

COPY DUPLICATE ORIGINAL



Document No. **C-15852**
Filed AUG 20 2012
Office of the City Clerk
San Diego, California

**AGREEMENT BETWEEN THE CITY OF SAN DIEGO
AND 11x14 LLC
FOR CONSULTING SERVICES**

THIS agreement [Consulting Agreement H125801], and the incorporated **Exhibits A-K**, is made and entered into between the City of San Diego, a municipal corporation [City], and 11x14 LLC [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 Scope of Services (**Exhibit A**), for fabrication and installation of an artwork in connection with the New Central Library, the Project.

**ARTICLE II
DURATION OF AGREEMENT**

2.1 Term of Agreement. This Consulting Agreement shall be effective on the date it is executed by the last party to sign the Consulting 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 June 30, 2014, 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 Consulting Agreement, unless otherwise specified in this Consulting 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 Consulting 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 Consulting Agreement prior to the notice of termination. In the event that the City terminates this Consulting Agreement pursuant to this Section, the City shall have no right to use the Artist's work-product or services to complete and display the artwork absent the written consent of the Artist.

2.4 City's Right to Terminate for Default. If the Artist fails to satisfactorily perform any obligation required by this Consulting 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 Consulting Agreement, and terminate each and every right of the Artist, and any person claiming any rights by or through the Artist under this Consulting 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 Consulting 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 Consulting 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 Consultant for performance of all Services rendered in accordance with this Agreement, including reasonably related expenses, for a total contract amount not exceeding \$184,000. The compensation for the Scope of Services shall not exceed \$184,000, and the compensation for Additional Services (described in Section 3.2), if any, shall not exceed \$0.

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 Compensation and Fee Schedule attached hereto as **Exhibit C**. For the duration of this Consulting 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 Consulting 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 Consulting 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 Consulting 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 Consulting Agreement and the Artist's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Consulting 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 Consulting Agreement.

4.3.1 Types of Insurance. At all times during the term of this Consulting 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).

Workers' Compensation. For all of the Artist's employees who are subject to this Consulting Agreement and to the extent required by the applicable state or federal law, the Artist shall keep in full force and effect, a Workers' 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 Consulting 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 Consulting 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.

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.

Workers' Compensation and Employer's Liability Insurance Endorsements

WAIVER OF SUBROGATION. The Workers' 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 Consulting Agreement without overhead, profit, or any other markup.

4.3.6 Additional Insurance. The Artist may obtain additional insurance not required by this Consulting 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 (**Exhibit E**) requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Consulting Agreement by this reference.

4.5 ADA Certification. The Artist hereby certifies (**Exhibit J**) 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 Consulting 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 Consulting 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 (**Exhibit H**). 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/register.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 Consulting 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 Consulting Agreement shall delay completion of the Consulting 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 (**Exhibit H**);
- Completed Equal Benefits Ordinance Certification of Compliance (**Exhibit I**);
- Completed Work Force Report per Section 4.6
- 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 Consulting Agreement, the Artist agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all liability. 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 Consulting 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 Consulting 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 Consulting 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 Consulting Agreement and the Exhibits, the main body of this Consulting Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Consulting Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Consulting 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 Consulting Agreement.

6.5 Notices. In all cases where written notice is required under this Consulting 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 Consulting Agreement. For the purpose of this Consulting Agreement, unless otherwise agreed to in writing, notice to the City shall be addressed to: Dana Springs, Public Art Program Manager, City of San Diego Commission for Arts and Culture, 1200 Third Avenue, Suite 924, San Diego CA, 92101, (619) 518-0920, dsprings@sandiego.gov. Notice to the Artist shall be addressed to: 11x14 LLC ATTN: Roy McMakin, 1422 34th Ave, Seattle, WA 98122, (206) 323-6992, roy@mcmakinstudio.com.

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 Consulting 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 Consulting Agreement may not be modified or altered except in writing signed by both parties.

6.8 Equal Benefits Ordinance. This Agreement is subject to the Equal Benefits Ordinance [EBO]. All consultants are required to complete the Equal Benefits Ordinance Certification of Compliance included herein as **Exhibit I**. Effective January 1, 2011, any contract awarded from this solicitation is subject to the City of San Diego's Equal Benefits Ordinance [EBO], Chapter 2, Article 2, Division 43 of the San Diego Municipal Code [SDMC].

In accordance with the EBO, contractors must certify they will provide and maintain equal benefits as defined in SDMC §22.4302 for the duration of the contract [SDMC §22.4304(f)]. Failure to maintain equal benefits is a material breach of the contract [SDMC §22.4304(e)]. Contractors must notify employees of their equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by employees:

During the performance of a contract with the City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners.

Contractors also must give the City access to documents and records sufficient for the City to verify the contractors are providing equal benefits and otherwise complying with EBO requirements. Full text of the EBO and the Rules Implementing the Equal Benefits Ordinance are posted on the City's website at www.sandiego.gov/purchasing/ or can be requested from the Equal Benefits Program at (619) 533-3948.

6.9 Public Records. This contract is public document subject to the California Public Records Act, and as such may be subject to public review per **Exhibit K** (Regarding Information Requested under the California Public Records Act).

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6.10 Exhibits Incorporated. All Exhibits referenced in this Consulting Agreement are incorporated into the Consulting Agreement by this reference.

IN WITNESS WHEREOF, this Consulting Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, pursuant to San Diego Municipal Code 22.3223 authorizing such execution, and by the Artist, 11x14 LLC.

I HEREBY CERTIFY that I can legally bind 11x14 LLC and that I have read all of this Consulting Agreement this 21 day of June, 2012.

