



Sunnyvale

# CALL FOR ARTISTS

Public Art - Request for Qualifications (RFQ)

## *Corn Palace Park*

*Deadline for Applications: Jan. 27, 2025, at 12 noon*

### Call for Artists

The City of Sunnyvale's Art in Public Places program seeks to commission artists, or artistic teams, to design and execute original works of art for the new Corn Palace Park. There are four opportunities for art for this project: three backless artist created benches and a mosaic seating wall.



Image: Corn Palace Park, Approved Concept Design Plan

### Artist Eligibility

This Request for Qualifications is open to practicing, professional and emerging artists residing in California. Artists residing or working in Sunnyvale and who meet all the criteria outlined in this RFQ are urged to apply. Applicants must be 18 and over.

Artists will be required to maintain appropriate licenses for the type of work proposed or can collaborate with a licensed professional to complete their design (for example, hiring a professional tiler or painter to collaborate and assist with the execution of a mosaic or mural design).

## Sunnyvale Overview

The City of Sunnyvale is in the heart of Silicon Valley in Northern California covering 24 square miles. Sunnyvale is the second largest city in Santa Clara County and the seventh largest city in the San Francisco Bay Area. The City has a population of 156,503 and daytime workforce of approximately 220,000 people.

Nearly 8,000 local businesses provide a rich mixture of goods and services, including many icons in tech, manufacturing, retail and R&D. Some of the nation's most successful business and industrial entities have campuses in Sunnyvale, including: Apple, Google, LinkedIn, Facebook, Yahoo!, AMD, NetApp, Nokia, 23andMe, Juniper Networks, National Semiconductor, Fortinet, Intuitive Surgical, Broadcom, Synopsis, Spansion Inc. and Lockheed Martin.

Sunnyvale is also known for its innovative Public Safety Department concept, business-friendly environment, cultural arts programming, 200-seat theater, Library and quiet family neighborhoods. The City's 23 parks and open space encompass 772 acres with facilities for golf, tennis, pickle ball and swimming. The historic downtown is home to a variety of local eateries and merchants and hosts frequent art festivals, concerts and a year-round farmers market.

Sunnyvale is also expanding and renovating quickly. Current projects include:

- A newly opened, state-of-the-art, built to LEED Platinum standards, all-electric City Hall building.
- The City's first branch library, currently under construction in the Lakewood Neighborhood.
- Upgrades and redesigns to many parks including: renovations of the Community Center grounds and Plaza del Sol.
- Downtown construction and development of Cityline, home to modern apartment living, shops and restaurants.



Image: *Arc of Dreams* by Linda Brunker, Sunnyvale Civic Center, 2024

## Site and Project Description

The Corn Palace property (1142 Dhalia Court) was originally a 20-acre parcel of agricultural land located west of Lawrence Expressway. It was known for its working cornfield and fresh produce stand. In 2013, the western portion of the property was developed into single family homes, while a 2-acre parcel of the land at to the south-east corner of Toyon Avenue and Lily Avenue and extending to Lawrence Expressway, was approved for a public park. This parcel was acquired by the City in March 2020 and construction of the park recently began.

Park amenities will include open lawn space, trees, toddler and youth play areas, pollinator garden, shade structure, picnic areas and public art.



*Image: Photo of Corn Palace fruit stand (est. 1990s)*

## Public Art Location

Four opportunities for public art have been identified for this project: three locations for artist designed benches (backless) and a cement seat wall in the plaza area. Artists may apply for a single bench, the seat wall or both, although only one location will be awarded per artist.

### Artist Designed Benches:

The artist benches for this project should be backless and measure 6-feet long by 1-foot, 7.5-inches wide and standing 1-foot, 6-inches tall from ground level. Benches should be made out of durable materials, such as cement, metal, or fiberglass, but may be treated with paint, ceramic, tile or glass mosaic (with grout) or other durable material. Prefabricated, backless benches may also be used. The benches should be able to withstand the elements and remain vibrant and intact for 25 years or more with minimal maintenance. The benches will be placed along the main pathway within areas of decomposed granite. They should be designed for mounting on concrete footings. City will provide the footings, however, installation of the benches will need to be completed by a licensed contractor at artist's cost. However, the three selected artists can work together and employ the same licensed contractor to save on costs associated with installation and permitting (if required). The budget for each bench is \$7,000, all-inclusive, as defined below in the Budget section.

### Plaza Seating Wall:



The plaza seat wall is a vertical, concrete wall with a flat top. It is 64-linear feet and stands 1-feet, 6-inches from ground level. Artists may choose to use all of the available surface area of the vertical wall or just a portion. Installation will need to be completed by a licensed tiler, painter or contractor. The budget for the plaza seat wall artwork is \$9,500, all-inclusive, as defined below in the Budget section.

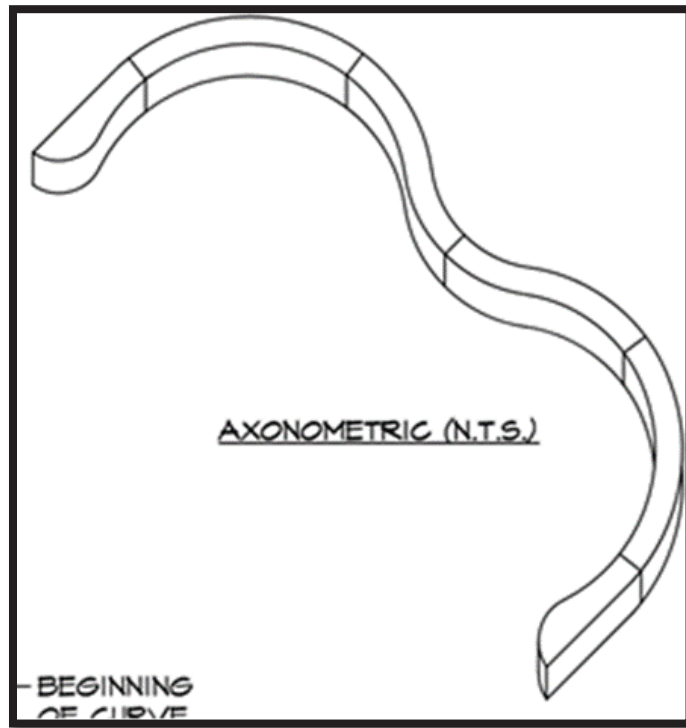


Image: Rendering of plaza seat wall

## Estimated Schedule

(dates subject to change)

