

ITEM 9.B.

MOORPARK CITY COUNCIL AGENDA REPORT

TO: Honorable City Council

FROM: Hugh R. Riley, Assistant City Manager 

DATE: April 10, 2013 (CC Meeting of 04/17/13)

SUBJECT: Consider Request for Qualifications for Public Art Projects at the Arroyo Vista Recreation Center

BACKGROUND & DISCUSSION

In May 2005 the City Council adopted City Ordinance No. 321 to require certain development projects to provide public art. Ordinance 321 also created an Art in Public Places Fund where fees are deposited, maintained, and used solely for the City's Art in Public Places Program. In 2011 the City of Moorpark, Mission Statement, Priorities, Goals and Objectives included two objectives relating to art in public places: 1) Development of a policy that new facilities and buildings which are City funded shall include public art in the same manner as private projects; and 2) Consider items of public art for the Police Services Center, Arroyo Vista Recreation Center, High Street Post Office and Train Station.

On February 5, 2013, during a special meeting, the Moorpark Arts Commission discussed these and other objectives relating to public art and directed staff to begin the process for the selection of artists to develop artworks at the Arroyo Vista Recreation Center and along High Street with possible emphasis on the Metro Link Rail Station. Because of the uncertainty of the final disposition of property on High Street both at the rail station and the Post Office, staff is recommending that projects involving High Street be deferred until the Successor Agency of the Redevelopment Agency of the City of Moorpark, has completed and obtained State of California approval of its Property Management Plan. This should occur in September or October 2013.

The staff and the Commission have 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:

- A theme relating to the specific location and its use or history is desirable, but the art is not necessarily limited to these concepts.
- 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 and/or paint.
- If mediums are proposed for statues, the recommended locations around the AVRC are shown in Appendix A.

The proposed timeline for the selection process is as follows:

April 18, 2013	RFQ released
May 17, 2013	Application deadline
May- June 2013	Shortlisting and recommendation by commission of one artist.
July 17, 2013 (or August 7, 21)	City Council Approval (Regular City Council Meeting)
August 2013	Agreement execution
September-October 2013	Design Concept
November 2013 – January 2014	Fabrication and installation phases (may be extended as approved)
March 2014	Completion

FISCAL IMPACT

The F.Y. 2012-2013 Operating Budget was amended on April 3 to include \$10,000 for this project location for preliminary administrative costs. The F.Y. 2013-2014 Operating Budget Recommendation includes \$150,000 for the project. Funding will be from the Art in Public Places Fund.

STAFF RECOMMENDATION

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

ATTACHMENT: Request for Qualifications



**CITY OF MOORPARK
MOORPARK ARTS COMMISSION**

REQUEST FOR QUALIFICATIONS (RFQ)

Arroyo Vista Recreation Center

INTRODUCTION

An artist(s) is(are) sought to design, fabricate and install an artwork or artworks to be located at the City of Moorpark's Arroyo Vista Recreation Center (7709-AVRC) A description of the project Site and recommended locations is provided in Appendix A.

Funding for the Artwork will be provided from the City of Moorpark, Art in Public Places Fund. The Moorpark Arts Commission (Commission) administers the artist selection process and the development of the Artwork concept with final selection by the City Council.

DEADLINE

Applications must be received and time-stamped by the City no later than

Friday, May 17, 2013, 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 Successor to the Moorpark Redevelopment Agency, and their business partners and/or their immediate family members may not apply.

BUDGET

Approximately one hundred fifty thousand dollars (\$150,000) for design, fabrication, and installation.

The budget is all-inclusive and a proposed price must include all design fees; travel expenses; all labor, 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 these projects.

DESIGN PRINCIPLES and SCOPE OF WORK

The overall design principles for the Artwork are:

- A theme relating to the specific location and its use or history is desirable, but the art is not necessarily limited to these concepts.
- 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 and/or paint.
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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 any architect involved in the project, 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

April 18, 2013	RFQ released
May 17, 2013	Application deadline
May- June 2013	Shortlisting and recommendation by commission of one artist
July 17, 2013 (or 8/7, 8/21)	City Council Approval (Regular City Council Meeting)
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The City reserves the right to revise this timeline should project construction delays occur.

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May 17, 2013	Application deadline
May- June 2013	Shortlisting and final selection of one artist for each location
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August 2013	Agreement execution
September-October 2013	Design Concept
November 2013 – January 2014	Fabrication and installation phases (may be extended as approved)
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The City reserves the right to revise this timeline should project construction delays occur.