ARTIST, ROY MCMAKIN

[Signature]
Authorized Signature

ROY MCMAKIN
Printed Name

manager
Title

6-21-2012
Date

CITY OF SAN DIEGO,
A Municipal Corporation

[Signature]

W. Downs Prior
Principal Contract Specialist, Public Works Contracting Group

8/15/12
Date

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH,
City Attorney

By: [Signature] 8/16/12
Deputy City Attorney

ARTIST CONSULTING SERVICES AGREEMENT EXHIBITS

Exhibit A - Scope of Services

Exhibit B - Additional Provisions

Exhibit C - Compensation and Fee Schedule

Exhibit D - Schedule of Work

Exhibit E - Consultant Certification for a Drug-Free Workplace

Exhibit F - Transfer of Title

Exhibit G - Approved Artwork Proposal

Exhibit H - Vendor Registration Form

Exhibit I - Equal Benefits Ordinance Certification of Compliance

Exhibit J - American with Disabilities Act (ADA) Compliance Certification

Exhibit K - Regarding Information Requested under the California Public Records Act

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 Public Works Contracting Group issues the Artist a notice to proceed.

A.2 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.3 Meetings. As determined by Dana Springs, the City's Project Manager, in consultation with the Artist, the Artist shall attend construction coordination meetings with City staff, architects, general contractors, and other parties working on the construction of the Project.

A.4 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.5 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.6 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.7 Fabrication. The Artist shall fabricate the artwork in substantial conformity with the Approved Artwork Proposal attached to the Consulting Agreement as **Exhibit G**.

A.7.1 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. To the extent that any specification for the

artwork is not identified in the Approved Artwork Proposal, the Artist shall seek the Project Manager's prior approval of these specifications before commencing or continuing with fabrication of the artwork. The Artist shall not incorporate imagery of a political, sexual, religious or other nature that could reasonably be considered offensive to the average person.

A.7.1.1 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.7.1.1.1 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 make an adjustment which requires a modification of the Approved Artwork Proposal without the prior written approval of the Project Manager.

A.7.1.2 Material Deviation. Any material deviation from the Approved Artwork Proposal 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.7.1.2.1 Material Deviation Further Defined. Without limiting the generality of the foregoing, material deviation also includes any change from the Approved Artwork Proposal 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.7.2 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.7.3 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.7.4 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.8 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.8.1 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.8.2 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.8.3 Notice of Artwork Completion. Upon completion of the artwork installation, the Artist shall issue the Project Manager a notice of artwork completion.

A.9 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 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.10 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.11 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 to the Consulting Agreement as **Exhibit F**.

A.12 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.13 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.14 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 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.

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. Copies of 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 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 reproduce 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. Any such authorized reproduction by the City or others under its control shall credit the Artist.

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. The Artist, in the Artist's sole discretion, may decline to authorize any reproduction which the Artist believes harmful to the Artist's professional reputation.

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 City and the Artist with © Roy McMakin 2013.

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. 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. For the period of time that starts on the date the City issues the notice of artwork acceptance and ends 25 years after the date of the Artist's death, the Artist or the Artist's designee shall consult on and approve any new location(s) for the artwork. If the Artist does not approve of the new location(s) in the good faith belief that the relocation of the artwork will harm the Artist's reputation, the Artist shall have the right to disavow the artwork. In the event that the Artist disavows the artwork, the City shall have the right to donate, sell, transfer or exchange the materials that comprise the artwork and the City shall be prohibited from representing that the materials represent an artwork by the Artist. The Artist shall have 30 days from the date of the City's notice to exercise the Artist's 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, 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. 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. In such case, the Artist shall be offered the opportunity to acquire the artwork for the cost of 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 or storage 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 copies of 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 property of the City and the Artist. 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. If a sub-consultant's work is not deemed a work-for-hire, the Artist shall require said sub-consultant to assign all rights to the Artist.

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 - \$35,000 upon Artist's receipt of the City's Notice to Proceed with the Services (~~Exhibit A, Section A.1~~);

Payment #2 - \$35,000 sixty (60) calendar days after issuance date of City's Notice to Proceed with the Services (**Exhibit A, Section A.1**);

Payment #3 - \$55,000 ninety (90) calendar days after issuance date of City's Notice to Proceed with the Services (**Exhibit A, Section A.1**);

Payment #4 - \$25,000 one hundred twenty (120) calendar days after issuance date of City's Notice to Proceed with the Services (**Exhibit A, Section A.1**);

Payment #5 - \$20,000 upon Artist's receipt of City's Notice to Proceed with Transport (**Exhibit A, Section A.7.3**); and

Payment #6 - \$14,000 upon Artist's receipt of City's Notice of Artwork Acceptance (**Exhibit A, Section A.12**).

SCHEDULE OF WORK

The Artist agrees to adhere to the following schedule:

Notice of Artwork Completion. Submit a Notice of Artwork Completion
(**Exhibit A**, Section A.8.3): on or before May 31, 2013

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:

11414 LLC
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 subdivisions A through C of Section 4.9.1. of Council Policy No. 100-17 as outlined.

Signed 

Printed Name ROY McMANIS

Title Manager

Date 6-29-2012

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 _____, 20____.

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 _____

EXHIBIT G

APPROVED ARTWORK PROPOSAL

**City of San Diego
New Public Library
Combined Artwork and Seating Proposal**

Erik Aasen presenting for Roy McMakin March 5th, 2004

PROPOSAL

Furniture plays a huge role in our memories. It also provides comfort and determines how we engage with a room. Most furniture we have in our homes was acquired throughout many years, with different styles, textures, and qualities. If a piece no longer fits or works for the room, it's common to call a friend or bring it to charity. When all else fails, we can put it on the street. Someone will have a home for it.

We propose spending a few days in San Diego collecting used and/or abandoned upholstered furniture from thrift stores, garage sales, street corners, and wherever. This process and the original pieces will be documented for future use in a published book as part of this proposal. After we have satisfied our quota, we will transport this collection to our workshop in Seattle.

