

**Los Angeles County Department of Arts and Culture
Civic Art Consultant Agreement**

This AGREEMENT is entered into and effective as of _____ (“Effective Date”), by and between the County of Los Angeles (“COUNTY”), a body corporate and politic and a political subdivision of the State of California, by and through its Los Angeles County Department of Arts and Culture (“Arts and Culture”), on the one hand, and

Consultant Name:
Address:
City, State, ZIP:
Vendor Number:
Email Address:

(“Consultant”), on the other hand, to provide COUNTY with specialized and administrative CONSULTANT services.

1. **SCOPE OF SERVICES.** Pursuant to the terms of this Agreement, CONSULTANT shall oversee public engagement, ARTIST selection, artwork design, design and construction documents, fabrication and installation of an Artwork as set forth in detail in Exhibit B (Scope of Work) to this Agreement. [ALT 1 CONSULTANT shall be responsible for contracting with the selected ARTIST, fabricators, and installers to complete the Artwork. CONSULTANT's contracts and subcontracts under this Agreement shall contain the model provisions in favor of the COUNTY, as specified in the Artist Agreement.] [ALT 2 CONSULTANT shall be responsible for contracting with the selected ARTIST. CONSULTANT's Contract with the ARTIST shall require the selected ARTIST to contract with fabricators and installers to complete the Artwork. Both the ARTIST's and CONSULTANT's contracts and subcontracts under this Agreement shall contain the model provisions in favor of the COUNTY, as specified in the Artist Agreement.]

2. **COMPENSATION**

2.1. **The Maximum Amount** of this Agreement shall be \$ _____ (including all materials, labor and out of pocket expenses) for the term of this Agreement as set forth in Section 2.0, above unless otherwise extended by written notice and agreed to by both parties.

2.2. **Contingency.** The Maximum Contract Amount designates \$ _____ as the CONSULTANT Contingency to be released only after Arts and Culture has provided prior written approval. In the event that CONSULTANT anticipates the need to use a portion of the CONSULTANT Contingency, CONSULTANT shall submit a written request demonstrating that there is insufficient funds remaining to complete the project without use of the CONSULTANT Contingency. This request shall include invoices, estimates, and a revised budget. Arts and Culture shall review the request to use the CONSULTANT Contingency funds for accuracy and completion, and may require additional documentation or information. A request to use the CONSULTANT Contingency shall not be unreasonably denied or conditioned.

2.3. **Remaining Funds.** In the event that there are unused funds in the CONSULTANT Contingency after completion of the project, Arts and Culture, at its sole discretion,

may choose to negotiate a contract amendment with CONSULTANT to deliver additional artwork, services, or programming.

- 2.4. Payment.** Payment to CONSULTANT shall be made in arrears pursuant to Exhibit B to this Agreement, setting out the performance milestones and payment schedule, provided that CONSULTANT is not in default under any provision of this Agreement and has submitted a complete and accurate statement of payment due with documentation and deliverables attached supporting the statement of payment due. CONSULTANT's fees shall include all applicable taxes, and any additional taxes that are not included remain the responsibility of CONSULTANT.
- 2.5. Supporting Invoices.** CONSULTANT shall submit to the Project Manager all invoices, with documentation supporting the invoiced amounts, and the required deliverables.
- 2.6. Adjustments.** Upon approval of the required deliverables, the Project Manager shall review the invoice and make adjustments for any offset authorized by this Agreement, and authorize payment of an accurate invoice as soon as possible after receipt of CONSULTANT's billing. COUNTY will make a reasonable effort to effect payment within thirty (30) days following receipt of an invoice which is accurate as to form and content.

3. TERM OF AGREEMENT

- 3.1. Term.** The term of this Agreement shall commence when executed by all parties hereto and shall expire on (DATE).
- 3.2. Extension.** This Agreement may be extended at the sole discretion of COUNTY by amending the Agreement in writing to reflect such extension, as indicated in the solicitation documents.
- 3.3. Delay.** Consultant shall notify COUNTY in writing whenever a delay is anticipated or experienced and set forth all facts and details related to the delay. The COUNTY may grant Consultant an extension of time if COUNTY deems it appropriate in the sole discretion of the COUNTY. Failure to fulfill Consultant's contractual obligations due to reasons beyond Consultant's control as determined by the COUNTY in its sole discretion will not constitute a breach of contract, provided that such obligations shall be suspended only for the duration approved in writing by the COUNTY.
- 3.4. Time is of the Essence.** Time is of the essence for all performance required under this Agreement.

4. CHANGES AND AMENDMENTS.

- 4.1.** COUNTY reserves the right to change, through negotiation, any portion of the work required under this Agreement, or amend such other terms and conditions which may become necessary. Any such revisions shall be accomplished in the following manner:
 - 4.1.1.** For any change which does not materially affect the scope of work, or any other term or condition included under this Agreement, a *Change Notice* shall be prepared and issued by the Project Manager.

