



# CITY OF CARLSBAD

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## REQUEST FOR QUALIFICATIONS

For

**Design and Installation of Public Art**

**Coastal Rail Trail Roundabout**

**October 2013**

**Any questions relative to this project should be directed via e-mail to:**

City of Carlsbad  
Cultural Arts Office  
Karen McGuire Gallery Curator  
Karen.Mcguire@carlsbadca.gov  
(760) 602-2022

## **Open Call to Artists Request for Qualifications (RFQ)**

Public Artwork

City of Carlsbad Coastal Rail Trail Roundabout

- 1. Short Description:** The City of Carlsbad's Library & Cultural Arts Department seeks an artist or artist team to develop a site-integrated artwork for the Roundabout project at the North entrance to the City at the intersection of Carlsbad Blvd. (Hwy 1) and State Street. The design of the roundabout is complete and the plans are being finalized. The project will begin construction in January and completion is expected by June 2014. The artist or artist team will work with City of Carlsbad staff and its consultants to develop the artwork within the schedule of the roundabout construction. The call is open to professional artists residing in the United States. The total project budget is \$100,000, all inclusive of travel expenses, taxes and other project costs. The submittal deadline is 4 p.m. Friday, November 8, 2013.
- 2. Introduction:** The City of Carlsbad seeks to commission an artist to design, fabricate and install a permanent piece of original art to be located in the center of a roundabout at the intersection of Carlsbad Blvd and State Street. As a prominent gateway to the city, the public art element of the circle will enhance the cultural environment for Carlsbad visitors and residents. The roundabout is designed to improve the safety and connectivity of all modes of transportation at the intersection and across the Buena Vista Lagoon with a new trail, bikes lanes, and sidewalk to connect two cities (Carlsbad and Oceanside). The project site represents a significant entry location into the city. The City of Carlsbad has a strategic focus area on Livable and Complete streets which supports our community values to foster active healthy lifestyles, access to recreational opportunities and open space, and promote active transportation such as walking and biking. It is expected that this artwork will become an important symbol welcoming residents and visitors to the community.
- 3. Background:** The Coastal Rail Trail (CRT) Reach 1 Project is part of the regional Coastal Rail Trail, a multi-modal trail that will ultimately travel from the San Luis Rey River in the City of Oceanside to the Santa Fe Depot in San Diego. The CRT Reach 1 Project in Carlsbad will connect Oceanside's CRT to Carlsbad's CRT Reach 2 near Oak Avenue/State Street Intersection. The CRT Reach 1 Project will improve the pedestrian and bicycle access, safety, and connectivity by constructing a multi-modal trail on the west side of Carlsbad Blvd, bike lanes in both directions, and sidewalk on the east side of the roadway across the Buena Vista Lagoon. In addition, this project will improve the safety and connectivity of all modes of transportation at the Carlsbad Boulevard/State Street intersection by constructing a roundabout. Turning movements that were previously restricted will now be possible which will enhance mobility within and access to Carlsbad village. As the project represents a prominent entry location into the city, the city contracted with a landscape architectural firm to design enhanced landscaping and hardscaping for the roundabout to make an entry statement into the city. The project site also represents an excellent opportunity for public art, which would welcome people to Carlsbad.
- 4. Site Specification:** The subject site (interior of the roundabout) is approximately 39 feet in diameter. The inside diameter identified for art has not been determined. Most of the open space inside of the roundabout's concrete apron which serves as a vehicular curb will be shared by artwork and landscaping. The artist is encouraged to review the design of the site elements that will accompany the public art in the roundabout (please see attached). The selected artist will be required to work with the City's landscape architect and project team during the design and installation phases of the project to ensure the most effective integration into the overall design concept.

**5. Schedule**

The roundabout has been designed and construction is expected to begin in January 2014. Project completion is expected in June 2014. The artist will work with the City Team and its consultants to develop an artwork that will be constructed within the project schedule.

