

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Hugh R. Riley, Assistant City Manager / 

DATE: February 18, 2011 (CC Meeting of 03/02/11)

SUBJECT: Consider Request for Qualifications for Public Art Project at the Ruben Castro Human Services Center

BACKGROUND & DISCUSSION

The Ruben Castro Human Services Center (RCHSC) project consists of two buildings totaling approximately 25,000 square feet (the Facility). Building A is 10,000 square feet and is designed to house non-emergency medical services. Building B is approximately 15,000 square feet and has been planned as an "Under-One-Roof" facility for various social services, educational uses, and charitable services. The Moorpark Arts Commission has studied the plans for the new facility as a location for public art as part of the City's Art in Public Places Program.

The Commission has developed the attached Request for Qualifications for the City Council's consideration. The overall design principles for the artwork, as recommended by the Arts Commission are:

- The theme "Family" is desirable, but the art is not limited to this concept.
- The art style is not limited or designated and may be historical, traditional or contemporary.
- The art may be of mediums including but not limited to metals, concrete, rock or paint.
- While the Human Resource Center is named after the individual Ruben Castro, the art should not be an individual likeness of him.
- No water feature will be considered.

The facility site plan is included with the RFQ along with several pictorial views of the buildings. While an ideal site for the artwork is the circular courtyard opening to the southeast, other options for artwork sites included the corridor between Buildings A and B and the northwest and north east corners of the building site.

The proposed timeline for the selection process is as follows:

March 7, 2011	RFQ released
April 22, 2011	Application deadline
April – May 2011	Short-listing and final selection of one artist
July 2011	Agreement execution
August – September 2011	Design Concept
October 2011 - January 2012	Fabrication and installation phases (may be extended as approved)
January 2012	Completion (to be unveiled at the Building's Grand Opening)

FISCAL IMPACT

Funds for the artwork are included in the approved budget for the Ruben Castro Human Services Center.

STAFF RECOMMENDATION

Approve Request for Qualifications and authorize proposal review process as contained in this report.

ATTACHMENT: Request for Qualifications and Sample Agreement



**CITY OF MOORPARK
MOORPARK ARTS COMMISSION**

REQUEST FOR QUALIFICATIONS (RFQ)

Ruben Castro Human Services Center Public Art

INTRODUCTION

An artist is sought to design, fabricate and install an artwork or artworks to be located at the City of Moorpark's Ruben Castro Human Services Center (the Center) currently under construction. The site is located on the east side of Spring Road, adjacent to the Police Services Center. The facility is intended as a one-stop location for various health and human services related activities.

Funding, not to exceed \$138,000, for the artwork is included in the Center project budget. The Moorpark Arts Commission (Commission) administers the artist selection process and the development of the artwork with final selection by the City Council.

DEADLINE

Applications must be received by

Friday, April 22, 2011, 3 P.M. PST

Applications received after the deadline will not be reviewed. The City of Moorpark (City) is not obligated to notify applicants when incomplete applications are received. Incomplete applications will not be reviewed. It is the responsibility of the applicant to ensure that applications are complete and arrive by the deadline.

ELIGIBILITY

Any professional artist who permanently resides in the State of California is eligible to apply.

Artists working in all mediums including but not limited to metals, concrete, rock or paint may apply.

Current City of Moorpark Arts Commissioners, employees of the City and/or the Moorpark Redevelopment Agency, and their business partners or their immediate family members may not apply.

BUDGET

Approximately one hundred thirty-eight thousand dollars (\$138,000.00) for design, fabrication, and installation.

The budget is all-inclusive and must cover design fees; travel expenses; all materials and fabrication costs; lighting and signage (if necessary); insurance costs; site-preparation costs; traffic control costs; engineering expenses; shipping and transportation to the site; installation; any applicable permit fees and taxes; any other expenses related to the design, fabrication, installation, and documentation of this project.

The selected artist may receive an initial contract for design services and a subsequent contract for fabrication and installation services.

PROJECT DESCRIPTION

The Ruben Castro Human Services Center proposed site and building design can be viewed on the attached images. Additional construction documents of the proposed facility are available on request.

The overall design principles for the artwork are:

- The theme "Family" is desirable, but the art is not limited to this concept.
- The art style is not limited or designated and may be historical, traditional or contemporary.
- The art may be of mediums including but not limited to metal, concrete, rock or paint.
- While the Human Resource Center is named after the individual Ruben Castro, the art shall not be an individual likeness of him.

Scope of Work for Design, Fabrication and Installation Services:

- Execution of an Agreement for Artistic Design, Fabrication, and Installation Services with City of Moorpark. (Sample Attached)
- Research, which includes examining the site, reviewing pertinent documents, meeting with the building's architect, City Staff, and members of the community including user groups, etc.
- Creation and submission of a minimum of one Design.
- Participation in a critique of the Design by the Commission and the City Council and Staff of the City.
- Participation in a review of the Proposal by the Commission and City Council if requested.
- Creation and submission of construction documents, if necessary.
- Participation in the approval process for construction documents, if necessary.
- Site or building element preparation, if necessary.
- Fabrication, transportation, and installation of art elements.
- Submission of documentation images and a maintenance report.
- Participation in ribbon-cutting ceremony and/or outreach to press.
- Coordination with City staff and representatives, as needed.

The City reserves the right to revise this scope of work.

PROPOSED TIMELINE

March 7, 2011	RFQ released
April 22, 2011	Application deadline
April – May 2011	Shortlisting and final selection of one artist
July 2011	Agreement execution
August – September 2011	Design Concept
October 2011 - January 2012	Fabrication and installation phases (may be extended as approved)
January 2012	Completion

The City reserves the right to revise this timeline should project construction delays occur.

SELECTION PROCESS AND CRITERIA

Applications submitted in response to this RFQ will be reviewed by the Commission. The Commission will review all complete, eligible applications received by the deadline. Selection will be based on the qualifications shown in the applications. The Commission will shortlist no more than three artists to attend interviews with the Commission.

Criteria used to shortlist artist teams will be:

- Quality, creativity and strength of concepts and workmanship as evidenced in images of past work and a professional resume
- Technical competence as evidenced by images of past work, a professional resume, and the application checklist

Artists who accept the invitation to interview will not be expected to develop proposals, but, in the interviews, each artist will be expected to discuss past approaches and working methods with the Commission as well as answer questions relating to working on projects of this nature. The Commission will provide a recommendation for the City Council's final consideration after the interview phase.

