

SOUTHEASTERN ECONOMIC DEVELOPMENT CORPORATION & CITY OF SAN DIEGO

CALL FOR ARTISTS / REQUEST FOR QUALIFICATIONS (RFQ)

Southcrest Trails Park
San Diego, CA

\$32,000 for Public Art Design, Fabrication & Installation

INTRODUCTION

An artist or artist team is sought to design, fabricate and install an artwork or artworks, responding to the unique history and context of Southcrest Trails Park in Southeastern San Diego.

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

ELIGIBILITY

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

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

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

BUDGET

\$32,000 for artwork design, fabrication, and installation. The budget is all-inclusive and must cover all costs associated with the conceptualization and realization of the artwork(s). Artists are responsible for travel expenses including travel to interviews, if invited.

TIMELINE

RFQ released—March 1, 2010

Pre-submittal meeting—March 5, 2010, 3:30 p.m.

Question cut-off date—March 10, 2010

Application deadline—March 19, 2010, 4:00 p.m.

Shortlisting and final selection of one artist—March 22 – April 9, 2010

Agreement execution—April 2010

Design development and approval phases—Spring/Summer 2010

Fabrication and installation phases—Summer 2012

Completion—Winter 2013

SITE

San Diego's Southcrest Trails Park is within the Chollas Creek floodplain, part of the smallest watershed in San Diego and containing the highest population density. The Park itself is located northeast of the Interstate 5 and Interstate 15 freeway junction, south of Boston Avenue and west of South 38th Street.

OVERVIEW

Like many waterways in southern California, Chollas Creek once served as a resource for those who chose to live along its banks, including the Kumeyaay people, European settlers and subsequent immigrants from many other nations. Urbanization of the watershed and channelization of the creek conceals knowledge of the rich cultural and ecological benefits of Chollas Creek. Over the years, the creek became highly contaminated, overgrown with invasive plants, and the site of illicit activities. In the past 50 years, the creek has lost many of its natural geographic features due to the construction of freeways and other urban developments that have segmented the creek so that in some areas it is barely recognizable as an actual creek system.

In 1969 the California State Department of Transportation (CalTrans) began acquiring land along the tidal delta of Chollas Creek for the purpose of building a one-mile corridor (State Route 252) through a community that did not want one. The residents of the Southcrest neighborhood, through a series of collaborative grassroots efforts, educated itself, engaged the political system, and 16 years later defeated the proposed freeway. In 1985, CalTrans sold all the annexed land to the Southeastern Economic Development Corporation (SEDC) for redevelopment, but only after seizing and destroying 280 homes, leaving a 66-acre scar through the center of Southcrest. In 1986, SEDC implemented the Southcrest Redevelopment Project with a 40-year life span, to heal and rebuild this community that had been left economically and politically marginalized. In the first two decades after the project began, State Route 252 Corridor was consistently identified in various reports as decimated, blighted, non-productive real estate and a major obstacle to the area's revitalization.

Through a series of recent redevelopment efforts, the length of the State Route 252 corridor has been revitalized with the establishment of a diverse commercial center, the construction of more than 99 affordable single-family homes, and the development of a municipal park, which is connected to trails that follow the Chollas Creek. The creek is also a source of hope and unity for community

members. Witnessing the degradation of the creek, concerned individuals and groups such as Groundwork San Diego and the City of San Diego have begun working towards a vision of Chollas Creek as a greenbelt connecting the neighborhoods along its banks, improving the health of the creek and the surrounding community, and restoring the natural habitat and function of the creek. The park and trail systems have evolved over several phases and, currently, a 5-acre section at the west end of the Chollas flood plain is being renewed. Landscaping, trail enhancement and the inclusion of public art are part of the current work.

The City of San Diego Park and Recreation Department will employ a design firm to plan improvements to the southern portion of the flood plain. The artist selected through this competitive process will work with the design firm to integrate art into the overall project. The art is funded by the SEDC as set forth in City of San Diego Council Policy 900-11. Additionally, the City of San Diego Commission for Arts and Culture (Commission) will administer the artist selection process related to the Southcrest Trails Park public art project and the resulting artwork will be accessioned into the City's Civic Art Collection.

ARTIST SELECTION PROCESS, PANEL, AND CRITERIA

A panel appointed by the Commission will review and evaluate the applications utilizing the selection criteria given below. (Commission staff may pre-screen each application to verify eligibility and to evaluate responsiveness to the criteria. Applications deemed to be marginally responsive may not be forwarded to the panel for review.) The panel may be comprised of community members and visual art/design experts. The panel may create a short-list of at least three of the most qualified artists and may interview the short-listed artists. It is mandatory that the designated lead artist attend any such interview. Artists who accept an invitation to interview will not be expected to develop proposals. However, in the interviews, artists will be expected to discuss past approaches and working methods as well as answer questions relating to working on projects of this nature. Based on these evaluations, the panel will recommend one artist for the contract award.

