

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Hugh R. Riley, Assistant City Manager

BY: Jessica Sandifer, Management Analyst 

DATE: November 8, 2013 (CC Meeting of 11/20/13)

SUBJECT: Consider Artwork Design for the Art in Public Places Project at the Arroyo Vista Recreation Center (AVRC) and Award Agreement to Anne Mudge to Design and Install the Project

BACKGROUND

In May 2005, the City Council adopted City Ordinance 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 artwork at the Arroyo Vista Recreation Center and along High Street with possible emphasis on the Metrolink Rail Station.

Based on the experience gained from the public art project at the Ruben Castro Human Services Center, staff recommended that the City Council authorize a Not-to-Exceed Budget of \$150,000 for this project. This appropriation has been included in the FY 2013-2014 budget.

On April 10, 2013, the City Council approved the issuance of a Request for Qualifications (RFQ) and authorized a proposal review process for a Public Art Project at the Arroyo Vista Recreation Center. At the conclusion of the review process, Anne Mudge was selected as the artist for the project. On September 4, 2013, the City Council approved the Arts Commission recommendation to select her as the project artist and authorized staff to negotiate an Agreement for Artistic Design containing the contract provisions approved by the City Attorney and included in the City Council-approved RFQ and project budget.

DISCUSSION

The artist's proposed design includes an homage to the Arroyo Simi, which generally runs in an east/west direction north of the park. The idea is to bring the Arroyo closer to the park by creating a concrete "stream" out of a proprietary concrete process known as Lithocrete© that will run generally from the curb at parking lot A, east and terminate near an existing drain. The termination point at the drain is a play on how water makes its way into the Arroyo. The artist will also craft medallions using the Lithomosaic© process which will feature the various wildlife and/or plants that live in the Arroyo. To showcase the native plantings in the area, the project includes removing the non-native plantings within the two existing planting areas at the front of the recreation center and creating pathways and seating areas within the planters. The Department of Fish and Wildlife is donating native plantings for the project and staff feels that the use of volunteer labor to remove the non-native planting, create the decomposed granite pathways, and plant the native plants is a good opportunity for community involvement in the project. The artist has also proposed seating elements that will contain Lithomosaic© artwork featuring native plants and animals in the Arroyo, including a bronze statue of the Western Toad. The artist has also proposed to create an interpretive signage display to be posted on the wall at the recreation center entryway, which would discuss the Arroyo and the various elements of the art project. Attachment 1 contains the artist's conceptual drawing, some details of the Lithomosaic© medallions and seating elements, and the interpretive signage layout.

FISCAL IMPACT

The artist's estimate to complete the project as designed comes in at \$147,930. This includes a \$12,000 contingency for unforeseen circumstances and the artist's fee of \$22,500. The approved 2013-2014 Capital Improvement Budget includes \$150,000 funded from the City's Art in Public Places Fund for this project.

STAFF RECOMMENDATION

1. Approve the artist's artwork design for the Public Art Project at the Arroyo Vista Recreation Center; and
2. Approve agreement for Artistic Design Services with Anne Mudge for an amount not to exceed \$147,631 subject to final language approval of the City Manager.

ATTACHMENTS

1. Conceptual Design and Design Elements
2. Agreement

ATTACHMENT 1

ANNE MUDGE | THE LAST STRAW

P.O.Box 333, Cardiff, CA 92007 | PH: (619) 887-5770 | Email: annemudge@sbcglobal.net | www.annemudge.com

Budget for Public Artwork, Arroyo Vista Recreation Center, Moorpark, CA

Fabrication of Lithomosaics

Materials @ \$40/sq.ft.	\$ 5,960
Medallions:124 sq. ft.	
Multi-source Seats: 25 sq.ft.	
Labor	\$ 11,475
Mosaic Fabrication and Storage Space; 412 SF	
Lease for 1 year @ \$435/month	\$ 5,220
149 sq.ft. of Lithomosaic	

Installation

Fencing	\$ 400
240'; Price for up to 6 mos.	
Trash Dumpster	\$ 495
One 10 yarder @ \$495	
Traffic Delineators	\$ 150
10 @ \$15 ea/wk	
Saw cut and removal of existing concrete to accept installation of Lithocrete and Lithomosaic	\$ 11,704
SeaCon Construction Inc., Moorpark, CA	
Includes removal, prevailing wage	
Installation of Lithocrete and Lithomosaic	
Shaw and Sons Concrete Contractors, Licensed Installers of proprietary processes	
- Lithomosaics: 118.23 sq.ft.	\$ 25,245
- Lithocrete – 400 sq.ft.	\$ 24,473
- "Multi-sourced" seating elements with Lithomosaic tops and sides	\$ 11,945
2 – 18" high by 24" x 18"	
1 – 30" high by 18" x 18"	
1 – 24" high by 30" x 18"	
- Samples, mock-up	\$ 4,965
All concrete to include Davis integral color	
Lithomosaics transport to site	\$ 220
Pickup in 92029 and drop off in 93021	