Criteria used to select an artist during the interview phase will include but not be limited to:

- Quality, creativity and strength of concepts and workmanship
- Interest in and understanding of the project

The City reserves the right to revise the selection process, composition, and criteria.

REQUIRED APPLICATION MATERIALS AND GUIDELINES

Artists who wish to be considered must submit the following materials (collated and in this order):

- Digital images of past work with annotations. (35mm slides will not be accepted.)
- A professional resume
- Professional references

Please closely observe the requirements and guidelines for the application materials as detailed below:

- **Digital Images (6 CDs or DVDs)**
 - Submit a maximum of 20 images showing at least five different artworks on a CD or DVD. This 20 image maximum is per application.
 - Label the CD or DVD with the artist's name. Please do not include the name of the artist's gallery, assistant, or representative on the label.
 - Load the images into a Microsoft PowerPoint slide show presentation. "Slide show" programs other than Microsoft PowerPoint are acceptable as long as the files can be successfully viewed with the City's equipment. Applicants are solely responsible for ensuring compatibility. Digital images not submitted in a PowerPoint presentation (or other compatible "slide show" program) will not be reviewed.
 - Only submit images with maximum dimensions of 1024 x 768 pixels and minimum dimensions of 720 x 480 pixels.
 - Only submit images of projects that have been realized; images of proposals, models or computer generated images will not be reviewed.

- Provide image annotations within the PowerPoint itself. Indicate the title of artwork, medium, dimensions, date artwork was created, and location. For previous public art projects please also list the commissioning body, budget, date of completion, and project manager (with telephone number). If you are submitting images of past work that cannot be understood plainly through imagery alone, please submit brief descriptions for each work that you believe needs further explanation. Where appropriate, please be sure to specify what your contributions, as the artist, were for projects involving teams, integrated artwork or collaborations with architects, etc. Details about the goals or challenges for each project and your solutions are also permitted. Brevity is the most effective way to communicate your ideas.

➤ **Professional Resume (6 copies)**

Please submit a current professional resume (five pages maximum) including information regarding past public art commissions, exhibitions, awards, grants, and education. Handwritten materials will not be reviewed.

➤ **Professional References (6 copies)**

Please submit the names, addresses, current telephone numbers and/or email addresses for three authorities on your past work and qualifications. The City reserves the right to contact references not given by the applicant. Handwritten materials will not be reviewed. PLEASE ENSURE THAT THE CONTACT INFORMATION FOR YOUR REFERENCES IS CURRENT; WE FREQUENTLY CONTACT REFERENCES AND ANY INACCURATE INFORMATION MAY DELAY THE SELECTION PROCESS.

In addition to the guidelines outlined above, please closely observe the following guidelines for the submission of applications (failure to observe these guidelines may render your application incomplete and ineligible and, therefore, it may not be reviewed):

- **COLLATE** 15 sets of your text materials in this order, top to bottom: 1) professional resume(s), 2) professional references.
- Submit text materials on **8.5" x 11" WHITE BOND PAPER**. (Common copy paper is best as fancy, heavier stock is more difficult to run through a copy machine.)
- **3-HOLE PUNCH** all pages on left side
- **SEPARATE THE COLLATED SETS** with colored paper or paper clips
- **DO NOT STAPLE** or bind materials in any way. (No folders, no envelopes, no binders, no decorative covers.)
- **DO NOT SUBMIT PROPOSALS, DRAWINGS, MODELS, MEDIUM SAMPLES, ORIGINAL WORKS OF ART, BOOKS, CATALOGUES, OR ANY OTHER MATERIALS IN LIEU OF, OR IN ADDITION TO, THE REQUIREMENTS LISTED ABOVE.**
- **UNSOLICITED MATERIALS WILL NOT BE REVIEWED BY PANELISTS AND WILL NOT BE RETURNED.**

The City reserves the right to revise the required application materials and guidelines.

APPLICATION SUBMISSION ADDRESS AND DEADLINE

Deliver applications no later than 3:00 pm on Friday, April 22, 2011 to:

City of Moorpark
 ATTN: Moorpark Arts Commission – Ruben Castro Human Resource Center Public Art- #5020
 799 Moorpark Avenue
 Moorpark, CA 93021

Applications received after this deadline will not be reviewed.

ADDITIONAL INFORMATION

For information not covered in this RFQ, please address your questions, prior to April 15, 2011, to:
Hugh R. Riley, Assistant City Manager, hriley@ci.moorpark.ca.us (805) 517-6215

CONDITIONS FOR SUBMISSION

Responsibility for Submissions: The City will not return any application materials submitted.

RFQ Revision: The City reserves the right to revise this RFQ, including, but not limited to, the application due date, the number of artists accepted, the timeline, the art budget, and the selection criteria.

Responsibility for Application Costs: The City is not liable for any cost incurred by any person responding to this RFQ. The applicant is fully responsible for all application costs. The City does not assume any contractual or financial obligation as a result of the issuance of this RFQ, the preparation and submission of an application by a respondent, the evaluation of an accepted proposal, or the selection of finalists.

Application Acceptance/Rejection: The City, at its sole discretion, reserves the right to reject any or all submissions received and to accept or reject any or all of the items in the application. The City reserves the right to negotiate with any respondent after applications are opened, if such action is deemed to be in the City's best interest. The City's acceptance and review of an application and/or submitted proposal, artwork concept, or artwork design does not constitute a commitment on the part of the City to award a commission to any artist.

Decline to Award: The City, at its sole discretion, reserves the right to not award the commission to any artist.

Equal Opportunity Contracting Program: The City endeavors to do business with artists sharing the City's commitment to equal opportunity and will not do business with any artist that discriminates on the basis of race, religion, sexual orientation, color, ancestry, age, gender, disability, medical condition or place of birth.

Insurance Requirements: Any artist selected to enter into contracts with the City shall not commence work until the artist has obtained, at the artist's sole cost and expense, all insurance required by the City and until such insurance has been approved by the City. Insurance required by the City may include but is not limited to Comprehensive General Liability, Automobile Liability and Workers' Compensation coverage in accordance with the laws of the State of California. The City requires that the City be named as additional insured on endorsements acceptable to the City on all insurance policies except Workers' Compensation coverage.

Copyright:

A version of the following language will appear in the contracts between the City and artists:

The Artist retains all copyrights to any and all of the Artist's Submissions and, except as provided below, to the Artwork.