- 4.1.2.** For any revision which materially affects the scope of work, price, or any term and condition included in the Agreement, a negotiated amendment to the Agreement shall be executed by CONSULTANT and COUNTY.
- 4.2.** If CONSULTANT determines that a proposed change will require a change in the schedule or costs in excess of the Maximum Amount, CONSULTANT shall advise COUNTY in writing within ten (10) calendar days of such determination. CONSULTANT shall furnish COUNTY with an itemized estimate of any adjustments to the costs or the schedule resulting from the proposed change. CONSULTANT must receive the written approval of the Project Manager prior to CONSULTANT taking any action on a proposed change. During negotiations for a proposed change, CONSULTANT shall continue performance of this Agreement other than the terms and conditions to be addressed in the proposed change amendment, unless otherwise directed by COUNTY.
- 4.3.** For any change affecting CONSULTANT's project personnel, CONSULTANT shall submit written notification and request to effect the change to the Project Manager. The Project Manager or designee may accept or reject CONSULTANT's written notification and request.

5. CONSULTANT REPRESENTATIONS AND WARRANTIES.

- 5.1.** CONSULTANT represents and warrants that the ARTIST shall be the sole author of the Artwork and ARTIST shall be the owner of all copyrights pertaining to the Artwork or shall obtain the appropriate permissions and licenses to incorporate the works of others.
- 5.2.** CONSULTANT represents and warrants that the Artwork shall be an original creation and the result of the artistic efforts of ARTIST and that it will be installed free of any liens, claims or other encumbrances of any type. Further, ARTIST shall not knowingly infringe upon any copyright or trademark.
- 5.3.** CONSULTANT represents and warrants that the Artwork shall be unique and an edition of one (1) and that ARTIST will not execute or authorize another party to execute another work of the same or substantially similar design as the artwork commissioned pursuant to this Agreement.
- 5.4.** CONSULTANT represents and warrants that within 30 days of selection of ARTIST, CONSULTANT shall, deliver to COUNTY the ARTIST Agreement (Exhibit D) completed by ARTIST, (i) requiring ARTIST to register a copyright, (ii) granting County a license; (iii) waiving rights to make certain reproductions; and (iv) waiving certain rights under the Visual ARTISTS Rights Act ("VARA") as codified in 17 U.S.C. sections 106, 106A(a), 113, and the California Art Preservation Act ("CAPA"), as codified in Cal. Civ. Code § 987.
- 5.5.** CONSULTANT represents and warrants that the anticipated lifespan of the Artwork shall be no less than 25 years from the date of the COUNTY's Acceptance Notice.
- 5.6.** CONSULTANT represents and warrants that the Artwork shall be fabricated, assembled, and installed in permanent, non-fugitive materials that will not tend to

degrade or fade over the life of the Artwork; and will be free of defects in workmanship and materials.

- 5.7. In the event that any defects become apparent in the workmanship or materials within one (1) years of the date of the COUNTY's Acceptance Notice, ARTIST will remedy any defects at ARTIST's expense. This Section does not apply to any inherent defects in the Artwork that are specifically disclosed in the Design and accepted by the COUNTY in writing. The COUNTY may, in its sole discretion, require the ARTIST to obtain additional warranties for material or labor from specified subcontractors or suppliers for a duration deemed necessary. Any warranties obtained by the ARTIST for materials or labor shall be assignable to the County and a copy of the warranty shall be provided to the County upon delivery of the Artwork.
- 5.8. CONSULTANT represents and warrants that the Artwork will not pose a danger to public health or safety in view of the possibility of misuse, if such misuse in the manner that was reasonably foreseeable at any time during the term of this Agreement. During the design, fabrication, and installation of the Artwork, CONSULTANT and ARTIST shall cooperate to make adjustments to the Artwork as necessary to address potential safety hazards, as determined by the COUNTY. CONSULTANT and ARTIST further agree to cooperate in making or permitting adjustments to the Artwork if necessary to eliminate any potential safety hazards, as determined by the COUNTY in its sole discretion.
- 5.9. CONSULTANT represents and warrants that general routine cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard of public display (including, but not limited to, remaining free from rust, mold, fractures, stains, chips, tears, abrasions, or peeling), taking into consideration foreseeable exposure to the elements and general wear and tear.
- 5.10. CONSULTANT represents and warrants that they, and their subcontractors and agents, shall obtain and maintain all licenses, permits, registrations and certificates, if any, required by law, which are applicable to the performance of this Agreement.
- 5.11. If applicable, CONSULTANT and subcontractor fabricators and installers shall comply with the Prevailing Wage requirements of Exhibit A (Standard Terms and Conditions).

6. **INTELLECTUAL PROPERTY.**

- 6.1. **Copyright Act.** Except as otherwise expressly provided by this Agreement, the selected ARTIST shall retain all rights to the Artwork and Artwork Studies pursuant to the Copyright Act of 1976 (17 U.S.C. 101 et seq. as amended, and any successor act).
- 6.2. **Copyright Registration.** The CONSULTANT shall ensure that a copyright of the Artwork in the ARTIST's name is registered with the United States Register of Copyrights, at no additional cost to the COUNTY, and shall provide the COUNTY with a copy of the application for registration, the registration number and the effective date of the registration.
- 6.3. **Copyright Infringement.** ARTIST shall be required to make best efforts to enforce and defend any attempt(s) to infringe upon ARTIST's copyright. If the ARTIST fails to

do so, the CONSULTANT shall make best efforts to enforce and defend any attempt(s) to infringe upon ARTIST's copyright. ARTIST shall be required to assign to the COUNTY and the CONSULTANT the ARTIST's right to enforce and defend the copyright in the event ARTIST does not act within a reasonable time after written notice from the COUNTY to do so.

