AGREEMENT BETWEEN

THE CITY OF SAN DIEGO

AND

MARLANA LLC
FOR

EMERALD HILLS PARK PUBLIC ART PROJECT

CONTRACT NUMBER: H2626773

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AGREEMENT BETWEEN

THE CITY OF SAN DIEGO
ECONOMIC DEVELOPMENT DEPARTMENT
FOR PUBLIC ART SERVICES
AND MARLANA LLC

THIS Agreement H2626773 [Consulting Agreement], and the incorporated **Exhibits A-G**, is made and entered into between the City of San Diego, a municipal corporation [City], and Marlana LLC, 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 design, fabrication, transportation of artwork to site and consultation during installation of artwork to be installed by the City in connection with the Emerald Hills Park Public Art Project, 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 April 10, 2031, 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.

2.2.1 Unless otherwise specified herein, time is of the essence for each and every provision of the Consulting Agreement. Artist must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Consulting Agreement as provided herein if City, in its sole discretion, determines the delay is material.

2.2.2 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Artist to a reasonable extension of time to complete performance, but Artist will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Artist. This provision does not apply to a delay caused by Artist's acts or omissions. Artist is not entitled to an extension of time to perform if a delay is caused by Artist's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Artist's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

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** attached hereto. 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 Artist for performance of all Services rendered in accordance with this Consulting Agreement, including reasonably related expenses, a total contract amount not exceeding $70,000.00

3.2 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 the Compensation and Fee Schedule, 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. However, failure to obtain the required documents prior to the Professional Services commencing shall not waive Artist's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Agreement, at any time. 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. The Artist shall keep in full force and effect 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. If the Artist does not possess owned automobiles then coverage for hired and non-owned automobiles shall be provided.

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 Approved Surplus Lines Insurers (LASLI 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.

4.3.4.1 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 Additional Insured the City and its respective elected officials, officers, employees, agents and representatives.

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.

4.3.4.2 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. By signing this Consulting Agreement, the Artist agrees that it is aware of, and hereby certifies that it 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 Consulting Agreement by this reference. Council Policy 100-17 is available online at https://www.sandiego.gov/city-clerk/officialdocs.

4.5 ADA Certification. By signing this Consulting Agreement, the Artist agrees that it is aware of, and hereby certifies that they agree 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, gender expression, gender identity, 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 contained in San Diego Municipal Code (SDMC) 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 Product Endorsement. The Artist shall conform to the City's Administrative Regulation 95.65 and Council Policy 000-41 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.

4.8 Compliance with the City's Contractor Standards. The Artist shall comply with the City's Contractor Standards delineated in the Municipal Code Chapter 2, Article 2, Division 30 adopted by Ordinance No. O-20316, the purpose of which is to ensure that the City of San Diego conducts business with firms that have the necessary quality, fitness and capacity to perform the work set forth in a given contract. To assist the City Manager in making this determination and to fulfill the requirements of SDMC section 22.3004(d), the Artist must complete and submit the *Contractor Standards Pledge of Compliance* attached hereto as **Exhibit G**. The submitted Pledge of Compliance is a public record and information contained therein will be available for public review for at least ten (10) calendar days, except to the extent that such information is exempt from disclosure pursuant to applicable law. If a change in circumstances occurs that would modify any response thereon, the Artist must provide the City an updated Contractor Standards Pledge of Compliance within thirty (30) calendar days of such change.

4.9 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 SDMC at sections 27.3501 to 27.3595.

4.9.1 If, in performing the Professional Services set forth in this Agreement, any member of the Artist's organization makes, or participates in, a "governmental decision" as described in Title 2, section 18704 of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the individual shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the individual's relevant financial interests. The determination as to whether any individual members of the Artist's organization must make disclosures of relevant financial interests is set forth in the Determination Form [Exhibit F].

4.9.1.1 If a determination is made that certain individuals must disclose relevant financial interests, the statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The individual shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the individuals are subject to a conflict of interest code. Each year thereafter, the individuals shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the individual was subject to a conflict of interest code. A Form 700 (Leaving Office Statement) shall also be filed when the individual discontinues services under this Agreement.

4.9.1.2 If the City requires an individual member of the Artist's organization to file a statement of economic interests as a result of the Professional Services performed, the individual shall be considered a "City Official" subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.

4.10 Business Tax License. Any Artist doing business with the City is required to comply with Section 31.0301 of the SDMC 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.

4.11 Submittals. Failure to provide the required submittals listed below with the Consulting Agreement shall delay the award 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

- Completed Equal Opportunity Contracting Program Work Force Report per Section 4.6
- Completed Contractor Standards Pledge of Compliance per Section 4.8
- Business Tax License per Section 4.10
- 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
- Artist's Signature Authority Document

4.12 Prevailing Wage Rates. RESERVED.

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, 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.

6.3.1 Governing Law. The Contract shall be deemed to be made

under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

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: Charles Miller, Senior Public Art Manager, City of San Diego Commission for Arts and Culture, 1200 3rd Ave, Suite 924, San Diego, CA 92101, Economic Development Department, cgmiller@sandiego.gov, 619-236-6832. Notice to the Artist shall be addressed to: Marlana Vassar, 6915 Wiltsie Street, Pittsburgh, PA, 15206, maralanasmusings@gmail.com, 724-880-5858.

6.6 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.

6.7 Equal Benefits Ordinance. Unless an exception applies, Artist shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (§22.4304(f)). Failure to maintain equal benefits is a material breach of this Agreement. By signing this Agreement, Artist certifies that Artist is aware of, and will comply with, this City-mandated clause throughout the duration of the Agreement.

6.8 Public Records. By Signing this Agreement the Artist agrees that it is aware that the contents of this Agreement and any documents pertaining to the performance of the Agreement requirements/Scope of Services resulting from this Agreement are public records, and therefore subject to disclosure unless a specific exemption in the California Public Records Act applies.