Irrevocable License to Reproduce for Non-Commercial Purposes. The Artist hereby grants the City, without charge to the City, irrevocable license to make, or cause to be made, photographs and other two-dimensional reproductions of the Artwork or the Artwork Design for educational, public relations, tourist and arts promotional purposes without payment of a royalty to the Artist. For the purposes of this Agreement, the following are among those deemed to be permissible reproductions for the above cited purposes: in brochures and pamphlets pertaining to the City or State; in exhibition catalogues, books, slides, photographs, postcards, posters, and calendars; in art magazines, art books and art and news sections of newspapers; in general books and magazines not primarily devoted to art; as well as on slides, CDs, DVDs, film strips, video, computer websites and television.

Artists' Rights:

A version of the following language will appear in the contracts between the City and artists.

ARTWORK REMOVAL

The Artwork may be removed from the Project Site at any time. The Artist and the City, acknowledge that the Artist may have certain rights under the federal Visual Artists Rights Act of 1990 (VARA). The

Artist acknowledges and understands that the installation of the Artwork 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 VISUAL ARTISTS RIGHTS ACT (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 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, the City, and the State 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.

Indemnification:

A version of the following language will appear in the contracts between the City of Moorpark and artists.

HOLD HARMLESS.

The Artist agrees to defend, indemnify, protect and hold 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 City, its agents, officers or employees contributes to the loss or claim.

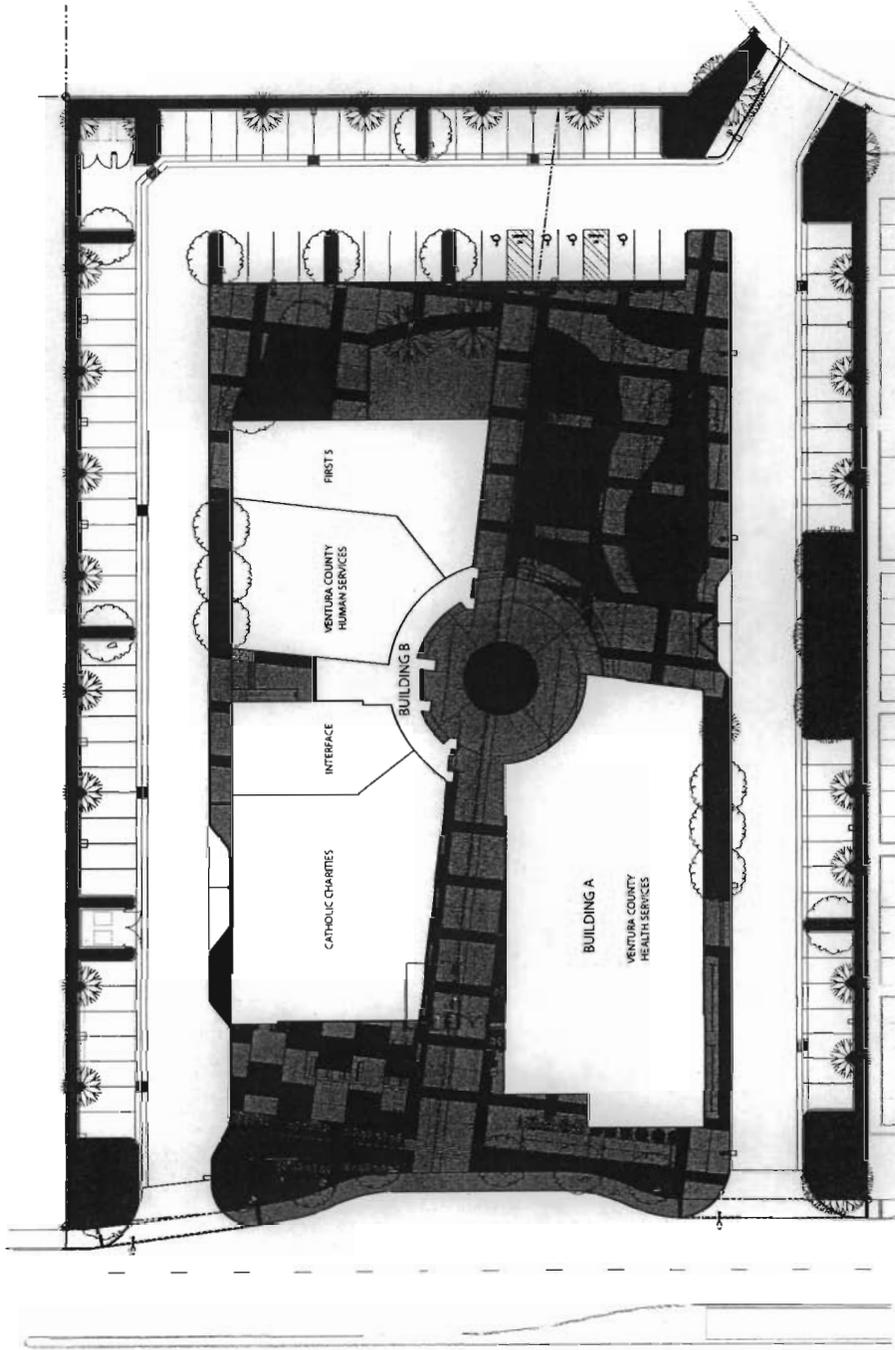
The Artist further agrees that the duty to defend includes attorneys fees and all costs associated with enforcement of this indemnification provision, defense of any claims arising from this Project; and, where a conflict of interest exists, or may exist between the Artist and the City, the reasonable value of attorneys fees and all costs if the 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 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, 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 City under law or equity. Artist further agrees to indemnify and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any 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, City shall be entitled, upon written notice to Artist, to withhold some or all of such payment.

The City does not and shall not waive any rights that it may have against the Artist by reason of this Section, because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this agreement between the Artist and the City. The hold harmless and indemnification provisions shall apply regardless of whether or not said insurance policies are determined to be applicable to any losses, liabilities, damages, costs and expenses described in this Section.