**6. About the City of Carlsbad Public Art Program:** The City of Carlsbad's Art in Public Places program, which began in 1985, was the first public art program established in San Diego County. The program is designed to expand residents' appreciation of art, reflect the city's aspiration to be recognized as a world class city, and to enhance and identify Carlsbad as a unique community. Tied to the city's capital projects budget and plan, the program is administered by the city's Library & Cultural Arts Department, which follows a set of policies and procedures that guides the entire process, from artist selection through to final installation of the work. A key component of Carlsbad's program is an emphasis on public participation during the process, ensuring that the artworks are integrated into the physical and social environment of the city and reflect the broad range and interests of the community.

**7. About the City of Carlsbad:** The City of Carlsbad is a scenic coastal community located in North San Diego County, 35 miles north of downtown San Diego and 54 miles south of the John Wayne Airport in Orange County. The city's population is 107,000 and covers 39 square miles, 40 percent of which is dedicated to open space, including three lagoons, 46 miles of hiking trails and nearly seven miles of coastline. The historic Carlsbad Village has a variety of retail, restaurant and arts-related businesses. Carlsbad is also home to regional attractions, such as LEGOLAND, La Costa Resort and Spa and the famous flower fields.

**8. Scope of Work:** The selected artist or artist team will work with city staff, landscape architect, project consultants and stakeholders to develop a site-integrated artwork to be installed at the center of the public roundabout. The artist is expected to develop an artwork that will have a strong presence and responds to the selected site's design and surrounding area. The artist will design, fabricate and install the artwork on a timeline that parallels work on the roundabout. The ideal result would reflect the mix of a truly unique and stunning natural environment (lagoon, coastal stretch) and the thriving, rich experience of Carlsbad's village, while also promising the discovery of a world class city beyond the initial intersection/gateway.

**9. The artwork should:**

- Be an original, site-specific treatment to public space that (1) creates a sense of place in the proposed outdoor location, (2) attracts and welcomes visitors to the City of Carlsbad from the north along the Coast and surrounding community
- Be engaging, and aesthetically pleasing to individuals of all ages, backgrounds, and native languages
- Be fabricated from durable, low maintenance material that can withstand the elements and requires minimal maintenance.
- Incorporate input from Carlsbad community, with a sensitivity to the environment, history, traditions, and iconography that uplift the prideful aspects of this community.
- Embrace the community values identified through the Envision Carlsbad public outreach process:
  - Maintain the small town, beach feel
  - Protect open space and the natural environment
  - Celebrate our history, the arts and culture
  - Strive for Sustainability
  - Promote high quality education, and community services
  - Improve access to recreation and Active, Healthy Lifestyles

- Promote local economy, business diversity and tourism
- Encourage Neighborhood Revitalization and Livability
- Enhance walking, biking, public transportation, and connectivity

**10. Prospective Site:** See the attached documents.

**11. Eligibility:** The call is open to established professional artists residing and eligible to work in the United States, with special preference given to artists living in Southern California. Artists whose work is already represented in the city's collection are eligible to apply, but the artist selection panel will consider artistic diversity as one factor in the selection process.

**12. Budget:** Up to \$100,000

The total budget for the artwork is up to \$100,000. The selected artist will receive a design contract for \$15,000 to develop site-integrated artwork. If the design proposal is accepted, the artist will receive a subsequent contract of up to \$85,000 to fabricate and install the artwork. Artists should know that any proposal by a selected artist must undergo an extensive approval process through the City's Art in Public Places program and required City contracts. Please take this approval process and contractual obligations into consideration when submitting qualifications.

**13. Submittal Deadline:** 4 p.m. Friday, November 8, 2013

**14. Submittal Requirements:**

- Letter of interest (not to exceed 2,000 characters). If you are applying as a team, the letter should clearly describe the contribution of each collaborator.
- Current Curriculum Vitae or RESUME highlighting experience with site-specific work and public art commissions **preferably with project budgets of \$75,000 or greater.**
- Three to five references from projects of similar scope and size.
- Up to 16 DIGITAL IMAGES. Digital images should be submitted as JPGS. Submit only "High" quality jpegs on CD (do not use gifs, tiffs or other formats). **All images will be viewed on PCs, not Macs. Please do not embed images into PowerPoint documents.**
- A corresponding IMAGE LIST including image number, title, medium, dimensions, and date of work.