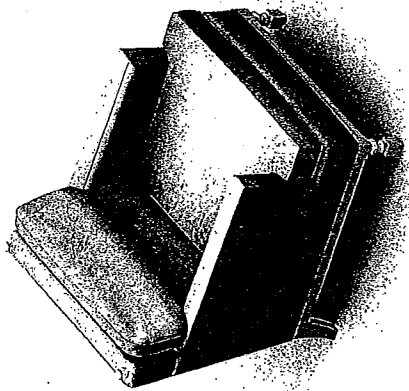
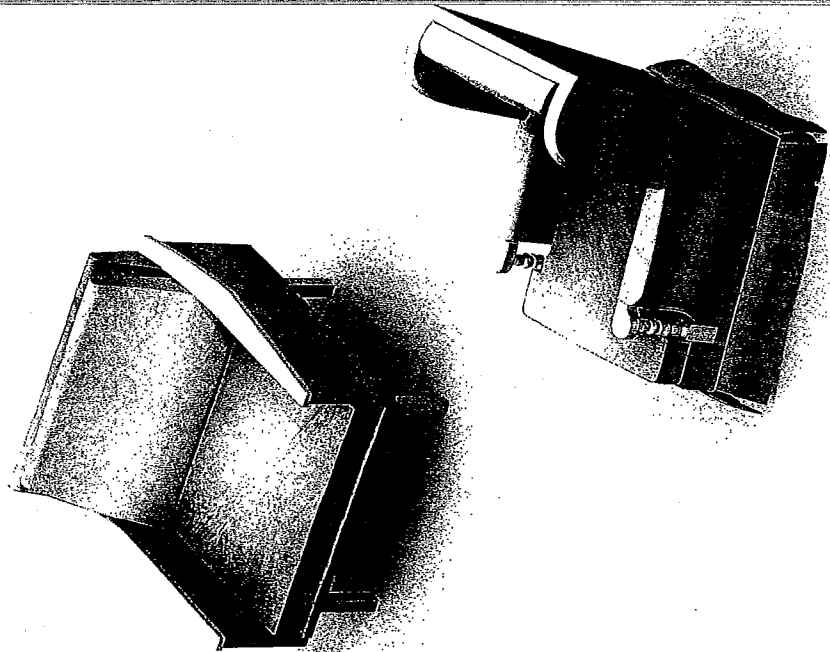
As demonstrated in this proposal by the catalogue photo copies representing the old and the computer renderings representing the new, we will re-create and bring new life to our old/new collection. The project will be created in our manufacturing facility where we maintain a full furniture shop with finish department and upholstery studio. From all new materials, we will re-produce each piece to our finest quality standards.

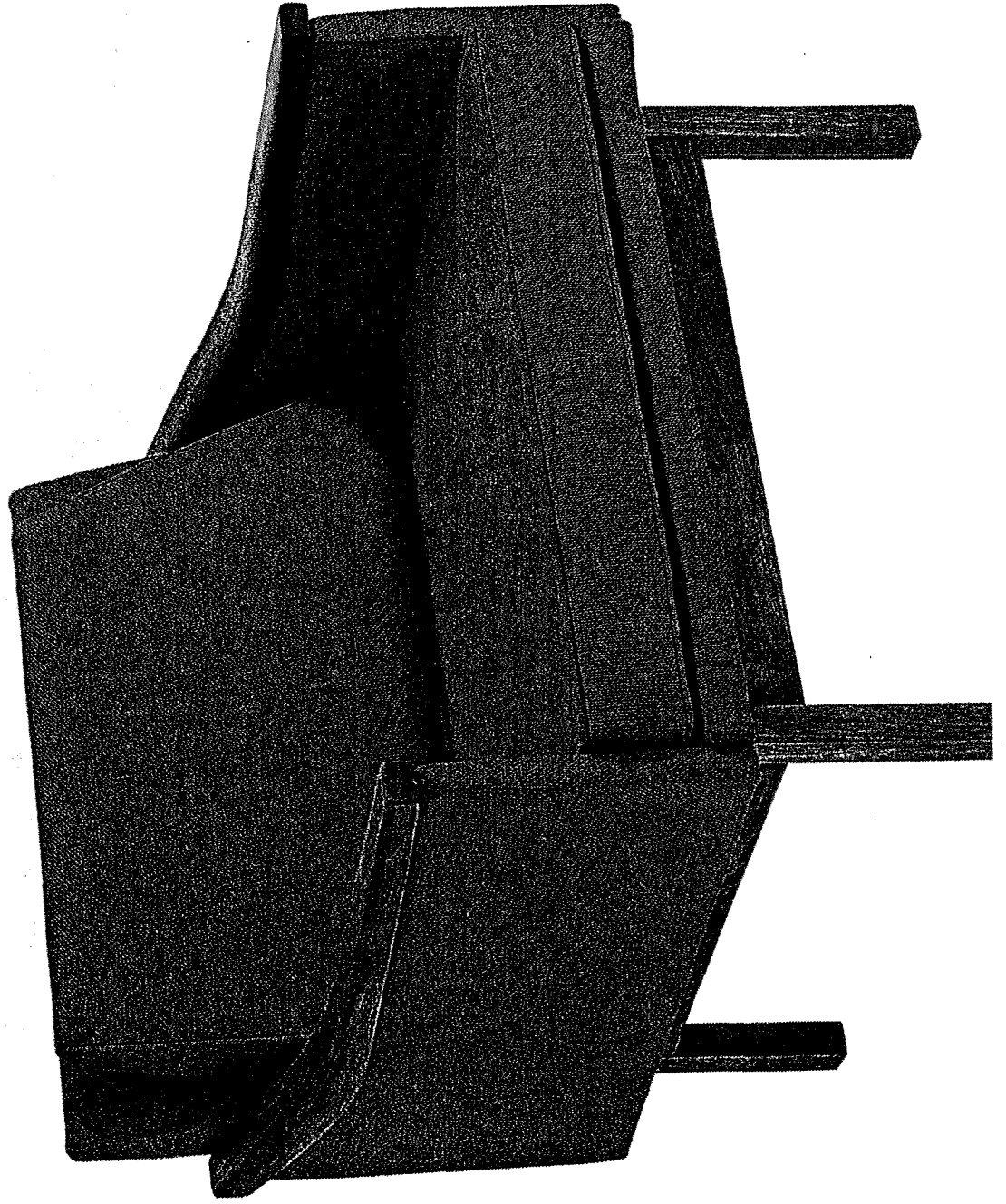
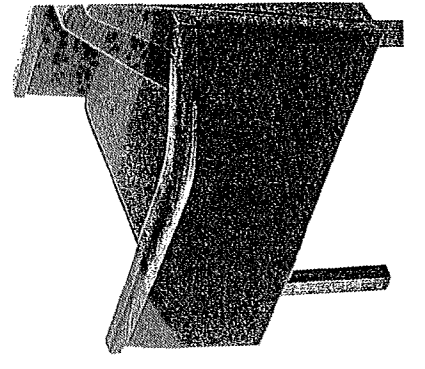
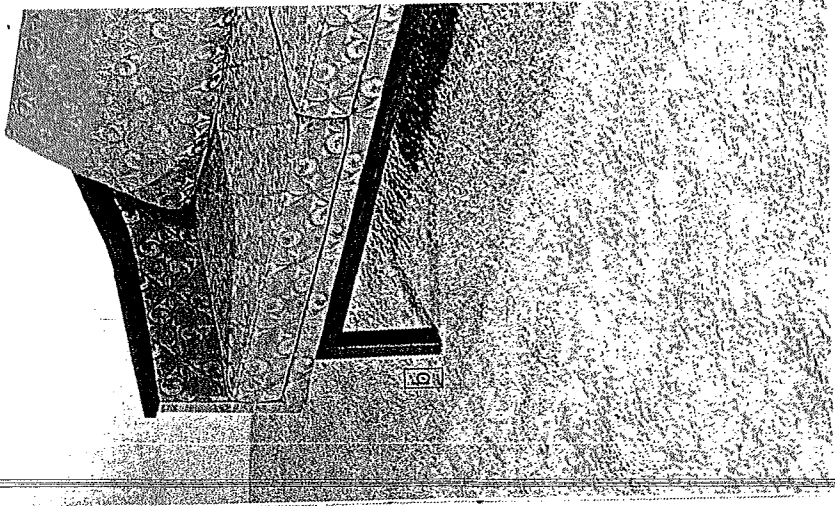
The form and scale of the new pieces will be nearly identical to those collected. The main aesthetic difference will be that all existing fabrics will now be substituted by grey leather. All other non-fabric components will be painted to match the leather. The leather chosen is provided by Spinneybeck, a well regarded domestic leather producer with a long history of providing for library settings. The painted surfaces will be finished with high quality European enamel which has proven to work well in both residential and commercial settings.