---End of RFQ---

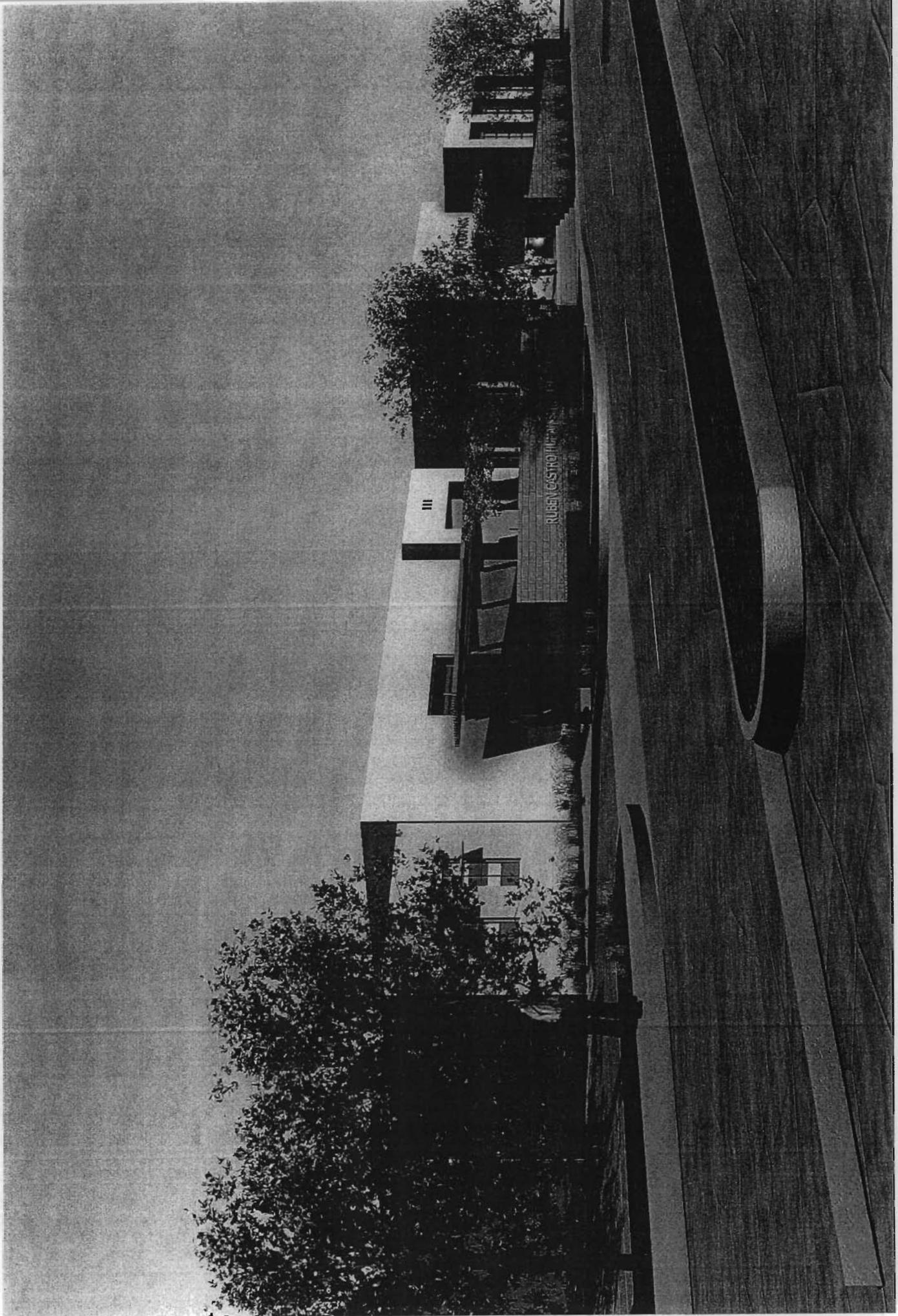
IMAGES ATTACHED

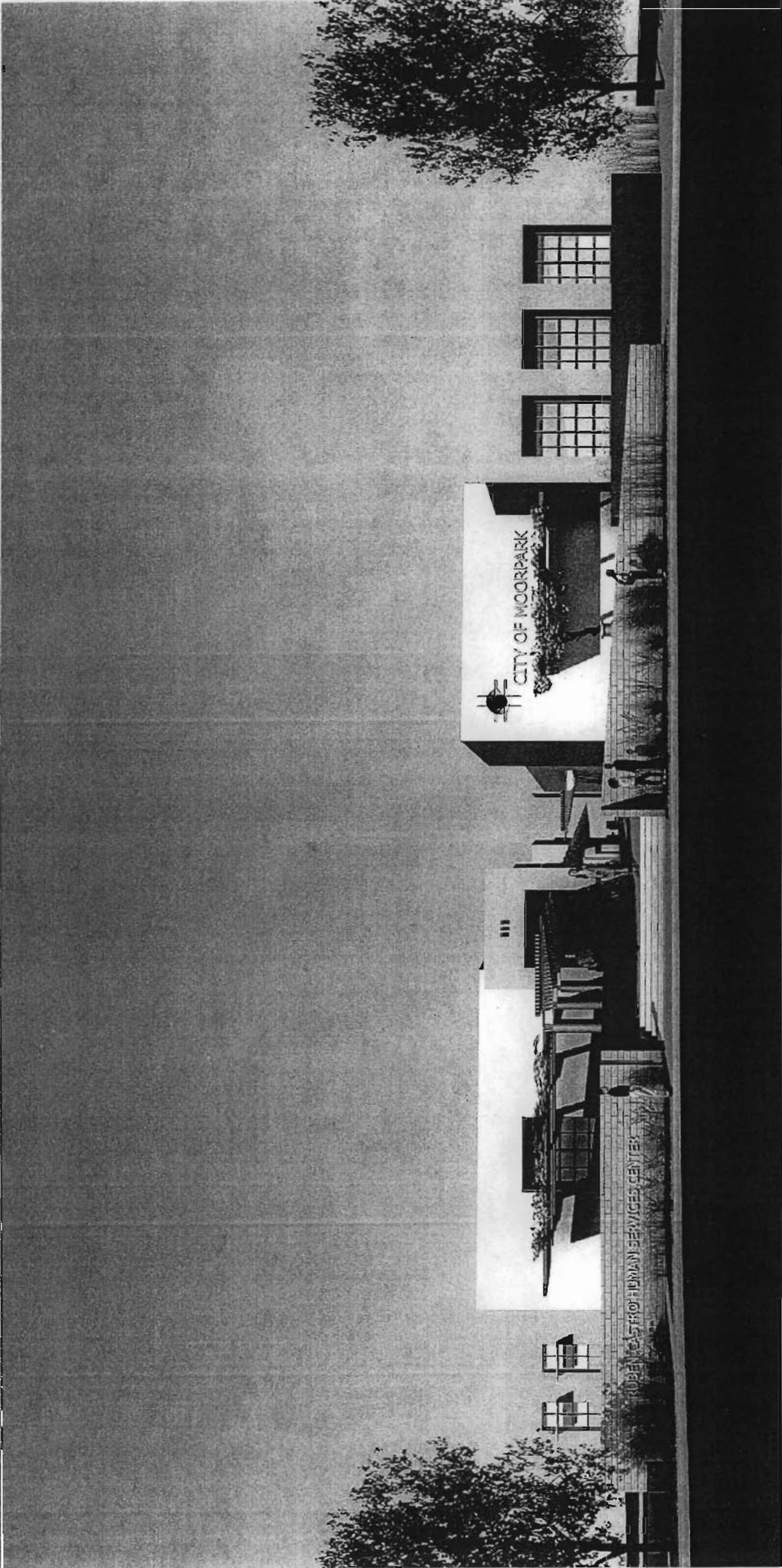


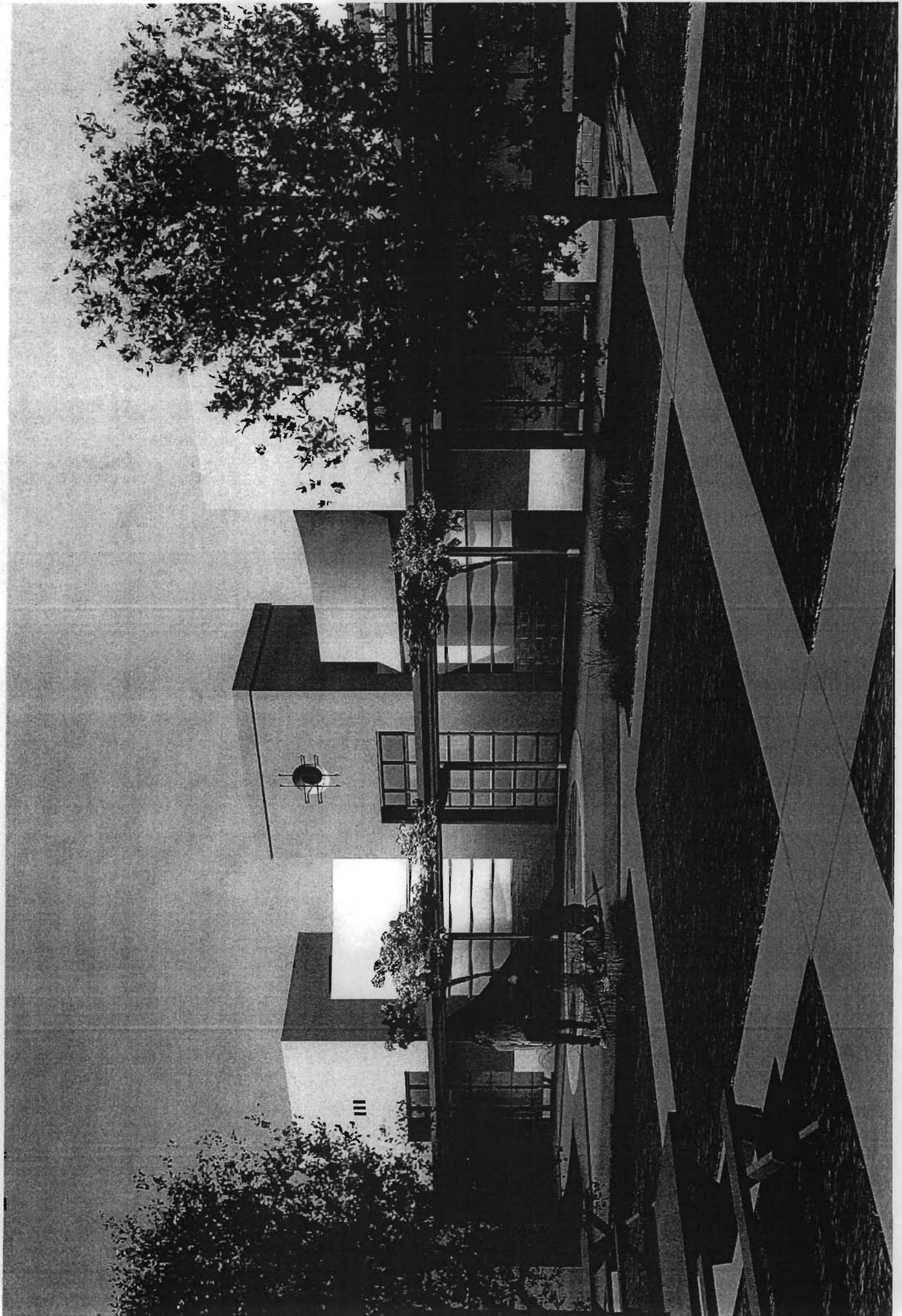
RUBEN CASTRO HUMAN SERVICES CENTER - SITE PLAN

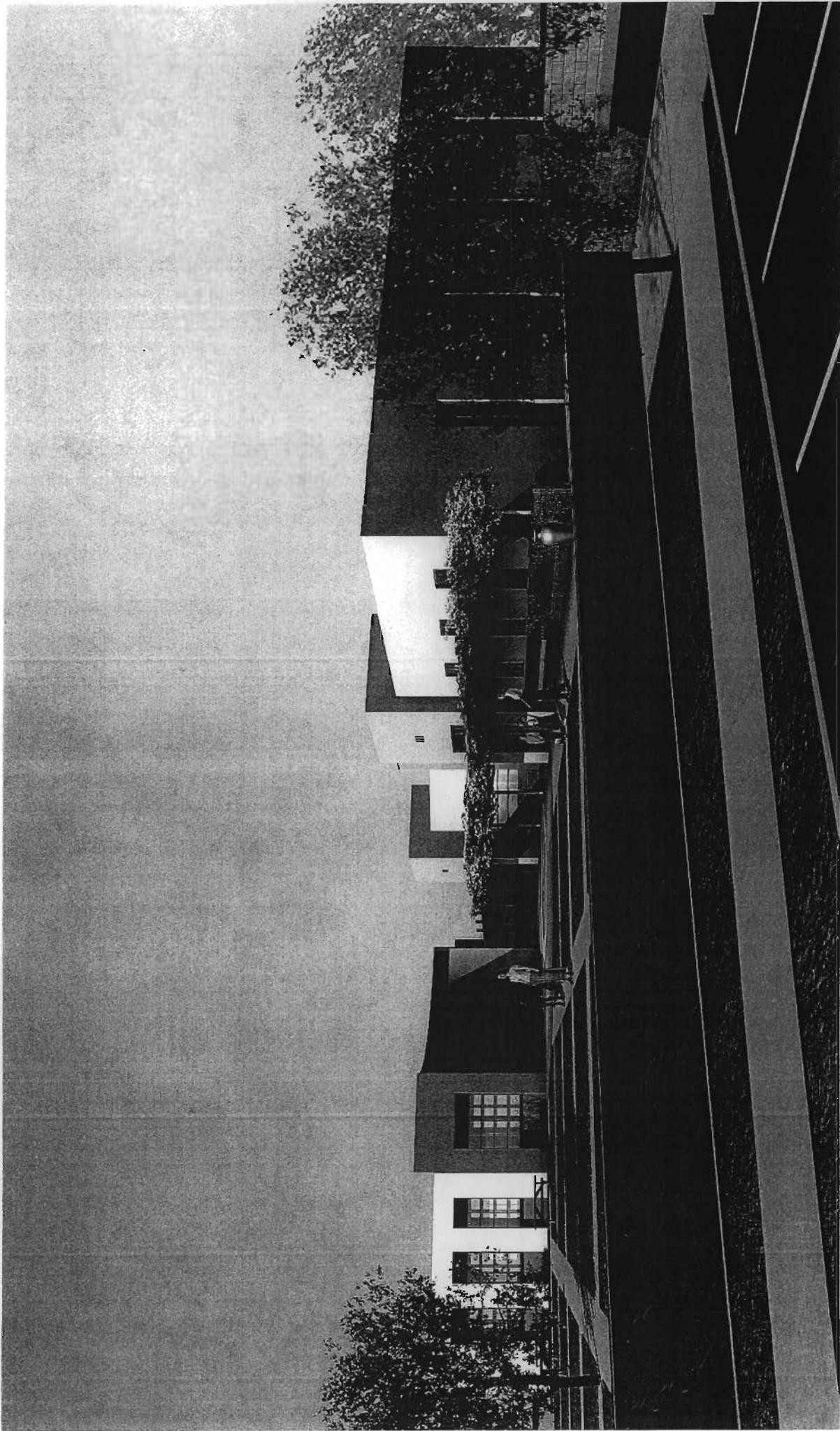
NTS / 01.19.2011

HMC Architects









ATTACHMENT

AGREEMENT FOR ARTISTIC DESIGN, FABRICATION AND INSTALLATION SERVICES

THIS AGREEMENT, made and entered into this ____ day of _____, 2011, between the City of Moorpark, hereinafter referred to as "CITY", and _____, an individual, hereinafter referred to as "ARTIST".

WITNESSETH:

WHEREAS, CITY has a need for certain artistic design, fabrication and installation services to create public art ("Artwork") at the Ruben Castro Human Services Center located at 610 Spring Road ("Project Site"); and

WHEREAS, CITY desires to contract for such services with a private artist to develop public artwork at the Ruben Castro Human services Center; and

WHEREAS, CITY wishes to retain ARTIST for said services.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and premises herein stated, the parties hereto agree as follows:

CITY does hereby appoint ARTIST in a contractual capacity to perform the services in accordance with the terms and conditions hereinafter set forth and with the authorities and responsibility ordinarily granted to this type of work.

I. COMPENSATION AND SERVICES

The ARTIST shall receive, and shall not exceed, _____ (\$) for work directly related to the services listed in Exhibit A. ARTIST shall submit payment requests as provided in Section III.H herein.

II. TERMINATION

This Agreement will terminate upon completion of the services list in Exhibit A, unless earlier terminated with or without cause by either party at any time with no less than ten (10) days written notice to ARTIST by CITY and no less than thirty (30) days written notice to CITY by ARTIST.