**15. Selection Criteria:**

The artist will be selected on the basis of the following criteria:

- Quality of concept, design and craftsmanship of past works.
- Visual and technical sophistication
- Creativity of approach
- The ability to produce durable outdoor art.
- A proven ability to coordinate and collaborate with project managers and design professionals.
- Demonstrated ability to complete projects on time and within budget.
- Ability to work in a public environment with multiple project members on a condensed and aggressive timeframe.

- 16. Selection Process:** The selection process will take place in two parts. During the first round, a panel of arts professionals, project representatives, community members and staff will review the artists' images, qualifications and other materials. Up to five semi-finalists will be selected to give presentations to the selection committee two to three weeks later. From these presentations, the Selection Committee will make recommendations on which artist will be invited to then develop a site-specific proposal for artwork. The selected artist will enter into a contract with City of Carlsbad. Sample City contracts are attached for reference and the artist should be aware of the requirements prior to submitting a proposal. The artist's proposal must then be approved by the Carlsbad Arts Commission and Carlsbad City Council before any project can commence.
- 17. Notification of Results:** Artists will be notified of the selection committee's decision by e-mail by end of January 2014. The City of Carlsbad reserves the right not to select any of the proposals.

**We're here to Help:**

City of Carlsbad Cultural Arts Office  
Karen McGuire Gallery Curator  
Karen.Mcguire@carlsbadca.gov  
(760) 602-2022

**Submittals must be received by  
4 p.m. Friday, November 8, 2013**

**Mail entry to:**

City of Carlsbad Cultural Arts Office  
Roundabout Public Art Project  
1200 Carlsbad Village Drive  
Carlsbad, CA 92008

**Or hand-deliver:**

City of Carlsbad Cultural Arts Office  
Roundabout Public Art Project  
2955 Elmwood Street  
Carlsbad, CA 92008

# SITE MAP AND DESIGNS



VICINITY MAP

**Carlsbad Coastal Rail Trail Reach 1**

DATE: 11/15/00  
 DRAWN BY: [Signature]  
 CHECKED BY: [Signature]

**NOTES:**

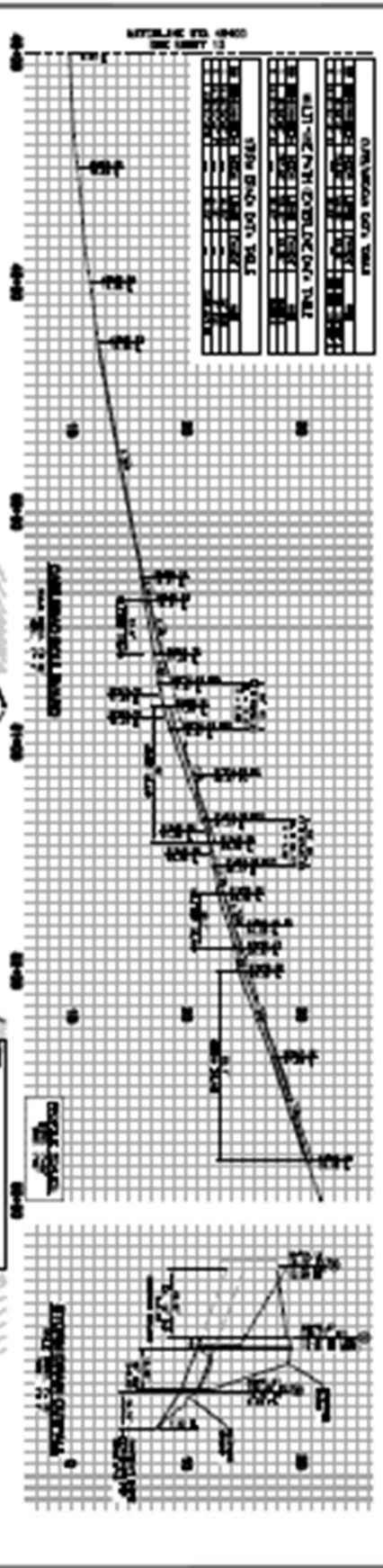
1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
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11. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE PLANTING STRIP UNLESS OTHERWISE NOTED.
12. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE BIKEWAY UNLESS OTHERWISE NOTED.
13. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE TRAIL UNLESS OTHERWISE NOTED.
14. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE PATH UNLESS OTHERWISE NOTED.
15. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE WALKWAY UNLESS OTHERWISE NOTED.
16. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE DRIVEWAY UNLESS OTHERWISE NOTED.
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18. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE EASEMENT UNLESS OTHERWISE NOTED.
19. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ENCROACHMENT UNLESS OTHERWISE NOTED.
20. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE VIOLATION UNLESS OTHERWISE NOTED.