If the Artist 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 Artist** 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 Artist 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 Artist 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 **Artist will hold the City harmless** for release of this information.

It will be the **Artist's obligation to defend**, at Artist'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 Artist's request. Furthermore, the Artist 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 Artist's request.

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

6.9 Exhibits Incorporated. All Exhibits referenced herein are hereby incorporated into this Consulting Agreement.

6.10 Severability. The unenforceability, invalidity, or illegality of any provision of this Consulting Agreement shall not render any other provision of this Consulting Agreement unenforceable, invalid, or illegal.

6.11 Equal Pay Ordinance. Unless an exception applies, Artist shall comply with the Equal Pay Ordinance (EPO) codified in the San Diego Municipal Code (SDMC) at section 22.4801 through 22.4809. Artist shall require all of its subconsultants to certify compliance with the EPO in their written subcontracts. Artist must post a notice informing its employees of their rights under the EPO in their workplace or job site. By signing this Agreement with the City of San Diego, Artist acknowledges the EPO requirements and pledges ongoing compliance with the requirements of SDMC Division 48, section 22.4801 et seq., throughout the duration of this Agreement.

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IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to SDMC section 22.3207, authorizing such execution, and by the Artist pursuant to the Artist's Signature Authority Document.

I HEREBY CERTIFY I can legally bind Marlana LLC and that I have read all of this Agreement, this 24th day of March 2026, _____.

By _____

Marlana Vassar
Artist

Dated this 6th day of October, 2026.

THE CITY OF SAN DIEGO
Mayor or Designee

By _____

Berric Doringo
Deputy Director
Purchasing & Contracting

I HEREBY APPROVE the form of the foregoing Agreement this 7th day of October, 2026.

HEATHER FERBERT, City Attorney

By _____

MICHAEL PARK
Deputy City Attorney

ARTIST CONSULTING SERVICES AGREEMENT EXHIBITS

SCOPE OF SERVICES

A.1 Notice to Proceed with the Services. The Artist must not proceed with work on the Scope of Services until Public Works Contracts 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 Consulting Agreement will meet the definition of "artwork" contained in SDMC section 26.0702. The City is not 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 the Consulting 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 that reflect the character and diversity of San Diego's region while incorporating a global perspective. Therefore, the Artist is 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 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 the Consulting Agreement. To facilitate this essential coordination, the Artist must be available with reasonable advance notice for meetings, as necessary. The City must 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 the Consulting Agreement.

A.6 Meetings. As determined by the City's Project Manager, or their successor, (Project Manager) in consultation with the Artist, the Artist must attend public information meetings and events with the general public, attend design and construction coordination meetings with City staff 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, transport, and consultation during installation of the artwork.

A.7 Authorizations. The Artist must 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 the Consulting Agreement.

A.9 Remedy of Defects. In the event that the City issues the Artist a notice of defects, the Artist must 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 must promptly remedy the defects and issue the Project Manager a notice of completion for the defect remedy. The Artist must not proceed with any work in this Scope of Services until the Project Manager issues the Artist a notice of approval for the defect remedy.

A.10 Preliminary Artwork Idea. The Artist will present Artist's exploration of artwork ideas to Project Manager (Preliminary Artwork Idea). Project Manager may request Artist to present the Preliminary Artwork Idea using a presentation format of Artist's choice sufficient to provide the group(s) of people representing the City, its constituents, or both with a clear understanding of the proposed idea(s). Examples of acceptable presentation formats include drawings, images, and brief written narratives.

A.10.1 Notice of Approval for Preliminary Artwork Idea. The Artist must not proceed with work on the Scope of Services further than the Preliminary Artwork Idea until the Project Manager has issued the Artist a notice of approval for Preliminary Artwork Idea.

A.11 Schematic Artwork Proposal. The Artist must develop a Schematic Artwork Proposal in accordance with this section and its subsections.

A.11.1 Site Selection. The Artist must work in collaboration with City staff to identify appropriate areas as potential locations for the artwork in the Project.

A.11.2 Research and Outreach. Throughout the development of the Schematic Artwork Proposal, the Artist must 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.11.3 Elements of Schematic Artwork Proposal. The Artist's submission of the Schematic Artwork Proposal to the Project Manager for review and approval must 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 must include, but is not 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 that 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 must include, but is not 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. Lighting (design, fixtures, bulbs)
    13. Permits and taxes (sales tax, use tax, City permits, etc.)
j. A preliminary fabrication plan, which includes a proposed list of materials, and methods of fabrication;
k. A preliminary transportation plan;
l. A preliminary installation plan, which outlines the proposed installation method to be completed by City, includes a timeline for the artwork installation that coordinates with other construction events at the Project, and identifies a schedule of relevant tasks that should 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.11.4 Reviewing Bodies. 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. (Reviewing Bodies) The Reviewing Bodies will be assembled by the Project Manager to review and approve the artwork proposal and its requirements at various stages of development.

A.11.5 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 will 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, must respond to the Reviewing Bodies' comments in writing and submit a revised Schematic Artwork Proposal to the Project Manager for review. The Reviewing Bodies will review the revised Schematic Artwork Proposal and make additional recommendations until the Schematic Artwork Proposal is approved by the Reviewing Bodies.

A.11.5.1 Notice of Approval for Schematic Artwork Proposal. The Artist must not proceed with work on the Scope of Services further than the Schematic Artwork Proposal until the Project Manager has issued the Artist a notice of approval for the Schematic Artwork Proposal.

A.12 Final Artwork Proposal. The Artist must develop a final artwork proposal that addresses feedback provided to the Artist by the Reviewing Bodies during the review of the Schematic Artwork Proposal, is of a quality appropriate for release to the press, and is in accordance with this section and its subsections (Final Artwork Proposal). The Artist agrees to supply any specific types of presentation materials required by the Project Manager. The Final Artwork Proposal must include, but is not 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 must include, but is not limited to, the following items, as appropriate:
    1. Artist's fee
    2. Design development expenses including engineering services and 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. Lighting (design, fixtures, bulbs)
13. 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 that outlines the installation method to be completed by City, includes a timeline for the artwork installation that accommodates other construction events at the Project, and identifies a schedule of relevant tasks that should 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 the art conservator's report per Section A.12.1.

