



Call for Artists: Dr. Martin Luther King Jr. & Coretta Scott King Artist Residency (King Residency)

Extended Application Deadline: Sunday, August 14, 2021 at 23:59 pm (PST)

Opportunity: The Palo Alto Public Art Program is inviting individual artists, collectives, and keystone community leaders/artist partnerships experienced in creative community engagement and outreach, to apply to be part of the first two rounds of **King Artist Residencies** for the Palo Alto Public Art Program. The selected artist or team will be asked to engage the community in conversations about equity, inclusion, and belonging in Palo Alto, resulting in a final artwork that will be displayed on Dr. Martin Luther King Jr. and Coretta Scott King Plaza in front of City Hall for a period of 6 months to one year.

Eligibility: This opportunity is open to individuals over the age of 18 and residing in Santa Clara, San Mateo, Alameda, Contra Costa, Santa Cruz and San Francisco counties. We strongly encourage artists who are Black, Indigenous, and People of Color to apply.

An Ideal candidate would be an individual or collective, whose artistic practice is rooted in empathetic collaboration, civic engagement, and critical discourse. They would be open to meaningful community outreach and partnerships, aware of their own biases, able and willing to recognize and address shared challenges in the Palo Alto community, and able to amplify the voices of diverse community members.

Scope: The selected artist/team will be tasked with virtually and physically (if allowed) engaging with the Palo Alto community in creative ways – which may include art making, creative storytelling, music, movement, or other methods to gather feedback and stories about equity, inclusion, and belonging in Palo Alto. It is anticipated that the selected artist will take up to six months to do this outreach and research, and they may be provided with a temporary studio/work space in Palo Alto. At the conclusion of the residency, the artist will create an artwork based on the interactions with the community centering on a particular equity topic. The temporary artwork may be two dimensional and recreated on a banner format on the front of City Hall, or may have a more sculptural form on King Plaza. (Public Art Program staff is open to various ideas about methodologies and manifestation of final artwork). The artwork must be suitable for all ages viewing. The Public Art Program staff will provide final approval as the final artwork is developed.

It is anticipated that the selected artist will spend approximately 16 - 20 hours per week focused on the residency project and outreach efforts. The artist will be asked to provide biweekly reports or regular check-ins with staff on the progress of the project. Liability insurance may be provided by the City of Palo Alto if needed.

Compensation: The artist will enter into a professional services agreement in the amount of \$20,000 for the period of the residency (including the community engagement and creation of artwork phases). The Public Art Program has allocated an additional budget of up to \$10,000 for the funding of materials for the creative outreach. Monthly invoices may be submitted for reimbursement for materials.

Additionally, the Public Art Program has allocated up to \$15,000 for fabrication and installation of an artwork on King Plaza. The artwork may be a sculptural work displayed at King Plaza or two-dimensional work that will be translated to a banner format and installed on the front of City Hall.

A separate agreement will be issued for that fabrication and installation either with the artist and their fabricator or the City may enter into an agreement with a third-party fabricator and installer.

Tentative Application / Project Timeline:

August 14, 2021 - Deadline to submit applications via SlideRoom by 23:59 pm (PST).

August 2021 – Selection of finalists who will prepare proposals.

September 2021 – Finalist public presentations and interview with the selection panel. Contract signed.

October 2021 – First Residency and community engagement period begins.

April 2022 – First Residency ends.

May 2022 – Exhibition of artwork at King Plaza for a period of 6-12 months.

October 2022 – Second Residency and community engagement period begins.

Submission Requirements: All applications must be submitted by **Sunday, August 14, 2021 at 23:59 pm (PST)**. All applications must be submitted online via SlideRoom (<http://CPApublicart.slideroom.com>), an online application system for artist calls. There is no application fee for artists to submit their application using SlideRoom. Applications that are submitted via email, post, fax or in person won't be considered.

First-time SlideRoom users will be required to create a username and password and set up an account. All submitted application information, including artist's resume, images of previous projects and annotated descriptions will be automatically archived and saved and can be accessed by the Public Art staff in the future. All applicants should allow adequate time to submit their applications, and we recommend that you complete your application well ahead of the deadline in case of complications. SlideRoom technical support is available at <https://support.slideroom.com/>.

