ITEM 9.B.

MOORPARK CITY COUNCIL
AGENDA REPORT

TO: **Honorable City Council**

FROM: **Jeremy Laurentowski, Parks and Recreation Director** JL
BY: **Jessica Sandifer, Management Analyst**

DATE: **March 11, 2015 (CC Meeting of 03/18/2015)**

SUBJECT: **Consider Request for Qualifications for Public Art Project at Moorpark Police Services 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 2014, the City of Moorpark Mission Statement, Goals, Priorities, Goals and Objectives included the following objective:

V.A.8. Consider item of public art for Police Services Center, High Street Post Office, or Train Station by June 30, 2015.

In May 2014, the Arts Commission visited the Metrolink Station on High Street to identify possible sites for public art and requested that staff contact Metrolink staff to obtain additional information regarding the process involved with placing a public art installation at the station, as well as any development constraints. Metrolink's staff was unable to provide any detailed information on the project without knowing the size and scope of the Artwork. The Commission also discussed the Post Office as a potential site for public art. However, staff suggested that it would be best to wait to develop artwork in this area until a more definitive design of the future development of the civic center property is completed. On August 19, 2014, staff recommended that the Commission defer discussions regarding public art at the Metrolink Station and the Post Office and focus on the Police Services Center (PSC). The Commission agreed with staff's recommendation and determined that the area on the north/east corner of Spring Road and Flinn Avenue at the PSC would be the preferred location for the future public art project ("Project Site").

The Project Site is currently improved with a square "criss-cross" pattern of turf divided by concrete curbs and purple leaf plum trees, in addition to several shrub planters, and is currently maintained by the County of Ventura per the terms of the lease agreement for use of the PSC. Unfortunately, these trees are subject to boring beetle infestations and they have already been replaced twice due to the loss of several trees. Due to the fact

that insecticides are only effective during certain stages of the egg development, treatment and preventative measures are difficult to schedule, and they are ineffective once the infestation progresses to the larvae stage. In consideration of the declining health of the trees, it is staff's intent to re-design the landscaping in this area in conjunction with the art project. Once an artist is selected, staff will work with the selected artist and contract with a landscape architect during the conceptual design phase to include landscaping that will complement and enhance the artwork.

Staff has developed the attached Request for Qualifications for the City Council's consideration. The goals for the artwork are:

- The artwork(s) should not disrupt use of the area facilities and spaces.
- The artwork(s) should inspire respect for public safety and service.
- The artwork(s) should encourage pride in the overall reputation of police officers, and other public safety officers both sworn and non-sworn.
- The artwork(s) should acknowledge the City's commitment to these services.
- The artwork(s) should simultaneously evoke the past while being future-directed.

The proposed timeline for the selection process is as follows:

March ,19, 2015	RFQ released
April 17, 2015	Application deadline
April – May 2015	Shortlisting and final selection of one artist team
June 3, 2015	City Council Approval
June – July, 2015	Agreement execution
August – September, 2015	Design development and approval phases
October – November,2015	Fabrication and installation phases
December 2015	Completion

FISCAL IMPACT

Funds for the artwork are included in the Art In Public Places fund for Fiscal Year 2014/15 in the amount of $150,000. No additional appropriation for the artwork is needed at this time. Staff estimates that design and installation of the landscaping around the artwork may cost as much as $75,000, depending on the extent of the renovation work that will be required to compliment the artwork. Staff will return to City Council for an appropriation for this work once we have finalized a conceptual plan for the artwork.

STAFF RECOMMENDATION

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

Attachment: Request for Qualifications

CITY OF MOORPARK
MOORPARK ARTS COMMISSION

REQUEST FOR QUALIFICATIONS (RFQ)

POLICE SERVICES CENTER
ART IN PUBLIC PLACES
Project No. 7708

An artist is sought to design, fabricate, and install an artwork or artworks at the City of Moorpark ("City"), Police Services Center at 610 Spring Road, Moorpark, California, 93021.

Funding for the Artwork is provided by the development fees collected for public art projects, which is mandatory in the City of Moorpark. The Moorpark Arts Commission (Commission) administers the artist selection process and the development of the Artwork.