A.12.1 Art Conservator's Review. The Artist must 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 must 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 must 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.12.2 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 will 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, must respond to the Reviewing Bodies' comments in writing, and submit a revised Final Artwork Proposal to the Project Manager for review. The Reviewing Bodies will review the revised Final Artwork Proposal and make additional recommendations until the Final Artwork Proposal is approved by the Reviewing Bodies.

A.12.2.1 Notice of Approval for Final Artwork Proposal. The Artist must not proceed with work on the Scope of Services further than the Final Artwork Proposal until the Project Manager has issued the Artist a notice of approval for the Final Artwork Proposal.

A.13 Construction Documents. If the Final Artwork Proposal is approved by the City it becomes the approved artwork proposal (Approved Artwork Proposal). If the Approved Artwork Proposal is of the nature to require plans, structural engineering drawings, or specifications to use in constructing the artwork (Construction Documents), the Artist must create, or cause to be created, detailed Construction Documents. To the extent applicable, the Artist and the Artist's sub-consultants must 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" must 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 the Consulting Agreement, this Consulting Agreement controls.

A.13.1 Consultation with City Departments. The Artist and the Artist's sub-consultants must 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 or meet the City's requirements for construction of the artwork at the Project.

A.13.2 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.13.3 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 will 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, must respond to the Reviewing Bodies' comments in writing, and submit revised Construction Documents to the Project Manager for review. The Reviewing Bodies will review the revised Construction Documents and make additional recommendations until the Construction Documents are approved by the Reviewing Bodies.

A.13.3.1 Notice of Approval for Construction Documents. If Construction Documents are necessary as described above for the Approved Artwork Proposal, then the Artist must not proceed with work on the Scope of Services further

than the Construction Documents until the Project Manager has issued the Artist a notice of approval for the Construction Documents.

A.14 Fabrication. The Artist must fabricate the artwork in substantial conformity with the approved Final Artwork Proposal and the approved Construction Documents.

A.14.1 Unidentified Design Specifications. The parties recognize and agree that certain specifications regarding the artwork, including, but not limited to, the size, color, material (including grade of the material), and other elements may not be 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 must seek the Project Manager's prior approval of the specification before commencing or continuing with fabrication of the artwork.

A.14.1.1 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.14.1.1.1 Adjustments Requiring Approval. In no event may an adjustment increase the total contract not to exceed amount specified in Article 3.1 of the Consulting Agreement, to which this exhibit is attached as Exhibit A, without prior written approval by the Project Manager. Nor may the Artist make an adjustment, which requires a modification of the approved Construction Documents without the prior written approval of the Project Manager.

A.14.1.2 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.14.1.2.1 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, delivery schedule, installation, maintenance, or operation of the artwork, including site preparation for the artwork.

A.14.2 Fabrication Progress Report. The Artist must submit to the Project Manager a progress report related to the fabrication of Artwork as outlined in **Exhibit D** to the Consulting Agreement, Schedule of Work (Fabrication Progress Report). The Fabrication Progress Report must include a description of the work completed, no fewer than 5 digital images of the fabrication progress and the work completed on the artwork measuring at least 300 dpi in JPG or RAW format, the percentage of work completed, and the expected completion date for remaining work. Within 15 days of receipt of the Artist's progress report, the Project Manager will issue a notice of defects, or a notice to proceed with completion of Artwork fabrication.

A.14.3 Notice of Fabrication Completion. Upon completion of the artwork fabrication and prior to transportation of the artwork to the site for installation, the Artist must 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.14.4 Notice to Proceed with Transport. Upon receipt of the City's notice to proceed with transport, the Artist must transport the artwork to the site. The Artist must coordinate with the Project Manager regarding the time and place for delivery of the artwork. The Artist must not proceed with work on the Scope of Services further than the notice of fabrication completion until the Project Manager has issued the Artist a notice to proceed with transport.

A.14.5 Notice of Artwork Delivery. The Artist must 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 consultation during installation.

A.15 Installation. The Artist must be responsible for consulting on the installation of the artwork by City at the site, including without limitation, consulting with other City consultants and contractors, when applicable.

A.15.1 Site Visits. The Artist must make site visits during installation of the artwork as directed by the Project Manager.

A.15.2 Personal Safety. The Artist must wear all required personal protective equipment, as specified by the City, including safety vest, OSHA-approved hardhat, and safety glasses.

A.15.3 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 will have the authority to require the Artist to consult on such modifications to address the public safety issues.

A.15.4 Notice of Artwork Completion. Upon completion of the artwork installation by the City, the Artist must issue the Project Manager a notice of artwork completion.

A.16 Maintenance Manual. As soon as possible following the completion of the Artwork installation, the Artist must supply the City with a written maintenance manual for the artwork. The maintenance manual must be based on the final maintenance plan contained in the approved Final Artwork Proposal, and must include the art conservator's report acquired by the Artist pursuant to Section A.12.1. The maintenance manual must take into account any and all modifications made during the fabrication and installation of the artwork, and must 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 City.

A.17 Documentation. As soon as possible following the completion of the

artwork installation, the Artist must supply the City with no fewer than 20 digital images of the artwork, measuring at least 300 dpi 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 City.

A.18 Transfer of Title. As soon as possible following the completion of the artwork installation, the Artist must complete, execute, and provide the City with the Transfer of Title document in **Exhibit E** to the Consulting Agreement.