Criteria used to evaluate artists will be:

- Uniqueness of vision and strength of creativity
- Originality of methods used to convey meaning through art
- Competence with selecting media to communicate concepts
- Quality of workmanship
- Experience collaborating with members of a design team such as architects, landscape architects and engineers
- Experience with engaging community members in the art process
- Experience with creating site-specific artworks for a public setting
- Demonstrated interest in and understanding of the project
- Strength of professionalism and communication skills

- Proven ability to self-direct, self-motivate and conduct business without excessive oversight
- If applicable, cohesiveness of team members
- If applicable, past performance on contracts with the City of San Diego

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

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

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

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

SCOPE OF WORK

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

- A. Conduct research, which includes examining the site, reviewing pertinent documents, meeting with the SEDC/City staff, consultants to the SEDC/City, members of the community, etc.
- B. Create artwork proposal(s)
- C. Prepare verbal, written and visual presentations to show schematic and final artwork proposal(s) to stakeholders. Presentations should include:
 1. A preliminary depiction of the proposed artwork(s) in the form of a to-scale drawing accompanied by either a three-dimensional rendering or a three dimensional model, if

applicable

2. A narrative description of the sources and methodology used to develop the proposal(s) which may include research, findings and/or input from the community and key stakeholders plus information about the scale, location, context, relationship of components, materials, operating requirements, maintenance requirements, and fabrication and installation methods
 3. A site plan
 4. A photographic survey of the site and other images depicting the site context
 5. Material samples, if available
 6. Documentation of compliance with ADA requirements, if necessary
 7. An outline of the anticipated budget for full design, fabrication, installation, maintenance and operating expenses
- D. Participate in approximately three in-person meetings/presentations with stakeholders (excluding the interview and any meetings solely with the design team) and respond to feedback.
- E. Engage subcontractors, if necessary.
- F. Create and submit engineer-approved construction documents, if necessary
- G. Obtain building permits, if necessary
- H. Perform site preparation, if necessary
- I. Fabricate, transport, and install artwork(s)
- J. Submit documentation images and a maintenance/operations report
- K. Participate in ribbon-cutting ceremony and/or outreach to press, if requested
- L. Coordinate with the SEDC/City staff and consultants to the SEDC/City, as required

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

PRE-SUBMITTAL MEETING

The purpose of a pre-submittal meeting is to provide an opportunity for artists to ask questions about the RFQ. Attendance at the pre-submittal meeting is optional.

Pre-Submittal Meeting

Friday, March 5, 2010

3:30 p.m. – 4:30 p.m.

Civic Center Plaza

1200 Third Avenue, Floor 9, Suite 924, Large Conference Room

San Diego, CA 92101

APPLICATION MATERIALS

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

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

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

Digital Images of Past Work with Annotations

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

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

Letter of Interest

Submit a one-page written narrative in .pdf format describing your passion for and comprehension of the purpose of the project as well as a description of your methodology for conceptualizing and creating art. Please do not use this letter as a forum for reiterating information already contained in your résumé. This is your opportunity to convey your understanding of what we're looking for, why you're well-matched for the project, what is distinctly "you" in your approach to creating art, what excites you about this project, and what the panel can't tell about your qualifications and your art just from looking at your résumé and examples of past work.

The letter must prominently include the name, address, telephone number, and e-mail address of the applicant. **At the end of the letter, be sure to create a statement that specifies you "have read, understand, and agree to all the *Conditions for Submission*" in this *Call for Artists*.** Your letter must

also contain your signature either by executing a “wet-ink” signature and then scanning the document or inserting an “electronic signature.” In either case, it should be your recognizably **handwritten signature**, not just an italicized font.

Professional Résumé with References

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

Tips for Submitting a Competitive Application

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

DIRECTIONS AND DEADLINE FOR SUBMISSION

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

Submitting via email:

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

Submitting a CD via delivery:

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

Applications must be **received** no later than 4:00 p.m. on Friday, March 19, 2010. Acknowledgement of the SEDC/City's receipt of an application will be sent to each applicant via email. The CCDC/City is not obligated to notify applicants when applications are late, incomplete, inaccessible or otherwise ineligible.

Did you remember to:

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

QUESTIONS?

After reading this entire *Call for Artists*, please submit questions in writing by March 10, 2010 to Nigel Brookes at nbrookes@sandiego.gov. Questions will not be taken after March 10, 2010. If questions lead to an addendum to this *Call for Artists*, the addendum will be posted on the Commission's website at www.sandiego.gov/arts-culture/publicart.shmhtml.

CONDITIONS FOR SUBMISSION

Rights Pertinent to This Solicitation

The Agency/SEDC/City reserves the right to reject, in whole or in part, any responses to this solicitation that do not meet the selection criteria. Failure to provide the required application materials in the required formats shall be cause for the submission to be rejected as non-responsive. Failure to provide the application materials by 4:00pm on March 19, 2010 (delivery, not postmark) shall be cause for the submission to be rejected as non-responsive.