All submitted applications should include the following materials:

1. **Letter of interest** highlighting previous creative community engagement experience and potential areas/topics of interest. Please also share your lived experience and/or experience working with specific audiences and underserved populations which may include youth, elderly, unhoused, food insecure, individuals with disabilities, non-English speakers, LGBTQ and BIPOC and / or other audiences.

2. **Images or videos and descriptions of creative community engagement experience and artwork.** If operating as a team / collective, please specify roles and responsibilities. Please include budget information and if the project was realized.
3. **Resume** (optional).

Artist Review and Selection Process:

The selection panel will be scoring artists based on:

1. Artistic merit.
2. Originality of approach to community engagement.
3. Previous relevant experience in successful creative community engagement.

The panelists will review the applications and select up to four finalists who will be paid a stipend of \$1,500 to research a topic of interest and create a proposal for their project in Palo Alto. Proposals must include:

- topic of interest (equity and accessibility around education, food, healthcare, housing, labor, mental health and wellbeing, transportation, etc.)
- methods for creative outreach
- timeline
- initial thoughts for the direction of the final artwork format
- potential non-profit partners
- budget

Finalists will present their previous relevant work experience and then share their proposal in person or on Zoom to the panel and the public. The panel may also ask questions of the artist or team. The public will have the opportunity to give feedback to the selection panel regarding the three candidates before they deliberate.

Up to two artists will be selected for the residency as part of the King Residency temporary public art program.

Background: The past year has been a time of change, growth, and meaningful discussions about equity, inclusion, and belonging in Palo Alto. With the commission of the Black lives matter mural in front of City Hall and in the spirit of Dr. Martin Luther King and Coretta Scott King, for whom King plaza is named, the Council asked the Public Art Commission to consider commissioning a permanent work signaling the City's commitment to race, equity, and belonging. The Public Art Commission is committed to a permanent platform for ongoing conversations about equity, inclusion, and belonging in Palo Alto through the arts. As a result, the King residency program was established.

City of Palo Alto's Equity Mission Statement: The City of Palo Alto is committed to creating a respectful, fair, and professional workplace and city. We will identify prejudices, eliminate inequities, welcome many perspectives, and use a collaborative approach to create an environment that works for everyone.

The City's commitment to achieve equity in Palo Alto is the shared responsibility of our residents, organizations, governments, and other institutions.

Helpful Links:

- [Link to the City's Race and Equity Page resources.](#)
- [Recent March 26, 2021 blog post, "Steps the Community Can Take to Help Stop Hate Crimes"](#)
- [March 9, 2021 Race and Equity Progress Update to the Policy and Services Committee](#)
- [Staff report detailing the Race and Equity Framework](#)
- [Human Relations Commission Report about Black and Brown History in Palo Alto and HRC Recommendations on #8CantWait](#)
- [City Council Resolution](#)
- [Police Department's Police Accountability page](#)

ABOUT THE PALO ALTO PUBLIC ART PROGRAM

Mission Statement: The Palo Alto Public Art Program promotes the highest caliber of artwork, commissioning memorable public artworks and experiences that stimulate discussion and thoughtful reflection, celebrating Palo Alto's character and enhancing civic pride and sense of place.

Vision Statement: Public art reflects Palo Alto's people, diverse neighborhoods, the innovative and global character of its businesses and academic institutions, and the beauty of its natural environment.

Program Overview: The Program operates in accordance with Chapter 2.26 Visual Art in Public Places Policy of Palo Alto Municipal Code which specifies that the City will budget one percent (1%) of its construction costs to include public art for City capital improvement projects. In addition, in 2013 the City adopted an Ordinance to add chapter 16.61 to the Municipal Code establishing a requirement for public art in private construction projects requiring Architectural Review over 10,000 square feet, with an estimated construction value of more than \$200,000. The Ordinance provides the option of commissioning artwork on the development site equal to the cost of one percent (1%) of the estimated construction valuation, or making the one percent (1%) in-lieu contribution to the Public Art Fund. The program also supports an active temporary public art program.

Contact: Contact us at nadya.chuprina@cityofpaloalto.org with any requests for additional information.

Stay in Touch: Interested in other public art opportunities? Visit the City of Palo Alto Public Art Program webpage <http://cityofpaloalto.org/publicart>, subscribe to our monthly newsletter, or follow up on social media @publicartpa.