6.4. Licensed Rights. ARTIST shall be required to grant the COUNTY an irrevocable and exclusive worldwide license to reproduce, distribute, and/or display two-dimensional reproductions of the Artwork for any educational, or non-commercial purpose including, without limitation, advertising, brochures, postcards, media publicity, and catalogues or similar publications. All such reproductions shall bear a copyright notice in ARTIST's name. ARTIST shall be required to grant to the COUNTY the right to reproduce and retain copies of the design plans and drawings produced and used by the ARTIST in the design and installation of the Artwork for the purposes of (1) fulfilling its responsibilities as owner of the Artwork and (2) public exhibition related to the display of the Artwork.

6.5. Commercial Reproductions.

6.5.1. If the COUNTY wishes to make reproductions of the Artwork for commercial purposes, including, but not limited to t-shirts, posters or other reproductions for sale, the COUNTY and ARTIST may execute a separate agreement to address the terms of the license granted by the ARTIST and the royalty the ARTIST shall receive.

6.5.2. Because the Artwork will be unique, ARTIST and CONSULTANT shall be required to waive the right to make or to authorize others to make two or three-dimensional reproductions of the Artwork, or to make derivative works based on the copyrighted Artwork, except with prior written permission by the COUNTY.

6.6. The terms of this Section shall survive the expiration or termination of this Agreement.

7. MORAL RIGHTS.

7.1. The COUNTY and CONSULTANT recognize the importance of ARTIST's moral rights of attribution and integrity, as identified in the Visual ARTISTS Rights Act ("VARA") as codified in 17 U.S.C. sections 106, 106A(a), 113, and the California Art Preservation Act ("CAPA"), as codified in Cal. Civ. Code § 987. ARTIST and COUNTY hereby agree to advance those statutory goals by private contract as provided for herein.

7.2. ARTIST shall have the following moral rights:

7.2.1. ARTIST shall have the right to claim authorship of the Artwork.

7.2.2. ARTIST shall have the right to prevent the use of their name as the author of the work of visual art in the event of any physical defacement, mutilation, alteration, or destruction of the Artwork.

7.2.3. ARTIST shall have the right, subject to the notice provisions of the section 7.4.4 below, to prevent any intentional defacement, mutilation, alteration or destruction of the Artwork.

7.3. Procedure for Protecting Moral Rights

- 7.3.1.** COUNTY and its agents shall not intentionally commit, or authorize the intentional commission of, any physical defacement, mutilation, alteration, or destruction of the Artwork during the anticipated lifespan of the Artwork except as provided herein.
- 7.3.2.** To effectuate the rights in Section 7.3.1, ARTIST may disavow authorship, otherwise ARTIST's remedy shall be limited to an action seeking injunctive relief.
- 7.3.3.** The rights and duties of this subsection 7.3: (i) Shall, with respect to the ARTIST, be limited to the life of the ARTIST, or limited to the anticipated life of the Artwork as defined in this Agreement, whichever is less; (ii) Shall exist in addition to any other rights and duties which may now or in the future be applicable; and (iii) Except as provided in this paragraph, may not be waived except by an instrument in writing expressly so providing which is signed by the ARTIST.
- 7.3.4.** If COUNTY wishes to commit any of the acts in section 7.3.1, above, or remove the Artwork or sell, lease or otherwise surrender possession of the building to anyone who will not agree to the terms of this subsection, the rights and duties created under this section shall apply unless COUNTY has notified ARTIST in writing a minimum of thirty (30) days, or as long as ninety (90) or more days in the sole discretion of the COUNTY in advance of COUNTY's action that may affect the Artwork in violation of this section. If the Artwork is removed at the expense of ARTIST, or their heir, beneficiary, devisee, or personal representative, title to the Artwork shall pass to that person.
- 7.3.5.** In the event the COUNTY determines that the Artwork presents an imminent hazard to the public, the COUNTY may commit any of the acts in section 7.3.1 without prior consultation with the ARTIST. The COUNTY shall make a good faith effort to notify the ARTIST within thirty (30) days of such removal to discuss options for the final disposition, reinstallation, maintenance or deaccession of the Artwork.
- 7.3.6.** Nothing in this subdivision shall affect any rights of Authorship.
- 7.3.7.** No action may be maintained to enforce any liability under this section unless brought within three years of the act complained of or one year after discovery of the act, whichever is longer.
- 7.3.8.** If any provision of this section or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect any other provisions or applications of this section which can be effected without the invalid provision or application, and to this end the provisions of this section are severable.