SELECTION PROCESS AND CRITERIA

The selection process will be in two phases- (1) Initial Submittal and (2) Interview. 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 to proceed to the Interview Phase will be based on the qualifications shown in the applications. From the applications received, the Commission will select a shortlist of at least three artists who will be invited to attend an interview with the Commission.

Criteria used to select the shortlist of artists or artist teams for interviews 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 references from past clients and a professional resume and compliance with requirements for application materials and guidelines

Artists who accept the invitation to interview will not be required to develop full proposals, but, in the interviews, each artist will be expected to discuss past approaches and working methods with the Commission, possible ideas that may be proposed for the projects and response to 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, specific ideas 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:

- 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 minimum of five and a maximum of 20 images showing at least five different artworks, on a CD or DVD. This 20 image maximum is per project application.
 - Label the CD or DVD with the artist's name and contact information. Please do not include the name of the artist's gallery, assistant, agent 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 completed projects; 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, whether or 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** the six 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 May 17, 2013 to:

City of Moorpark
ATTN: Moorpark Arts Commission – Public Art- #7708 and 7709
799 Moorpark Avenue
Moorpark, CA 93021

Applications received after this deadline will not be accepted.

ADDITIONAL INFORMATION

For information not covered in this RFQ, please address your questions, prior to May 17, 2013 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, for any or no reason.

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, its elected and appointed officials, officers, employees, agents and volunteers be named as additional insureds on endorsements acceptable to the City on all insurance policies except Workers' Compensation coverage. Detailed insurance requirements are provided in Appendix B.

CONTRACT PROVISIONS

Each selected Artist, if any, shall be required to execute a form of agreement provided by the City. The terms of such agreement will include, but will not be limited to, the following:

Copyright:

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. The Artist hereby grants the City, without additional charge to, or payment by, the City, an irrevocable license to make, or cause to be made, photographs and other two-dimensional reproductions of the Artwork or the Artwork Design for any municipal purpose including, but not limited to, educational, public relations, tourist and arts promotional purposes. For the purposes of this Agreement, the following are examples of 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' Waiver of Rights:

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, to the maximum extent permitted by law.

CALIFORNIA CIVIL CODE SECTION 987 WAIVER

The Artist and the City acknowledge that the Artist may have certain rights under California Civil Code Section 987 which are not preempted by VARA. In consideration of the mutual covenants and conditions in this Agreement, and to the maximum extent permitted by law, 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:

INDEMNIFICATION

To the maximum extent permitted by law, the Artist agrees to defend, indemnify, protect and hold City, its elected and appointed officials, officers, employees, agents and volunteers, free and harmless from any and all claims asserted, and/or actual or alleged liability for damages or injuries to any person or property including Artist's employees, agents, representatives or subcontractors, and/or claims and liabilities arising directly or indirectly from, or that are connected with, or are caused or claimed to be

caused by, the acts of the Artist, the Artist's employees, agents, representatives or subcontractors, or anyone acting on the Artist's behalf. 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 payment of 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 cost of attorney's fees and all other 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, defend and hold harmless shall not include any claims or liability (i) to the extent arising from the active negligence, sole negligence, or willful misconduct of the City, its agents, officers or employees, as established by final court decision; or (ii) or where otherwise prohibited or preempted by law.

Without in any way limiting the generality of the foregoing, the Artist represents and warrants that the Artwork is solely the result of the artistic effort of the Artist. Any and all materials or deliverables, including but not limited to the Artwork Design and/or the Artwork (collectively, "Works"), provided under this contract are unique, original, an edition of one, 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. The Artwork has not been accepted for sale elsewhere; the Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement; the Artwork is free and clear of any liens from any source whatsoever; all artwork created or performed by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others, shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party; the Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement; and all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, and/or statutes, and with all necessary care, skill, and diligence.

If any of the 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, defend and hold harmless the City, its elected and appointed officials, officers, employees, volunteers and agents from and against any and all claims, actions, liabilities, costs, judgments and/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.

Additional Requirements

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

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

Defects in Workmanship. The Artist represents and warrants that all work by the Artist and/or contractors 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.

Breach of Warranty. If within the warranty period 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 damage and the City accepted in writing that it may occur, it shall not be deemed a breach for purposes of this Agreement.

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.

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

Maintenance. The Artist represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in a maintenance plan submitted by the Artist.