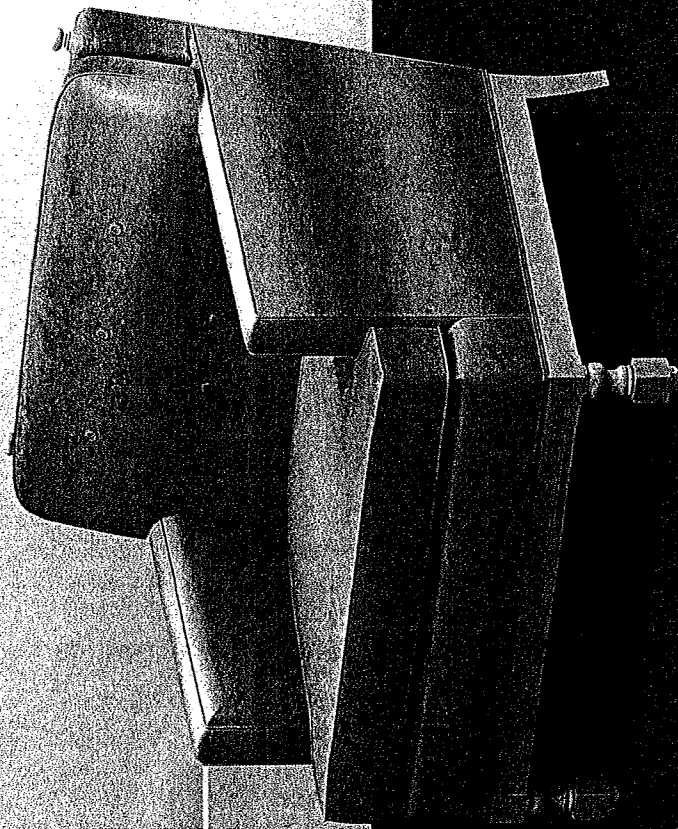
After our study, the old chairs will be donated and re-introduced to a new city, Seattle.

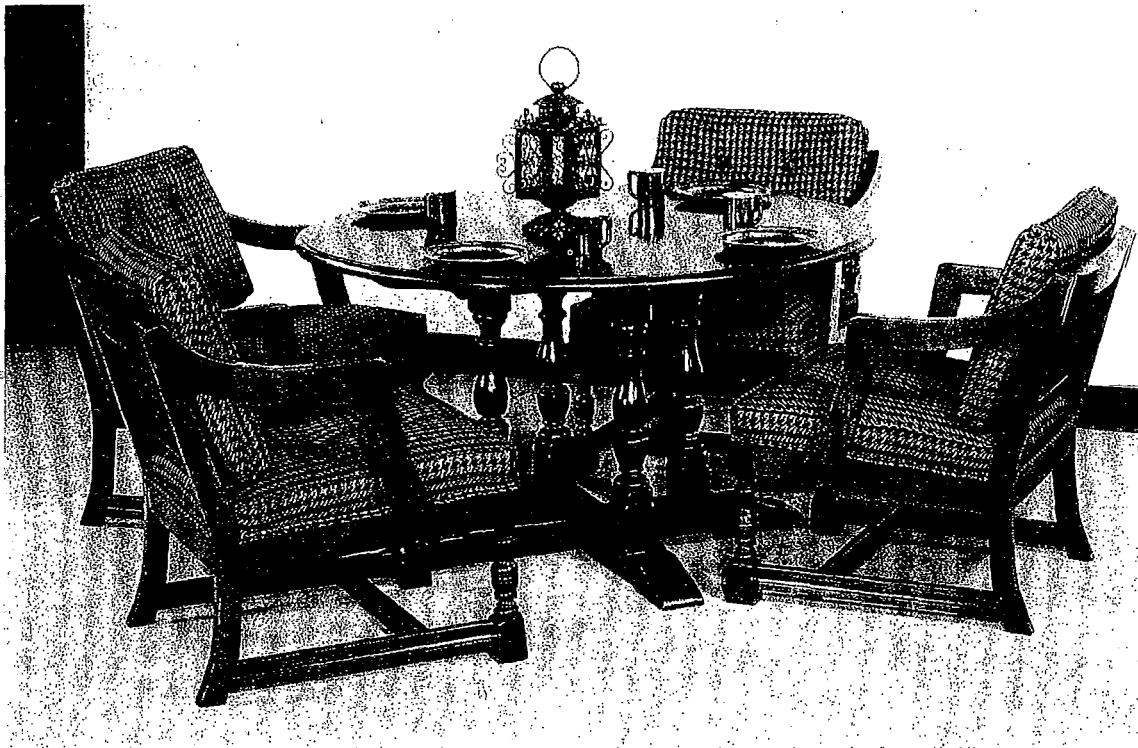
There is another very important component to this proposal: the book. As previously mentioned, we propose producing a book to tell the story as to where and how the various chairs came into our lives. Working with a small Seattle press that we have collaborated with in the past, we would like to produce a limited edition of these books for sale and display.