In the event of an early termination, ARTIST shall be compensated for such services up to the date of termination. Such compensation for work in progress shall be limited to actual services performed.

III. GENERAL CONDITIONS

- A. CITY shall not be called upon to assume any liability for the direct payment of any salary, wage or other compensation to any person employed by ARTIST performing services hereunder for CITY.
- B. ARTIST is and shall at all times remain as to CITY a wholly independent contractor. Neither CITY nor any of its officers, employees, servants, or agents shall have control over the conduct of ARTIST or any of the ARTIST'S officers, employees, or agents, except as herein set forth.
- C. At the time of termination of this Agreement, all CITY files including but not limited to original documents, designs, drawings, reports, logos, compact disks, computer files, notes or other related materials, whether prepared by ARTIST or his subcontractor(s), or obtained in the course of providing the services to be performed pursuant to this Agreement shall be given to CITY upon twenty-four (24) hours notice.
- D. ARTIST agrees to defend, indemnify, protect and hold 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 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 the Artwork; and, where a conflict of interest exists, or may exist between the ARTIST and the CITY, the reasonable value of attorneys fees and all costs if the CITY chooses, at its own election, to conduct its own defense or participate in its own defense of any claim related to this Artwork. 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 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, 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 CITY under law or equity. ARTIST further agrees to indemnify and hold harmless the CITY, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, services or Works provided under this Agreement 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 Agreement, CITY shall be entitled, upon written notice to ARTIST, to withhold some or all of such payment.