Interactive Component with Local Scouts and Boys & Girls Club

Materials and supplies	\$ 200
Child-generated imagery to be incorporated into book	
Instantpublisher.com:	
50 books @ \$ 8.12 = \$406 + tax/shipping	\$ 466

Native Garden Planter areas

Plant material by Ventura County Fish & Wildlife, Excepting specimen trees	NC
Labor to remove non-native plantings Provided by Volunteers	\$ 0
DG – Thompson Bldg. Materials, Camarillo Unless provided by Moorpark Parks & Rec 570 SF, 3" thick @ \$61 .20/yd x 6 yards	\$ 367
Stabilizer @ \$68 48/bucket x 8	\$ 548
Labor to install DG Provided by Volunteers	\$ 0

Bronze of Western Toad

Baja Bronze, Chula Vista, CA 12"H x 18"W x 27"L	\$ 3,650
Footing	\$ 1,200

Interpretive signage

KVO Industries, Exterior High Pressure Laminate 8 – 12" x 12" x 1/8" 2 – 24" x 24" x 1/8"	\$ 1,025
Labor to install	\$ 280

Artist travel expenses to Moorpark

\$ 2,400

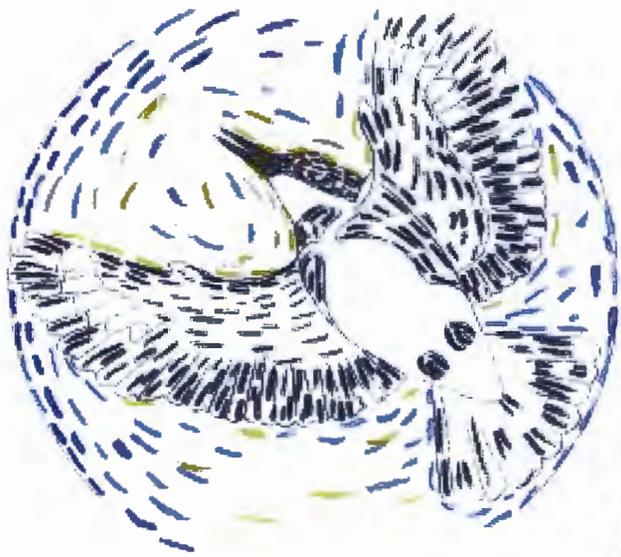
Insurance

General Liability Insurance: The Hartford, Policy # 72 SBA TV0791	\$ 1,042
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Artist fee @ 15% \$ 22,500