A maintenance handbook will be submitted at time of delivery to help maintain and preserve these pieces well into the future. Since all furniture items will be manufactured by us, we will be able to answer and assist with any issues or concerns. In addition, both





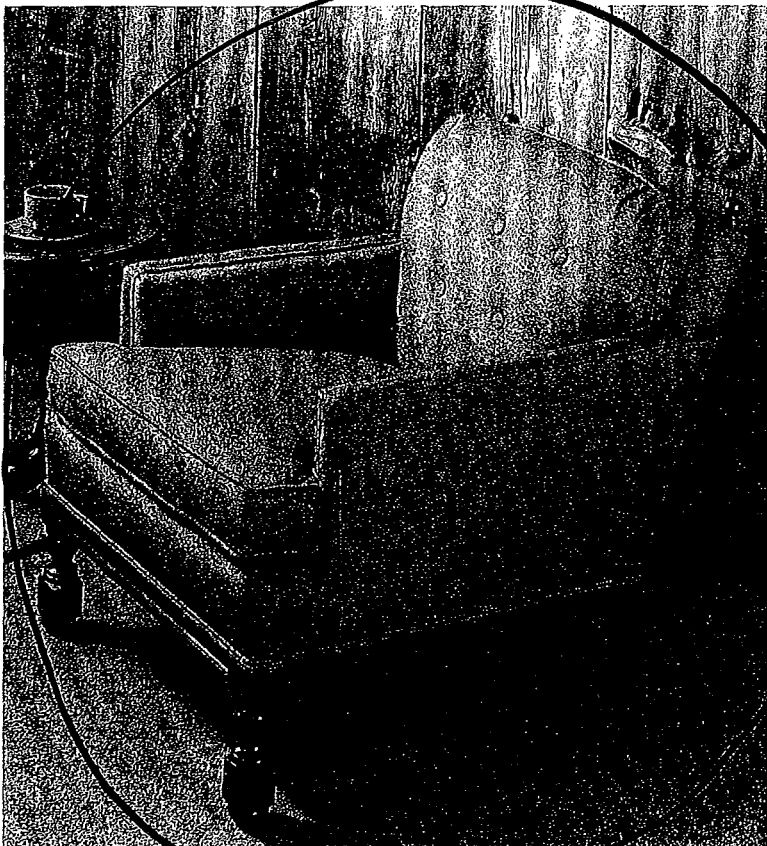




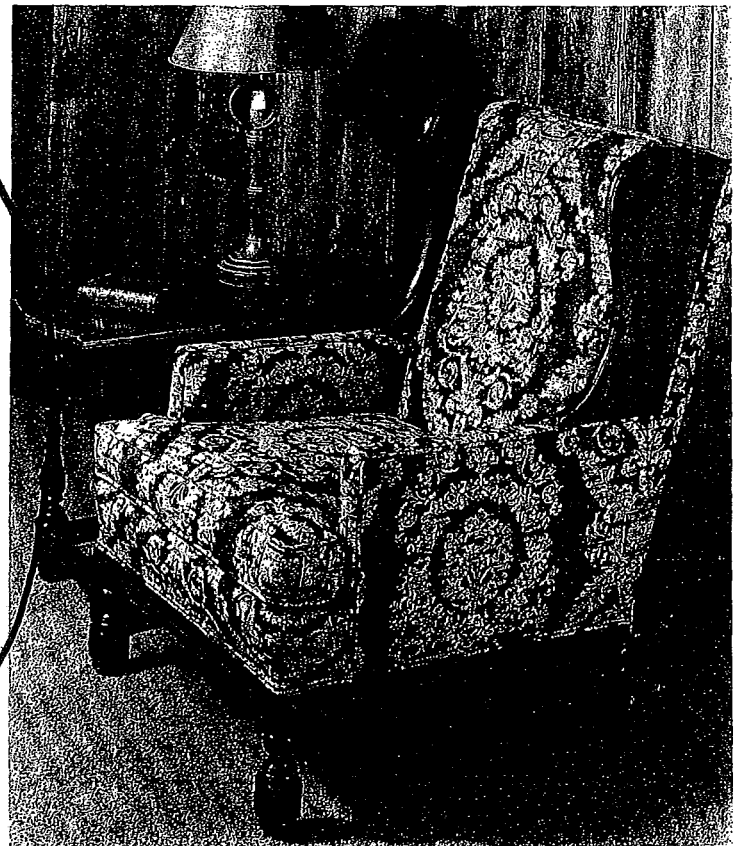
No. 828 Arm Chair
Outside 30 H, 24 W, 25 D
Inside 16 H, 21 W, 18 D

No. 463 Tavern Table
48 Diameter, 26 H

No. 831 Arm Chair
Outside 30 H, 28 W, 34 D
Inside 18 H, 20 W, 21 D



No. 840 Wing Chair
Outside 38 H, 26 W, 36 D
Inside 19 H, 21 W, 21 D



ACQUA: the Only Leather Capable of Working alongside Healthcare Professionals

The healthcare environment is tough and demanding on healthcare professionals— and on finishes and surfaces as well. ACQUA is the only leather capable of providing comfort and beauty while gracefully withstanding the extraordinary stresses of the healthcare environment.

ACQUA: Proven Durable by Extensive Testing

- **ACQUA repels water:**

AATCC Test Method 22, Water Repellency: Spray Test

Rating: 80

This test is used to determine if a material repels water. The rating of 80 indicates that some water collected on the surface of the leather at the spray point, however there was no absorption beyond the surface. Based on a rating of 80, the leather can be identified as water repellent.