Distribution of RFQ	Dec. 3, 2024
Application Deadline	Jan. 27, 2025 (12 noon)
Selection Committee: Artist Application Review	Jan. 28 - Feb. 9, 2025
Notification of semi-finalists/Invitation to submit design proposal	Feb. 10, 2025
Design Proposal Deadline (semi-finalists)	Mar. 7, 2025
Arts Commission Review	May 16, 2025
City Council Review and Approval	May/June 2025 (TBD)
Contract Development	June 2025
Project Team Meetings (for plaza seat wall art only)	July 2025
Final Design Concept Deadline	July 2025 (TBD)
Begin Fabrication of Artwork	July 2025 (TBD)
Installation of Artwork	Est. November/December 2025 or before (TBD)

## Artist Responsibilities

The selected artist or artistic team will be expected to work with City staff to develop the specific parameters of the public art component, as well as implement all aspects of the project. These specifics will include:

- Develop the final design proposal
- Select appropriate artistic materials for the design
- Select an anti-graffiti, anti-fade and marine grade clear coat to protect the artwork
- Attend meetings with City staff as necessary
- Present the project to the City's Arts Commission (City staff will present to the City Council)
- Obtain required permits
- Maintain appropriate and/or required license(s) for the type of work proposed or provide evidence of collaboration with appropriate licensed professionals (tilers, contractors for installation, etc.) to bring artist's design to fruition.
- Comply with federal, state and local rules and regulations related to prevailing wage
- Obtain appropriate insurance for the artwork until City has accepted the artwork (see Exhibit C)
- Backless Benches: Fabricate and deliver the artwork to the site for installation on the agreed upon date
- Seat Wall Artwork: Execute/install the artwork on site on the agreed upon date
- Provide detailed instructions for maintenance and preservation of the artwork
- Provide detailed documentation on the engineering, execution or installation of the artwork, including MSDS sheets if appropriate, to be included in the permanent file for the art
- Abide by all requirements of the artist's contract with the City (see Exhibit B-Example)

The selected artist or artistic team will be expected to consider and align with the City's vision of inclusion and diversity, and represent the City's brand essence: *Bold, Sustainable Innovation*. The final proposal should also be appropriate for all ages of the community and designed to remain vibrant for 25 years or more.

## Public Art Budget

Benches	\$7,000 each (3 locations total)
Plaza seat wall	\$9,500
Semi-Finalist Artist Design Honorarium (per artist or artist team)	\$750

The project budget is all-inclusive of project costs, including artist's fees and expenses, taxes, materials, permit fees, license fees, travel, framing, shipping and crating, insurance fees, site preparation, equipment rental, fabrication and installation or execution of the artwork by appropriately licensed professionals.

The current scope of construction includes foot candle lighting for security. No spot lighting is planned for the artwork.

## Selection Process

An 8 to 10-person selection panel will review the submitted applications using the following criteria:

- Originality of artistic style.

- Durability and maintenance of materials the artist works with.
- Artist's experience with art projects of a similar size and scope.
- Alignment with the theme of the park: Agricultural with homage to the history of the Corn Palace.
- Alignment with the City's vision of equity, access and inclusion.
- Alignment with the City's brand essence: Bold, Sustainable, Innovation.

The selection panel will consist of representatives from the City's Department of Public Works, Department of Library and Recreation Services, project designers, residents and artists/arts professionals.

The selection panel will shortlist: six artists for the benches and three artists for the seat wall. Shortlisted artists will be invited to develop a detailed design proposal for consideration and a design stipend of \$750 will be paid to each of the selected artists (or artist team) upon completion of their design proposal. Shortlisted artists will be provided with additional drawings and information in order to develop their design. The park site is currently under construction, so a site visit will not be offered. However, artists are encouraged to visit the area, to experience the surrounding neighborhood prior to submitting a final design.

The design proposals will be presented to the City's Arts Commission for review. Artists will be required to present their design at the commission meeting. This presentation can be done virtually or in person, although there will be no travel reimbursement for in-person presenters. The commission will be asked to rank the design proposals, and the results of the rankings will be presented by City staff to the City Council for final design approval and artist selection.

### Submission Requirements

This is a Request for Qualifications only. Please do not submit design ideas or proposals at this time. These items will not be included in the selection process until the next phase.

Please be prepared to indicate if the artist or a member of the artistic team can provide appropriate licensing information for the installation of their artwork, or collaborate with an appropriately licensed professional (painter, tiler, contractor, etc.).

To apply for this call, artists/artistic teams should electronically submit the following items to the link provided at the end of this document. Prepare the following in advance of clicking on the link:

#### Solo Artist:

- Artist Contact Information
- Artist Resume (.doc, .pdf)
- Letter of Interest and Artist Statement (one page maximum, .doc, .pdf)
- Images of Previous Works (1-10 images total)(.jpg, .png, .ppt, .pdf, 10mb each max)
- Annotated Image Descriptions including: title, date, location, materials, art budget and a 2-3 sentence description (.doc, .pdf)

#### Artist Teams:

- Lead Artist Contact Information (one per team)
- Contact Information for EACH artist on the team

- Resume for EACH artist (.doc, .pdf)
- Letter of Interest and Artist Team Statement (one page maximum, .doc, .pdf)
- Images of Previous Works (\*1-10 images for entire team)(.jpg, .png, .ppt, .pdf, 10mb each max)
- Annotated Image Descriptions including: title, date, location, materials, art budget and a 2-3 sentence description (.doc, .pdf)

\*Teams that do not have up to 10 images of past work done *together* may round out the images with the work of individual team members.

You may be required to create a Google account (if you don't already have one) to submit your files. If you have questions or are unable to submit an application through Google Forms, please contact [publicart@sunnyvale.ca.gov](mailto:publicart@sunnyvale.ca.gov) or 408-730-7758 for further instructions.

**All applications must be received by the deadline listed on the cover page of this document, no exceptions.**

### Award of Contract

The City of Sunnyvale reserves the right to accept or reject any submittals and to alter or extend the selection process as needed.

This RFQ and the selection process shall in no way be deemed as a binding contract or agreement of any kind between the City and the artist. Award of a contract is contingent upon approval of the City's selection panel, Arts Commission and City Council. Artists/artist teams selected and approved will contract with the City for the entire duration of the project. The selected artist will be required to secure and maintain various types of insurance, including Automobile Liability, General Liability and other insurance as needed (see attached insurance requirements).

The artwork commissioned for this project shall become the property of the City of Sunnyvale. The artwork will be maintained as part of the City's permanent art collection. The City shall have no obligation to display the artwork for any particular period or in perpetuity.