8. MAINTENANCE, REPAIR, CONSERVATION, REMOVAL, ALTERATION AND DEACCESSION.

- 8.1. Maintenance, Repair, Conservation.** The COUNTY recognizes that maintenance of the Artwork is essential to the integrity of the Artwork and agrees that it will take reasonable efforts to see that it is properly maintained, taking into account the written maintenance guidelines of the CONSULTANT delivered with the close out documentation. The COUNTY reserves the right to make minor or emergency repairs without consultation provided the work is performed in accordance with recognized principles of conservation. In the event the COUNTY desires to make repairs to or to conserve the Artwork during the ARTIST's lifetime and such work does not comply with the written maintenance guidelines, the COUNTY shall make a good faith effort to notify the ARTIST in writing at least thirty (30) days in advance to request that ARTIST advise COUNTY about the proposed repair or conservation, and ARTIST shall have a right to reasonable compensation with respect to advice and/or services provided.
- 8.2. Removal and Alteration.** While it is the intent of the COUNTY to permanently retain and publicly display the Artwork, circumstances may arise that would make it prudent for the COUNTY to remove the Artwork from public display. CONSULTANT hereby acknowledges that the Artwork, when installed, will be incorporated within and made a part of the Premises in such a way that removing the Artwork from the Premises may cause destruction, distortion, mutilation, or other modification of the Artwork. CONSULTANT agrees that the COUNTY shall have the absolute right incidental to its ownership of the Premises and the Artwork to remove, relocate, replace, transport, or store in whole or in part (such actions being referred to herein as "Removal"), or to alter, change, modify, or destroy (such actions being referred to herein as "Alterations"), the Artwork at such times as the COUNTY shall deem necessary in order to exercise its powers and responsibilities with regard to the Premises. The County shall make a good faith effort to notify the ARTIST in writing at least thirty (30) days in advance of such Removal or Alteration or as long as ninety (90) or more days in the sole discretion of the COUNTY, to discuss methods of removal, transportation and conservation, and ARTIST shall have a right to reasonable compensation with respect to advice and/or services provided in support of such Removal or Alteration.
- 8.3. Deaccession.** In the event the COUNTY decides to deaccession the Artwork, the ARTIST shall have the first right of refusal to purchase the Artwork, providing it is not integrated into a larger piece or a structure, and/or can be removed without destruction of the artwork. The COUNTY shall follow the procedures for deaccession identified in the Civic Art Procedures.
- 8.4.** Nothing herein, including the COUNTY's obligation to consult with the ARTIST, is intended to diminish ARTIST's waiver in Section 6 and 7 herein of ARTIST's statutory rights to preserve the Artwork. However, ARTIST retains all rights to disclaim authorship of the Artwork.
- 8.5.** Nothing within this Section 8 shall give the CONSULTANT any cause of action against the COUNTY for money damages in the event of any breach of this Section by the COUNTY.
- 8.6.** In fulfilling its obligations under Sections 6, 7 and 8, the COUNTY may rely exclusively upon the address provided by the CONSULTANT pursuant to Section 14, as updated by written notice from the CONSULTANT.

9. OWNERSHIP OF ARTWORK AND ARTWORK STUDIES

- 9.1. Upon CONSULTANT completion of all project milestone and deliverables, COUNTY shall issue a Notice of Project Completion (Project Completion Notice), at which time the Artwork will be accessioned into the LA County Civic Art Collection and all right, title and ownership of the Artwork shall vest in the COUNTY.
- 9.2. All Artwork Studies created or prepared by the ARTIST pursuant or related to this CONSULTANT Agreement will be provided to and become the sole and exclusive property of the COUNTY, as selected by the Project Manager.
 - 9.2.1. Notwithstanding Section 6, the COUNTY shall have the right to reproduce Artwork Studies, design plans, and drawings produced and used by the ARTIST in the design and installation of the Artwork for the purposes of (1) fulfilling COUNTY’s responsibilities as owner of the Artwork, and (2) public exhibition related to the display of the Artwork.

10. RISK OF LOSS. Prior to issuance of the Notice of Artwork Acceptance, CONSULTANT bears the risk of loss or damage to the Artwork for any loss or damage to the Artwork, except any damage caused by jobsite contractors or subcontractors not under the CONSULTANT’s contractual control or supervision. The CONSULTANT shall, at its sole expense, rebuild, repair, and/or restore any portion of the Artwork which has been so damaged. After the Notice of Artwork Acceptance is issued and the Artwork is accessioned into the County Collection, the risk of damage to or loss of the Artwork passes to COUNTY.

11. INSURANCE COVERAGE.

- 11.1. CONSULTANT shall comply with the Insurance and Indemnifications requirements of Exhibit A (Standard Terms and Conditions).
- 11.2. CONSULTANT shall procure and maintain throughout the Term of the Agreement the following insurance coverage:

11.2.1. Commercial General Liability insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$ _____
Products/Completed Operations Aggregate:	\$ _____
Personal and Advertising Injury:	\$ _____
Each Occurrence:	\$ _____

11.2.2. Automobile Liability insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than:

Bodily injury liability each person	\$ _____
Bodily injury liability each accident	\$ _____
Property damage liability	\$ _____

11.2.3. Workers Compensation and Employers’ Liability insurance or qualified self- insurance satisfying statutory requirements, which includes Employers’ Liability coverage with limits of not less than \$1 million per accident. If

CONSULTANT will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also must include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer. The written notice must be provided to County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. If applicable to Contractor's operations, coverage also must be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

11.2.4. Property insurance for loss of materials paid for by the COUNTY for any loss which occurs prior to Acceptance by the COUNTY. The risk of loss or damage shall be borne by the ARTIST as provided in Section 11 herein.