- **ACQUA resists the growth of 2 types of tested bacteria:**

AATCC Test Method 100, Antibacterial Finishes on Textile Materials (Quantitative Test)

Staphylococcus aureus – 99.93% Reduction of Bacteria

Klebsiella pneumoniae – 99.94% Reduction of Bacteria

This test is used to determine if there is a sign of significant bacterial growth. Ideally, there should be little or no growth. Bacteria for both specimens were reduced by nearly 100%.

- **ACQUA resists water penetration:**

AATCC Test Method 127, Water Resistance: Hydrostatic Pressure Test

Sample #1 – 115.0 cm; Sample #2 – 163.0 cm; Sample #3 – 108.0 cm

This test determines the amount of pressure required to force water through a material. The water pressure (measured in centimeters (cm) and recorded at the point of breakthrough) is normally tested to 100 cm of pressure. The results for the three samples averaged 129.0 cm.

- **ACQUA resists noticeable staining:**

AATCC Test Method 130, Stain Release: Spot Clean Method

Blood: Immediate Blotting Grade 5.0; Cleaning After 24 Hours Grade 5.0 (No Staining)

Urine: Immediate Blotting Grade 5.0; Cleaning After 24 Hours Grade 5.0 (No Staining)

Bleach: Immediate Blotting Grade 5.0; Cleaning After 24 Hours Grade 5.0 (No Staining)

Betadine: Immediate Bleach Cleaning Grade 4.5-5.0; Bleach Cleaning After 24 Hours Grade 4.5 (Slight to No Staining)

This test is used to determine the amount of staining created by blood, urine, bleach, and betadine on the surface of the leather. The staining agents are applied directly to the surface of the leather. One set of stains is cleaned after 5 minutes and another set of stains is left for 24 hours and then cleaned. The stained areas are then evaluated to the AATCC Grey Scale and given a numeric rating from 1 through 5 (Grade 1 – Severe Staining through Grade 5 – No Staining). Blood, urine, and bleach were all cleaned off of the leather surface using only mild soap and water. The betadine stain was almost completely removed with bleach solution.

- **ACQUA resists cigarette ignition:**

UFAC Test Method 1990, Cigarette Ignition Resistance of Fabric for Use in Upholstered Furniture

Rating: Class I – No Obvious Ignition

This test is used to determine if a material will catch fire if a lit cigarette is dropped on it. The cigarette on three Acqua samples extinguished before the leather ignited. A Class I rating is the highest possible score for this test.

READING ROOM + POPULAR LIBRARY

LOUNGE

CHAIRS

in

Random and Assorted
Styles

recreated from chairs:

- found in the world
- found discarded on the streets of
SAN DIEGO
- found in my memory
- found in my mind

covered in various fabrics



LARGE TABLES

- existing library styles (two)
- found in the world
- " discarded in S.D.
- " in my memory
- " " " mind
- " woods
- " laminates
- gray



SMALL TABLES

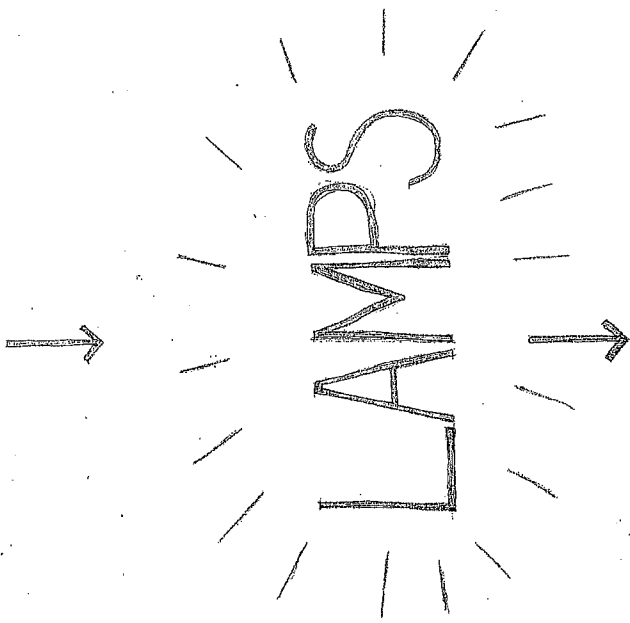
- assorted as above
- shapes of "a", "→", "the" + "..."
- some tables are ottomans