Acceptable Standard for Display. Artist represents and warrants that:

General routine cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard for public display; foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard for public display; with general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling; and to the extent the Artwork incorporates products covered by a manufacturer's warranty, the Artist shall provide copies of such warranties to the City.

Ownership of Documents. All original designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine, originated or prepared exclusively for the City pursuant to this Agreement ("Work Product Materials") shall become the joint property of the City and the Artist. The Artist shall deliver such documents to the City whenever reasonably requested to do so by the City. Artist may not provide, transfer or otherwise convey any of the Work Product Materials to any third party without the City's prior, written consent.

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

Acknowledging the City. The Artist shall use the Artist's best efforts in any public showing or on a résumé to give acknowledgment to the City in substantially the following credit line: "An artwork commissioned by the City of Moorpark."

City's Right to Repair and Conserve. The City shall have the right to determine when and if repairs and restorative conservation to the Artwork will be made. It is the policy of the City to consult with the Artist regarding repairs and restorative conservation which is undertaken up to five (5) years after final payment has been made, when practicable. In the event that the City makes repairs or restorative conservation not approved by the Artist, the Artist shall have the right to disown the Artwork as the Artist's creation and request that all credits be removed from the Artwork and reproductions thereof.

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

Transfer of Title. Following final payment to Artist, Artist shall execute a "Transfer of Title" to the Artwork to the City, forever transferring, conveying and assigning all ownership rights to the Artwork, to the City, for all purposes permitted by this Agreement. Artist shall retain the copyright to the Artwork.

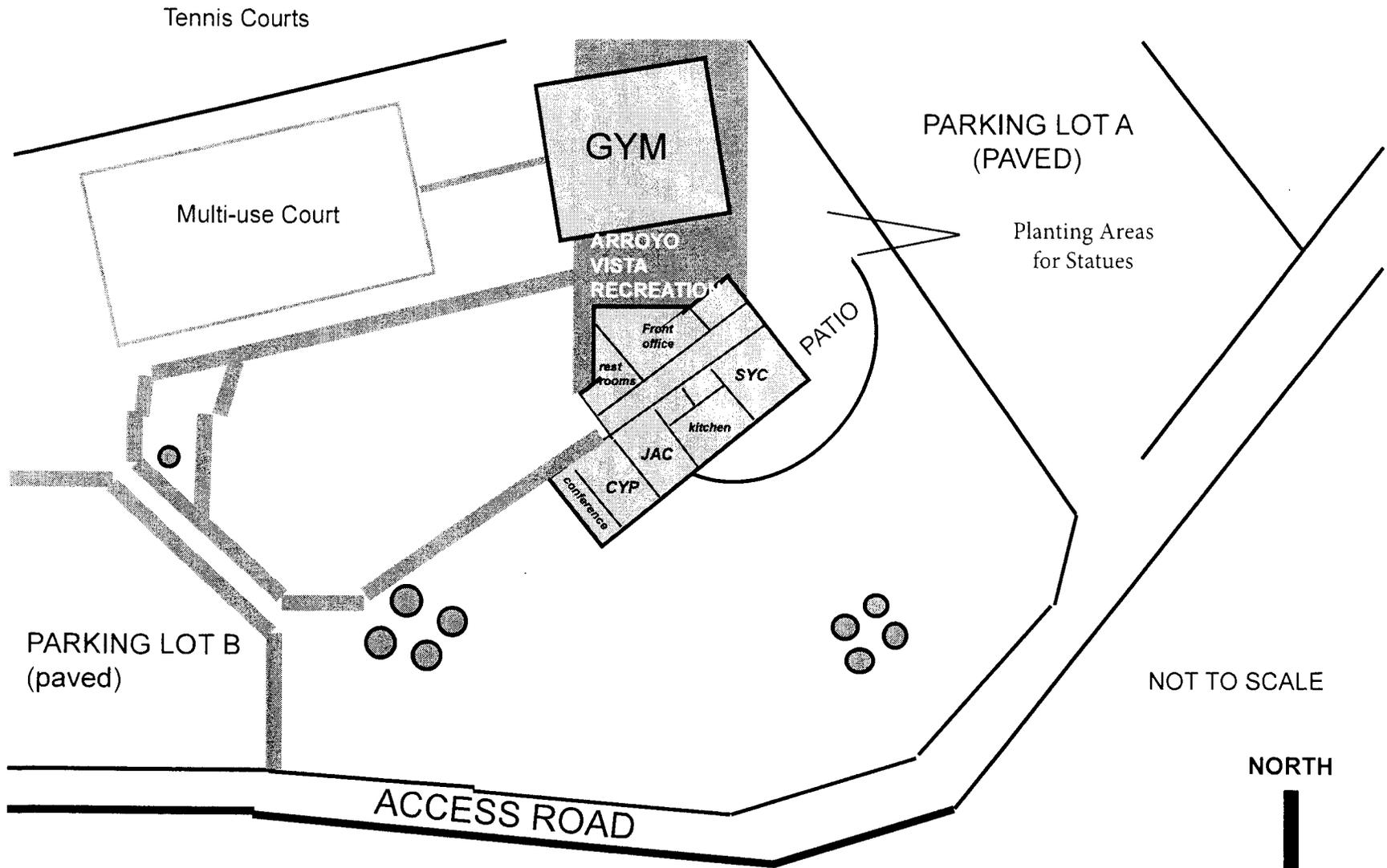
APPENDIX A- Project Location Description