12. CREDITS

12.1. Plaque. A plaque identifying ARTIST, the title of the Artwork and the year it was created may be publicly displayed in the area adjacent to the Artwork on a plaque of reasonable dimensions.

12.2. ARTIST Credit. COUNTY agrees that unless ARTIST requests to the contrary in writing, all references to the Artwork and all reproductions of the Artwork will credit the Artwork to ARTIST.

12.3. COUNTY Credit. ARTIST agrees that all formal references to the Artwork, including public showings of reproductions and/or derivative works of the Artwork, as approved by Arts and Culture, will include the following credit line: "From the collection of **"The Los Angeles County Department of Arts and Culture."**

13. NOTICES. All notices, submittals, requests, and reports required under this Agreement will be hand delivered, emailed, or sent by mail as follows:

COUNTY:

CONSULTANT:

Routine exchange of information may be conducted via telephone or electronic means, including e-mail. A change in the designation of the person or address to which submittal, requests, notices and reports will be delivered is effective when the other party has received notice of the change.

14. GENERAL PROVISIONS.

14.1. Standard Terms and Conditions. The Standard County Terms and Conditions attached here to are hereby incorporated as Exhibit A.

- 14.2. Headings.** The headings of Sections of this Agreement are for convenience of reference only, and will in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.
- 14.3. No Third Party Beneficiaries.** Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.
- 14.4. Further Assurances.** The parties agree to execute other documents reasonably necessary to further effect and evidence the terms of this Agreement, as long as the terms and provisions of the other documents are fully consistent with the terms of this Agreement.
- 14.5. Authority To Sign.** Each party's signer certifies that s/he has the necessary authority to enter into a valid, enforceable contract and bind the named companies, non-profits, corporations, entities, or persons listed above.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

COUNTY OF LOS ANGELES

By: _____ Date: _____
KRISTIN SAKODA
Director, Department of Arts and Culture

CONSULTANT

By: _____ Date: _____
(Name of CONSULTANT)

APPROVED AS TO FORM:
DAWYN R. HARRISON
Interim County Counsel

By: _____
Deputy

EXHIBIT A
STANDARD TERMS AND CONDITIONS

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1 DEFINITIONS

1.1 Artist

The person or team selected and subcontracted by Consultant, in consultation with Arts and Culture, to create an artwork.

1.2 Contract

This agreement executed between County and Consultant. Included are all supplemental agreements amending or extending the service to be performed. The Contract sets forth the terms and conditions for the issuance and performance of all tasks, deliverables, services and other work.

1.3 Consultant

The person or persons, sole proprietor, partnership, joint venture, corporation or other legal entity who has entered into an agreement with the County to perform or execute the work covered by this contract.

1.4 Statement of Work

The directions, provisions, and requirements provided herein and special provisions pertaining to the method, frequency, manner and place of performing the contract services.

1.5 Subcontract

An agreement by the Consultant to employ a subcontractor to provide services to fulfill this contract.

1.6 Subcontractor

Any individual, person or persons, sole proprietor, firm, partnership, joint venture, corporation, or other legal entity furnishing supplies, services of any nature, equipment, and/or materials to Consultant in furtherance of Consultant's performance of this contract, at any tier, under oral or written agreement.

1.7 Board of Supervisors (Board)

The Board of Supervisors of the County of Los Angeles acting as governing body.

1.8 County Project Manager

Person designated by County's Project Director to manage the operations under this contract and with responsibility to oversee the day-to-day activities of this contract. Responsibility for inspections of all tasks, deliverables, goods, services and other work provided by the Consultant.

1.9 County Project Director

Person designated by County with authority for County on contractual or administrative matters relating to this contract that cannot be resolved by the County's Project Manager.

1.10 Day(s)

Calendar day(s) unless otherwise specified.

1.11 Fiscal Year

The twelve (12) month period beginning July 1st and ending the following June 30th.

2 STANDARD COUNTY TERMS

2.1 Compliance with Applicable Law

2.1.1 In the performance of this Contract, Consultant must comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, and all provisions required thereby to be included in this Contract are hereby incorporated herein by reference.

2.1.2 Consultant must indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by Consultant, its officers, employees, agents, or subcontractors, to comply with any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by County in its sole judgment. Any legal defense pursuant to Consultant's indemnification obligations under Paragraph 2.1 (Compliance with Applicable Law) will be conducted by Consultant and performed by counsel selected by Consultant and approved by County. Notwithstanding the preceding sentence, County will have the right to participate in any such defense at its sole cost and expense, except that in the event Consultant fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County will be entitled to retain its own counsel, including, without limitation, County Counsel, and to reimbursement from Consultant for all such costs and expenses incurred by County in doing so. Consultant will not have the right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of County without County's prior written approval.

2.2 Compliance with Civil Rights Laws

The Consultant hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person will, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract. Additionally, Consultant certifies to the County:

2.2.1 That Consultant has a written policy statement prohibiting discrimination in all phases of employment.

2.2.2 That Consultant periodically conducts a self-analysis or utilization analysis of its work force.

2.2.3 That Consultant has a system for determining if its employment practices are discriminatory against protected groups.