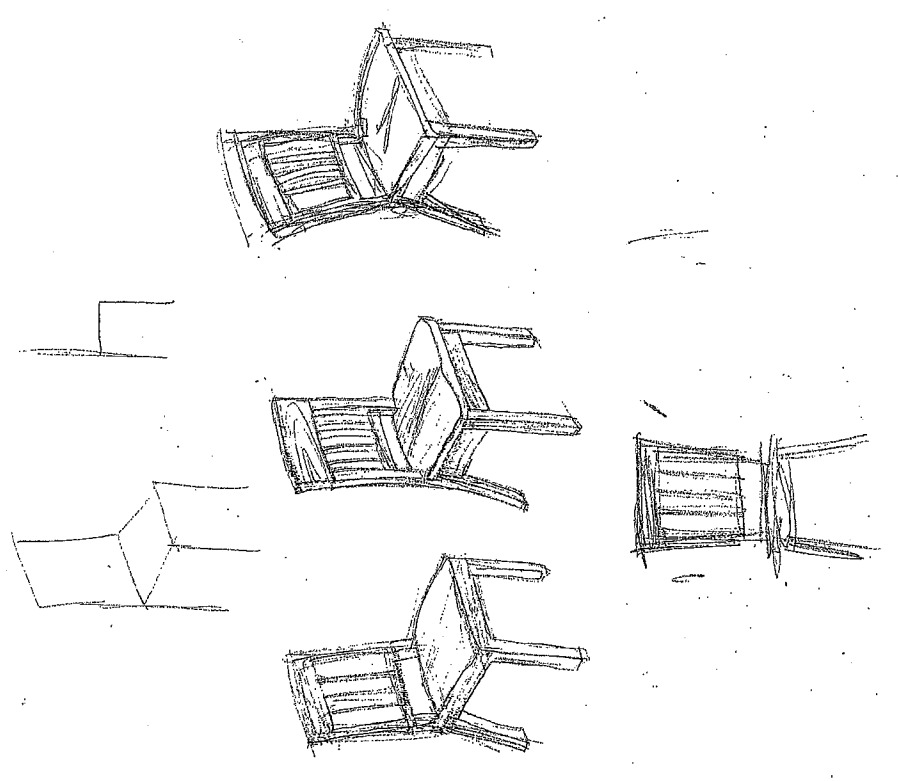


FABRIC

- grey vinyl or leather
 - found production
 - various "A" typography forms (layered)
 - " " → " " " "
 - " "the" " " "
 - " "..." " " "
 - images of:
 - flower
 - door
 - man
 - woman
 - identical flower, door, man, woman with "a", "→", "the" & "..." next to the
 - "a", "→", "the" and "..." in a single typography form
 - very
 - layered
- ↓

LAMPS





8

- Photos ^{such as} found chair photo
with - "a"
- "→"
- "the"
- "..."

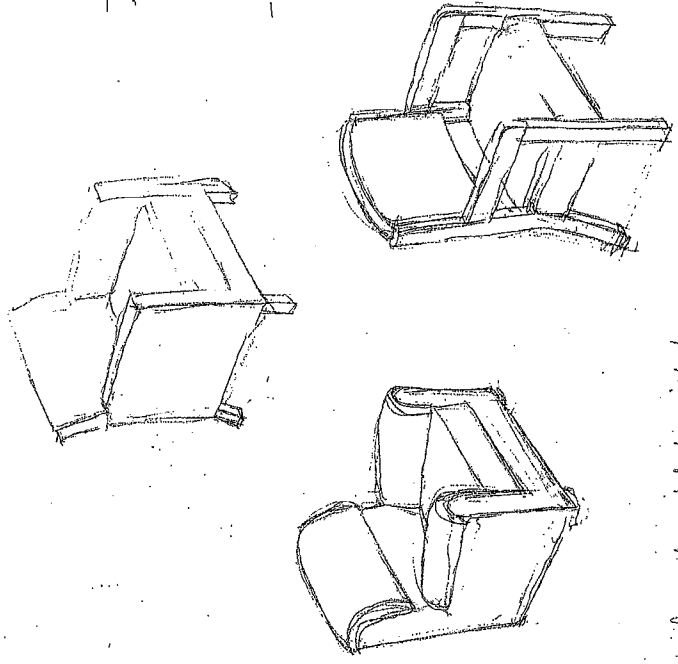
- "Signage"? : a THE

- drawings (of these things)

(framed and scattered about)

- assort chairs
 - found on stairs
 - found in the woods
 - found in my memory
 - found in my mind
- one of each "style" in grey (paint + vinyl or leather)
- "found" fabric, perhaps distinctive of style, perhaps not
- w/ our fabrics

- side tables
 - assort found (see above)
 - also shapes of "a" → "the"
 - some stomach
 - words?
- large tables
 - old dining (2 styles)
 - found on streets
 - very memory
 - my mind
 - words - laminated (grey)



- library chairs - a few we make, special wood, patches, painted grey, painted w/ "a" "a" → "the"

- same as above w/ tables, brochure ends +?
- photos - found chair photo w/ "a" w/ "the" w/ "a"
- "Signage" a THE
- drawings - of letters + chairs + tables dated

- fabrics - grey vinyl or leather
- found
- a - various "a" forms layered
- "the" forms layered
- floor man (occasional) woman door
- a flower the flower
- a man the man
- a woman the woman
- a door the door

EXHIBIT H

CONTRACTOR/VENDOR
REGISTRATION FORM



**City of San Diego
Purchasing & Contracting Department
Contractor/Vendor Registration Form**

All prospective bidders, as well as existing contractors and vendors, are required to complete this form.

Vendor ID: [ID Number will be provided by City]

Firm Info:

Firm Name: (as reported on W9)

Firm Address:

City: State: Zip:

Phone: Fax:

Taxpayer ID: Business Tax Certificate:

Website:

Contact Info:

Contact Name:

Title:

Email:

Phone: Cell:

Alternate Address (if different from above) to Receive Remittance:

Mailing Address:

City: State: Zip:

Alternate Address (if different from above) to Receive Bid/Contract Opportunities:

Mailing Address:

City: State: Zip:

Contractor Licenses (if applicable)

License Number: License Type:

License Number: License Type:

License Number: License Type:

Contractor/Vendor Registration Form - Page 2

Firm Name:
(as reported on W9)

H X 14 LLC

Product/Services Information:

NIGP Codes:

* 91886 - PUBLIC ART
~~96207 - ART SERVICES~~
96104 - ARTISTS

*find list of available NIGP Codes at <http://www.sandiego.gov/purchasing> OR request hard copy from Purchasing & Contracting

The City requires this information for statistical purposes only.

Ethnicity:

Ethnicity:

* CAUCASIAN AMERICAN

* select one from the following List of Ethnicities:

AFRICAN AMERICAN
ASIAN AMERICAN
CAUCASIAN AMERICAN
HISPANIC AMERICAN
NATIVE AMERICAN
PACIFIC ISLANDER AMERICAN

Ownership Classification

Classification:

*

*select from the following List of Ownership Classification Codes (select all that apply):

WBE	(Woman Owned Business Enterprise)
DBE	(Disadvantaged Business Enterprise)

DVBE	(Disabled Veteran Business Enterprise)
SLBE*	(Small Local Business Enterprise)
8(a)	(Small Business Administration 8(a) Enterprise)
SDB	(Small Disadvantaged Business Enterprise)
LBE	(Local Business Enterprise)
MLBE	(Micro Local Business Enterprise)
SBE	(Small Business Enterprise)
MBE	(Minority Business Enterprise)
ELBE*	(Emerging Local Business Enterprise)
UDBE	(Underutilized Disadvantaged Business Enterprise)
DPBT	(Persons With A Disability or Disabilities Business Enterprise)
LGBT	(Lesbian, Gay, Bisexual, Transgender Business Enterprise)
EBE	(Emerging Business Enterprise)

* Requires certification by the City of San Diego Equal Opportunity Contracting Office.