Contingency at 10% \$ 12,000

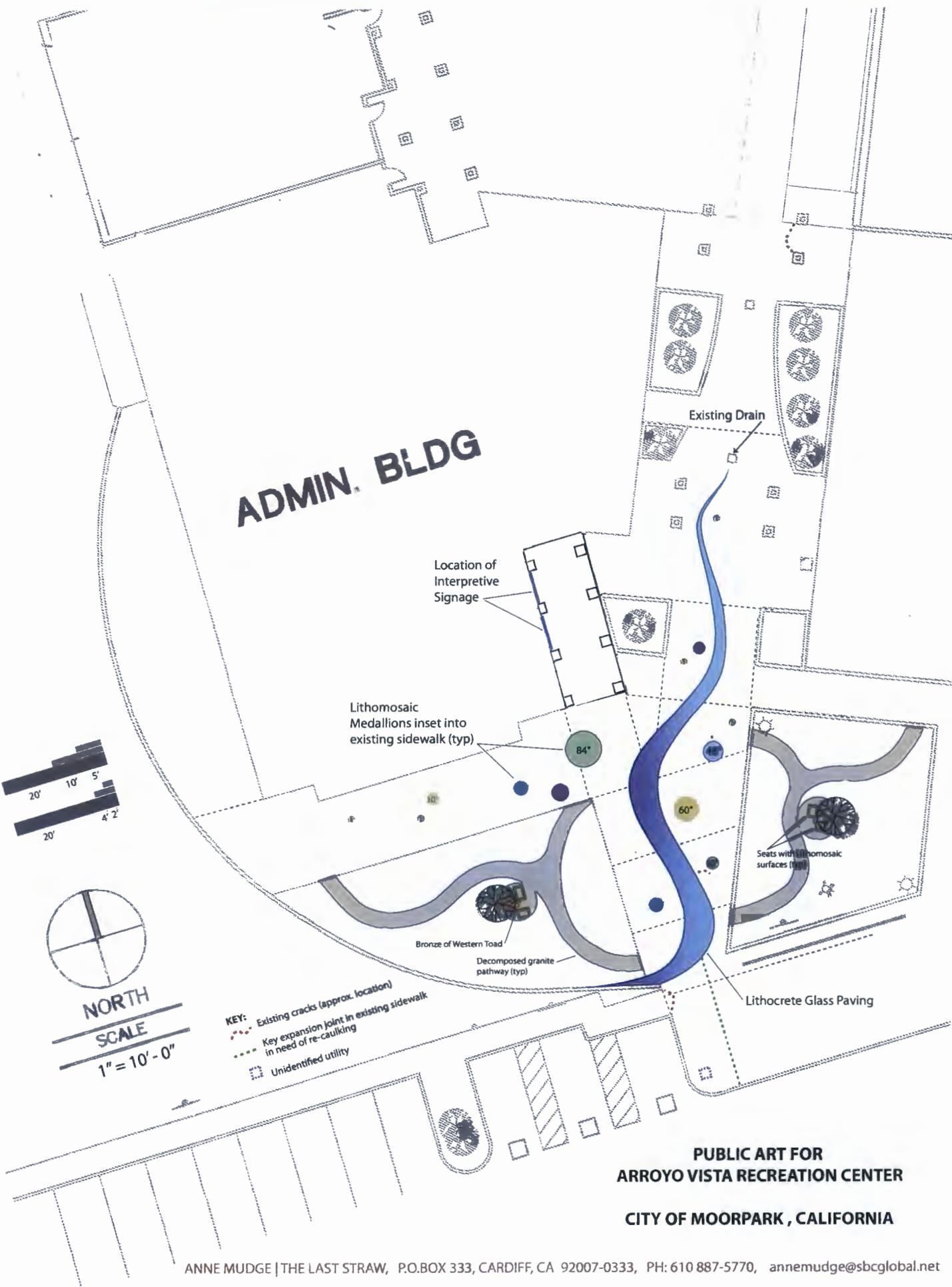
TOTAL \$147,930



LITHOMOSAIC MEDALLION SAMPLE WITH PRELIMINARY DRAWING

Shown on the right are mosaic tiles mounted on a fiber backing in preparation for an on-site installation where it will be inserted into a monolithic concrete pour.

Shown to the left is its preliminary drawing. It is worth noting that these drawings are aptly called "cartoons." They cannot convey the rich material presence that the mosaic tiles will provide. The enclosed drawings should likewise be considered as conceptual cartoons.