A.19 Notice of Artwork Acceptance. Upon the City's receipt and approval of the notice of artwork completion, the maintenance manual, digital image 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.20 Risk of Loss. Until the Artist receives the notice of artwork acceptance 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.21 Errors and Omissions. The City's acceptance of the artwork will not release the Artist of the responsibility for the correction of errors or omissions in the Approved Artwork Proposal, the approved Construction Documents, or the artwork, 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 unforeseen circumstances at the time of development or approval.

ADDITIONAL PROVISIONS

B.1 Incapacity or Death. If the Artist becomes unable to complete the Consulting Agreement due to incapacitation or death, such incapacity or death will not be deemed a breach of the Consulting Agreement or a default on the part of the Artist. However, nothing in this section will 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 the Consulting Agreement or the City may assign the Artist's obligations and the Scope of Services under the Consulting Agreement to another Artist or consultant for completion, which will be in accord with the designs and 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 (such approval must be provided within a reasonable amount of time, otherwise such approval requirement will be deemed waived), and the new artist or consultant agrees in writing to comply with the Consulting Agreement. However, the artwork will 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 will retain all the Artist's rights under this **Exhibit B**.

B.1.2 Death. In the event of the Artist's death, the Consulting Agreement will terminate effective the date of death. At the City's request, the Artist's executor must deliver to the City the artwork proposal and the artwork in whatever form or degree of completion either may be at the time. If any step in the Scope of Services is incomplete on the date of the Artist's death, the City may assign the Artist's obligations and the Scope of Services under the Consulting Agreement to another artist or consultant for completion, which will be in accord with the designs and specifications previously approved by the City, if any, provided that the original Artist's executor approves of the new artist or consultant (such approval must be provided within a reasonable amount of time, otherwise such approval requirement will be deemed waived), and the new artist or consultant agrees in writing to comply with the Consulting Agreement. However, the artwork will 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 will retain all the Artist's rights under this **Exhibit B**. If the artwork is in unfinished stages of fabrication or installation by the City at the time of the Artist's death, the title to the artwork will automatically transfer to the City.

B.1.3 Waiver of Claims. The Artist agrees, for the Artist, the Artist's heirs, executors, administrators, successors, assigns, and all those claiming under or through the Artist, that the completion of the work by a new artist as provided for herein will 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 will 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; the artwork is unique, original, will be and will remain an edition of one, and does not infringe upon any copyright or the rights of any person, except as otherwise disclosed in writing to the City; 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 the Consulting Agreement; the artwork is free and clear of any liens from any source whatsoever; all artwork created or performed by the Artist under the Consulting Agreement, whether created by the Artist alone or in collaboration with others, is wholly original with the Artist and does not infringe upon or violate the rights of any third party; the Artist has the full power to enter into and perform the Consulting Agreement and to make the grant of rights contained in the Consulting Agreement; and all services performed hereunder will be performed in accordance with all applicable rules, policies, laws, regulations, and ordinances, 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 Artist's 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 of the completed and executed Transfer of Title document in **Exhibit E** to the Consulting Agreement.

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 must, 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 must give notice to the Artist of such breach with reasonable promptness.

B.2.3 Breach of Warranty. If, within one year from the date the artwork is formally accepted, 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** to the Consulting Agreement, accepted that it may occur, it will not be deemed a breach for purposes of the Consulting 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 will 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 will be notified in writing when an adjustment is necessary and the City will 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 manual submitted by the Artist pursuant to Section A.16 of **Exhibit A** to the Consulting Agreement.

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 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 must 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 for the City pursuant to the Consulting Agreement, will become the property of the City. The Artist must 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.

B.4.1 Copyright Registration. The Artist must, 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 will be unique, the Artist must not make any additional exact-duplicate, two or three-dimensional, reproductions of the final artwork, nor may the Artist grant permission to others to do so except with the written permission of the City. However, nothing herein prevents the Artist from creating other artworks in the Artist's manner and style of artistic expression.

B.5.1 City's License to Reproduce. The Artist grants the City a nonexclusive, irrevocable, perpetual, and royalty-free license to reproduce the artwork for all noncommercial City educational, public relations, tourism, and arts promotional purposes including, but not limited to, displaying the artwork, reprinting the 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 by any available means. Such reproductions and transmissions may include 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 all means or methods now known or hereafter invented in connection with City activities. As limited by the terms described in this licensing paragraph, City may authorize others to reproduce the artwork through separate licensing agreements that duly authorize such reproduction. Any such authorized reproduction by the City or others under its control will credit the Artist. The license granted to City through this licensing paragraph will last in perpetuity beyond termination of the Agreement.

B.5.2 Reproductions for Commercial Purposes. If the City wishes to make reproductions of the artwork for commercial purposes, the parties must execute a separate agreement to address the terms of the commercial license granted by the Artist, and the royalty the Artist will 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 will credit the City and the Artist with © Artist's Name & Date of Completion.

B.6 Acknowledging the City. The Artist must 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 must not, during the performance of the Consulting 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 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 will have the right, in its sole discretion, to require Artist to produce, at Artist's own expense, a 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 elected officials, 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, intellectual property, or other 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 is entitled to, 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 the Consulting Agreement, including but not limited to, attorney's fees.

B.9 City's Right to Repair and Conserve. The City has the right to determine when and if repairs and restorative conservation to the Artwork will be made. Subject to Sections B.11-B.13 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 the Consulting Agreement when practicable. In the event that the City makes repairs or restorative conservation not approved by the Artist, the Artist will 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, must be made in accordance with professional conservation standards and in accordance with the maintenance manual provided to the City by the Artist pursuant to Section A.16 of **Exhibit A** to the Consulting Agreement.