NO.	DESCRIPTION	DATE	BY
1	ISSUED FOR PERMITS	11/15/00	[Signature]
2	ISSUED FOR CONSTRUCTION		
3	ISSUED FOR RECORD		

**PROJECT INFORMATION:**

PROJECT NO: [Blank]  
 SHEET NO: [Blank]  
 TOTAL SHEETS: [Blank]



DATE: 11/15/00  
 DRAWN BY: [Signature]  
 CHECKED BY: [Signature]

NO.	DESCRIPTION	DATE	BY
1	ISSUED FOR PERMITS	11/15/00	[Signature]
2	ISSUED FOR CONSTRUCTION		
3	ISSUED FOR RECORD		

**PROJECT INFORMATION:**

PROJECT NO: [Blank]  
 SHEET NO: [Blank]  
 TOTAL SHEETS: [Blank]



# **SAMPLE CITY CONTRACTS**

## **SAMPLE AGREEMENT FOR DESIGN OF PUBLIC ARTWORK**

### **Artist's Name**

This agreement is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the City of Carlsbad, a municipal corporation, hereinafter referred to as "CITY" and ARTIST'S NAME, an individual, hereinafter referred to as "ARTIST".

### **RECITALS**

WHEREAS, Carlsbad Municipal Code section 2.18.110 authorizes the City to select artists and to commission the placement of works of art in public places; and

WHEREAS, the CITY wants to commission ARTIST to design artwork ("ARTWORK") for \_\_\_\_\_, located \_\_\_\_\_ within the area encompassed by \_\_\_\_\_ ("SITE") according to the payment schedule set forth in Exhibit "A", Payment Schedule, and

WHEREAS, the ARTIST has been selected, pursuant to procedures adopted by the CITY, to design the ARTWORK and funds have been allocated for that purpose, and

NOW, THEREFORE, CITY and ARTIST, for the consideration and under the conditions hereinafter set forth, agree as follows:

#### **1. ARTIST'S OBLIGATIONS**

- (a) The ARTIST shall, to the best of his/her artistic ability, design the ARTWORK in a manner that is consistent with the intent and purpose of this Agreement. The Design shall be complete and ready for fabrication by the ARTIST or a third party selected by the CITY.
- (b) The ARTIST shall design ARTWORK, taking into consideration the nature of the SITE, the surrounding community, the amount of money allocated for the ARTWORK by the CITY (a not-to-exceed amount of \$\_\_\_\_\_ that includes the design and all ARTIST travel and taxes, regardless of form, payable according to Exhibit "A", Payment Schedule), and the desirability for low maintenance of said ARTWORK.
- (c) The ARTIST shall design the ARTWORK taking into consideration the safety of the public, including, but not limited to, the safety of persons traveling on public rights of way.
- (d) The ARTIST shall design the ARTWORK in a manner which conforms to regulations of all public agencies with jurisdiction over the SITE or the ARTWORK and to all other applicable laws, regulations and standards, including but not limited to, federal, state, and local.
- (e) The ARTIST shall meet regularly with CITY staff to ensure the design and future implementation of the ARTWORK complies with all provisions of this Agreement.
- (f) The ARTIST shall submit to the CITY a series of design concepts, in a tangible form, that will be reviewed by the CITY \_\_\_\_\_ (SITE) Team, the Carlsbad Arts Commission, and the public. After the completion of the review process, a final design concept ("CONCEPT DESIGN") will be presented to the City Council for its approval. If the City Council rejects ARTIST'S