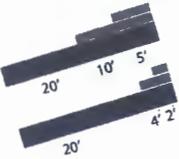


ADMIN. BLDG

Existing Drain

Location of Interpretive Signage

Lithomosaic Medallions inset into existing sidewalk (typ)



NORTH
SCALE

1" = 10'-0"

- KEY:**
- - - Existing cracks (approx. location)
 - - - Key expansion joint in existing sidewalk in need of re-caulking
 - Unidentified utility

Bronze of Western Toad

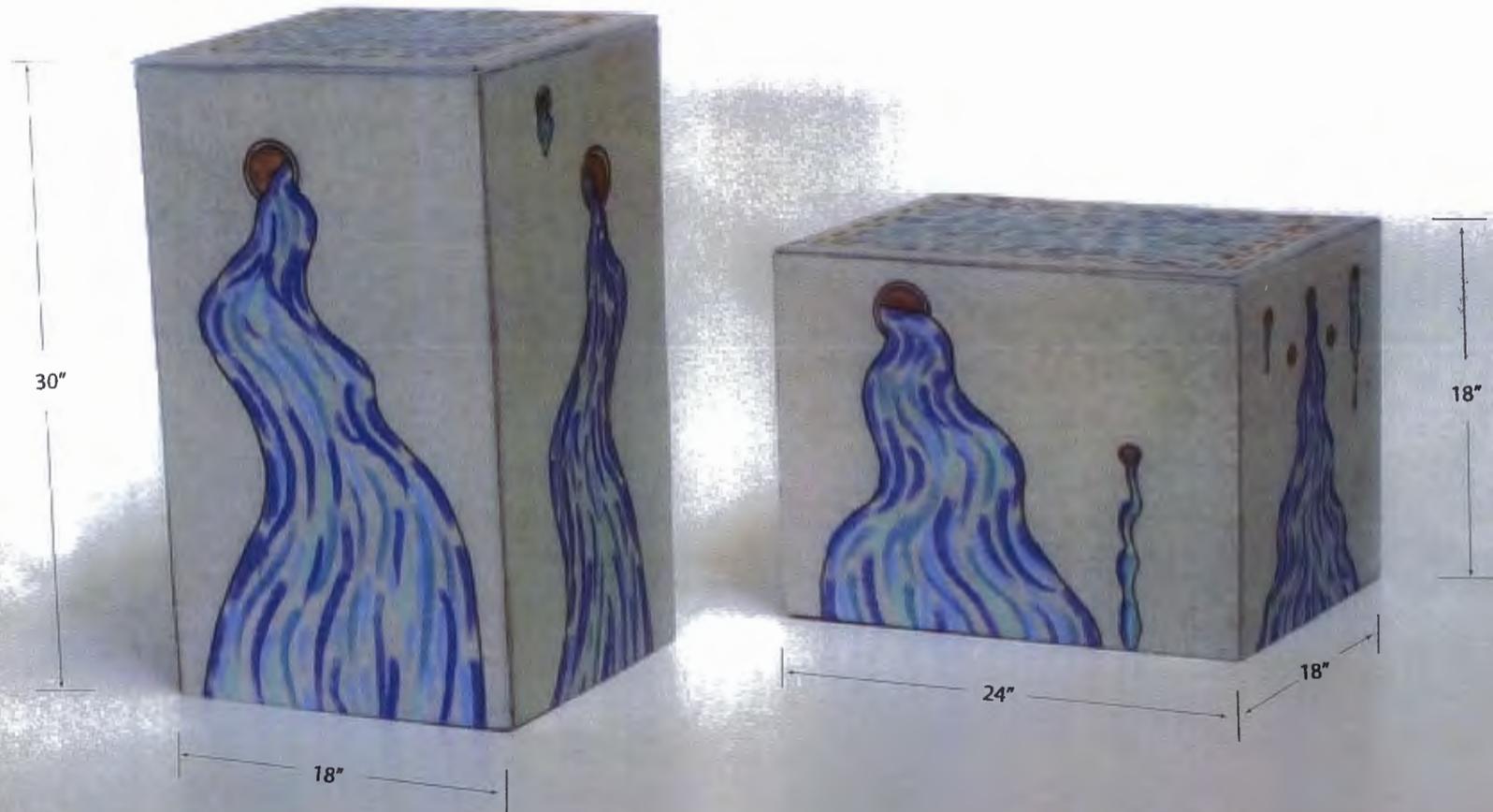
Decomposed granite pathway (typ)