PUBLIC ART PROGRAM POLICIES

Acceptance of Applications: The City of Palo Alto Public Art Program reserves the right in their sole discretion not to accept any applications to not accept any artist recommended by any of the selection panels, to initiate an alternate selection process, or to reissue the RFQ for additional pre-qualified artist candidates.

Maquette Policy: In the event Applicant is asked to develop a proposal, maquette, or other conceptual design materials, the City of Palo Alto will compensate the artist for the design work and the following policy shall apply. The City of Palo Alto Public Art Program shall:

- At its sole discretion, have unconditional rights to own maquettes or other design materials produced as part of this selection and/or commission process.
- Have the right to display and/or reproduce any maquettes or proposal commissioned, whether selected for implementation or not.
- Require that all proposals and/or maquettes submitted are original and unique.

Applicant shall retain all copyright in the work which may be held by Applicant.

Americans with Disabilities Act: The selected artist / artist team will be required to comply with the Americans with Disabilities Act (ADA) requirements in addition to related federal, state and local codes and will be encouraged to develop artwork(s) sensitive to programmatic as well as physical accessibility issues.

Other Requirements: As part of the City of Palo Alto's procurement process, artists and artist teams selected and approved by the Public Art Commission will enter into a contract with the City for the entire duration of the project. Based on the specific scope of the project, the artist may be required to secure and maintain various types of insurance, including Automobile Liability, General Liability and other insurance as needed. While some items specific to individual projects such as scope of work, payment schedule and schedule of deliverables may be negotiated, the terms of the contract as approved by the City of Palo Alto will not be changed.

CITY OF PALO ALTO CONTRACT NO: XXXXXXX

AGREEMENT BETWEEN THE CITY OF PALO ALTO AND ARTIST XXX FOR PROFESSIONAL SERVICES

This Agreement is entered into on this DATE of MONTH, YEAR, (“Agreement”) by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and XXX, located at XXX (“ARTIST”).

RECITALS

The following recitals are a substantive portion of this Agreement.

- A. CITY intends to engage the community in conversations about equity, inclusion, and belonging in Palo Alto, resulting in a final artwork that will be displayed on Dr. Martin Luther King and Coretta Scott King Plaza in front of City Hall for a period of 6 months to one year. the ARTIST will provide research, community engagement, and concept and design development in connection with the Artwork (the “Services”).
- B. ARTIST has represented that he has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Artwork and Services.
- C. ARTIST was selected by a panel of art professionals and stakeholders from a pool of applicants, as the most qualified to design and fabricate the Artwork.
- D. The source of funds for the Artwork and Services derives from funds made available from the City of Palo Alto’s CIP funds identified through the Municipal Percent for Art Ordinance #5301.
- E. CITY in reliance on these representations desires to engage ARTIST to provide the Services as more fully described in Exhibit “A”, attached to and made a part of this Agreement.

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

AGREEMENT

SECTION 1. SCOPE OF SERVICES. ARTIST shall perform the Services as described in Exhibit “A” in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

SECTION 2. TERM.

The term of this Agreement shall be from XXXX, 20XX through XXX XX, 20XX unless terminated earlier pursuant to Section 23 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of Services under this Agreement. ARTIST shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit “B”, attached to and made a part of this Agreement. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by ARTIST in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the ARTIST. CITY’s agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of ARTIST.

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to ARTIST for performance of the Services described in Exhibit “A”, including both payment for professional services and reimbursable expenses, shall not exceed XXX Thousand and XX Hundred Dollars (\$XX,XXX). The applicable rates and schedule of payment are set out in Exhibit “C”, entitled “COMPENSATION”, which is attached to and made a part of this Agreement.

ARTIST agrees that in consideration of the compensation paid under this Agreement, CITY has the option to commission ARTIST to create and install a work of art consistent with the Artwork Design (“Services”). If ARTIST is subsequently commissioned by CITY to fabricate and install the Artwork, the parties shall enter into the CITY’S form Artwork Fabrication and Installation Agreement, which is a separate agreement providing for the fabrication and installation of the Artwork in an amount determined by CITY. ARTIST will enter into a separate Artwork Fabrication and Installation Agreement and provide a separate scope of work and project timeline.