### For More Information or Questions

Please contact the City of Sunnyvale Public Art Manager, Kristin Dance, at 408-730-7758 or [publicart@sunnyvale.ca.gov](mailto:publicart@sunnyvale.ca.gov). Questions will be compiled into a single list with responses and made available to all interested parties upon request.

### Artist Application:

<https://bit.ly/CornPalaceArtists>

**Exhibit B**  
**AGREEMENT BETWEEN THE CITY OF SUNNYVALE**  
**AND <NAME> FOR PROFESSIONAL SERVICES**  
**(DESIGN, FABRICATION, AND INSTALLATION OF PUBLIC ART AT**  
**<PROJECT NAME>)**

THIS AGREEMENT is made and entered into by the City of Sunnyvale, a chartered municipal corporation of the State of California ("CITY"), and <NAME> ("ARTIST"), <ADDRESS>, this <DATE>.

**RECITALS**

WHEREAS, CITY intends to integrate a SITE-specific work of art ("ARTWORK") as part of the <PROJECT NAME>, located at <ADDRESS> and desires to engage an ARTIST to provide design, fabrication, delivery, lighting, and installation in connection with the ARTWORK (the "Services"); and

WHEREAS, ARTIST has represented that he/her/they has the necessary professional expertise, qualifications, and capability, and all necessary authority to provide the Services; and

WHEREAS, ARTIST was selected from a pool of applicants, as the most qualified to design and fabricate the ARTWORK. The Art Commission and City Council approved the conceptual proposals by ARTIST on <DATE> and <DATE>, respectively; and

WHEREAS, CITY is commissioning the ARTWORK to fulfill a portion of the public art requirements for City's <PROJECT NAME>, consistent with the requirements of its Municipal Percent for Art Policy ; and

WHEREAS, in reliance on these representations, CITY desires to engage ARTIST to provide the Services as more fully described in Exhibits A and A-1 ("Scope of Services"), attached to and made a part of this Agreement; and

WHEREAS, CITY has provided certain specifications for <PROJECT NAME>, within which ARTIST has designed his/her/their ARTWORK to fit; and

WHEREAS, the ARTWORK will be considered a permanent installation, intended to remain or remaining in a public place for one year or more after the completion by ARTIST, provided, however, CITY may remove the ARTWORK in accordance with CITY's Deaccession Policy or as described in this Agreement; and

WHEREAS, CITY may accession the completed ARTWORK consistent with the provisions of its Public Art Program into the CITY'S Collection of Public Art upon acceptance of the ARTWORK and own all right, title and interest in the ARTWORK pursuant to the specific terms of this Agreement.



NOW THEREFORE, in consideration of the recitals, covenants, terms and conditions in this Agreement, the parties agree as follows:

**1. SERVICES BY ARTIST**

ARTIST shall perform the Services as described in Exhibits A (“Scope of Services”) and A-1, attached and incorporated by reference, in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY. ARTIST shall determine the method, details and means of performing the services.

**2. DUTIES OF CITY**

- (a) CITY shall provide, at no cost to ARTIST, any non-confidential documents or information available to CITY that is required by ARTIST for performance of his/her/their duties.
- (b) CITY shall coordinate with ARTIST to define and plan a community workshop to promote interest in public art that includes public participation to create an art project (the “Workshop”). CITY shall provide outreach to community members for the event.
- (c) CITY shall provide and display a plaque, at CITY’s cost, no less than eight inches by eight inches, at minimum identifying the ARTIST, title, date and medium for the ARTWORK. Placement of the plaque shall be done in consultation with ARTIST.

**3. TIME FOR PERFORMANCE**

ARTIST shall promptly commence the Services, diligently prosecute all of the Services to completion, and deliver the ARTWORK and agreed upon services to CITY according to the schedule specified in Exhibit A. Time is of the essence in performance of all obligations under this Agreement, and extensions of time may be granted by the Superintendent of Recreation Services only as provided in Section 28, Excuse From Performance, below.

**4. COMPENSATION**

CITY agrees to pay ARTIST as full compensation for the services rendered pursuant to this Agreement, the amounts set forth in Exhibit A. Total compensation, including Optional Services as described in Exhibit A, shall not exceed **<DOLLAR AMOUNT>**.

ARTIST shall submit invoices to CITY for services no more than monthly. All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707,

Sunnyvale, CA 94088-3707. Payment shall be made within twenty-one working days upon completion of each task as provided in Exhibit A and upon receipt of an accurate, itemized invoice by CITY's Accounts Payable Unit.

- (a) CITY has no obligations regarding commissions or any agreement with galleries or agents with whom ARTIST may have contracted. CITY shall not be responsible for paying sales tax.
- (b) As used herein, "working days" means all days, except Saturday, Sunday and CITY holidays (New Year's Day, New Year's Eve, Martin Luthis/her/their King Day, President's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, Day after Thanksgiving, Christmas Eve and Christmas Day).

## 5. ARTIST WARRANTIES

- (a) **Warranty of Title.** ARTIST represents and warrants that ARTIST is the sole author of the ARTWORK and that ARTIST is the sole owner of any and all copyrights pertaining to the ARTWORK. ARTIST further represents that the ARTWORK is free and clear of any liens and that there are no outstanding disputes in connection with property rights, intellectual property rights or any other rights in the ARTWORK or any parts of the ARTWORK.
- (b) **Workmanship.** ARTIST shall warrant and maintain the ARTWORK free from all faults or defects related to material or workmanship for a period of two years after the ARTWORK is accepted by CITY.
- (c) **Originality.** ARTIST warrants that the design of the ARTWORK is an edition of one, and that neither the ARTIST nor ARTIST'S agents will execute or authorize another to execute his/her/their work of the same or substantially similar image, design, dimensions and materials as the ARTWORK.
- (d) **Public Safety.** ARTIST represents and warrants that the ARTWORK will not pose a danger to the safety of persons or property in view of the possibility of misuse, if such misuse is in a manner that was reasonably foreseeable at any time during the term of this Agreement. ARTIST agrees to cooperate with CITY in making or permitting adjustments to the ARTWORK if necessary to eliminate hazards that become apparent after the ARTWORK is accepted by CITY.
- (e) **Acceptable Standard of Display.** ARTIST represents and warrants that:
  - (1) General routine cleaning and repair of the ARTWORK and any associated working parts and/or equipment will maintain the ARTWORK within an acceptable standard of public display;

(2) 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 of public display; and

(3) With general routine cleaning and repair consistent with instructions provided to CITY by ARTIST, and within the context of foreseeable exposure to the elements and general wear and tear, the ARTWORK will not experience irreparable conditions that fall below an acceptable standard of public display, including but not limited to mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.