Seats with lithomosaic surfaces (typ)

Lithocrete Glass Paving

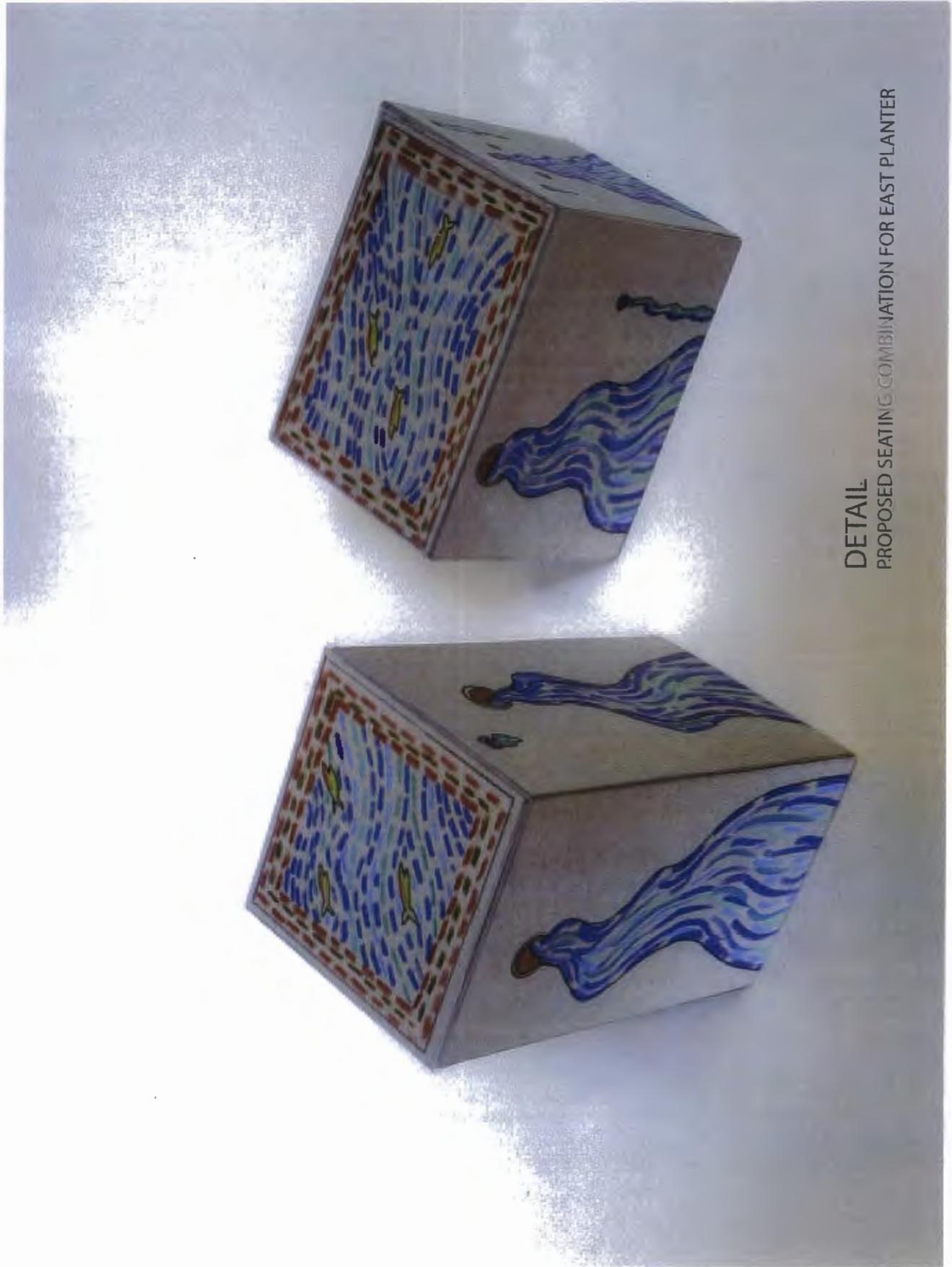
**PUBLIC ART FOR
ARROYO VISTA RECREATION CENTER**

CITY OF MOORPARK, CALIFORNIA



MULTI-SOURCED SEATING
PROPOSED SEATING COMBINATION FOR EAST PLANTER

ANNE MUDGE | THE LAST STRAW, P.O.BOX 333, CARDIFF, CA 92007-0333, PH: 610 887-5770, annemudge@sbcglobal.net



DETAIL
PROPOSED SEATING COMBINATION FOR EAST PLANTER



MULTI-SOURCED SEATING
PROPOSED SEATING COMBINATION FOR WEST PLANTER

ANNE MUDGE | THE LAST STRAW, P.O.BOX 333, CARDIFF, CA 92007-0333, PH: 610 887-5770, annemudge@sbcglobal.net