ARTIST acknowledges that CITY desires that conceptual design and content for the Artwork to be unique. ARTIST agrees to not duplicate the Artwork without the express written consent of CITY.

SECTION 5. INVOICES. In order to request payment, ARTIST shall submit invoices to the CITY describing the services performed and the applicable charges (including an identification of personnel who performed the services and reimbursable expenses), based upon the ARTIST’s payment schedule (set forth in Exhibit “C-1”). If applicable, the invoice shall also describe the percentage of completion of each task. The information in ARTIST’s payment requests shall be subject to verification by CITY. ARTIST shall send all invoices to the City’s project manager at the address specified in Section 13 below. The City will generally process and pay invoices within thirty (30) days of receipt.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by ARTIST or under ARTIST’s supervision. ARTIST represents that it 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 it, its employees and subcontractors, if permitted, have and shall maintain during the term of this Agreement all licenses, permits, 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.

SECTION 7. COMPLIANCE WITH LAWS. ARTIST shall keep themselves informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the performance of the Services or those engaged to perform Services under this Agreement. ARTIST shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

SECTION 8. ERRORS/OMISSIONS. ARTIST shall correct, at no cost to CITY, any and all errors, omissions, or ambiguities in the work product submitted to CITY, provided CITY gives notice 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 errors, omissions or ambiguities discovered prior to and during the course of construction and installation of the Artwork. This obligation shall survive termination of the Agreement.

SECTION 9. *Left blank by agreement of the parties.*

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement ARTIST, and any person employed by or contracted with ARTIST to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of the CITY.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of ARTIST are material considerations for this Agreement. ARTIST shall not assign or transfer any interest in this Agreement nor the performance of any of ARTIST's obligations hereunder without the prior written consent of the city manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the city manager will be void.

SECTION 12. SUBCONTRACTING

ARTIST shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

ARTIST shall be responsible for directing the work of any SUB-CONTRACTORS and for any compensation due to SUB-CONTRACTORS. CITY assumes no responsibility whatsoever concerning compensation. ARTIST shall be fully responsible to CITY for all acts and omissions of a SUB-CONTRACTOR. ARTIST shall change or add SUB-CONTRACTORS only with the prior approval of the city manager or his designee.

SECTION 13. PROJECT MANAGEMENT. ARTIST will serve as the project manager with supervisory responsibility for the performance, progress, and execution of the Services. If circumstances cause the substitution of key personnel for any reason, the appointment of substitute personnel will be subject to the prior written approval of the CITY's project manager. ARTIST, at CITY's request, shall promptly remove personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property.

The City's Project Manager is Elise DeMarzo, Public Art Program Director, Division of Arts & Sciences, Community Services Department, 1313 Newell Road, Palo Alto, CA 94303, phone: 650-617-3517. The CITY may designate an alternate project manager from time to time.

SECTION 14. PROPERTY RIGHTS IN ARTWORK; VARA WAIVER.

14.1. CITY commissions ARTIST to design a work of art (the "Artwork") to be displayed at a location in Palo Alto, as determined by CITY, acting in its sole discretion. Subject to the rights granted by ARTIST to CITY, as described below, and in consideration of the substantial compensation that CITY will pay to ARTIST for the Artwork, CITY acquires all right, title and interest in the Artwork, and ARTIST retains all copyrights in the Artwork that ARTIST will deliver to CITY under this Agreement.

14.2. ARTIST grants to CITY a non-exclusive, royalty-free, irrevocable license to do the following with respect to the Artwork, in whatever media, including, without limitation, digital and electronic media, that now or hereafter are known: (A) use and display the Artwork; (B) make and distribute, and authorize the making and distribution of, two-dimensional images and reproductions of the Artwork; (C) use any images and reproductions for City-related purposes, including, without limitation, advertising-, branding-, education-, information-, promotion- and publicity-related materials; and (D) sublicense the rights granted herein to third parties to fulfill the public art purposes of the City's commissioning of the Artwork.

14.3. With respect to the Artwork, ARTIST waives any and all claims, arising at any time against CITY, its elected and appointed officials, officers, employees, agents and representatives, that may be grounded in any federal law, including, without limitation, the Visual Artists Rights Act (17 U.S.C. §106A). California law, including, without limitation, the California Art Preservation Act (Cal. Civil Code §987 *et seq.*), or local law that may relate to the moral rights of ARTIST or protection of the integrity of the Artwork.