The CITY does not and shall not waive any rights that it may have against the ARTIST by reason of this Section, because of the acceptance by the CITY, or the deposit with the CITY, of any insurance policy or certificate required pursuant to this Agreement between the ARTIST and the CITY. The hold harmless and indemnification provisions shall apply regardless of whether or not said insurance policies are determined to be applicable to any losses, liabilities, damages, costs and expenses described in this Section.

- E. In the event ARTIST hires employees other than officers, then ARTIST shall provide workers' compensation insurance as required by the California Labor Code. If any class of employees engaged by ARTIST in work under this agreement is protected by the workers' compensation law, ARTIST shall provide adequate insurance for the protection of such employees to the satisfaction of the CITY.
- F. ARTIST shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit B attached hereto and incorporated herein by this reference as though set forth in full.
- G. ARTIST shall not assign this Agreement or any of the rights, duties, or obligations hereunder. It is understood and acknowledged by the parties that ARTIST is uniquely qualified to perform the services provided for in this Agreement.
- H. Payment to ARTIST shall be made by CITY within thirty (30) days of receipt of invoice, except for those which are contested or questioned and returned by CITY, with written explanation within thirty (30) days of receipt of invoice. ARTIST shall provide to CITY a written response to any invoice contested or questioned and further, upon request of CITY, provide CITY with any and all documents related to any invoice. Invoices shall be

submitted on a monthly basis at the end of each month.