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 Artist and the City acknowledge that the Artist may have certain rights under the federal Visual Artists Rights Act of 1990 (VARA). The Artist agrees that 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. If the artwork cannot be moved, removed, or otherwise altered or modified without causing the artwork destruction, distortion, mutilation, or other modification, then the City agrees to give the Artist 90 calendar days notice of its intended action affecting the artwork, except in cases

where a threat to public safety requires immediate removal. In such notice, the Artist will 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 the Consulting Agreement, and except as otherwise provided for in the Consulting Agreement, the Artist agrees to waive any right that the Artist or the Artist's heirs, beneficiaries, devises, or personal representatives 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.11.2 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 the Consulting 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.12 Rights of Artist's Heirs, Successors, and Assigns. The Artist's VARA and California Civil Code Section 987 rights under the Consulting Agreement shall cease with the Artist's death and will not extend to the Artist's heirs, successors, or assigns.

B.13 Conflict. The terms of the Consulting Agreement and this Exhibit B are 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 the Consulting Agreement is in direct conflict with those rights. The parties acknowledge that the Consulting Agreement supersedes those laws to the extent that the Consulting Agreement is in conflict therewith.

B.14 Sub-consultants: Ownership of Documents. The Artist must 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 for the City pursuant to the Consulting Agreement will become the property of the City. The Artist or sub-consultant must deliver such documents to the City whenever reasonably requested to do so by the City. This language must be in contracts between the Artist and any sub-consultants.

B.15 Sub-consultants: Transfer of Title. The Artist must require each sub-consultant to agree that title to the artwork will pass to the City upon the City's written final acceptance and payment for the artwork pursuant to **Exhibit A** to the Consulting Agreement. This language must be in contracts between the Artist and any sub-consultants.

B.16 Sub-consultants: Copyright Ownership. The Artist must require each sub-consultant to agree that the Artist retains all rights to the artwork 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. This language must 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 must 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 upon Artist's receipt of each appropriate City Notice below:

Payment #1 - $5,000 upon Artist's receipt of the City's Notice to Proceed with the Services as an advance payment for Services performed up to and including the presentation of the Preliminary Artwork Idea (Exhibit A, Sections A.1 and A.10);

Payment #2 - $5,000 upon Artist's receipt of City's Notice of Approval for Preliminary Artwork Idea as an advance payment for Services performed up to and including completion of the Schematic Artwork Proposal (Exhibit A, Sections A.10.1 and A.11);

Payment #3 - $5,000 upon Artist's receipt of the City's Notice of Approval for the Schematic Artwork Proposal as an advance payment for Services performed up to and including completion of the Final Artwork Proposal (Exhibit A, Sections A.11.5.1 and A.12);

Payment #4 - $30,000 upon Artist's receipt of the City's Notice of Approval for the Final Artwork Proposal to proceed with Services as an advance payment for Services performed up to and including creation of the Construction Documents, if they are deemed necessary (Exhibit A, Sections A.12.2.1 and A.13);

Payment #5 - $10,000 upon Artist's receipt of City's Notice of Approval for the Fabrication Progress Report as an advance payment to proceed with Services up to and including completion of fabrication of the artwork and issuance of the Notice of Fabrication Completion (Exhibit A, Sections A.14.2 and A.14.3);

Payment #6 - $10,000 upon Artist's receipt of City's Notice to Proceed with Transport as an advance payment for transportation of the artwork (Exhibit A, Section A.14.4); and

Payment #7 - $5,000 upon Artist's receipt of City's Notice of Artwork Acceptance (Exhibit A, Section A.19).

The Artist shall submit an invoice to City for each appropriate milestone, including a description of completed services, within 10 days of receiving the corresponding City Notice.

EXHIBIT D

SCHEDULE OF WORK

The Artist agrees to adhere to the following schedule:

Preliminary Artwork Idea. Submit Preliminary Artwork Idea for the review process (Exhibit A, Section A.10): April 20, 2026

Schematic Artwork Proposal. Submit Schematic Artwork Proposal for the review process (Exhibit A, Section A.11): June 26, 2026

Final Artwork Proposal. Submit Final Artwork Proposal for the review process (Exhibit A, Section A.12): July 31, 2026

Construction Documents. Submit Construction Documents for the review process (Exhibit A, Section A.13): September 30, 2026

Fabrication Progress Report. Submit fabrication progress report to the Project Manager (Exhibit A, Section A.14.2): February 26, 2027

Notice of Fabrication Completion. Submit notice of fabrication completion to the Project Manager (Exhibit A, Section A.14.2): April 30, 2027

Notice of Artwork Completion. Submit a Notice of Artwork Completion (Exhibit A, Section A.15.4): December 15, 2028

ADJUSTMENT OF SCHEDULE OF WORK: The City reserves the right, in its sole judgment and discretion, to make any reasonable adjustments to the Schedule of Work.

NOTE: All work must be completed by the Agreement's expiration date stated in Section 2.1.

EXHIBIT E

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 Consulting 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 _____before me, _____, personally appeared _____, 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 F

INSTRUCTION SHEET FOR

DISCLOSURE DETERMINATION FOR CONSULTANT (Form CC-1671)

Use the "Disclosure Determination for Consultant" form (CC-1671) to report the disclosure requirement for any consultant hired to provide services to the City of San Diego or the boards, commissions and agencies that fall under the City of San Diego's jurisdiction.

2 California Code of Regulations defines a "consultant" as an individual who, pursuant to a contract with a state or local government agency, either makes a governmental decision or serves in a staff capacity with the state or local government agency and in that capacity participates in making a governmental decision.

The "Disclosure Determination for Consultant" form is completed for all consultants under contract with the City of San Diego or the boards, commissions and agencies that fall under the City of San Diego's jurisdiction. Please follow the step-by-step directions:

1. List the department, board, commission or agency requesting the consultant service.
2. List the consulting company. If known, also list the individual(s) who will be providing the consultant services.
3. List the mailing address.
4. List the e-mail address of individual(s) providing the consultant service.
5. Provide the date the individual(s) will start providing the consultant service.
6. List all duties/responsibilities the consultant will have. This list will enable you to determine the disclosure requirement for the consultant.
7. Determine the consultant's disclosure category. Your consultant should be required to disclose only those economic interests which could potentially create a conflict of interest as he/she performs his/her contractual obligations. For ideas about possible disclosure categories, review those in your department's, board's, commission's or agency's conflict of interest code, available at:

   www.sandiego.gov/city-clerk/elections/eid/codes.shtml

Please fill out the entire "Disclosure Determination for Consultant" form, and have it signed by the appropriate authority. (Individuals with signing authority are described in your conflict of interest code as part of the disclosure requirement for Consultants.) Forward the original form to the City Clerk's Office, MS 2A.