DETAIL
PROPOSED SEATING COMBINATION FOR WEST PLANTER

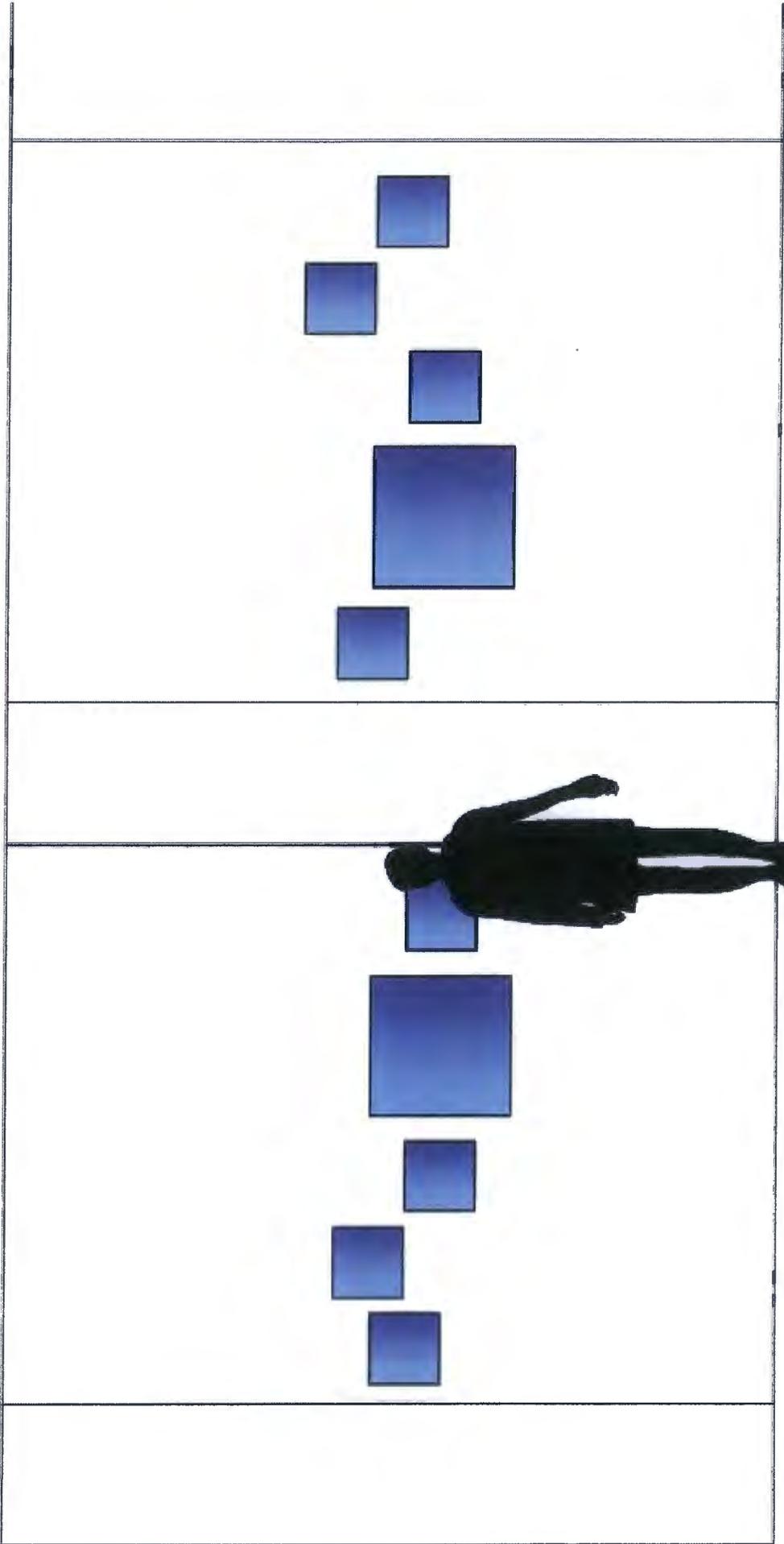


MULTI-SOURCED SEATING WITH BRONZE OF WESTERN TOAD
PROPOSED SEATING COMBINATION, INCLUDING INTERACTIVE TOAD, FOR WEST PLANTER
Toad measures approximately 1'H x 1.5' W x 2.25' L



MULTI-SOURCED SEATING
PROPOSED SEATING COMBINATION FOR WEST PLANTER
with Bronze Western Toad

NATIVE GARDEN DESIGN TO BE DETERMINED IN COOPERATION WITH VENTURA FISH AND WILDLIFE
THROUGH THEIR SCHOOLYARD HABITAT PROGRAM



PROPOSED LAYOUT OF INTERPRETATIVE WALL TEXT

LOCATED IN TWO NORTH-MOST BAYS OF COVERED WALKWAY

ENTRANCE TO ADMINISTRATION BUILDING

Signs measure 12" x 12" and 24" x 24"

ATTACHMENT 2

AGREEMENT BETWEEN THE CITY OF MOORPARK AND ANNE MUDGE FOR PUBLIC ART PROJECT AT ARROYO VISTA RECREATION CENTER

THIS AGREEMENT, is made and effective as of this _____ day of _____, 2013, between the City of Moorpark, a municipal corporation ("City") and Anne Mudge, an individual ("Artist"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

WHEREAS, City has a need for certain artistic design, fabrication, and installation services to create public art ("Artwork" or "Work" or "Works") at Arroyo Vista Recreation Center located at 4550 Tierra Rejada Road ("Project Site"); and

WHEREAS, City desires to contract for such services with a private artist; and

WHEREAS, City wishes to retain Artist for said services as described in this agreement.

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

1. TERM

The term of this Agreement shall be from the date of execution to completion of the work identified in the Scope of Services and in conformance with Exhibit B, unless this Agreement is terminated or suspended pursuant to this Agreement.

2. SCOPE OF SERVICES

City does hereby retain Artist as an independent contractor in a contractual capacity to perform the services set forth in the Scope of Work, Schedule of Performance, Project Budget Exhibit B and in accordance with the terms and conditions hereinafter set forth herein and with the authorities and responsibility ordinarily granted to this type of work. In the event there is a conflict between the provisions of Exhibit B and this Agreement, the language contained in this Agreement shall take precedence.

Artist shall perform the tasks described and set forth in Exhibit B. Artist shall complete the tasks according to the schedule of performance, which is also set forth in Exhibit B.

Compensation for the services to be performed by Artist shall be in accordance with Exhibit B and Section 6 of this Agreement. Compensation shall not exceed the rates or total contract value of one hundred and forty-seven thousand six hundred and thirty-one dollars (\$147,631) as stated in Exhibit B, without the written authorization of the City Manager. Payment by City to Artist shall be in accordance with the provisions of this Agreement.

3. PREVAILING WAGES

City and Contractor acknowledge that this project is a public work to which prevailing wages apply. The Agreement to Comply with California Labor Law Requirements is attached hereto as Exhibit C and incorporated herein by this reference. Eight hours of labor constitutes a legal day's work.

4. SPECIAL CONTRACT PROVISIONS

Artist agrees to be bound by the terms of these Special Contract Provisions:

a) 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.

b) Artists' Waiver of Rights

Artwork Removal. The Artwork may be removed from the Project Site at any time by City. 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 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.

c) 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.

d) 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.

e) 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.

f) 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.

g) 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.

h) 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.

i) 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.

j) 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.

k) 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.

l) 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.

m) 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."

n) 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.

o) 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.

p) 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.

5. PERFORMANCE

Artist shall at all times faithfully, competently and to the best of their ability, experience, standard of care, and talent, perform all tasks described herein. Artist shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Artist hereunder in meeting its obligations under this Agreement.

6. MANAGEMENT

The individual directly responsible for Artist's overall performance of the Agreement provisions herein above set forth and to serve as principal liaison between City and Artist shall be Anne Mudge, and no other individual may be substituted without the prior written approval of the City Manager.

The City's contact person in charge of administration of this Agreement, and to serve as principal liaison between Artist and City, shall be the City Manager or the City Manager's designee.

7. PAYMENT

Taxpayer ID or Social Security numbers must be provided, on an IRS 1099 form, before payments may be made to vendors.

