that the appropriate milestone as described below has been reached:

**Payment #1** - \$ **XXX** upon receipt of the City's notice to proceed with the Scope of Services (Exhibit A, Section A.1);

**Payment #2** - \$ **XXX** upon receipt of the City's notice of approval for the schematic artwork proposal (Exhibit A, Section A.10.5.1.);

**Payment #3** - \$ **XXX** upon receipt of the City's notice of approval for the final artwork proposal (Exhibit A, Section A.11.2.1);

**Payment #4** - \$ **XXX** upon receipt of City's notice to proceed with transport (Exhibit A, Section A.13.3); and

**Payment #5** - \$ **XXX** upon receipt of City's notice of artwork acceptance (Exhibit A, Section A.18).

## **EXHIBIT D SCHEDULE OF WORK**

The Artist agrees to adhere to the following schedule:

**Schematic Artwork Proposal.** Submit Schematic Artwork Proposal for the review process (Exhibit A, Section A.10): XXXX

**Final Artwork Proposal.** Submit Final Artwork Proposal for the review process (Exhibit A, Section A.11): XXXX

**Construction Documents.** Submit Construction Documents for the review process (Exhibit A, Section A.12): XXXX

**Notice of Fabrication Completion.** Submit notice of fabrication completion to the Project Manager (Exhibit A, Section A.13.2): XXXX

**Notice of Artwork Completion.** Submit an Artwork Completion Notice (Exhibit A, Section A.14.3): XXXX

**EXHIBIT E**  
**CERTIFICATION FOR A DRUG-FREE WORKPLACE**

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace and that:

\_\_\_\_\_  
Name under which business is conducted

has in place a drug-free workplace program that complies with said policy. I further certify that each Sub-consultant agreement for this Project contains language which indicates that each Sub-consultant agrees to abide by the provisions of Section 4.9.1 subdivisions A through C of the Council Policy as outlined.

Signed \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT F  
TRANSFER OF TITLE**

For valuable consideration, the receipt of which is hereby acknowledged, the undersigned Artist located at the address noted below does hereby sell, transfer and convey to the City of San Diego, its assigns and successors, all right, title and interest in the ownership of the artwork commissioned by Agreement and as described therein.

Artwork Title: \_\_\_\_\_

Artwork Site: \_\_\_\_\_

Dated: This \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

Artist Signature \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

Signature \_\_\_\_\_ Title \_\_\_\_\_

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

On [Insert date] before me, [Insert name and title of the officer], personally appeared [Insert name of person binding the owner], who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

---End of RFQ---