EXHIBIT F

DISCLOSURE DETERMINATION FOR CONSULTANT

**Must be signed by department director, agency president or other individual authorized by the appropriate conflict of interest code regarding consultants.*

1. Department / Board / Commission / Agency Name: Cultural Affairs, Economic Development Department

2. Name of Specific Consultant & Company: Marlana Adele Vassar

3. Address, City, State, ZIP: 6915 Wiltsie St, Pittsburgh, PA 15206

4. Project Title (as shown on 1472, "Request for Council Action"): Emerald Hills Public Art Project H2626773

5. Consultant Duties for Project: Design, fabrication, transport of artwork to site, and consultation during install of artwork for Emerald Hills Park Public Art Project in an amount not to exceed $70,000

6. Disclosure Determination [**select applicable disclosure requirement**]:

☒ Consultant will not be "making a governmental decision" or "serving in a staff capacity." No disclosure required.

- or -

☐ Consultant will be "making a governmental decision" or "serving in a staff capacity." Consultant is required to file a Statement of Economic Interests with the City Clerk of the City of San Diego in a timely manner as required by law. [**Select consultant's disclosure category.**]

☐ Full: Disclosure is required pursuant to the broadest disclosure category in the appropriate Conflict of Interest Code.

- or -

☐ Limited: Disclosure is required to a limited extent. [**List the specific economic interests the consultant is required to disclose.**]

By: Christie A. Marcella, Deputy Director — 5/6/2026

[Name/Title]* — [Date]

EXHIBIT F

Once completed, with all questions answered and an authorized signature affixed, please forward the original form to the City Clerk's Office, MS 2A. Keep a copy with the contract.

DEFINITION OF "CONSULTANT"

2 California Code of Regulations defines a "consultant" as an individual who, pursuant to a contract with a state or local government agency:

(A) Makes a governmental decision whether to:

1. Approve a rate, rule or regulation;
2. Adopt or enforce a law;
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
4. Authorize the City to enter into, modify, or renew a contract provided it is the type of contract that requires City approval;
5. Grant City approval to a contract that requires City approval and to which the City is a party, or to the specifications for such a contract;
6. Grant City approval to a plan, design, report, study, or similar item;
7. Adopt, or grant City approval of, policies, standards, or guidelines for the City, or for any subdivision thereof; or

(B) Serves in a staff capacity with the City and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code.

An individual "serves in a staff capacity" if he or she performs substantially all the same tasks that normally would be performed by staff member of a governmental entity. In most cases, individuals who work on only one project or a limited range of projects for an agency are not considered to be working in a "staff capacity." The length of the individual's service to the agency is relevant. Also, the tasks over the relevant period of time must be substantially the same as a position that is or should be specified in the City's conflict of interest code.

An individual "participates in making a governmental decision" if he or she: (1) negotiates, without substantive review, with a governmental entity or private person regarding the decision; or (2) advises or makes recommendations to the decision-maker, by conducting research or an investigation, preparing or presenting a report, analysis or opinion which requires the exercise of judgment on the part of the individual and the individual is attempting to influence the decision.

City of San Diego
CONTRACTOR STANDARDS
Pledge of Compliance

The City of San Diego has adopted a Contractor Standards Ordinance (CSO) codified in section 22.3004 of the San Diego Municipal Code (SDMC). The City of San Diego uses the criteria set forth in the CSO to determine whether a bidder or proposer has the capacity to fully perform the contract requirements and the business integrity to justify the award of public funds. This completed Contractor Standards Pledge of Compliance (Pledge of Compliance) signed under penalty of perjury must be submitted with each bid and proposal. If an informal solicitation process is used, the bidder must submit this completed Pledge of Compliance to the City prior to execution of the contract. All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, Respondents must provide responses on Attachment "A" to the Pledge of Compliance and sign each page. Failure to submit a signed and completed Pledge of Compliance may render the bid or proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed Pledge of Compliance is submitted. A submitted Pledge of Compliance is a public record and information contained within will be available for public review except to the extent that such information is exempt from disclosure pursuant to applicable law.

A. BID/PROPOSER/SOLICITATION TITLE:

Emerald Hills Public Art Project H2626773

B. BIDDER PROPOSER INFORMATION

Marlana LLC		Marlana Adele Vassar	
Legal Name		DBA	
6915 Wiltsie St	Pittsburgh	PA	15206
Street Address	City	State	Zip
Marlana Adele Vassar, Lead Artist	724.880.5858	n/a	
Contact Person, Title	Phone	Fax	

Provide the name, identity, and precise nature of the interest* of all persons who are directly or indirectly involved** in this proposed transaction (SDMC § 21.0103). Use additional pages if necessary.

* The precise nature of the interest includes:

- the percentage ownership interest in a party to the transaction,
- the percentage ownership interest in any firm, corporation, or partnership that will receive funds from the transaction,
- the value of any financial interest in the transaction,
- any contingent interest in the transaction and the value of such interest should the contingency be satisfied, and
- any philanthropic, scientific, artistic, or property interest in the transaction.

** Directly or indirectly involved means pursuing the transaction by:

- communicating or negotiating with City officers or employees,
- submitting or preparing applications, bids, proposals or other documents for purposes of contracting with the City, or
- directing or supervising the actions of persons engaged in the above activity.

Name	Title/Position
Pittsburgh, PA	
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	100% interest

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Use Attachment “A” if additional pages are necessary.