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

Friday, April 17, 2015, at 4:00P.M. PST

Applications received after the deadline will not be reviewed. The 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.

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

Artists working in all mediums may apply but sculpture in metals, concrete, and other solid mediums are preferred. Projects using wall murals or art affixed to walls will not be accepted.

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

BUDGET

Approximately $145,000 for design, fabrication, and installation for the Artwork

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 this project.

Artists are responsible for travel expenses including travel to interviews and meetings, if invited. No separate budget exists to support project-related travel for artists during the selection phase.

THE SITE

The site for the artwork(s) is the general courtyard area at the Police Services Center ("PSC Facility"), 610 Spring Road, on the northeast corner of the intersection of Spring Road and Flinn Avenue in Moorpark, California. The approximate area is 2,500 square feet. (See EXHIBIT A). The courtyard is currently improved with a square "criss-cross" pattern of turf divided by concrete curbs and includes purple plum trees. There is a sanitary sewer service line running diagonally across the north side of the site and there is an irrigation system for the turf and trees. All or part of these improvements may be modified with the City's consent as a part of the public art project.

VISIBILITY

The site offers good visibility from Spring Road, however there are traffic signal control devices located on the corner that may slightly obstruct street visibility.

THE FACILITY

The PSC Facility was constructed by the City and was completed in 2005. The building was designed to provide a headquarters for the Ventura County Sheriff's Department under contract as the Moorpark Police Department. The building also serves as a base for other deputies serving eastern Ventura County including special gang prevention and major crimes units. The City also leases 4,500 square feet of the building to the California Highway Patrol as a base for their operations in the East County.

NEIGHBORING PROPERTIES

The Veterans Memorial Park is located to the south of the site across Flinn Avenue. The City's Ruben Castro Human Services Center is located immediately north of the PSC Facility. To the west across Spring Road is a residential neighborhood. The properties to the east of the PSC Facility have industrial and public uses including the Ambulance Service, the Moorpark Public Services Facility and a Caltrans Maintenance Yard.

The overall design considerations for the Artwork(s) are:

- Respect neighborhood character including the Veterans Memorial.
- Celebrate the general theme of public service and the protection of life and property.
- Consider possible community sensitivity toward law enforcement in light of recent incidents of alleged police misconduct in the news. (NOTE: There have been no such incidents in Moorpark)
- Do not include a water feature.
- Sculpture in metals, concrete, and other solid mediums are preferred, but other mediums will be considered.
- Projects using wall murals or art affixed to walls will not be accepted.
- The Artwork(s) shall be an original piece of art that is solely the result of the artistic effort of the Artist(s). Any and all materials and deliverables including, but not limited to, the Artwork(s) and its design shall be unique, original, an edition of one, not encumbered, and must not infringe upon the copyright, trademark, patent, or other intellectual property rights of any third party, or are in the public domain.

The goals for the artwork(s) are:

- The artwork(s) should not disrupt use of the area facilities and spaces.

- The artwork(s) should inspire respect for public safety and service.
- The artwork(s) should encourage pride in the overall reputation of police officers, and other public safety officers both sworn and unsworn.
- The artwork(s) should acknowledge the City's commitment to these services.
- The artwork(s) should simultaneously evoke the past while being future-directed.

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

- Execution of an Agreement for Design Services with the City
- Research, which includes examining the site, reviewing pertinent documents, meeting with City staff involved in the project, as well as members of the community
- Creation and submission of one Schematic Design
- Participation in a critique of the Schematic Design by the Moorpark Arts Commission
- Attendance at one meeting with members of the community to present the Schematic Design and gather feedback
- Development and submission of a Final Proposal
- Participation in a review of the Final Proposal by the Arts Commission and Staff
- Participation in a review of the Final Proposal by the Moorpark City Council
- Creation and submission of construction documents, if necessary
- Participation in the approval process for construction documents, if necessary
- Execution of an Agreement for Fabrication and Installation Services with City of Moorpark, if necessary
- Site preparation, if necessary
- Fabrication, transportation, and installation of art element(s)
- Submission of documentation images and a maintenance report
- Participation in ribbon-cutting ceremony and/or outreach to press
- Coordination with City staff, as needed

Some meetings, except meetings between the artist and members of the community, may be conducted remotely, as necessary and as solely determined by City staff.