Maps and photographs of the project site

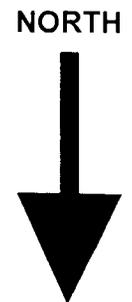
Artists are encouraged to visit the site if possible

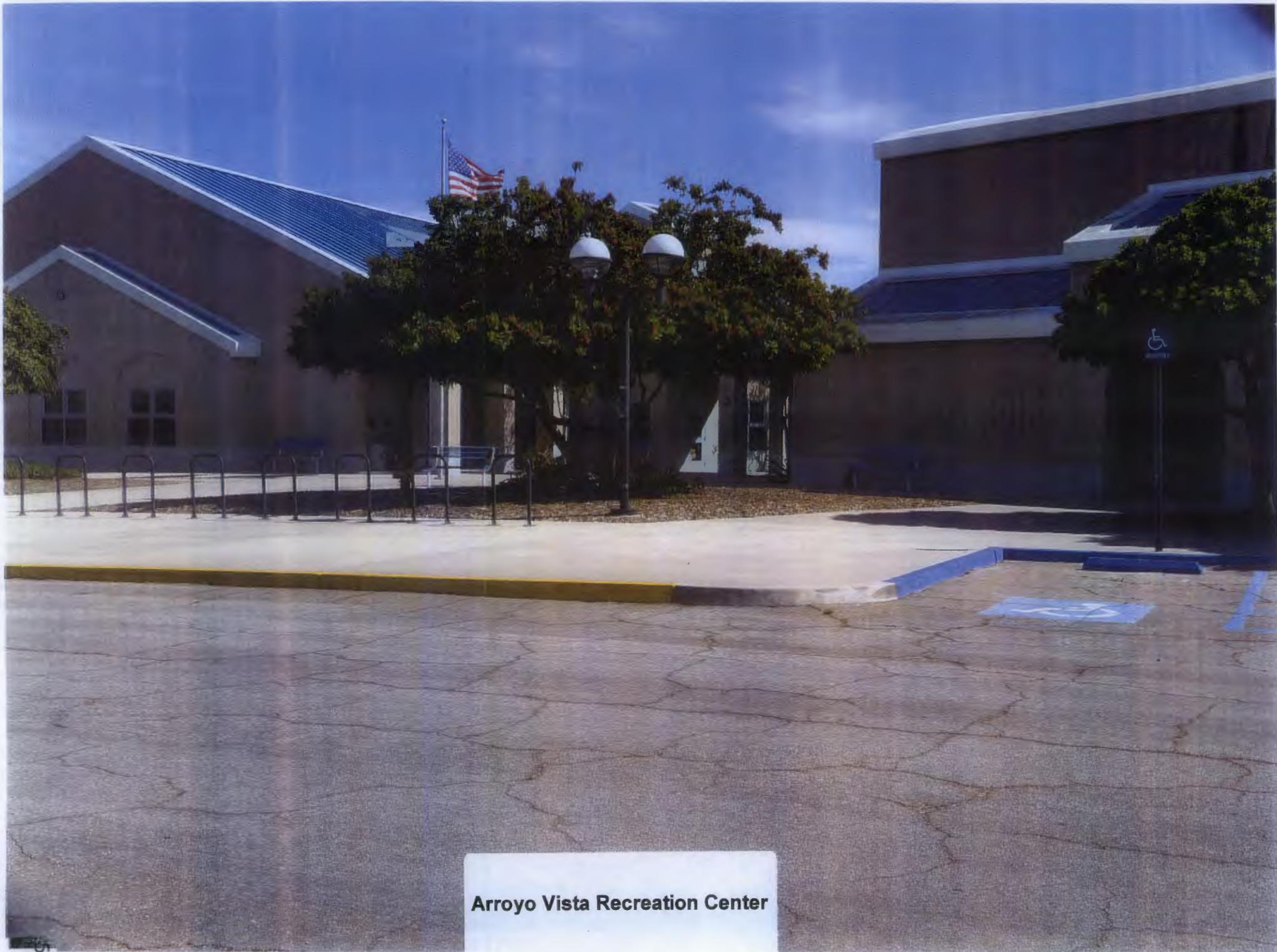


Appendix A - Vicinity Map



Arroyo Vista Recreation Center





Arroyo Vista Recreation Center







APPENDIX B

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of Work, 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 requirements set forth here, ARTIST agrees to amend, supplement or endorse the existing coverage 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 the City in excess of the limits and coverage required in this Agreement and which is applicable to a given loss, will be available to the City.

ARTIST shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office (ISO) "Commercial General Liability" policy form CG 00 01 or the exact 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 are subject to review but in no event less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. 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 for each such person. (If Applicable)

Workers' 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 or disease. (If Applicable)

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. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to the City for injury to employees of ARTIST, Sub-ARTISTs or others involved in the Work. The scope of coverage provided is subject to approval by the City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 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. Bests rating of A- or better and a minimum financial size of VII.

General conditions pertaining to provision of insurance coverage by ARTIST. ARTIST and the City agree to the following with respect to insurance provided by ARTIST:

1. ARTIST agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds the City, its officials, employees, and agents, using standard ISO endorsement CG 2010 with an edition prior to 1992. ARTIST also agrees to require all ARTISTs and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit ARTIST, or ARTIST's employees, or agents, from waiving the right to subrogation prior to a loss. ARTIST agrees to waive subrogation rights against the City regardless of the applicability of any insurance proceeds, and to require all ARTISTs and subcontractors to do likewise.
3. All insurance coverage and limits provided by ARTIST and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operation limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include limiting endorsement of any kind that has not been first submitted to the City and approved in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any ARTISTs and subcontractors.
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) that may affect the City's protection without the City's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to ARTIST's general liability policy, shall be delivered to city at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled or reduced at any time and no replacement coverage is provided, the 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 the City shall be charged to and promptly paid by ARTIST or deducted from sums due ARTIST, at the City's option.