C. OWNERSHIP AND NAME CHANGES:

1. In the past five (5) years, has your firm changed its name?

☐ Yes ☒ No

If **Yes**, use Attachment "A" to list all prior legal and DBA names, addresses, and dates each firm name was used. Explain the specific reasons for each name change.

2. In the past five (5) years, has a firm owner, partner, or officer operated a similar business?

☐ Yes ☒ No

If **Yes**, use Attachment "A" to list names and addresses of all businesses and the person who operated the business. Include information about a similar business only if an owner, partner, or officer of your firm holds or has held a similar position in another firm.

D. BUSINESS ORGANIZATION/STRUCTURE:

Indicate the organizational structure of your firm. Fill in only one section on this page. Use Attachment "A" if more space is required.

☐ **Corporation**
Date incorporated: ___/___/___ State of incorporation: _____

List corporation's current officers:

President: _____

Vice Pres.: _____

Secretary: _____

Treasurer: _____

Is your firm a publicly traded corporation? ☐ **Yes** ☐ **No**

If **Yes**, name those who own ten percent (10%) or more of the corporation's stocks:

_____

_____

_____

_____

☒ **Limited Liability Company**
Date formed: ___/___/ 1/1/2011 State of formation: Pennsylvania

List names of members who own ten percent (10%) or more of the company:

Marlana Adele Vassar 100%

_____

_____

_____

_____

☐ **Partnership**
Date formed: ____/____/____ State of formation: _____

List names of all firm partners:

_____

_____

_____

_____

☐ **Sole Proprietorship** Date started: ____/____/____

List all firms you have been an owner, partner or officer with during the past five (5) years. Do not include ownership of stock in a publicly traded company:

_____

_____

_____

_____

☐ Joint Venture Date formed: ____/____/____

List each firm in the joint venture and its percentage of ownership:

_____

_____

_____

_____

Note: To be responsive, each member of a Joint Venture must complete a separate Pledge of Compliance.

E. FINANCIAL RESOURCES AND RESPONSIBILITY:

1. Is your firm preparing to be sold, in the process of being sold, or in negotiations to be sold?
   ☐ **Yes** ☒ **No**

   If **Yes**, use Attachment "A" to explain the circumstances, including the buyer's name and principal contact information.

2. In the past five (5) years, has your firm been denied bonding?
   ☐ **Yes** ☒ **No**

   If **Yes**, use Attachment "A" to explain specific circumstances; include bonding company name.

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?

☐ **Yes** ☒ **No**

If **Yes**, use Attachment "A" to explain specific circumstances.

4. In the past five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

   ☐ **Yes** ☒ **No**

   If **Yes**, use Attachment "A" to explain specific circumstances.

5. Within the last five (5) years, has your firm filed a voluntary petition in bankruptcy, been adjudicated bankrupt, or made a general assignment for the benefit of creditors?

   ☐ **Yes** ☒ **No**

   If **Yes**, use Attachment "A" to explain specific circumstances.

6. Please provide the name of your principal financial institution for financial reference. By submitting a response to this Solicitation Contractor authorizes a release of credit information for verification of financial responsibility.

Name of Bank: PNC Bank

Point of Contact: Michelle Kinzel

Address: 915 Freeport Road, Pittsburgh, PA 15238

Phone Number: 412.781.2282

7. By submitting a response to a City solicitation, Contractor certifies that he or she has sufficient operating capital and/or financial reserves to properly fund the requirements identified in the solicitation. At City's request, Contractor will promptly provide to City a copy of Contractor's most recent balance sheet and/or other necessary financial statements to substantiate financial ability to perform.

F. PERFORMANCE HISTORY:

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?

   ☐ **Yes** ☒ **No**

   If **Yes**, use Attachment "A" to explain specific circumstances.

2. In the past five (5) years, has a public entity terminated your firm's contract for cause prior to contract completion?

   ☐ **Yes** ☒ **No**

   If **Yes**, use Attachment "A" to explain specific circumstances and provide principal contact information.

3. In the past five (5) years, has your firm entered into any settlement agreement for any lawsuit that alleged contract default, breach of contract, or fraud with or against a public entity?

   ☐ **Yes** ☒ **No**

   If **Yes**, use Attachment "A" to explain specific circumstances.

4. Is your firm currently involved in any lawsuit with a government agency in which it is alleged that your firm has defaulted on a contract, breached a contract, or committed fraud?

   ☐ **Yes** ☒ **No**

   If **Yes**, use Attachment "A" to explain specific circumstances.

5. In the past five (5) years, has your firm, or any firm with which any of your firm's owners, partners, or officers is or was associated, been debarred, disqualified, removed, or otherwise prevented from bidding on or completing any government or public agency contract for any reason?

   ☐ **Yes** ☒ **No**

   If **Yes**, use Attachment "A" to explain specific circumstances.

6. In the past five (5) years, has your firm received a notice to cure or a notice of default on a contract with any public agency?

   ☐ **Yes** ☒ **No**

   If **Yes**, use Attachment "A" to explain specific circumstances and how the matter resolved.

7. Performance References:

   Please provide a minimum of three (3) references familiar with work performed by your firm which was of a similar size and nature to the subject solicitation within the last five (5) years.