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

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The City reserves the right to revise this timeline.

Applications submitted in response to this RFQ will be reviewed by the Moorpark Arts Commission-Selection Panel (MACASP), which may include a representative of the Parks and Recreation

Department. The MACASP will review all complete, eligible applications received by the deadline. Evaluating the qualifications shown in the applications, the MACASP will shortlist no more than three artists to attend interviews with the MACASP. **Travel expense for these interviews is not reimbursable**.

Criteria used to shortlist artist teams will be:

- Quality, creativity and strength of concepts and workmanship as evidenced in images of past work and a professional resume
- Technical competence as evidenced by images of past work, a professional resume, and the application checklist
- Aptitude for planning, budgeting and working on teams as evidenced by a professional resume, professional references, and the application checklist
- Experience and a demonstrated aptitude for working on public art projects as evidenced in a professional resume, images of past work, professional references, and the application checklist
- A commitment to working with members of the public to create art projects as evidenced in a professional resume, images of past work, and the application checklist
- Access to appropriate technology for communicating efficiently and effectively as evidenced by the application checklist

Artists who accept the invitation to interview will not be expected to develop proposals, but, in the interviews, each artist will be expected to discuss past approaches and working methods with the MACASP as well as answer questions relating to working on projects of this nature and the design principles and artwork goals set forth by the MACASP. The MACASP will recommend only one artist to the City Council after the interview phase.

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

- Quality, creativity, and strength of concepts and workmanship
- Interest in and understanding of the project
- Experience with community groups and public input
- Ability to organize and administer complex projects
- Quality and strength of communication skills

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

Application Submittal

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

- Digital images of past work with annotations (35mm slides will not be accepted.)
- A professional resume for each team member/partner
- Professional references for each team member/partner

Provide six USB flash drives containing the application materials and one (1) hard copy of the application materials. Flash drives should be labeled with the Artist's name only. Please closely observe the requirements and guidelines for the application materials as detailed below:

- **Digital Images**
  - Submit a maximum of 20 images showing at least five different artworks. This 20 image maximum is per application, not per team member.
  - The operating system utilized by the Commission is Windows-based. The Commission utilizes Microsoft PowerPoint 2010 as well as a projector. Applicants are responsible for ensuring compatibility between the applicants' submissions and the Commission's operating system and software. Applicants are advised to test their presentations in advance of submitting.
  - 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.
  - The Commission is not responsible for distortion or alteration of images as they appear on monitors or as projected.
  - It is recommended that a PDF copy of the slideshow presentation be included on the flash drive, along with the PowerPoint file.
  - If you include a sound element in your presentation, please include a conspicuous notice with your submission.
  - 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 (such as installations, integrated artwork or team work), please submit brief descriptions for each work that you believe needs further explanation.

- **Professional Resume**
  Please submit a current professional resume, in PDF format, (five pages maximum) including information regarding past public art commissions, design team experience, exhibitions, awards, grants, and education. Teams should submit a separate resume for each member of the team and each partner or advisor. Handwritten materials will not be reviewed.

- **Professional References**
  Please submit the names, addresses, current telephone numbers and/or email addresses for three public agencies on your past work and qualifications, in PDF format. Do not send letters of recommendation. 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.

- **Self Addressed Stamped Envelope (Optional)**
  If you wish to receive your flash drives back, please submit a self-addressed stamped

envelope (S.A.S.E.) for the return of the submitted materials. Materials submitted without an S.A.S.E. will not be returned. Text materials will not be returned. The Commission will make every effort to protect submitted materials; however, it will not be responsible for any loss or damage.

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):

- Submit text materials on **8.5" x 11" WHITE BOND PAPER**. (Common copy paper is best as heavier stock is more difficult to run through a copy machine.)
- **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, CATALOGS, 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.

Deliver applications no later than 4:00 pm on Friday, April, 17, 2015 to:

City of Moorpark
ATTN: Public Art Program – Police Services Center #7708
799 Moorpark Avenue
Moorpark, CA 93021

Applications received after this deadline will not be reviewed.

For information not covered in this RFQ, please address your questions no later than 72 hours prior to the deadline, to: Jessica Sandifer, Management Analyst at jsandifer@moorparkca.gov or (805) 517-6225.