(f) **Physical Warranty.** ARTIST shall provide a two-year warranty on the ARTWORK and advise on maintenance at no cost to CITY as described in this Agreement. For each ARTWORK, the warranty shall begin on the date of the CITY'S acceptance of the ARTWORK, such acceptance not to be unreasonably withheld, conditioned or delayed.

(g) **Errors/Omissions.** ARTIST shall correct, at no cost to CITY, any and all defects in the work product submitted to CITY, provided CITY gives not less than 30 days' prior written notice thereof to ARTIST. If ARTIST has prepared plans and specifications or other design documents to construct and install the ARTWORK, ARTIST shall be obligated to correct any and all technical errors or omissions on such plans. This obligation shall survive termination of the Agreement for a period of one year.

## **6. TRANSFER OF TITLE TO ARTWORK**

Title to the ARTWORK shall remain in ARTIST'S name until CITY has accepted the ARTWORK as completed and it is installed to the satisfaction of CITY. Transfer of title shall be self-executing upon CITY's acceptance. ARTIST shall bear all risk of loss of the ARTWORK until title has been transferred to CITY, and CITY agrees to inspect ARTWORK and accept ARTWORK within thirty (30) days of ARTIST'S notification of completion, unless the provisions of Section 9(a) or (b) apply.

## **7. ACCEPTANCE OF WORK**

CITY agrees to accept the completed ARTWORK unless:

(a) The ARTWORK was not completed in substantial conformance with the approved final design, or

(b) The ARTWORK as completed or any portion thereof does not conform to a reasonable standard of artistic or technical quality. CITY shall provide its reasons for this finding to ARTIST in writing no later than ten (10) days after ARTIST has tendered the ARTWORK to the CITY for CITY's acceptance. Where the ARTIST disputes this finding, the dispute shall be submitted to Arts

Arbitration and Mediation Services ("A.A.M.S."), of California Lawyers for the Arts, San Francisco, CA for resolution, and any decision by A.A.M.S. shall be binding upon CITY and ARTIST and neither shall have any further recourse or cause of action regarding the matters so resolved.

(c) Upon the CITY's refusal to accept the ARTWORK for the reasons stated in subparagraphs (a) or (b), CITY, in addition to other rights or remedies available to the CITY under the Agreement or applicable law, shall have the right to: (1) request that ARTIST correct the deficiencies in the ARTWORK within a reasonable time, or (2) terminate this Agreement and recover all sums previously paid to ARTIST.

(d) No payments to ARTIST shall be deemed as a waiver of CITY's right to refuse to accept the ARTWORK.

## **8. CLEANING AND MAINTENANCE OF ARTWORK**

(a) ARTIST shall design the ARTWORK so that it is durable, taking into consideration that the SITE is an unsecured public space, and that the ARTWORK will be exposed to elements, including but not limited to, weather, temperature variation, and movement of people, vehicles and equipment. ARTIST shall design and construct the ARTWORK so that maintenance requirements are reasonable in terms of time and expense.

(b) As a condition of and prior to acceptance of the ARTWORK, ARTIST shall supply CITY with written maintenance instructions for proper care of the ARTWORK, including standards for general routine cleaning and repair of the ARTWORK and any associated working parts and/or equipment.

(c) Following acceptance of the work, CITY shall be responsible for the proper cleaning, maintenance and protection of the ARTWORK. Although CITY strives to maintain its public art collection in good repair and condition, CITY is not required by this Agreement to maintain the ARTWORK to any particular standard.

(d) ARTIST will supply during his/her/their lifetime at no charge; four (4) hours of advice by telephone each calendar year as to problems arising in relation to maintenance of the ARTWORK. All repairs and restorations that are made during the lifetime of ARTIST shall be performed in consultation with ARTIST as provided in Section 11, below.

(e) CITY shall have the right to determine, after consultation with ARTIST, when and if repairs and restorations to the ARTWORK will be made. It is the policy of CITY to consult with ARTIST regarding repairs and restoration which are undertaken during ARTIST'S lifetime when that is practicable. CITY shall make a reasonable effort to consult with ARTIST and a professional conservator in all matters concerning major repairs and restoration of the work. In the event that CITY makes repairs or restoration not approved by ARTIST, ARTIST shall have the right, at ARTIST's

sole option, to have ARTIST's association with ARTWORK severed and shall have no further maintenance or warranty obligations under this Section 17 of this Agreement to CITY.

(f) All repairs and restorations, whether performed by ARTIST, CITY, or by third parties responsible to ARTIST or CITY, shall be made in accordance with professionally recognized principles of conservation of ARTWORK and in reasonable accordance with the maintenance instructions provided to CITY by ARTIST.

## **9. ARTIST'S MORAL RIGHTS; WAIVER OF VARA AND CAPA RIGHTS**

(a) The CITY, having expended considerable public funds to commission the ARTWORK, and pursuant to its responsibilities to maintain the ARTWORK owned by CITY, intends to make its best efforts to display the ARTWORK at the SITE, as originally created by ARTIST and to maintain the ARTWORK in good condition. However, CITY must preserve complete flexibility to operate and manage CITY property. Therefore, subject to CITY's obligation to make good faith efforts to consult with ARTIST as set forth in subsection (c), below, ARTIST agrees that CITY, in connection with its power and duty to operate and manage CITY property in the public's interest, shall have the absolute right to alter, repair, modify, remove, relocate, sell, dispose of, or destroy (collectively, "MODIFY") the ARTWORK in CITY'S sole judgment. For example, CITY may MODIFY the ARTWORK to eliminate hazards, to comply with the ADA, to otherwise aid CITY in the management of its property and affairs, or through neglect or accident. CITY also has the right to install the ARTWORK in an alternate location that the CITY chooses in its sole discretion. If CITY chooses to destroy artwork, ARTIST will be given the option of salvaging the ARTWORK at no cost to CITY.

(b) ARTIST waives any and all claims, arising at any time and under any circumstances, against CITY, its officers, agents, employees, successors and assigns, arising under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. If the ARTWORK is incorporated into a SITE such that the ARTWORK cannot be removed from the SITE without MODIFYING the ARTWORK, ARTIST waives any and all such claims against any future owners of the SITE, and its agents, officers and employees, for MODIFYING the ARTWORK.