2.2.4 Where problem areas are identified in employment practices, the Consultant has a system for taking reasonable corrective action, to include establishment of goals or timetables.

2.3 Death or Incapacity of Consultant or Artist

2.3.1 If the Consultant becomes unable to complete the scope of work due to death or incapacity, such death or incapacity will not be treated by the County as an automatic default on the part of the Consultant. Consultant or Consultant's estate shall timely submit invoices for outstanding expenses and all work completed by

Consultant up to the time of death or incapacity and may seek reimbursement for any costs incurred prior to the death or incapacity. The County may elect to terminate this Agreement effective as of the date of Consultant's death or incapacity, and either engage another consultant to complete the project, or work directly with the Artist to complete the Artwork.

2.3.2 In the event of incapacity or death of the Artist before completion of the Artwork, it is the intent of the parties that the County and the Consultant will consult with the Artist or the authorized representatives of the Artist to determine if the Artwork can be completed by a third party or parties to the satisfaction of the County. In the event of incapacity or death of the Artist, the County may elect to terminate this Agreement or may elect to have the Artwork completed by a third party or parties. Should the Artwork be completed by a third party or parties, the Artist will retain Intellectual Property rights under Section 6 of the Agreement.

2.4 Consultant's Charitable Activities Compliance

The Supervision of Trustees and Fundraisers for Charitable Purposes Act regulates entities receiving or raising charitable contributions. The "Nonprofit Integrity Act of 2004" (SB 1262, Chapter 919) increased Charitable Purposes Act requirements. By requiring Consultants to complete Exhibit J (Charitable Contributions Certification), the County seeks to ensure that all County Consultants which receive or raise charitable contributions comply with California law in order to protect the County and its taxpayers. A Consultant which receives or raises charitable contributions without complying with its obligations under California law commits a material breach subjecting it to either contract termination or debarment proceedings or both. ([County Code Chapter 2.202](#))

2.5 Prohibited Activity

To the extent applicable, the Consultant represents and warrants that it will not engage in or permit any religious proselytizing or political propagandizing in connection with the performance of this Agreement. The Consultant agrees to comply with the provision of the federal Hatch Act and with Section 675e of Subtitle B of Title VI of Public Law 101-121 (31 USC § 1352) which prohibits use of federal funds to influence the award of federal contracts or grants.

2.6 Budget Reductions

In the event that the County's Board of Supervisors adopts, in any fiscal year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County contracts, the County reserves the right to reduce its payment obligation under this Contract correspondingly for that fiscal year and any subsequent fiscal year during the term of this Contract (including any extensions), and the services to be provided by the Consultant under this Contract will also be reduced correspondingly. The County's notice to the Consultant regarding said reduction in payment obligation will be provided within thirty (30) calendar days of the Board's approval of such actions. Except as set forth in the preceding sentence, the Consultant must continue to provide all the services set forth in this Contract.

2.7 Complaints

The Consultant must develop, maintain, and operate procedures for receiving, investigating and responding to complaints.

2.7.1 Complaint Procedures

- 2.7.1.1 Within 10 (ten) business days after the Contract effective date, the Consultant must provide the County with the Consultant's policy for receiving, investigating and responding to user complaints.
- 2.7.1.2 The County will review the Consultant's policy and provide the Consultant with approval of said plan or with requested changes.
- 2.7.1.3 If the County requests changes in the Consultant's policy, the Consultant must make such changes and resubmit the plan within 10 (ten) business days for County approval.
- 2.7.1.4 If, at any time, the Consultant wishes to change the Consultant's policy, the Consultant must submit proposed changes to the County for approval before implementation.
- 2.7.1.5 The Consultant must preliminarily investigate all complaints and notify the County's Project Manager of the status of the investigation within 10 (ten) business days of receiving the complaint.
- 2.7.1.6 When complaints cannot be resolved informally, a system of follow-through will be instituted which adheres to formal plans for specific actions and strict time deadlines.
- 2.7.1.7 Copies of all written responses must be sent to the County's Project Manager within 10 (ten) business days of mailing to the complainant.

2.8 County's Quality Assurance Plan

The County or its agent(s) will monitor the Consultant's performance under this Contract on not less than an annual basis. Such monitoring will include assessing the Consultant's compliance with all Contract terms and conditions and performance standards. Consultant deficiencies which the County determines are significant or continuing and that may place performance of the Contract in jeopardy if not corrected will be reported to the Board of Supervisors and listed in the appropriate Consultant performance database. The report to the Board will include improvement/corrective action measures taken by the County and the Consultant. If improvement does not occur consistent with the corrective action measures, the County may terminate this Contract or impose other penalties as specified in this Contract.

2.9 Consultant Responsibility and Debarment

2.9.1 Responsible Consultant

A responsible Consultant is a Consultant who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible Consultants.

2.9.2 Chapter 2.202 of the County Code

The Consultant is hereby notified that, in accordance with [Chapter 2.202 of the County Code](#), if the County acquires information concerning the performance of the Consultant on this or other contracts which indicates that the Consultant is not responsible, the County may, in addition to other remedies provided in the Contract, debar the Consultant from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five (5) years but may exceed five (5) years or be permanent if warranted by the circumstances, and terminate any or all existing contracts the Consultant may have with the County.