SECTION 15. ARTIST'S WARRANTY

ARTIST represents and warrants that:

15.1. ARTIST is the sole and absolute owner of the Artwork, the copyrights pertaining to the Artwork, and all the rights associated or relating to it.

15.2. ARTIST has not previously sold, assigned, licensed, granted, encumbered, or utilized the Artwork or any element thereof, in any manner which may affect or impair the rights granted pursuant to this Agreement including without limited to, inhibiting the CITY's ability to show the work, reproduce the Artwork as defined in Section 22, or maintain/conservate the work into the future.

15.3. All Artwork created by ARTIST under this Agreement, whether created by ARTIST alone or in collaboration with others, is wholly original and does not infringe upon or violate the rights of any third party.

15.4. ARTIST has acquired all rights to any third party software or other component of the Artwork necessary for the operation and display of the Artwork.

15.5. ARTIST has the full power to enter into and perform this Agreement and to grant the rights contained in this Agreement.

15.6. ARTIST warrants that the Artwork is the result of the artistic efforts of ARTIST and that it will be delivered full and clear of any liens, claims and encumbrances of any type.

15.7. These representations and warranties shall survive the termination or other extinction of this Agreement.

SECTION 16. *Left blank by agreement of the parties.*

SECTION 17. *Left blank by agreement of the parties.*

SECTION 18. OWNERSHIP OF MATERIALS. Upon delivery, all work products, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use.

SECTION 19. AUDITS. ARTIST will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, ARTIST's records pertaining to matters covered by this Agreement. ARTIST further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

SECTION 20. INDEMNITY. 20.1. To the fullest extent permitted by law, ARTIST shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements ("Claims") resulting from, arising out of or in any manner related to performance or nonperformance by ARTIST, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

20.2. Notwithstanding the above, nothing in this Section 20 shall be construed to require ARTIST to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

20.3. The acceptance of ARTIST's services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 20 shall survive the expiration or early termination of this Agreement.

SECTION 21. WAIVERS.

The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

SECTION 22. INSURANCE.

22.1. ARTIST, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "D". ARTIST and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

22.2. All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A-:VII or higher which are licensed or authorized to transact insurance

business in the State of California. Any and all contractors of ARTIST retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

22.3. Certificates evidencing such insurance shall be filed with CITY concurrent-ly with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification. If the insurer cancels or modifies the insurance and provides less than thirty (30) days' notice to ARTIST, ARTIST shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of the ARTIST's receipt of such notice. ARTIST shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Chief Procurement Officer during the entire term of this Agreement.

22.4. The procuring of such required policy or policies of insurance will not be construed to limit ARTIST's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, ARTIST will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

SECTION 23. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

23.1. The City Manager may suspend the performance of the Agreement, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to ARTIST. Upon receipt of such notice, ARTIST will immediately discontinue its performance of the Agreement.

23.2. ARTIST may terminate this Agreement or suspend its performance by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

23.3. Upon such suspension or termination, ARTIST shall deliver to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by ARTIST or its contractors, if any, or given to ARTIST or its contractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

23.4. Upon such suspension or termination by CITY, ARTIST will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by ARTIST, CITY will be obligated to compensate ARTIST only for that portion of ARTIST's services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion.

23.5. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a

waiver on the part of CITY of any of its rights under this Agreement.

SECTION 24. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk
 City of Palo Alto
 Post Office Box 10250
 Palo Alto, CA 94303

With a copy to the Public Art Program Manager

Public Art Program
City of Palo Alto
1313 Newell Road
Palo Alto, CA 94303

To ARTIST: Attention of the project director
 at the address of ARTIST recited above

SECTION 25. CONFLICT OF INTEREST.