(c) Where time permits, prior to MODIFYING the ARTWORK, CITY shall make reasonable good faith efforts to notify and consult with ARTIST, at the last phone number or address provided by ARTIST to the CITY, and to come to a mutually agreeable plan for disposition of the ARTWORK. Such consultation shall be without charge by ARTIST unless otherwise specifically agreed in writing. If the ARTWORK is MODIFIED and CITY intends to maintain the ARTWORK on display, CITY shall make a reasonable good faith effort to engage ARTIST in the restoration of the ARTWORK and to compensate ARTIST for ARTIST'S time and efforts at fair market value, which



may be the subject of a future Agreement between ARTIST and CITY. However, CITY has no obligation under this Agreement to restore the ARTWORK or to compensate ARTIST for any restoration work. If ARTIST fails or refuses to negotiate with CITY in good faith with respect to any restoration, CITY may contract with any other qualified art conservator or artist for such restoration.

(d) If CITY alters the ARTWORK without ARTIST'S consent in a manner that is prejudicial to ARTIST'S reputation, ARTIST may disclaim authorship of the ARTWORK.

#### **10. QUALIFICATIONS/STANDARD OF CARE.**

All of the Services shall be performed by ARTIST or under ARTIST's supervision. ARTIST represents that he/she/they possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. ARTIST represents that he/she/they, his/her/their employees and subcontractors, if permitted, have and shall maintain during the term of this Agreement all professional licenses, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services. All of the Services to be furnished by ARTIST under this agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

#### **11. PERFORMANCE OF AGREEMENT IN EVENT OF DEATH OR DISABILITY OF ARTIST**

(a) If ARTIST is unable to personally perform his/her/their obligation under this Agreement due to death or disability prior to the completion and installation of the ARTWORK, this Agreement may be terminated at the sole discretion of CITY, and, in such event, all completed work, materials, and supplies related to the ARTWORK shall be delivered to CITY and shall become CITY's sole property.

(b) ARTIST, or his/her/their estate, as the case may be, shall refund to CITY whatever amount CITY paid to ARTIST pursuant to Paragraph 4(a) of this Agreement, less the total of:

(1) All costs and expenses incurred by ARTIST in connection with the performance of this Agreement prior to the time of his/her/their death or disability; such costs and expenses shall be supported by adequate documentary evidence before they can be credited against any refund;

(2) Five hundred dollars (\$500.00) per month for the nearest number of whole months which have elapsed from the execution of this Agreement at the time of such death or disability.

(c) In the event of such termination, CITY may take such action as may appear to it appropriate under the circumstances, including but not limited to commissioning another artist to complete the ARTWORK. In the event that CITY completes the ARTWORK or arranges to have it completed, ARTIST'S name shall be publicly displayed at, on or near the ARTWORK, unless ARTIST and CITY mutually agree otherwise.

## **12. CONFLICT OF INTEREST**

ARTIST shall avoid all conflicts of interest, or appearance of conflict, in performing the services and agrees to immediately notify CITY of any facts that may give rise to a conflict of interest. ARTIST is aware of the prohibition that no officer of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement ARTIST shall not accept employment or an obligation which is inconsistent or incompatible with ARTIST'S obligations under this Agreement.

## **13. CONFIDENTIAL INFORMATION**

ARTIST shall maintain in confidence and at no time use, except to the extent required to perform his/her/their obligations hereunder, any and all proprietary or confidential information of CITY of which ARTIST may become aware in the performance of his/her/their services.

## **14. COMPLIANCE WITH LAWS**

(a) **Nondiscrimination.** ARTIST shall not discriminate against, or engage in the harassment of, any CITY employee or volunteer or any employee of ARTIST or applicant for employment because of an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS-related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual). This prohibition shall apply to all of ARTIST's employment practices and to all of ARTIST's activities as a provider of services to the CITY.

(b) **Compliance with Other Laws.** ARTIST shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, or administrative bodies or tribunals in any manner affecting the performance of this Agreement.

**15. PREVAILING WAGES AND DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS.**

(a) ARTIST is required to pay general prevailing wages as defined in Subchapter 3, Title 8 of the California Code of Regulations and Section 16000 et seq. and Section 1773.1 of the California Labor Code. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to execute the contract for this Project from the Director of the Department of Industrial Relations ("DIR"). A copy of the prevailing wage rates may be reviewed in the office of the Director of Public Works, City of Sunnyvale, 456 West Olive Avenue, Sunnyvale, California. Wage rates can also be obtained through the California Department of Industrial Relations website at: <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>

(b) ARTIST shall provide a copy of prevailing wage rates to any staff or subcontractor hired, and shall pay the adopted prevailing wage rates as a minimum. ARTIST shall comply with the provisions of all sections, including, but not limited to, Sections 1775, 1776, 1777.5, 1782, 1810, and 1813, of the Labor Code pertaining to prevailing wages.

(c) It shall be mandatory upon ARTIST and upon any subcontractor to pay not less than the specified rates to all laborers, workers, and mechanics employed in the execution of the Contract. It is further expressly stipulated that ARTIST shall, as a penalty to Owner, forfeit two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic paid less than the stipulated prevailing rates for any work done under this Contract by ARTIST or by any subcontractor; and ARTIST agrees to comply with all provisions of Section 1775 of the Labor Code. In case it becomes necessary for ARTIST or any subcontractor to employ on the project under this Contract any person in a trade or occupation (except executives, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate is herein specified, ARTIST shall immediately notify CITY, which will promptly thereafter determine the prevailing rate for such additional trade or occupation and shall furnish ARTIST with the minimum rate based thereon. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

**16. INDEPENDENT CONTRACTOR**

ARTIST is acting as independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and ARTIST. ARTIST is responsible for paying all required state and federal taxes.

**17. HOLD HARMLESS/INDEMNIFICATION**

A. To the fullest extent permitted by law, ARTIST shall hold harmless, defend at its own expense, and indemnify the City and its officers, officials, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions of ARTIST or its officers, agents, or employees in rendering services under this Agreement; excluding, however, such liability, claims, losses, damages, or expenses arising from the City's sole negligence or willful acts. The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement. ARTIST'S responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement.

B. ARTIST shall not perform any copyrighted materials of others during performance of this Agreement without full compliance with applicable copyright laws. In the event that ARTIST breaches this representation, warranty and covenant, ARTIST hereby agrees to indemnify and hold harmless City and its employees, guests and agents from and against all liability, loss, damages, claims, and expenses, including attorney's fees, arising out of said breach.

**18. INSURANCE**

The City requires that ARTIST maintain insurance requirements on the Pacific Insurance Network System (PINS). ARTIST shall procure and maintain, at its own expense during the life of this Agreement, policies of insurance as specified in Exhibit "C" attached and incorporated herein by reference and shall provide all certificates and endorsements as specified in Exhibit "C" through PINS for approval by the City Risk Manager prior to ARTIST (or subcontractor) commencing any work under this Agreement.