8. Certificate(s) are to reflect that the insurer will provide 30 days-notice to the City of any cancellation or reduction of coverage. ARTIST agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation or reduction of coverage imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
9. It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by ARTIST or any ARTISTs and subcontractors, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self-insurance available to the City.
10. ARTIST agrees to ensure that ARTISTs and subcontractors, and any other party involved with the Work who is brought onto or involved in the Work by ARTIST, provide the same minimum insurance 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 ARTISTs and subcontractors and others engaged in the Work will be submitted to the City for review.
11. 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 ARTIST, ARTISTs and subcontractors, Architects, Engineers, or other entity or person in any way involved in the performance of Work contemplated by this Agreement to self-insure its obligations to the 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.
12. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the ARTIST 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 the City.
13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
14. ARTIST acknowledges and agrees that any actual or alleged failure on the part of the City to inform ARTIST of non-compliance with an insurance requirement in

no way imposes any additional obligations to the City nor does it waive any rights hereunder in this or any other regard.

15. ARTIST will renew the required coverage annually as long as the 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. Termination of this obligation is not effective until the City executes a written statement to that effect.
16. ARTIST shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. As coverage binder or letter from ARTIST's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specification applicable to the renewing or new coverage must be provided to the City within five days of the expiration of coverage.
17. The provisions of any Workers' Compensation or similar act will not limit the obligations of ARTIST under this Agreement. ARTIST expressly agrees not to use any statutory immunity defenses under such laws with respect to the City, its employees, officials, and agents.
18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits, or other requirements nor 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 limiting or all-inclusive.
19. 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. The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts or impairs the provisions of this section.
21. ARTIST agrees to be responsible for ensuring that no contract used by any party involved in any way with the Work reserves the right to charge the City or ARTIST for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the City. It is not the intent of the City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against the City for payment of premiums or other amounts with respect thereto.
22. ARTIST agrees to provide immediate notice to City of any claim or loss against ARTIST arising out of the work performed under this Agreement. The City

assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.