The Artist shall receive a fee (Artist's Fee) of twenty-two thousand five hundred dollars (\$22,500) upon completion of the Artwork and final acceptance by the City Council of the City of Moorpark of the Artwork. The Artist shall be reimbursed for other project related expenses including lodging, subsistence, project community promotion and pre-approved travel as set forth in the Project Budget included in Exhibit B. The Project Budget, excluding the Artist's Fee, shall not exceed one hundred and twenty-five thousand one hundred and thirty-one dollars (\$125,131) for work directly related to the services set forth in Exhibit B. Artist shall complete the tasks according to the Schedule of Performance, which is set forth in Exhibit B.

Artist shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. Any expense or reimbursable cost appearing on any invoice shall be accompanied by a receipt or other documentation subject to approval of the City Manager. If the City disputes any of

Artist's fees or expenses it shall give written notice to Artist within thirty (30) days of receipt of any disputed fees set forth on the invoice.

Artist shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Artist shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Artist at the time City's written authorization is given to Artist for the performance of said services.

8. TERMINATION OR SUSPENSION WITHOUT CAUSE

The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Artist at least ten (10) days prior written notice. Upon receipt of said notice, the Artist shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

The Artist may terminate this Agreement only by providing City with written notice no less than thirty (30) days in advance of such termination. If the Agreement is terminated by Artist prior to final acceptance of the Artwork by the City Council, Artist shall forfeit the \$22,500 Artist's Fee.

In the event the Agreement is terminated by the City, prorated compensation shall be calculated at a rate of four thousand five hundred dollars (\$4,500) per week commencing from the actual start date of work as approved by the City Manager or his/her designee in writing. Upon termination or suspension of the Agreement pursuant to this Section, the Artist will submit an invoice to the City pursuant to this Agreement.

9. DEFAULT OF ARTIST

The Artist's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Artist is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Artist for any work performed after the date of default and can terminate or suspend this Agreement immediately by written notice to the Artist. If such failure by the Artist to make progress in the performance of work hereunder arises out of causes beyond the Artist's control, and without fault or negligence of the Artist, it shall not be considered a default.

If the City Manager or the City Manager's designee determines that the Artist is in default in the performance of any of the terms or conditions of this Agreement, designee shall cause to be served upon the Artist a written notice of the default. The Artist shall have seven (7) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Artist fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice

and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

10. OWNERSHIP OF DOCUMENTS

Subject to additional requirements in Special Contract Provisions, Artist shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Artist shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Artist shall provide free access to the representatives of City or the City's designees at reasonable times to such books and records; shall give the City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Notification of audit shall be provided at least thirty (30) days before any such audit is conducted. Such records, together with supporting documents, shall be maintained for a period of five (5) years after receipt of final payment.

Upon completion of, or in the event of termination or suspension without cause of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Artist. With respect to computer files, Artist shall make available to the City, at the Artist's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

11. INDEMNIFICATION AND HOLD HARMLESS

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 attorneys 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 Agreement 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.

12. INSURANCE

Artist shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit A attached hereto and incorporated herein by this reference as though set forth in full.

13. INDEPENDENT ARTIST

Artist is and shall at all times remain as to the City a wholly independent Contractor. The personnel performing the services under this Agreement on behalf of Artist shall at all times be under Artist's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Artist or any of Artist's officers, employees, or agents, except as set forth in this Agreement. Artist shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Artist shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

No employee benefits shall be available to Artist in connection with the performance of this Agreement. Except for the fees paid to Artist as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Artist for performing services hereunder for City. City shall not be liable for compensation or indemnification to Artist for injury or sickness arising out of performing services hereunder.

14. LEGAL RESPONSIBILITIES

The Artist shall keep itself informed of local, state and federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Artist shall at all times observe and comply with all such laws and regulations, including but not limited to the Americans with Disabilities Act and Occupational Health and Safety Administration laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Artist to comply with this Section.

15. ANTI DISCRIMINATION

Neither the Artist, nor any subconsultant under the Artist, shall discriminate in employment of persons upon the work because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or gender of such person, except as provided in Section 12940 Government Code. The Artist shall have responsibility for compliance with this Section [Labor Code Section 1735].

16. UNDUE INFLUENCE

Artist declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential

financial arrangement, or financial inducement. No officer or employee of the City will receive compensation, directly or indirectly from Artist, or any officer, employee or agent of Artist, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

17. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of the City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Services during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Services performed under this Agreement.

18. CONFLICT OF INTEREST

Artist 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 shall 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.

19. NOTICE

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 whom intended as follows:

To: City Manager
City of Moorpark
799 Moorpark Avenue
Moorpark, California 93021

To: Anne Mudge
The Last Straw
Post Office Box 333
Cardiff, California 93007-0333

Either party may, from time to time, by written notice to the other, designate a different address or contact person, which shall be substituted for the one above specified. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the third (3rd) day after deposit in the United States mail.