**19. COPYRIGHT OWNERSHIP**

ARTIST retains all rights under the Copyright Act of 1976, USC101, as the sole author of the ARTWORK for the duration of the copyright.

**20. REPRODUCTION RIGHTS**

(a) ARTIST shall not make any additional exact duplicate reproductions of the final ARTWORK, nor shall ARTIST grant permission to others to do so except with the written permission of the CITY. However, nothing shall prevent ARTIST from creating works in the ARTIST'S manner and style of artistic expression.

(b) ARTIST grants CITY license to make two-dimensional reproductions of the ARTWORK for non-commercial purposes, including, but not limited to, reproductions used in brochures, media

publicity, and exhibition catalogues or other similar publication provided that these reproductions are exercised in a tasteful and professional manner. All reproductions by the CITY shall contain a credit to the ARTIST and a copyright notice.

(c) CITY grants ARTIST license to make two-dimensional reproductions of the ARTWORK for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues, ARTIST'S portfolio or other similar publication provided that these reproductions are exercised in a tasteful and professional manner. All reproductions by the ARTIST shall contain a credit to the CITY as the owner of the ARTWORK.

(d) If the CITY wishes to make reproductions of the ARTWORK for commercial purposes, including, but not limited to, tee shirts, post cards and posters, the parties shall execute a separate agreement to address the terms.

## **21. CITY REPRESENTATIVE**

<NAME>, Superintendent of Recreation Services as the CITY Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

## **22. ARTIST'S REPRESENTATIVE**

<NAME> shall represent ARTIST in all matters pertaining to the services and materials to be rendered under this Agreement. All requirements of ARTIST pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the ARTIST.

## **23. NOTICES**

All notices required by this Agreement shall be in writing and shall be personally delivered, sent by first class mail with postage prepaid, or sent by commercial courier addressed as follows:

To CITY:           <NAME>  
Superintendent of Recreation Services  
Department of Library and Recreation Services  
CITY OF SUNNYVALE  
P.O. Box 3707  
Sunnyvale, CA 94088-3707



To ARTIST:     < NAME>  
                  < ADDRESS>

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by email or fax, to accomplish timely communication. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three business days after mailing.

#### **24. NOTICE OF CHANGE OF ADDRESS**

ARTIST agrees to notify CITY in writing promptly of any changes of address. A failure to do so shall be deemed a waiver of ARTIST'S rights under this Agreement.

#### **25. NO ASSIGNMENT OR SUBCONTRACTING**

(a) The expertise and experience of ARTIST are material considerations for this Agreement. ARTIST shall not sublet or assign any right or obligation pursuant to this Agreement without the prior and express written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect. Consent to one assignment will not be deemed to be consent to any subsequent assignment.

(b) ARTIST shall not subcontract any portion of the work to be performed under this Agreement without the prior and express written consent of the CITY. ARTIST shall be responsible for directing the work of any subcontractors and for any compensation due to subcontractors. CITY assumes no responsibility whatsoever concerning compensation of subcontractors. ARTIST shall be fully responsible to CITY for all acts and omissions of ARTIST's subcontractors in connection with their performance of the Services. ARTIST shall change or add subcontractors only with the prior approval of CITY.

#### **26. EXCUSE FROM PERFORMANCE**

In the event ARTIST'S performance of any of their obligations or undertakings under this Agreement is delayed, interrupted, or prevented by an act of God, unforeseen conditions, unusually severe weather, governmental order or occurrences that are beyond the control of either party to this Agreement, ARTIST shall be excused from any further performance for whatever period of time after the occurrence necessary to remedy the effects of that occurrence. ARTIST shall notify CITY in writing within ten (10) days after any occurrence described in this

section that may delay ARTIST'S performance. The Superintendent of Recreation Services shall amend the schedule when, in his determination, ARTIST'S performance has been excused, and the delay or interruption has resulted in a material change in the time for performance.

## **27. TERMINATION**

- (a) If ARTIST defaults in the performance of this Agreement or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to ARTIST.
- (b) If CITY fails to pay ARTIST, ARTIST at his/her/their option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days from the date payment is due. ARTIST shall present CITY with any work product completed at that point in time.
- (c) Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason by giving ten (10) days' written notice to ARTIST. In the event of such termination without cause, ARTIST shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished), through the date of receipt of notification from CITY to terminate. ARTIST shall present CITY with any work product completed at that point in time.
- (d) No payment, partial payment, acceptance, or partial acceptance by CITY or acceptance of any payment or partial payment by ARTIST will operate as a waiver on the part of CITY or ARTIST of any of their rights under this Agreement.

## **28. ENTIRE AGREEMENT; AMENDMENT**

This writing constitutes the entire Agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing, signed by all parties.

## **29. GOVERNING LAW, JURISDICTION AND VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

**30. ATTORNEY'S FEES**

In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

**31. MISCELLANEOUS**

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

IN WITNESS IS/HER/THEIREOF, the parties have executed this Agreement. ATTEST:

CITY CLERK

CITY OF SUNNYVALE ("CITY")

\_\_\_\_\_

\_\_\_\_\_

City Clerk

City Manager

APPROVED AS TO FORM:

ARTIST

\_\_\_\_\_

\_\_\_\_\_

City Attorney

<NAME>

EXHIBITS:

A. Scope of Services

A-1. Conceptual Designs approved by Arts Commission and City Council

C. Insurance Requirements

## EXHIBIT A SCOPE OF SERVICES

### Background

The purpose of this agreement is to define the scope of work for the design, fabrication, delivery and installation, including lighting, of an original ARTWORK designed by ARTIST <NAME> to be integrated into <PROJECT NAME>, located at <ADDRESS>, in Sunnyvale, California.

### <PROJECT DESCRIPTION>

In response to a Request for Qualifications, ARTIST created a conceptual design for the original ARTWORK approved by the Arts Commission on <DATE> and the City Council on <DATE>. ARTIST proposed <INSERT PROPOSAL DESCRIPTION>

Final placement of ARTWORK will be determined in collaboration with the project team including the project designer, project manager, Superintendent of Recreation, or his designee, and architect.

Maintenance of the sculptures is expected to be <MAINTENANCE DETAILS> and a detailed maintenance plan will be developed by ARTIST for the City. The approved artist and conceptual design is represented Exhibit A-1.

It is mutually understood by the CITY and ARTIST that minor refinements to the conceptual design and engineering may take place. Should the initial conceptual design as approved by the Art Commission and City Council shift significantly, CITY staff will report back to the Art Commission and City Council on those changes.