CONCEPT DESIGN, the ARTIST may submit a second design (“REPLACEMENT DESIGN”) to the CITY within 90 days. The CITY shall notify the ARTIST within a reasonable time whether the City Council approves or rejects the REPLACEMENT DESIGN. If the CITY rejects the REPLACEMENT DESIGN, this Agreement shall terminate with payment made to the ARTIST as shown in Exhibit “A” and all materials of the CONCEPT DESIGN and REPLACEMENT DESIGN shall be returned to the ARTIST. In that event, neither party shall have further obligation to the other; with the exception of the ARTIST’S obligations under the hold harmless and indemnity provisions of this Agreement.

- (g) The CONCEPT DESIGN or REPLACEMENT DESIGN (collectively “DESIGN”) shall specify materials, dimensions, finish, color, and any other relevant information. The DESIGN shall also include the maintenance requirements and installation method with engineering calculations contemplated by the ARTIST and shall include a cost estimate for each. The DESIGN shall include a drawing or model that presents a meaningful representation of the DESIGN. The drawing or model will be placed on display for public comment.
- (h) The ARTIST shall furnish all supplies, materials and equipment necessary for preparation of the DESIGN of the ARTWORK.
- (i) After approval of the DESIGN pursuant to Section 1(f), the ARTIST shall furnish to the City’s public art manager assigned to this project (“MANAGER”) assigned a tentative schedule for fabrication and installation of the ARTWORK.
- (j) The ARTIST shall, at the option of the MANAGER, meet with the general public or representatives of the media to discuss the DESIGN of the ARTWORK.
- (k) The ARTIST shall be insured in the following manner, with the CITY named as an additional insured;

Prior to commencing any work or receiving payment for any services performed under this Agreement, the ARTIST must provide a certificate of insurance indicating \$1 million general liability coverage, naming CITY as additional insured. The insurance shall cover all phases of the project and shall be effective from the first day work is commenced under this Agreement until one year after final acceptance of the ARTWORK by the City Council. The insurance must be obtained from a carrier that is admitted and authorized to do business in California and that has a current Best’s Key Rating of not less than “A-:V.” The insurance coverage must be single-limit occurrence coverage and may not be cancelled without thirty (30) days written notice to the CITY sent by certified mail.

The ARTIST shall be required to provide proof of automobile liability coverage as required by the Risk Manager.

- (l) ARTIST may, but shall not, be required to assist a third party in the fabrication or installation of the ARTWORK.

## **2. CITY’S OBLIGATIONS**

- (a) The CITY shall make available to the ARTIST, background information on the SITE, if requested by the ARTIST.

- (b) Subject to Section 1(f) above, the CITY shall make payments to the ARTIST according to the payment schedule in Exhibit "A". The total not-to-exceed fee is \$\_\_\_\_\_ which includes sales tax if required, and all travel expenses of the ARTIST.
- (c) A plaque identifying the ARTIST, the title of the ARTWORK, if any, and the year of the ARTWORK'S completion will be displayed in the immediate vicinity of the installed ARTWORK at the expense of the CITY.
- (d) The CITY will be responsible for contracting with either the ARTIST or a third party for the fabrication and/or installation of the ARTWORK.

### **3. TERM AND EXTENSIONS**

This Agreement shall be effective on the date it is executed by the last party to sign the Agreement, and it shall be effective for one year or until completion of the design of the ARTWORK, whichever is sooner. Notwithstanding, this Agreement may be extended for one additional year with the consent of both Parties and by a written amendment to this Agreement.

### **4. TERMINATION and FORCE MAJEURE**

A. In the event of the ARTIST'S failure to deliver or perform the services required under this Agreement, CITY may terminate this Agreement for nonperformance by notifying ARTIST by certified U.S. Mail or next day overnight mail of the termination. If CITY decides to abandon or indefinitely postpone the work or services contemplated by this Agreement, CITY may terminate this Agreement upon written notice to ARTIST. Upon notification of termination, ARTIST has five (5) business days to deliver all work in progress to CITY and, at the CITY'S option the work in progress will become the CITY'S sole property. CITY will make a determination of fact based upon the work product delivered to CITY and of the percentage of work that ARTIST has performed which is usable and of worth to CITY in having the Agreement completed. Based upon that finding CITY will determine the final payment of the Agreement.