2.9.3 Non-responsible Consultant

The County may debar a Consultant if it finds, in its discretion, that the Consultant has done any of the following: 1) violated a term of a contract with the County or a nonprofit corporation created by the County, 2) committed an act or omission which negatively reflects on the Consultant's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, 3) committed an act or offense which indicates a lack of business integrity or business honesty, or 4) made or submitted a false claim against the County or any other public entity.

2.9.4 Consultant Hearing Board

2.9.4.1 If there is evidence that the Consultant may be subject to debarment, the Department will notify the Consultant in writing of the evidence which is the basis for the proposed debarment and will advise the Consultant of the scheduled date for a debarment hearing before the Contractor Hearing Board.

2.9.4.2 The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Consultant and/or the Consultant's representative will be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board will prepare a tentative proposed decision, which will contain a recommendation regarding whether the Consultant should be debarred, and, if so, the appropriate length of time of the debarment. The Consultant and the Department will be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.

2.9.4.3 After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board will be presented to the Board of Supervisors. The Board of Supervisors will have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

2.9.4.4 If a Consultant has been debarred for a period longer than five (5) years, that Consultant may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Consultant has adequately demonstrated one or more of the following: 1) elimination of the grounds for which the debarment was imposed; 2) a bona fide change in ownership or management; 3) material evidence discovered after debarment was imposed; or 4) any other reason that is in the best interests of the County.

2.9.4.5 The Contractor Hearing Board will consider a request for review of a debarment determination only where 1) the Consultant has been debarred for a period longer than five (5) years; 2) the debarment has been in effect for at least five (5) years; and 3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board will conduct a hearing where evidence on the

proposed reduction of debarment period or termination of debarment is presented. This hearing will be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

2.9.4.6 The Contractor Hearing Board's proposed decision will contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board will present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors will have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

2.9.4.7 Subcontractors of Contractor. These terms will also apply to subcontractors of County Consultants.

2.10 Damage to County Facilities, Buildings or Grounds

2.10.1 The Consultant will repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by the Consultant or employees or agents of the Consultant. Such repairs must be made immediately after the Consultant has become aware of such damage, but in no event later than thirty (30) days after the occurrence.

2.10.2 If the Consultant fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by County, for such repairs must be repaid by the Consultant by cash payment upon demand.

2.11 Publicity

2.11.1 The Consultant must not disclose any details in connection with this Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing the Consultant's need to identify its services and related clients to sustain itself, the County will not inhibit the Consultant from publishing its role under this Contract within the following conditions:

2.11.1.1 The Consultant must develop all publicity material in a professional manner; and

2.11.1.2 During the term of this Contract, the Consultant will not, and will not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the prior written consent of the County's Project Director. The County will not unreasonably withhold written consent.

2.11.1.3 The Consultant may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Contract with the County of Los Angeles, provided that the requirements of this Paragraph 2.10 (Publicity) will apply.

2.12 Records

2.12.1 Public Records Act

2.12.1.1 Any documents submitted by the Consultant; all information obtained in connection with the County's right to audit and inspect the Consultant's documents, books, and accounting records pursuant to Paragraph 2.11.2 (Record Retention and Inspection-Audit Settlement) of this Contract; as well as those documents which were required to be

submitted in response to the Request for Proposals (RFP) used in the solicitation process for this Contract, become the exclusive property of the County. All such documents become a matter of public record and will be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The County will not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

2.12.1.2 In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the Consultant agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

2.12.2 Record Retention and Inspection-Audit Settlement

2.12.2.1 The Consultant must maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. The Consultant must also maintain accurate and complete employment and other records relating to its performance of this Contract. The Consultant agrees that the County, or its authorized representatives, will have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Contract. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, will be kept and maintained by the Consultant and will be made available to the County during the term of this Contract and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material must be maintained by the Consultant at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the County's option, the Consultant will pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such material at such other location.

2.12.2.2 In the event that an audit of the Consultant is conducted specifically regarding this Contract by any Federal or State auditor, or by any auditor or accountant employed by the Consultant or otherwise, then the Consultant must file a copy of such audit report with the County's Auditor Controller within thirty (30) days of the Consultant's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Contract. Subject to applicable law, the County will make a reasonable effort to maintain the confidentiality of such audit report(s). Failure on the part of the Consultant to comply with any of the provisions of this subparagraph 2.11.2 will constitute a material breach of this Contract upon which the County may terminate or suspend this Contract.

2.12.2.3 If, at any time during the term of this Contract or within five (5) years after the expiration or termination of this Contract, representatives of the County conduct an audit of the Consultant regarding the work performed under this Contract, and if such audit finds that the County's dollar liability for any such work is less than payments made by the County to the Consultant, then the difference must be either: a) repaid by the Consultant to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to the Consultant from the County, whether under this Contract or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to the Consultant, then the difference will be paid to the Consultant by the County by cash payment, provided that in no event will the County's maximum obligation for this Contract exceed the funds appropriated by the County for the purpose of this Contract.