TERMS AND GENERAL CONDITIONS

Responsibility for Submissions: Although we will make every effort to protect the materials you submit, the City is not responsible for the loss or damage of any application materials submitted. Artists submitting applications without an S.A.S.E. will not receive materials back.

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, the Selection Committee composition, 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 team.

Decline to Award: The City, at its sole discretion, reserves the right to not award the commission to any artist team, 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 insured on all insurance policies except Workers' Compensation coverage.

CONTRACT PROVISIONS

The Artist shall be required to execute a form of agreement provided by the City, a sample of which is attached to this RFQ. The terms of such agreement will include, but will not be limited to, the following:

Copyright:

The Artwork shall be considered to be "works made for hire" for the benefit of the City. The Artwork and any and all associated intellectual property rights arising from the Artwork, shall be and remain the property of the City without restriction or limitation. The Artist shall not obtain or attempt to obtain copyright protection as 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 catalogs, 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.

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

Artists' Waiver of Rights:

ARTWORK REMOVAL.
The Artwork may be removed from the Project Site at any time. The Artist, the City, and the State 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 State, the City, or their 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 or omissions 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 attorney's 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) 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, liabilities, actions, 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."

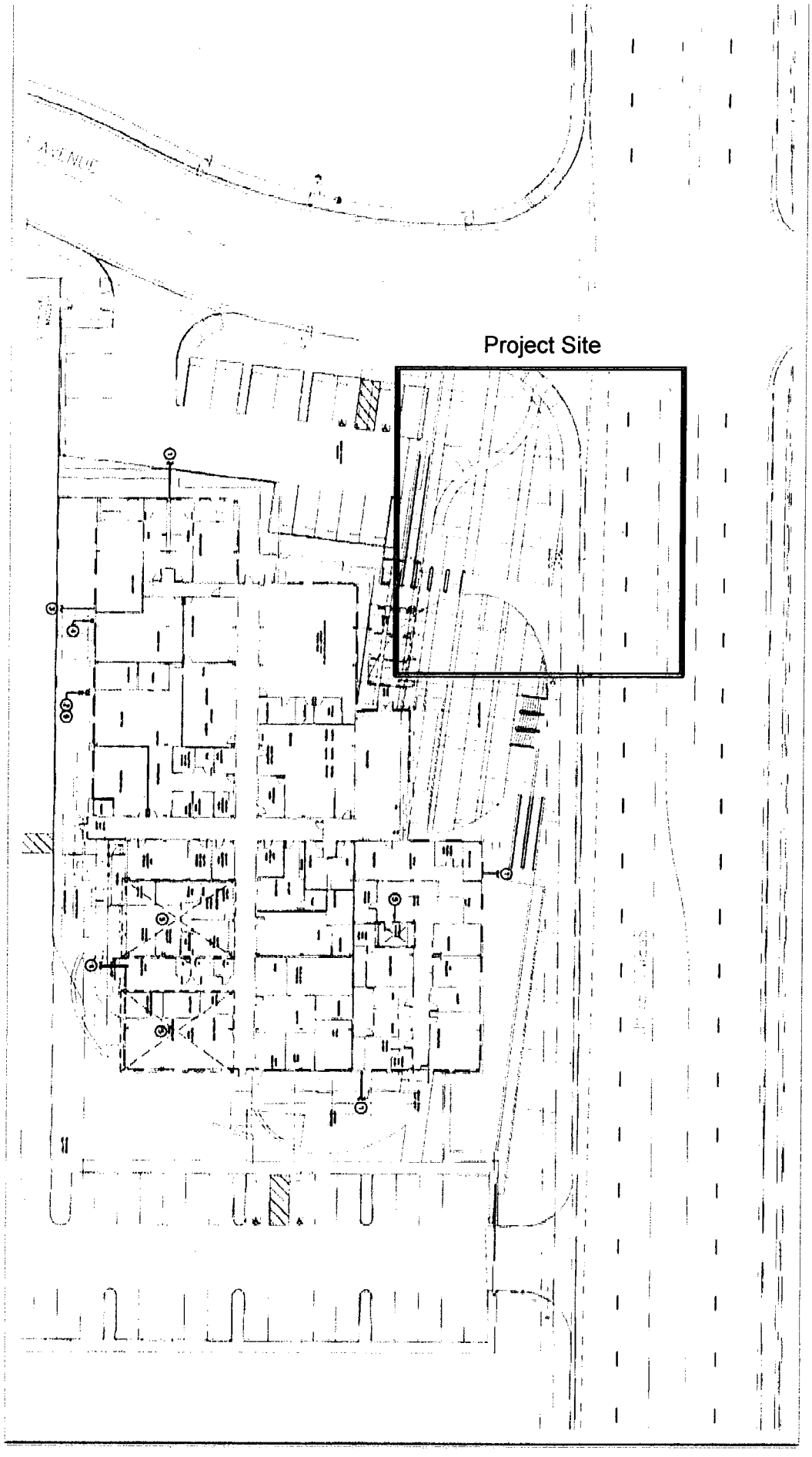
City's Right to Repair and Conserve. The City shall have the right to determine when and if repairs and restorative conservation to the Artwork will be made. It is the policy of the City to consult with the Artist regarding repairs and restorative conservation which is undertaken up to five (5) years 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.