B. Force Majeure. Any delay in the performance of any the duties or obligations of either Party under this Agreement caused by an event outside the affected Parties' reasonable control shall not be considered a breach of this Agreement, and the time required for performance shall be extended for a period equal to the period of such delay. ARTIST shall not be entitled to damages or additional payment due to such delays. Such events shall include, without limitation: war, government regulation instituted or revised after the date of this Agreement, labor disputes (including without limitation strikes, lockouts, job actions or boycotts), fires, floods, earth quakes, adverse weather necessitating succession of work or similar actions of the elements, civil unrest, or such other unforeseeable causes beyond the reasonable control and without the fault or negligence of the Party so affected. The Party so affect shall give prompt notice to the other Party of such cause and shall take whatever reasonable steps are necessary to relieve the effects of such cause as rapidly as possible. In the event that the Forced Majeure delay extends longer than the CITY or ARTIST desires and such delay makes it difficult for either Party to perform, either Party may contact the other Party to meet and confer as to whether the Agreement should be terminated due to the extended delay or continue to be held in abeyance during the period of delay. If the Agreement is terminated, CITY will make the final determination as to the portions of the tasks completed and the compensation to be paid.

C. This Agreement may be terminated pursuant to Section 1 (f) above.

**5. OWNERSHIP OF MATERIAL SUBMITTED**

Subject to Sections 1(f) above, all materials submitted related to the approved ARTWORK or the approved DESIGN are the sole property of the CITY.

**6. OWNERSHIP OF THE DESIGN AND/OR ARTWORK**

Title to the completed DESIGN for the ARTWORK immediately vests in the CITY upon acceptance of the DESIGN and/or ARTWORK by the City, including all rights of ownership, possession and control. After DESIGN completion and prior to acceptance of the ARTWORK, CITY shall have the right, at its option, to claim ownership, possession and control of the DESIGN or ARTWORK which is to be installed at the SITE.

**7. REPRODUCTION RIGHTS**

Subject to the rights granted herein, ARTIST retains all rights under the Copyright Act of 1976 (17 U.S.C. §101 et. seq.), as amended from time to time. The ARTIST hereby grants the CITY, royalty free and irrevocable license to make, or cause to be made, photographs and other two-dimensional reproductions of the DESIGNS for educational, public relations, tourism and arts promotional purposes. For the purpose of this Agreement, the following are among those deemed to be permissible reproductions for the above cited purposes: brochures and pamphlets pertaining to the CITY; reproductions in exhibition catalogues, books, slides, photographs, postcards, posters, calendars, art magazines, art books and art and news sections of newspapers; in general books and magazines not primarily devoted to art; slides and film strips; video; computer websites; and television; as well as in media that shall exist in the future. The CITY shall include the ARTIST'S copyright notice on any reproductions and the ARTIST shall include the following words on any reproduction: "An original work commissioned by the City of Carlsbad, California."

**8. REGISTRATION OF COPYRIGHT**

The responsibility for registration of the copyright shall be the responsibility of the copyright holder under this Agreement.

**9. WARRANTIES**

1. Warranty of Title

The ARTIST represents and warrants that:

- (a) The ARTWORK is solely the result of the artistic effort of the ARTIST.
- (b) The ARTWORK is unique and original and does not infringe upon any copyright, trademark, service mark or other intellectual property right of any third party.
- (c) The ARTWORK or a duplicate of the ARTWORK has not been sold elsewhere.

**10. WAIVER OF ARTIST'S RIGHTS**

The ARTIST and CITY acknowledge that the ARTIST may have certain rights under the Federal Visual Artists Rights Act of 1990 ("VARA" 17 U.S.C. § 106A, et seq.). The ARTIST acknowledges and understands that if fabrication is performed, the subsequent installation of the ARTWORK at the SITE may subject the ARTWORK to destruction, distortion, mutilation, or other modification due to its removal by the CITY or its officials, officers, employees, agents, or representatives.