Company Name:	Dan McDowell - Senior Associate/Project Manager for LBA Architecture
Contact Name and Phone Number:	Contact: mcdowell@lba-la.com • 412.488.8822 X205
Contact Email:	Address: 95 S 10th St, Pittsburgh, PA 15203
Address:	January 1, 2024
Contract Date:	$30,000
Contract Amount:	Completed community engagement and initial concepts, collected feedback and developed designs for sculptural wayfindings along several blocks in Pittsburgh's Garfield neighborhood, including bus station graphics, stamped asphalt, custom bike racks and concrete formliner benches. The project will be completed in 2026.
Requirements of Contract:	

Company Name:	Diane Daniels - Founder/Executive Director for East Hills Consensus Group
Contact Name and Phone Number:	Contact: easthillsconsensusgroup@gmail.com • 412.310.3927
Contact Email:	Address: P.O. Box 8723, Pittsburgh, PA 15221
Address:	May 2024-November 2025
Contract Date:	$20,000
Contract Amount:	: Completed community engagement and social outreach efforts to develop the artwork concept, fabricated and installed 8 sculptures + a plinth, and held multiple studio events and artists' talks before, during, and after the installation.
Requirements of Contract:	

Company Name:	Clare Drobot - Co-Artistic Director for City Theatre Company
Contact Name and Phone Number:	Contact: cdrobot@citytheatrecompany.org • 412.431.4400 ext. 244
Contact Email:	
Address:	Address: 1300 Bingham Street | Pittsburgh, PA 15203
Contract Date:	January 1, 2022-July 7, 2022
Contract Amount:	$10,000
Requirements of Contract:	Completed community engagement, artist talks, designed and painted the mural.

G. COMPLIANCE:

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executive, or manager been criminally penalized or found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for violating any federal, state, or local law in performance of a contract, including but not limited to, laws regarding health and safety, labor and employment, permitting, and licensing laws?

   ☐ **Yes** ☒ **No**

   If **Yes**, use Attachment "A" to explain specific circumstances surrounding each instance. Include the name of the entity involved, the specific infraction(s) or violation(s), dates of instances, and outcome with current status.

2. In the past five (5) years, has your firm been determined to be non-responsible by a public entity?

   ☐ **Yes** ☒ **No**

   If **Yes**, use Attachment "A" to explain specific circumstances of each instance. Include the name of the entity involved, the specific infraction, dates, and outcome.

H. BUSINESS INTEGRITY:

1. In the past five (5) years, has your firm been convicted of or found liable in a civil suit for making a false claim or material misrepresentation to a private or public entity?

   ☐ **Yes** ☒ **No**

   If **Yes**, use Attachment "A" to explain specific circumstances of each instance. Include the entity involved, specific violation(s), dates, outcome and current status.

2. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a crime, including misdemeanors, or been found liable in a civil suit involving the bidding, awarding, or performance of a government contract?

   ☐ **Yes** ☒ **No**

   If **Yes**, use Attachment "A" to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

3. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a federal, state, or local crime of fraud, theft, or any other act of dishonesty?

   ☐ **Yes** ☒ **No**

If **Yes**, use Attachment "A" to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

I. WAGE COMPLIANCE:

In the past five (5) years, has your firm been required to pay back wages or penalties for failure to comply with the federal, state or local prevailing, minimum, or living wage laws?

☐ **Yes** ☒ **No**

If **Yes**, use Attachment "A" to explain the specific circumstances of each instance. Include the entity involved, the specific infraction(s), dates, outcome, and current status.

J. STATEMENT OF SUBCONTRACTORS:

Please provide the names and information for all subcontractors used in the performance of the proposed contract, and what portion of work will be assigned to each subcontractor. Subcontractors may not be substituted without the written consent of the City. Use Attachment "A" if additional pages are necessary. If no subcontractors will be used, please check here ☒ Not Applicable.

Company Name:

Contact Name and Phone Number:

Contact Email:

Address:

Contract Date:

Sub-Contract Dollar Amount:

Requirements of Contract:

What portion of work will be assigned to this subcontractor:

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Check One) **Yes** ☐ **No** ☐

If **Yes**, Contractor must provide valid proof of certification with the response to the bid or proposal.

K. STATEMENT OF AVAILABLE EQUIPMENT:

List all necessary equipment to complete the work specified using Attachment "A". In instances where the required equipment is not owned by the Contractor, Contractor shall explain how the equipment will be made available before the commencement of work. The City of San Diego reserves the right to reject any response when, in its opinion, the Contractor has not demonstrated he or she will be properly equipped to perform the work in an efficient, effective manner for the duration of the contract period.

If no equipment is necessary to complete the work specified, please check here ☒ Not Applicable.

L. TYPE OF SUBMISSION: This document is submitted as:

☒ Pledge of Compliance Initial submission.

OR

☐ Update to prior Pledge of Compliance dated _____/_____/_____

Complete all questions and sign below.

Under penalty of perjury under the laws of the State of California, I certify that I have read and understand the questions contained in this Pledge of Compliance, that I am responsible for completeness and accuracy of the responses contained herein, and that all information provided is true, full and complete to the best of my knowledge and belief. I agree to provide written notice to the Purchasing Agent within five (5) business days if, at any time, I learn that any portion of this Pledge of Compliance requires an updated response. Failure to timely provide the Purchasing Agent with written notice is grounds for Contract termination.

I, on behalf of the firm, further certify that I and my firm will comply with the following provisions of SDMC section 22.3004:

(a) I and my firm will comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.

(b) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of receiving notice that a government agency has begun an investigation of me or my firm that may result in a finding that I or my firm is or was not in compliance with laws stated in paragraph (a).

(c) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).

(d) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).

(e) I and my firm will cooperate fully with the City during any investigation and agree to respond to a request for information within ten (10) working days.

Failure to sign and submit this form with the bid/proposal shall make the bid/proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed Pledge of Compliance is submitted.

Marlana Adele Vassar, Lead Artist	Marlana Adele Vassar	March 24th, 2026
Name and Title	Signature	Date

City of San Diego
CONTRACTOR STANDARDS
Pledge of Compliance Attachment "A"

- Provide additional information in space below. Use additional Attachment "A" pages as needed. Each page must be signed. Print in ink or type responses and indicate question being answered.
- If not using this Attachment "A", please check here [X] Not Applicable.

I have read the matters and statements made in this Pledge of Compliance and Attachment "A"(s) there to and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters, I believe the same to be true. I certify under penalty of perjury that the foregoing is true and correct.

Marlana Adele Vassar, Lead Artist	Marlana Adele Vassar	March 24th, 2026
Print Name, Title	Signature	Date