25.1. In accepting this Agreement, ARTIST covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

25.2. ARTIST further covenants that, in the performance of this Agreement, it will not employ sub-CONTRACTORS, contractors or persons having such an interest. ARTIST certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

SECTION 26. NONDISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, ARTIST certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. ARTIST acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

SECTION 27. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS. ARTIST shall comply with the City's Environmentally Preferred Purchasing policies which are available at the City's Purchasing Department, incorporated by

reference and may be amended from time to time. ARTIST shall comply with waste reduction, reuse, recycling and disposal requirements of the City's Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste and third, recycling or composting waste. In particular, ARTIST shall comply with the following zero waste requirements:

- All printed materials provided by ARTIST to City generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by the City's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.
- Goods purchased by ARTIST on behalf of the City shall be purchased in accordance with the City's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Office.
- Reusable/returnable pallets shall be taken back by the ARTIST, at no additional cost to the City, for reuse or recycling. ARTIST shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

SECTION 28. NON-APPROPRIATION

28.1. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

SECTION 29. PREVAILING WAGES AND DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS

29.1 This Project is not subject to prevailing wages. ARTIST is not required to pay prevailing wages in the performance and implementation of the Project in accordance with SB 7 if the contract is not a public works contract, if the contract does not include a public works construction project of more than \$25,000, or the contract does not include a public works alteration, demolition, repair, or maintenance (collectively, 'improvement') project of more than \$15,000.

OR

29.1 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"). Copies of these rates may be obtained at the Purchasing Division's office of the City of Palo Alto. 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.

SECTION 30. MISCELLANEOUS PROVISIONS.

30.1. This Agreement will be governed by the laws of the State of California.

30.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

30.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

30.4. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

30.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, ARTIST's heirs, successors, executors, administrators, and assignees.

30.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

30.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

30.8 If, pursuant to this contract with ARTIST, City shares with ARTIST personal information as defined in California Civil Code section 1798.81.5(d) about a California resident ("Personal Information"), ARTIST shall maintain reasonable and appropriate security procedures to protect that Personal Information, and shall inform City immediately upon learning that there has been a breach in the security of the system or in the security of the Personal Information. ARTIST shall not use Personal Information for direct marketing purposes without City's express written consent.

30.10 The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

30.11 This Agreement may be signed in multiple counterparts, which shall, when executed by all the parties, constitute a single binding agreement

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO

ARTIST

Contracts Administrator

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

City Attorney or designee

Attachments:

- EXHIBIT "A": SCOPE OF SERVICES
- EXHIBIT "B": SCHEDULE OF PERFORMANCE
- EXHIBIT "C": COMPENSATION
- EXHIBIT "D": INSURANCE REQUIREMENTS



**EXHIBIT “A”
SCOPE OF SERVICES**

Background

XXX

Project Description

XXX

Scope of Work

**EXHIBIT “B”
SCHEDULE OF PERFORMANCE**

Tentative Timeline – Task

XXXXX

**EXHIBIT “C”
COMPENSATION**

The compensation to be paid to ARTIST under this Agreement for all services described in Exhibit “A” (“Services”) and reimbursable expenses shall not exceed \$XXXXX. ARTIST agrees to complete all Services, including reimbursable expenses, within this amount. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

TOTAL COMPENSATION:

\$XX,XXX - inclusive of all artist fees.

COMPENSATION SCHEDULE:

XXX

REIMBURSABLE EXPENSES

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included

within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse ARTIST for the following reimbursable expenses at cost. Expenses for which ARTIST shall be reimbursed are:

- A. Travel outside the San Francisco Bay area, including transportation and meals, will be reimbursed at actual cost subject to the City of Palo Alto's policy for reimbursement of travel and meal expenses for City of Palo Alto employees.

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense anticipated to be more than \$0 shall be approved in advance by the CITY's project manager.

DRAFT

**INSURANCE REQUIREMENTS
EXHIBIT "D"
INSURANCE REQUIREMENTS**

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A:-VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE
REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	
YES	THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSURED CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.			

- I. INSURANCE COVERAGE MUST INCLUDE:
 - A. A PROVISION FOR A WRITTEN THIRTY DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
 - B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.
 - C. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY'S PRIOR APPROVAL.
- II. CONTACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.
- III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSURED"
 - A. PRIMARY COVERAGE

INSURANCE REQUIREMENTS

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

B. CROSS LIABILITY

INSURANCE REQUIREMENTS

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSUREDS UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

NOTICES SHALL BE EMAILED OR MAILED TO:

**PURCHASING AND CONTRACT
ADMINISTRATION
CITY OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 94303.**

EMAIL: InsuranceCerts@CityofPaloAlto.org