The ARTIST and CITY acknowledge that the ARTIST may have certain rights under California Civil Code Section 987 which are not pre-empted by VARA. In consideration of the terms and conditions in this Agreement, the ARTIST waives any rights which the ARTIST or the ARTIST's heirs, beneficiaries, devisees, or personal representatives may have under California Civil Code Section 987 to prevent the removal, destruction, distortion, mutilation, or other modification of the ARTWORK.

Any contracts or written agreements between the ARTIST and his/her subcontractors or other artists contributing to the ARTWORK shall include a waiver of the ARTIST'S rights under this Agreement.

The ARTIST agrees to waive the rights under VARA to prevent the destruction, distortion, mutilation, or other modification of the ARTWORK.

The ARTIST'S rights under this Agreement shall cease with the ARTIST'S death and do not extend to the ARTIST'S heirs, successors or assigns.

In addition, in the event that any element of the Artwork constitutes a public safety hazard, the City has the right to remove only the element posing the public safety hazard.

The ARTIST, his or her agents, heirs, successors and assigns further agree not to attempt to defeat this waiver by cooperating, encouraging or assisting any organization which seeks to bring an action under these Acts.

#### **11. SALE OR DONATION OF THE DESIGNS BY THE CITY.**

The CITY shall have the right to donate or sell the ARTWORK at any time. Before exercising this right, the CITY, by written notice to the ARTIST at ARTIST'S last known address, agrees to give the ARTIST the opportunity to purchase the ARTWORK for the greater of the market value as determined by a qualified appraiser or the amount of any offer that the CITY has received for the purchase of the ARTWORK, plus all costs associated with the removal of the artwork from the SITE, clean-up of the SITE and delivery to the ARTIST. The ARTIST shall have thirty (30) days from the date of the CITY'S notice to exercise the option to purchase the ARTWORK.

#### **12. STATUS OF THE ARTIST**

The ARTIST shall perform the services provided for herein in ARTIST'S own way as an independent contractor and in pursuit of ARTIST'S independent calling, and not as an employee of the CITY. ARTIST shall be under control of the CITY only as to the result to be accomplished, but shall consult with the CITY as provided for in this agreement.

#### **13. WITHHOLDINGS**

The CITY shall not make any federal or state tax withholdings on behalf of the ARTIST. The CITY shall not be required to pay workers' compensation insurance on behalf of the ARTIST. The ARTIST agrees to indemnify the CITY for any tax, retirement contribution, social security, overtime payment, or workers' compensation payment which the CITY may be required to make on behalf of the ARTIST or any employee of the ARTIST for work done under this agreement.

**14. IMMIGRATION ACT**

The ARTIST shall be aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this agreement.

**15. NONDISCRIMINATION CLAUSE**

The ARTIST shall comply with the state and federal laws regarding nondiscrimination.

**16. COVENANTS AGAINST CONTINGENT FEES**

The ARTIST warrants that he has not employed or retained any company or person, other than a bona fide employee working for the ARTIST, to solicit or secure this agreement, and that ARTIST has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this agreement. For breach or violation of this warranty, the CITY shall have the right to annul this agreement without liability, or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**17. HOLD HARMLESS AGREEMENT**

The CITY, its officers, and employees shall not be liable for any claims, liabilities, penalties, fines, for any damage to goods, properties, or effects of any person whatsoever, nor for personal injuries or death caused by, or resulting from, any intentional or negligent acts, errors or omissions of ARTIST or ARTIST'S agents, employees, or representatives. ARTIST agrees to defend, indemnify, and save free and harmless the CITY and its officers and employees against any of the foregoing liabilities or claims of any kinds, and any cost and expense including attorney's fees incurred by the CITY on account of any of the foregoing liabilities, including liabilities or claims by reason of alleged defects in the DESIGN.

17.1 Indemnification for Infringement. The ARTIST also agrees to protect, defend, indemnify and hold the City harmless from any action, claim, suit or liability based on a claim that work performed under this Agreement by the ARTIST or his/her agents constitutes an infringement of any patent, copyright, trademark, trade name or other proprietary right of any party.