- I. Any notice to be given pursuant to this Agreement shall be in writing and all such notices and any other document to be delivered shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the party for who intended as follows:

To: City of Moorpark
Attn: City Manager
799 Moorpark Avenue
Moorpark, CA 93021

To: _____

Either party may, from time to time, by written notice to the other, designate a different address, which shall be substituted for the one above specified. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or upon deposit in the United States mail.

Nothing contained in this Agreement shall be deemed, construed, or represented by CITY or ARTIST or by any third person to create the relationship of principal or agent, or of a partnership, or of a joint venture, or of any other association of any kind or nature between CITY and ARTIST.

- J. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereto and all prior written agreements or understandings, oral or written, are hereby merged herein. This Agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed and acknowledged by both of the parties hereto.
- K. Should interpretation of this Agreement, or any portion thereof be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that a party prepared the Agreement or caused it to be prepared.
- L. No waiver of any provision of this Agreement shall be deemed, or shall constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless executed in writing by the party making the waiver.
- M. In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement

or as a result of any alleged breach of any provision of this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

- N. Cases involving a dispute between CITY and ARTIST may be decided by an arbitrator if both sides agree in writing to arbitration and on the arbitrator selected, with costs proportional to the judgment of the arbitrator.
- O. This Agreement is made, entered into, executed in Ventura County, California, and any action filed in any court or for arbitration for the interpretation, enforcement or other action to herein, shall be filed in the applicable court in Ventura County, California.
- P. The captions and headings of the various Articles, Exhibits, and Paragraphs of this Agreement are for convenience and identification only and shall not be deemed to limit or define the content of the respective Articles, Exhibits, and Paragraphs hereof.
- Q. ARTIST agrees that he/she has no interest, nor shall he/she acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of the services hereunder. ARTIST further agrees that he/she has not contracted with nor is performing any services directly or indirectly, with the developer(s) and/or property owner(s) and/or firm(s) and/or partnerships and/or public agencies owning property and/or processing an entitlement application for property in the CITY or its Area of Interest, and further agrees that he/she shall provide no service or enter into any agreement with any developer(s) and/or property owner(s) and/or firms(s) and/or partnership(s) and/or public agency(ies) owning property and/or processing an entitlement application for property in the CITY or its Area of Interest, prior to completion of the term of this Agreement.

With the exception of Section I of this Agreement, neither ARTIST nor any member of his/her immediate family shall have any economic interest, or acquire or receive any economic interest, directly or indirectly in any manner or degree arising out of the performance of this Agreement during the term of this Agreement.

ARTIST further agrees he/she shall provide no service or enter into any agreement with any individual or entity that has an agreement to provide services, materials, or equipment to CITY without the prior written consent of the City Manager.

ARTIST also agrees he/she will not accept a gift from any person or entity doing business with the CITY. For purposes of this Agreement, a gift is defined as provided for in Government Code Section 87300 et seq. and

Title 2, Division 6, California Code of Regulations, Section 18730 and amendments or supplementary thereto.

- R. ARTIST agrees that he/she shall not provide a reference or response to personnel and work experience related inquiries pertaining to any current or prior employees of CITY and shall refer all such matters to the CITY'S Human Resources office.
- S. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- T. ARTIST shall provide bi-monthly progress reports to the CITY detailing the ARTIST'S activities.
- U. The ARTIST retains all copyrights to any and all of the ARTIST's Submissions and, except as provided below, to the Artwork:

Irrevocable License to Reproduce for Non-Commercial Purposes. The ARTIST hereby grants the CITY, without charge to the CITY, irrevocable license to make, or cause to be made, photographs and other two-dimensional reproductions of the Artwork or the Artwork Design for educational, public relations, tourist and arts promotional purposes without payment of a royalty to the ARTIST. For the purposes of this Agreement, the following are among those deemed to be permissible reproductions for the above cited purposes: in brochures and pamphlets pertaining to the CITY, Ventura County or State of California; in exhibition catalogues, books, slides, photographs, postcards, posters, and calendars; in art magazines, art books and art and news sections of newspapers; in general books and magazines not primarily devoted to art; as well as on slides, CDs, DVDs, film strips, video, computer websites and television.

- V. The Artwork may be removed from the Project Site at any time. The ARTIST and the CITY, acknowledge that the ARTIST may have certain rights under the federal Visual Artists Rights Act of 1990 (VARA). The ARTIST acknowledges and understands that the installation of the Artwork 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.
- W. 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 CITY or CITY elected officials, officers, employees, agents, or representatives, or the presence of the Artwork at the Project Site.

- X. The ARTIST and 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.
- Y. 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.

IV. RESPONSIBLE INDIVIDUAL

The individual directly responsible for ARTIST'S overall performance of the Agreement provisions herein above set forth shall be _____.

The individual directly responsible for the CITY shall be the City Manager or his/her designee.

V. EFFECTIVE DATE AND IMPLEMENTATION DATE

The effective date of the Agreement shall be _____, 2011.

CITY OF MOORPARK

ARTIST

By _____
Steven Kueny
City Manager

ARTIST

Date _____

Date _____

ATTEST: _____
Maureen Benson
City Clerk

EXHIBIT A

ARTISTIC DESIGN, FABRICATION AND INSTALLATION SERVICES

The overall design principles for the artwork are:

- The theme "Family" is desirable, but the art is not limited to this concept.
- The art style is not limited or designated and may be historical, traditional or contemporary.
- The art may be of mediums including but not limited to metal, concrete, rock or paint.
- While the Ruben Castro Human Services Center is named after the individual Ruben Castro, the art shall not be an individual likeness of him.
- Fountains or other water features will not be considered.

Scope of Work for Artistic Design, Fabrication and Installation Services:

- Research, which includes examining the site, reviewing pertinent documents, meeting with the building's architect, CITY staff, and members of the community including user groups, etc.
- Creation and submission of a minimum of one design.
- Participation in a critique of the design(s) by the Moorpark Arts Commission ("Commission"), Moorpark City Council ("City Council") and CITY staff.
- Participation in a review of the design by the Commission and City Council if requested.
- Creation and submission of construction documents, if necessary.
- Participation in the approval process for construction documents, if necessary.
- Site or building element preparation, if necessary.
- Fabrication, transportation, and installation of art elements.
- Submission of documentation images and a maintenance report.
- Participation in ribbon-cutting ceremony and/or outreach to press.
- Coordination with CITY staff and representatives, as needed.

The CITY reserves the right to revise this scope of work.

Exhibit "B"

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Agreement, ARTIST will maintain insurance in conformance with the requirements set forth below. ARTIST will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, it will be amended to do so. ARTIST acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to CITY in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to CITY.