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

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

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

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

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

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

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

Contact With Personnel

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

Nigel Brookes, Arts Management Specialist

City of San Diego City for Arts and Culture

1200 Third Avenue, Suite 924

San Diego, CA 92101

nbrookes@sandiego.gov

Formal Approval of Contract

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

Public Disclosure

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

Confidential Solicitation

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

News Releases

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

Examination of Solicitation

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

Eligibility Restrictions

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

Use of Information

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

Definition of "Artist"

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

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

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

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

Contract Requirements

A version of the following language may appear in contracts between the Agency/SEDC/City and the applicant:

COPYRIGHT

In consideration of the ownership of the Artwork by the Agency/SEDC/City, the Copyright Holder does hereby grant a nonexclusive, irrevocable, royalty-free license to the Agency/SEDC/City, and to other parties duly authorized by the Agency/SEDC/City, to use the Artwork for noncommercial purposes including, but not limited to, exhibiting the Artwork; lending the Artwork; making two-dimensional reproductions of the Artwork by photography and/or by other means or methods now known or hereafter invented; exhibiting, distributing such two-dimensional reproductions. Such two-dimensional reproductions may include, but are not limited to, magazines, books, newspapers, journals, brochures and pamphlets, catalogues, films, television, video, websites, slides, negatives, prints and electronic media, DVD and/or CD.

ARTWORK REMOVAL.

The Artwork may be removed from the Project Site at any time. The Artist and the Agency/SEDC/City acknowledge that the Artist may have certain rights under the federal Visual Artists Rights Act of 1990 (VARA). The Artist acknowledges and understands that the installation of the Artwork at the Project Site may subject the Artwork to destruction, distortion, mutilation, or other modification due to the acts of third parties or to its removal, repair, maintenance, storage, or transfer of ownership.

LIMITED VARA WAIVER.

In consideration of the mutual covenants and conditions in this Agreement, and except as otherwise provided for in this Agreement, the Artist agrees to waive any right that the Artist may have under VARA to prevent the removal of the Artwork, or the destruction, distortion, mutilation, or other modification of the Artwork which arises from, is connected with, or is caused or claimed to be caused by the removal, repair, maintenance, storage, or transfer of ownership of the Artwork by the

Agency/SEDC/City, or its elected officials, officers, employees, agents, or representatives, or the presence of the Artwork at the Project Site.

CALIFORNIA CIVIL CODE SECTION 987 WAIVER.

The Artist and the Agency/SEDC/City acknowledge that the Artist may have certain rights under California Civil Code Section 987 which are not preempted by VARA. In consideration of the mutual covenants and conditions in this Agreement, the Artist waives any rights which the Artist or the Artist's heirs, beneficiaries, devisees, or personal representatives may have under California Civil Code Section 987 to prevent the removal, destruction, distortion, mutilation, or other modification of the Artwork.

RIGHTS OF ARTIST'S HEIRS, SUCCESSORS AND ASSIGNS.

The Artist's VARA rights under this Agreement shall cease with the Artist's death and do not extend to the Artist's heirs, successors or assigns.

HOLD HARMLESS.

The Artist agrees to defend, indemnify, protect and hold the Agency/SEDC/City its agents, officers and employees, harmless from and against all claims asserted, or liability established for damages or injuries to any person or property including to Artist's employees, agents, representatives or subcontractors, or judgments arising directly or indirectly out of obligations, work or services herein undertaken, which arise from, are connected with, are caused or claimed to be caused by the acts or omissions of the Artist, or the Artist's employees, agents, representatives or subcontractors. The obligation to indemnify shall be effective even if the passive negligence of the Agency/SEDC/City its agents, officers or employees contributes to the loss or claim. The Artist further agrees that the duty to defend includes attorneys fees and all costs associated with enforcement of this indemnification provision, defense of any claims arising from this Project; and, where a conflict of interest exists, or may exist between the Artist and the Agency/SEDC/City, the reasonable value of attorneys fees and all costs if the Agency/SEDC/City chooses at its own election, to conduct its own defense or participate in its own defense of any claim related to this Project. The Artist's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or willful misconduct of the Agency/SEDC/City, its agents, officers or employees. Without in any way limiting the generality of the foregoing, the Artist represents and warrants that any materials or deliverables, including but not limited to the Artwork Design and the Artwork (Works), provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If deliverables, materials or Works provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, Agency/SEDC/City shall have the right, in its sole discretion, to require Artist to produce, at Artist's own expense, new non-infringing materials, deliverables or Works as a means of remedying any claim of infringement in addition to any other remedy available to the Agency/SEDC/City under law or equity. Artist further agrees to indemnify and hold harmless the Agency/SEDC/City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, services or Works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). If a Third Party Claim of Infringement is threatened or made before Artist receives payment under this contract, Agency/SEDC/City shall be entitled, upon written notice to Artist, to withhold some or all of such payment.

---End of RFQ---