**18. ASSIGNMENT OF CONTRACT**

The ARTIST shall not assign this contract or any part therefore or any monies due thereunder without the prior written consent of the CITY.

**19. SUBCONTRACTING**

If the ARTIST subcontracts any of the work to be performed under this agreement, ARTIST shall be fully responsible to the CITY for the acts and omissions of ARTIST'S subcontractor and of the persons either directly or indirectly employed by the subcontractor, as ARTIST is for the acts and omissions of persons directly employed by ARTIST. Nothing contained in this agreement shall create any contractual relationship between any subcontractor of ARTIST and the CITY. The ARTIST shall bind every subcontractor and every subcontractor of a subcontractor by the terms of this agreement applicable to ARTIST'S work unless specifically noted to the contrary in the subcontract in question and approved in writing by the CITY.

**20. PROHIBITED INTEREST**

No official of the CITY who is authorized in such capacity on behalf of the CITY to negotiate, make, accept, or approve, or take part in negotiating, making, accepting, or approving of this agreement, shall become directly or indirectly interested personally in this contract or in any part thereof. No officer or employee of the CITY who is authorized in such capacity and on behalf of the CITY to exercise any executive, supervisory, or similar functions in connection with the performance of this contract shall become directly or indirectly interested personally in this contract or any part thereof.

**21. VERBAL AGREEMENT OR CONVERSATION**

No verbal agreement or conversation with any officer, agent, or employee of the CITY, either before, during or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained nor entitle the ARTIST to any additional payment whatsoever under the terms of this contract.

**22. EXHIBITS**

All exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference.

**23. CONFLICT OF INTEREST**

The ARTIST shall file a Conflict of Interest Statement with the City Clerk in accordance with the requirements of the City of Carlsbad Conflict of Interest Code. The ARTIST shall report investment of interests in real property.

**24. AUTHORITY**

The individuals executing this Agreement and the instruments referenced in it on behalf of ARTIST each represent and warrant that they have the legal power, right and actual authority to bind ARTIST to the terms and conditions of this Agreement.

ARTIST

CITY OF CARLSBAD, a municipal corporation of the State of California

By:

By:

\_\_\_\_\_  
(sign here)

\_\_\_\_\_  
Library & Cultural Arts Director

\_\_\_\_\_  
(print name/title)

ATTEST:

By:

\_\_\_\_\_  
(sign here)

\_\_\_\_\_  
City Clerk

If required by City, proper notarial acknowledgment of execution by contractor must be attached. If a corporation, Agreement must be signed by one corporate officer from each of the following two groups.

**Group A**

Chairman,

President, **or**

Vice-President

**Group B**

Secretary,

Assistant Secretary,

CFO **or** Assistant Treasurer

**Otherwise**, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

APPROVED AS TO FORM:

City Attorney

BY: \_\_\_\_\_

Assistant City Attorney

**EXHIBIT "A"**

AGREEMENT BETWEEN CITY OF CARLSBAD AND ARTIST, \_\_\_\_\_

Payment Schedule

Task 1 –Design: Not-to-Exceed \$\_\_\_\_\_

Prepare Design in consultation with architect, \_\_\_\_\_ (SITE) goal team, and City staff; present Design to the Arts Commission (twice), public and City Council for approval.

1. \$\_\_\_\_\_ will be paid 14 days after execution of the Agreement by all Parties
  
2. Progress payments while working on initial CONCEPT DESIGN: Artist may bill City on a weekly basis at \$100/hour, not-to-exceed a total of \$\_\_\_\_\_.
  
3. \$\_\_\_\_\_, plus any remaining unbilled amount from Task 1, Number 2 above, will be paid after the submission of the initial CONCEPT DESIGN and the receipt of the Arts Commission's approval of initial CONCEPT DESIGN.
  
4. \$\_\_\_\_\_ after submission of final CONCEPT DESIGN and the receipt of the Arts Commission's approval of the final CONCEPT DESIGN.
  
5. \$\_\_\_\_\_ after submission of final CONCEPT DESIGN or REPLACEMENT DESIGN and the receipt of the City Council's final approval of the final CONCEPT DESIGN or REPLACEMENT DESIGN.