20. CHANGE IN NAME

Should a change be contemplated in the name or nature of the Artist's legal entity, the Artist shall first notify the City in order that proper steps may be taken to have the change reflected in the Agreement documents.

21. ASSIGNMENT

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.

22. LICENSES

At all times during the term of this Agreement, Artist shall have in full force and effect, all licenses required of it by law for the performance of the services in this Agreement.

23. VENUE AND GOVERNING LAW

This Agreement is made, entered into, and executed in Ventura County, California, and any action filed in any court or for arbitration for the interpretation, enforcement or other action of the terms, conditions, or covenants referred to herein shall be filed in the applicable court in Ventura County, California. The City and Artist understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement.

24. COST RECOVERY

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 from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

25. ARBITRATION

Cases involving a dispute between City and Artist may be decided by an arbitrator if both sides agree in writing, with costs proportional to the judgment of the arbitrator.

26. ENTIRE AGREEMENT

This Agreement and the Exhibits attached hereto contain the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings,

representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

27. CAPTIONS OR HEADINGS

The captions and headings of the various Articles, Paragraphs, and Exhibits of this Agreement are for convenience and identification only and shall not be deemed to limit or define the content of the respective Articles, Paragraphs, and Exhibits hereof.

28. AMENDMENTS

Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by both parties to this Agreement.

29. PRECEDENCE

In the event of conflict, the requirements of the City's Request for Proposal, if any, and this Agreement shall take precedence over those contained in the Artist's Proposal.

30. INTERPRETATION OF AGREEMENT

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 the party prepared the Agreement or caused it to be prepared.

31. WAIVER

No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver 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.

32. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of the Artist warrants and represents that he/she has the authority to execute this Agreement on behalf of the Artist and has the authority to bind Artist to the performance of obligations hereunder.

[signatures next page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF MOORPARK

ARTIST

By: _____
Steven Kueny, City Manager

By: _____
Anne Mudge

Attest:

Maureen Benson, City Clerk

EXHIBIT A

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.

Arist'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
 - Contractual liability
2. Artist shall provide Worker's Compensation insurance on a State of California 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. A Worker's Compensation Insurance Certificate shall be filed with the City before beginning work, unless Artist signs a written certification that Artist is aware of the provisions of Section 3700 et seq. of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation, and that no one other than Artist, or a legal subcontractor, will perform any services under this Agreement.

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.

In lieu of the above, the Artist may provide certification to the City on a form to be provided by the City that there are no employees other than the Artist engaged in the project.

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 insured City, its officials, employees and agents, using standard ISO endorsement No. CG 2010 in a form acceptable to the City. Artist also agrees to require all contractors, subcontractors, and anyone 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 thirty (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 effective upon issuance of a Notice of Completion by the City.
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. **Section 19 of the Exhibit "A", Insurance Requirements, is Intentionally Deleted.**
20. **Section 20 of the Exhibit "A", Insurance Requirements, is Intentionally Deleted.**
21. **Section 21 of the Exhibit "A", Insurance Requirements, is Intentionally Deleted.**

EXHIBIT B

**TO BE
ATTACHMENT 1**

EXHIBIT C

AGREEMENT TO COMPLY WITH CALIFORNIA LABOR LAW REQUIREMENTS TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

[Labor Code §§ 1720, 1775, 1776, 1777.5, 1810, 1813, 1860, 1861, 3700]

The undersigned Contractor certifies that it is aware of and hereby agrees to fully comply with the following provisions of California law:

1. Contractor acknowledges that this contract is subject to the provisions of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works and the awarding Owner ("Owner") and agrees to be bound by all the provisions thereof as though set forth in full herein.
2. Contractor agrees to comply with the provisions of California Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. Contractor shall, as a penalty to Owner, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by Contractor or by any subcontractor.
3. Contractor agrees to comply with the provisions of California Labor Code Section 1776 which require Contractor and each subcontractor to (1) keep accurate payroll records, (2) certify and make such payroll records available for inspection as provided by Section 1776, and (3) inform Owner of the location of the records. Contractor is responsible for compliance with Section 1776 by itself and all of its subcontractors.
4. Contractor agrees to comply with the provisions of California Labor Code Section 1777.5 concerning the employment of apprentices on public works projects, and further agrees that Contractor is responsible for compliance with Section 1777.5 by itself and all of its subcontractors.
5. Contractor acknowledges that eight (8) hours of labor shall constitute a legal day's work for all workmen employed in the execution of this contract, and the Contractor and any subcontractor under him shall comply with and be governed by the laws of the State of California having to do with working hours set forth in Division 2, Part 7, Chapter 1, Article 3 of the Labor Code of the State of California as amended.
6. Contractor agrees to comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. Contractor shall, as a penalty to Owner, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the California Labor Code.
7. California Labor Code Sections 1860 and 3700 provide that every contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

Signature _____

Date _____

Printed Name _____

Company _____

Title _____