ARTIST shall provide the following types and amounts of insurance:

1. Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

ARTIST's policy shall contain no endorsements limiting coverage beyond the basic policy coverage grant for any of the following:

- Explosion, collapse or underground hazard (XCU)
- Products and completed operations
- Pollution liability
- Contractual liability

Coverage shall be applicable to CITY for injury to employees of ARTIST's, subcontractors or others involved in the project. Policy shall be endorsed to provide a separate limit applicable in this project.

2. Worker's Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses. ARTIST shall procure and maintain during the life of the contract, worker's compensation insurance or a valid certificate of consent to self-insure for all its employees engaged in or at the site of the project; and in case any of the work is sublet, the ARTIST shall require all subcontractors to similarly provide worker's compensation insurance for all the latter's employees unless such employees are covered by protection afforded by worker's compensation insurance carried by the ARTIST.

By submitting a bid pursuant to these specifications, ARTIST hereby certifies that it is aware of the provisions of Section 3700 et seq. of the Labor Code which require every employer to be insured against liability for Worker's Compensation.

In the event the Worker's Compensation Insurance submitted by the ARTIST becomes inoperative any time before the completion of the work, all work shall immediately cease until a new policy is obtained and any time so lost shall not entitle the ARTIST to any extension of time. Certificates shall unequivocally provide at least thirty (30) days written notice by certified mail to the CITY prior to cancellation or modification.

3. Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto) or the exact equivalent. Limits shall be no less than \$1,000,000 per accident, combined single limit. If ARTIST owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If ARTIST or ARTIST's employees will use personal autos in any way on this project, ARTIST shall provide evidence of personal auto liability coverage for each such person.

4. Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to CITY for injury to employees of ARTIST, subcontractors or others involved in the Work. The scope of coverage provided is subject to approval of CITY following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence and aggregate.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the state of California and with an A.M. Best rating of A- or better and a minimum financial size VII.

ARTIST and CITY agree as follows:

1. ARTIST agrees to endorse the third party general liability coverage required herein to include as additional insureds CITY, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition date of 1985. ARTIST also agrees to require all contractors, subcontractors, and any one else involved in any way with the project contemplated by this Agreement to do likewise.

2. Any waiver of subrogation express or implied on the part of CITY to any party involved in this Agreement or related documents applies only to the extent of insurance proceeds actually paid. CITY, having required that it be named as an additional insured to all insurance coverage required herein, expressly retains the right to subrogate against any party for sums not paid by insurance. For its part, ARTIST agrees to waive subrogation rights against CITY regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with the project(s) contemplated by this agreement, to do likewise.

3. All insurance coverage maintained or procured by ARTIST or required of others by ARTIST pursuant to this Agreement shall be endorsed to delete the subrogation condition as to CITY, or to specifically allow ARTIST or others providing insurance herein to waive subrogation prior to a loss. This endorsement shall be obtained regardless of existing policy wording that may appear to allow such waivers.

4. It is agreed by ARTIST and CITY that insurance provided pursuant to these requirements is not intended by any party to be limited to providing coverage for the vicarious liability of CITY or to the supervisory role, if any, of CITY. All insurance coverage provided pursuant to this or any other agreement (express or implied) in any way relating to CITY is intended to apply to the full extent of the policies involved. Nothing referred to here or contained in any agreement involving CITY in relation to the project(s) contemplated by this agreement is intended to be construed to limit the application of insurance coverage in any way.

5. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to CITY and approved of in writing.

6. All coverage types and limits required are subject to approval, modification and additional requirements by the CITY, as the need arises. ARTIST shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) which may affect CITY's protection without CITY's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of binders of coverage, or endorsements, or certificates of insurance, at the option of CITY, shall be delivered to CITY at or prior to the execution of this Contract. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, CITY has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by CITY shall be charged to and promptly paid by ARTIST or deducted from sums due ARTIST, at CITY option.

8. ARTIST agrees to endorse, and to require others to endorse, the insurance provided pursuant to these requirements, to require 30 days notice to CITY and the appropriate tender prior to cancellation of such liability coverage and notice of any material alteration or non-renewal of any such coverage, and to require contractors, subcontractors, and any other party in any way involved with the project contemplated by this agreement to do likewise.

9. It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by ARTIST or any subcontractor, is intended to apply first and on a primary non-contributing basis in relation to any other insurance or self insurance available to CITY.

10. ARTIST agrees to ensure that subcontractors, and any other party involved with the project that is brought onto or involved in the project by ARTIST, provide the same minimum insurance coverage required of ARTIST. ARTIST agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. ARTIST agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to CITY for review.

11. ARTIST agrees that all layers of third party liability coverage required herein, primary, umbrella and excess, will have the same starting and expiration date. ARTIST agrees further that all other third party coverages required herein will likewise have concurrent starting and ending dates.

12. ARTIST agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to CITY. If ARTIST's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the CITY. At that time the CITY shall review options with the ARTIST, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

13. The CITY reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the ARTIST ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the ARTIST, the CITY will negotiate additional compensation proportional to the increased benefit to CITY.

14. For purposes of applying insurance coverage only, all contracts pertaining to the project will be deemed to be executed when finalized and any activity commences in furtherance of performance under this agreement.

15. ARTIST acknowledges and agrees that any actual or alleged failure on the part of CITY to inform ARTIST of non-compliance with any insurance requirement in no way imposes any additional obligations on CITY nor does it waive any rights hereunder in this or any other regard.

16. ARTIST will renew the required coverage annually as long as CITY, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. The insurance shall include but not be limited to products and completed operations and discontinued operations, where applicable. Termination of this obligation is not effective until CITY executes a written statement to that effect.

17. ARTIST agrees to waive its statutory immunity under any workers' compensation statute or similar statute, in relation to the CITY, and to require all subcontractors and any other person or entity involved in the project contemplated by this Agreement to do

likewise.

18. Requirements of specific coverage features are not intended as limitations on other requirements or as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be all-inclusive.

19. Any provision in any of the construction documents dealing with the insurance coverage provided pursuant to these requirements is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.

20. All liability coverage provided according to these requirements must be endorsed to provide a separate aggregate limit for the project that is the subject of this agreement and evidencing products and completed operations coverage for not less than two years after issuance of a final certificate of occupancy by all appropriate government agencies or acceptance of the completed work by CITY.

21. ARTIST agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge CITY or ARTIST for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to CITY. It is not the intent of CITY to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against CITY for payment of premiums or other amounts with respect thereto.