Attachment:
1 – Site Plan
2 – Sample Agreement

---End of RFQ---

EXHIBIT A



ATTACHMENT 2

AGREEMENT BETWEEN THE CITY OF MOORPARK AND
_____ FOR PUBLIC ART PROJECT AT
MOORPARK POLICE SERVICES CENTER

THIS AGREEMENT, is made and effective as of this _____day of _____, 2015, between the City of Moorpark, a municipal corporation ("City") and _____, an _____ ("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 the Moorpark Police Services Center (MPSC) located at 610 Spring Road, Moorpark, CA 93021 ("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 _____dollars ($XXXXX) 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 Artist acknowledge that this project is a public work to which prevailing wages apply, and that a public work project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations (DIR). Artist agrees to notify any contractors(s) hired by Artist in the commission of the Artwork, that said contractor(s) are bound by all the terms, rules and regulations described in (a) Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, including without limitation Labor Code Section 1771 and (b) the rules and regulations established by the DIR implementing such statutes, as though set forth in full herein, including any applicable amendments made thereto during the term of this Agreement. For every contractor who will perform work on this project, Artist shall be responsible for contractor's compliance with (a) and (b), and Artist shall take all necessary actions to ensure contractor's compliance. Labor Code Section 1725.5 requires all contractors and subcontractors to annually register with the DIR before bidding or performing on any public work contract. Artist is required to provide proof of compliance with Labor Code Section 1725.5 prior to hiring any contractors or sub-contractors for this project.

4. SPECIAL CONTRACT PROVISIONS

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

a) Copyright. The Artwork shall be considered to be "works made for hire" for the benefit of the City. The Artwork and any and all associated intellectual property rights arising from the Artwork, shall be and remain the property of the City without restriction or limitation. The Artist shall not obtain or attempt to obtain copyright protection as to the Artwork.

b) 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 catalogs, 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.

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

c) Artists' Waiver of Rights

Artwork Removal. The Artwork may be removed from the Project Site at any time. The Artist, the City, and the State 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 State, the City, or their 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.

d) 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.

e) 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.

f) 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.

g) 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.

h) 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.

i) 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.

j) 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.

k) 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.

l) 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.

m) 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.

n) 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."

o) 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.

p) 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.

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 _____, 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 _____dollars

($XXXX) upon completion of the Artwork and final acceptance by the City Council of the City of Moorpark of the Artwork. The Artist shall be reimbursed for other project related expenses including lodging, subsistence, project community promotion and pre-approved travel as set forth in the Project Budget included in Exhibit B. The Project Budget, excluding the Artist's Fee, shall not exceed _____ dollars ($XXXXXX) 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 $XXXXX 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 or omissions 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 attorney's 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) 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, liabilities, actions, 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: Artist
Address
City State Zip

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.

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

CITY OF MOORPARK

By:_____
Steven Kueny, City Manager

Attest:

_____
Maureen Benson, City Clerk

ARTIST

By:_____

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.

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

- Explosion, collapse or underground hazard (XCU)
- Products and completed operations
- 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 again 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.**