Certified by an Agency? No Yes (enter Certification Number and Certifying Agency below)

Certification #: Expiration Date:

Agency:

Certification #: Expiration Date:

Agency:

California State Tax Permit #:

Please mail this form to: Purchasing & Contracting Department
1200 Third Avenue, Suite 200
San Diego, CA 92101

or fax to: 619-236-5904

EXHIBIT I

EQUAL BENEFITS ORDINANCE

CERTIFICATION OF
COMPLIANCE

EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE



For additional information, contact:
CITY OF SAN DIEGO
EQUAL BENEFITS PROGRAM
 202 C Street, MS 9A, San Diego, CA 92101
 Phone (619) 533-3948 Fax (619) 533-3220

COMPANY INFORMATION

Company Name: 11 x 14 LLC Contact Name: Roy McMAKIN
 Company Address: 1422 34th Ave. Contact Phone: 206.323.0198
SEATTLE WA 98122 Contact Email: roy@mcmaikinstudio.com

CONTRACT INFORMATION

Contract Title: CONSULTING SERVICES / PUBLIC ART FOR NEW CENTRAL LIBRARY Start Date: 5-31-12
 Contract Number (if no number, state location): CITY OF SAN DIEGO LIBRARY End Date: 5-31-13

SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

The Equal Benefits Ordinance [EBO] requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in SDMC §22.4302 for the duration of the contract. To maintain equal benefits a contractor shall:

- Offer equal benefits to employees with spouses and employees with domestic partners in accordance with the EBO.
 - Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation; employee assistance programs; credit union; or any other benefit.
 - If a contractor does not offer a benefit to an employee with a spouse, that same benefit is not required to be offered to an employee with a domestic partner.
- Post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods.
- Allow City access to records, when requested, to confirm compliance with EBO requirements.
- Submit *EBO Certification of Compliance*, signed under penalty of perjury, prior to award of contract.

This summary is provided for convenience. Full text of the EBO and Rules Implementing the EBO are available at www.sandiego.gov.

CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION

Please indicate your firm's compliance status with the EBO by selecting A, B, or C below. The City may request supporting documentation.

- A. I affirm **compliance** with the EBO because my firm (*contractor must select one reason*):
- Provides identical benefits to spouses and domestic partners.
 - Provides no benefits to spouses or domestic partners.
 - Has no employees.
- B. I am not now in compliance, but request approval of **provisional compliance** with the EBO (*contractor must select one*):
- Until my firm completes administrative steps to implement compliance (3 month maximum).
 - Until effective date of my firm's first open enrollment period (1 year maximum).
 - Until expiration of current collective bargaining agreement(s) with my firm.
- C. I request approval to pay affected employees a **cash equivalent** in lieu of equal benefits and verify my firm (*contractor must select all*):
- Made reasonable efforts to comply, but will not be able to comply with EBO requirements before contract completion.
 - Will amend policies to extend benefits for which a cash equivalent is not available to domestic partners.
 - Will notify employees of the availability of a cash equivalent in lieu of equal benefits.

Under penalty of perjury under laws of the State of California, I certify I understand and will comply with requirements of the Equal Benefits Ordinance in the manner affirmed above in accordance with San Diego Municipal Code, Chapter 2, Article 2, Division 43 and the Rules Implementing the Equal Benefits Ordinance.

ROY McMAKIN
 Name/Title of Signatory

[Signature]
 Signature

6-25-12
 Date

FOR OFFICIAL CITY USE ONLY

Receipt Date: _____ EBO Analyst: _____ Approved Not Approved – Reason: _____

CONSULTANT CERTIFICATION

AMERICAN WITH DISABILITIES ACT (ADA) COMPLIANCE CERTIFICATION

PROJECT TITLE: Public Art @ New Center Library

I hereby certify that I am familiar with the requirements of San Diego City Council Policy No. 100-4 regarding the American With Disabilities Act (ADA) outlined in Article IV, "ADA Certification", of the Agreement, and that;

11x14 LLC
(Name under which business is conducted)

has in place workplace program that complies with said policy. I further certify that each subcontract agreement for this project contains language which indicates the subcontractor's agreement to abide by the provisions of the policy as outlined.

Signed [Signature]
Printed Name ROY McMAKIN
Title manager

REGARDING INFORMATION REQUESTED UNDER THE
CALIFORNIA PUBLIC RECORDS ACT

The undersigned duly authorized representative, on behalf of the named Contractor declares and acknowledges the following:

The contents of this contract and any documents pertaining to the performance of the contract requirements/Scope of Services resulting from this contract are public records, and therefore subject to disclosure unless a specific exemption in the California Public Records Act applies.

If a Contractor submits information **clearly marked** confidential or proprietary, the City of San Diego (City) may protect such information and treat it with confidentiality only to the extent permitted by law. However, it will be the **responsibility of the Contractor** to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the California Public Records Act, should the City choose to withhold such information.

General references to sections of the California Public Records Act will not suffice. Rather, the Contractor must provide a **specific and detailed legal basis, including applicable case law** that **clearly establishes** the requested information is exempt from the disclosure requirements of the California Public Records Act.

If the Contractor does not provide a specific and detailed legal basis for withholding the requested information within a time specified by the City, the City will release the information as required by the California Public Records Act and the **Contractor will hold the City harmless** for release of this information.

It will be the **Contractor's obligation to defend**, at Contractor's expense, any legal actions or challenges seeking to obtain from the City any information requested under the California Public Records Act withheld by the City at the Contractor's request. Furthermore, the Contractor shall **indemnify** the City and **hold it harmless** for any claim or liability, and **defend any action** brought against the City, resulting from the City's refusal to release information requested under the Public Records Act withheld at Contractor's request.

Nothing in this Agreement creates any obligation for the City to notify the Contractor or obtain the Contractor's approval or consent before releasing information subject to disclosure under the California Public Records Act.

11414 LLC
Name of Firm

[Signature]
Signature of Authorized Representative

ROY McMAKEN
Printed/Typed Name

6-29-12
Date