### Summary of ARTWORK

ARTIST will further develop the conceptual proposals represented in Exhibit A-1, including lighting of the installed ARTWORK; and fabricate, deliver, and coordinate installation, of the finished ARTWORK with the CITY as detailed below. References to "ARTWORK" in this scope of services shall include any and all lighting, electrical, and engineering requirements associated with and necessary to complete and install such artwork. The images in Exhibit A-1 are for reference only. To view more details of the approved ARTWORK, please see the presentation to the Art Commission on <DATE>.

### ARTIST Requirements for the ARTWORK

(1) ARTIST shall furnish and provide at his/her/their cost and expense all labor, supplies, materials, lighting, equipment and shipment thereof related to completion of the ARTWORK. ARTIST will provide all necessary foundations, anchoring hardware, lighting, and finishes

necessary for the installation of the ARTWORK as approved by the CITY. All services related to the ARTWORK shall be performed in a professional manner and in strict compliance with all terms and conditions in the Agreement.

(2) Delivery of ARTWORK and materials necessary for installation of the Artwork will be coordinated with the CITY on mutually agreeable delivery dates to the project SITE. ARTIST will supply any necessary delivery details to the CITY in advance regarding delivery vehicles, crates, and staging necessary for the installation. For the ARTWORK, ARTIST shall be responsible for all direct shipping costs, including packing materials, insurance, and use of any shipping vendors. CITY agrees that additional costs imposed on ARTIST by CITY'S delay will be reasonably compensated to ARTIST.

(3) Installation dates will be determined by mutual agreement between the CITY and the ARTIST. The ARTIST or ARTIST'S representative shall be present to oversee the installation. The ARTIST shall provide to the CITY in advance information regarding equipment involved for installation, numbers of contractors involved to complete the installation, electrical or equipment needs, and any additional information required by the CITY. ARTIST shall be responsible for contracting with installation contractors. All installation contractors must be pre-approved by CITY and must comply with all requirements for subcontractors in this Agreement, including but not limited to, insurance and Prevailing Wage requirements.

(4) ARTIST shall provide CITY with the names of all subcontractors along with a copy of the agreement between the ARTIST and each subcontractor.

(5) In designing and fabricating the ARTWORK, ARTIST shall take all reasonable measures to protect or preserve the integrity of the ARTWORK including but not limited to application of a protective sealant, patina and/or anti-graffiti coating.

(6) ARTIST shall cooperate with CITY and provide any documentation reasonably requested in order to assist CITY in preparing ARTIST'S payments in accordance to the terms set forth in Paragraph 4(a).

### **ARTWORK Services, Schedule, and Compensation**

#### **(1) Task 1: Commencement of Final Design Development**

##### **(a) Services**

(1) Upon execution of this Agreement, and written notice from CITY to proceed, ARTIST shall commence the final design of the ARTWORK. Final design shall include a lighting design and plan for the ARTWORK, and ARTIST shall be responsible for providing all materials and details necessary for lighting for the artwork, including, but not limited to permits, site preparation, conduit,



engineering and light fixtures.

(2) The ARTWORK shall substantially conform to the conceptual design proposal attached in Exhibit A-1 and any requested modifications approved and directed by the Sunnyvale City Council at their <DATE> meeting.

(3) ARTIST shall coordinate with CITY'S project manager to visit the project SITE to discuss and agree on final locations for the ARTWORK. Artist shall be responsible for preparing and submitting engineering plans for footings and installation of the ARTWORK, as well as electrical plans for lighting associated with the ARTWORK, and shall be responsible for all costs related to plans, permits, and materials for the ARTWORK.

(4) ARTIST shall coordinate with CITY to define and plan a community workshop to promote interest in public art that includes public participation to create an art project (the "Workshop"). ARTIST shall oversee community workshop and provide, at his/her/their cost, any necessary materials for the workshop.

(5) ARTIST shall submit to CITY for approval a final design, including a final SITE plan for the ARTWORK locations reflecting footing, lighting and electrical plans, and a detailed plan for the Workshop within thirty (90) working days of execution of this agreement.

**(b) Compensation for Commencing Final Design Development**

(1) CITY shall pay ARTIST <DOLLAR AMOUNT> within twenty-one (21) working days of final execution (complete signatures) of this Agreement;

**(2) Task 2: CITY Approval of Final Design.**

**(a) Services**

(1) Within a reasonable period after ARTIST submits the final design to CITY, CITY will review and provide written approval of the final design.

(2) After City's written approval, ARTIST may not change the approved SITE or the approved final design of the ARTWORK or lighting without written approval of the Superintendent of Recreation Services or his designee.

**(b) Compensation for Services- CITY Approval of Final Design**

(1) CITY shall pay ARTIST <DOLLAR AMOUNT> within twenty-one (21) working days of CITY's written acceptance of final design for the ARTWORK.

**(3) Task 3: Fabrication of ARTWORK and Community Workshop**

**(a) Services**

- (1) Following CITY's written approval of the final design, ARTIST shall commence the execution of the ARTWORK in accordance with the Final Design approved by CITY.
- (2) Artist shall conduct the community Workshop at a date and time mutually agreed between City and Artist.

**(b) Compensation for Fabrication and Community Workshop**

- (1) CITY shall pay ARTIST **<DOLLAR AMOUNT>** within twenty- one (21) working days of City's verification of ARTIST's completion of fabrication of the Artwork and completion of the Workshop, whichever occurs later.

**(4) Task 4: Installation of ARTWORK and CITY'S Final Acceptance of ARTWORK**

**(a) Services**

- (1) ARTIST shall coordinate installation of ARTWORK with CITY, engineers, architects and contractors at his/her/their expense. ARTIST shall secure all required licenses permits and similar legal authorizations at the ARTIST'S expense as may be necessary for the installation of the ARTWORK at the SITE.
- (2) ARTIST shall be responsible for installation of the ARTWORK and all costs associated with placement and anchoring of the ARTWORK including required foundations, mounts and hardware, and electrical conduit, including lighting fixtures. ARTIST must consult with the Superintendent of Recreation Services or his designee, CITY engineers, architects, contractors, and the Construction Project Manager prior to and during installation.
- (3) ARTIST shall be responsible for installation of the ARTWORK lighting and all costs associated with placement of electrical conduit, including lighting fixtures. ARTIST must consult with the Superintendent of Recreation Services or his designee, CITY engineers, contractors, and the Construction Project Manager prior to and during installation of the lighting.
- (4) Fabrication, delivery and installation of ARTWORK must be completed between **<DATES>**, unless otherwise notified in writing by CITY. ARTIST will assume all costs associated with transportation and installation of completed ARTWORK. ARTIST will be required to inspect SITE, at his/her/their cost, prior to the transportation and installation of the ARTWORK and shall notify the CITY of any adverse SITE conditions that will impact the installation of the ARTWORK. Failure to do so by the ARTIST shall be deemed as an acceptance of the SITE conditions.
- (5) Field meetings and installation drawings shall be required in order to

prepare for final installation. Installation drawings shall take into account all municipal and state building codes and will also be reviewed by CITY's Project Manager in order to prepare for final installation.

(6) ARTIST shall be present to supervise the installation of the ARTWORK.

(7) Installation shall be required to meet all municipal and state building codes and obtain inspection approval from CITY's Project Manager. If installation does not meet inspection criteria, ARTIST at his/her/their own cost shall continue working until such time as approval is obtained from CITY's Project Manager. Final placement of the ARTWORK must be approved by the Project Manager and Superintendent of Recreation Services, or his designee, prior to installation.

(8) Following installation of the ARTWORK, CITY shall accept the ARTWORK as provided in this Agreement.

(9) ARTIST shall provide CITY, engineers, architects and contractors with all drawings, plans, photos, and maintenance and other requirements set forth in this Agreement, prior to City's acceptance of Artwork.

**(b) Compensation for Installation of the Artwork and CITY's Final Acceptance**

CITY shall pay ARTIST <DOLLAR AMOUNT> within sixty (60) working days of completion of installation of the ARTWORK and acceptance by CITY's Construction Project Manager and the Superintendent of Recreation Services or his designee as provided in this Agreement.

**(5) Optional Task 5: Storage of Art**

**(a) Service**

(1) In the event that <PROJECT NAME> is not ready for art installation as expected by <DATE>, additional storage may be required. CITY and ARTIST shall meet to discuss storage requirements and agree in writing on terms and compensation for such storage, estimated at an additional <DOLLAR AMOUNT> per month after <DATE>. Should additional storage be required, funds for Additional Services will be made available for this purpose in accordance with the terms of this section. Payment for additional services is subject to all requirements and restrictions in this Agreement.

**(b) Compensation for Storage of Art**

(1) If additional storage is required, CITY's Project Manager may authorize up to <DOLLAR AMOUNT>, for additional storage beyond the installation dates set forth in this Agreement.

SAMPLE

## EXHIBIT C

### INSURANCE REQUIREMENTS

ARTIST shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the ARTIST, their agents, representatives, or employees.

Minimum Scope and Limits of Insurance. ARTIST shall maintain limits not less than:

1. **Commercial General Liability:** coverage written on an occurrence basis with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form shall be at least as broad as CG 0001.

2. **Automobile Liability:** coverage with a combined single limit of not less than \$1,000,000 per occurrence applying to all owned, non-owned, or hired vehicles used in conjunction with this Agreement for bodily injury and property damage. ISO Form shall be at least as broad as CA 0001.

3. **Workers' Compensation:** Statutory Limits and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

Industry Specific Coverages. If checked below, the following insurance is also required:

- ☐ Professional Liability / Errors and Omissions Liability coverage with limits not less than \$1,000,000 per occurrence or claim.
- ☐ Valuable Papers and Electronic Data Processing with limits not less than \$10,000 each.
- ☐ Cyber & Tech Liability coverage with limits not less than of \$1,000,000 per occurrence or claim.
- ☐ Crime coverage with limits not less than \$500,000 to include third party premises endorsement.

Deductibles, Self-Insured Retentions and Other Coverages:

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale, Risk Manager. The ARTIST shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

The aforementioned insurance requirements can be met through any combination of self-insured, primary and excess/umbrella policies that fulfill the stipulated coverage as cited above.



Other Insurance Provisions:

1. During the term of the Agreement, the City of Sunnyvale, its officers, officials, employees, agents, and volunteers are to be covered as an additional insured in the ARTIST's commercial general liability policy (and if industry specific coverage is identified above, valuable papers, electronic data processing, and cyber liability policies) with respect to liability arising out of activities performed by or on behalf of the ARTIST; products and completed operations of the ARTIST; premises owned, occupied or used by the ARTIST. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, officials, employees, agents, or volunteers.

Additional Insured Endorsement for ongoing operations at least as broad as ISO CG 20 10 Scheduled, or automatic CG 20 38.

2. During the term of the Agreement, the ARTIST's Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Sunnyvale.

3. For all Architects, Engineers and Design Professionals - If Industry Specific Coverage box is check above **and** if the ARTIST's Professional Liability/Errors and Omissions coverage is written on a claims made basis:

- a. The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of Agreement work.
- b. Insurance must be maintained and evidence of insurance must be provided *for at least three (3) years after completion of the Agreement of work.*
- c. If coverage is canceled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the Agreement effective date, the ARTIST must purchase "extended reporting" coverage for a minimum of *three (3) years* after completion of Agreement work.

4. For any claims related to this agreement, the ARTIST's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the ARTIST's insurance and shall not contribute with it and shall be at least as broad as ISO CG 20 01 04 13.

5. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.

6. The ARTIST's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

7. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.

8. Any umbrella or excess Insurance Liability policies shall be true "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the

insurance requirements stated in this document, including the additional insured, SIR, and primary and non-contributory insurance requirements for the benefit of City (if agreed to in a written contract or agreement) until all coverage carried by or available to the ARTIST's primary and excess liability policies are exhausted and before the City's own Insurance or self-insurance shall be called upon to contribute to a loss.

9. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the ARTIST's policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, and who are admitted and authorized to do business and in good standing in California unless otherwise acceptable to the City of Sunnyvale's Risk Manager.

Verification of Coverage:

The City of Sunnyvale utilizes PINSAdvantage.com (PINS) to track and verify all insurance related documents. The City is no longer accepting Certificates of Insurance by mail and requires the use of PINS. The City will email the ARTIST requesting proof of insurance for this Agreement through the PINS platform ([no-reply@pinsadvantage.com](mailto:no-reply@pinsadvantage.com)), which include instructions on how to upload insurance documents electronically. ARTIST shall furnish the City of Sunnyvale with an original Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale, Risk Manager prior to commencement of work.

The ARTIST shall provide certificate(s) evidencing renewals of all insurance required herein prior to the expiration date of any such insurance. ARTIST shall submit insurance certificates reflecting the policy renewals through PINS. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Subcontractors

ARTIST shall require all sub-contractors to procure and maintain insurance policies subject to these requirements. Failure of ARTIST to verify existence of sub-contractor's insurance shall not relieve ARTIST from any claim arising from sub-contractors work on behalf of ARTIST.