2.13 Conflicts of Interest

2.13.1 Conflict of Interest

2.13.1.1 No County employee whose position with the County enables such employee to influence the award of this Contract or any competing Contract, and no spouse or economic dependent of such employee, will be employed in any capacity by the Consultant or have any other direct or indirect financial interest in this Contract. No officer or employee of the Consultant who may financially benefit from the performance of work hereunder will in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.

2.13.1.2 The Consultant must comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Contract. The Consultant warrants that it is not now aware of any facts that create a conflict of interest. If the Consultant hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it must immediately make full written disclosure of such facts to the County. Full written disclosure must include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this paragraph will be a material breach of this Contract.

2.13.2 Prohibition Against Inducement or Persuasion

Notwithstanding the above, the Consultant and the County agree that, during the term of this Contract and for a period of one year thereafter, neither party will in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

2.13.3 Prohibition from Participation in Future Solicitation(s)

A Proposer, or a Consultant or its subsidiary or Subcontractor ("Proposer/Consultant"), is prohibited from submitting a bid or proposal in a County solicitation if the Proposer/Consultant has provided advice or consultation for the solicitation. A Proposer/Consultant is also prohibited from submitting a bid or proposal in a County solicitation if the Proposer/Consultant has developed or prepared any of the solicitation materials on behalf of the

County. A violation of this provision will result in the disqualification of the Consultant/Proposer from participation in the County solicitation or the termination or cancellation of any resultant County contract. This provision will survive the expiration, or other termination of this Agreement.

2.14 Employment Eligibility Verification

- 2.14.1** The Consultant warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Consultant must obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The Consultant must retain all such documentation for all covered employees for the period prescribed by law.
- 2.14.2** The Consultant must indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Consultant or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

2.15 Independent Contractor Status

- 2.15.1** This Contract is by and between the County and the Consultant and is not intended, and must not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the Consultant. The employees and agents of one party must not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever. Except as otherwise expressly provided in the Agreement, Consultant has no power or authority to bind the County to any obligations, agreements, or contracts.
- 2.15.2** The Consultant will be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Contract all compensation and benefits. The County will have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Consultant.
- 2.15.3** The Consultant understands and agrees that all persons performing work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of the Consultant and not employees of the County. The Consultant will be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Consultant pursuant to this Contract.
- 2.15.4** Use of the County seal or other County identifier requires prior written approval of the County Chief Administrative Officer or his or her designee. IMPROPER USE OF THE COUNTY SEAL OR OTHER IDENTIFIER SHALL BE REFERRED TO THE COUNTY DISTRICT ATTORNEY OR OTHER APPROPRIATE PROSECUTORIAL AGENCY FOR INVESTIGATION AND PROSECUTION TO THE FULL EXTENT PERMITTED BY LAW. To the extent such material includes the County seal or other identifier, such material shall be distinguishable from

County materials and expressly and clearly indicate that Consultant is an independent contractor or Consultant.

2.16 Most Favored Public Entity

If the Consultant's prices decline or should the Consultant at any time during the term of this Contract provide the same goods or services under similar quantity and delivery conditions to the State of California or any county, municipality, or district of the State at prices below those set forth in this Contract, then such lower prices must be immediately extended to the County.

2.17 Non-Exclusivity

Nothing herein is intended nor will be construed as creating any exclusive arrangement with the Consultant. This Contract will not restrict County from acquiring similar, equal or like goods and/or services from other entities or sources.

2.18 Nondiscrimination and Affirmative Action

2.18.1 The Consultant certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and will be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

2.18.2 Consultant certifies to the County each of the following:

2.18.2.1 That Consultant has a written policy statement prohibiting discrimination in all phases of employment.

2.18.2.2 That Consultant periodically conducts a self-analysis or utilization analysis of its work force.

2.18.2.3 That Consultant has a system for determining if its employment practices are discriminatory against protected groups.

2.18.2.4 Where problem areas are identified in employment practices, the Consultant has a system for taking reasonable corrective action, to include establishment of goals or timetables.

2.18.3 The Consultant must take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action must include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

2.18.4 The Consultant certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.

2.18.5 The Consultant certifies and agrees that it, its affiliates, subsidiaries, or holding companies will comply with all applicable Federal and State laws and regulations to the end that no person will, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.

- 2.18.6** The Consultant will allow County representatives access to the Consultant's employment records during regular business hours to verify compliance with the provisions of this Paragraph 2.17 (Nondiscrimination and Affirmative Action) when so requested by the County.
- 2.18.7** If the County finds that any provisions of this Paragraph 2.17 (Nondiscrimination and Affirmative Action) have been violated, such violation will constitute a material breach of this Contract upon which the County may terminate or suspend this Contract. While the County reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated, in addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that the Consultant has violated Federal, or State anti-discrimination laws or regulations will constitute a finding by the County that the Consultant has violated the anti-discrimination provisions of this Contract.
- 2.18.8** The parties agree that in the event the Consultant violates any of the anti-discrimination provisions of this Contract, the County will, at its sole option, be entitled to the sum of five hundred dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Contract.

2.19 Fair Labor Standards

The Consultant must comply with all applicable provisions of the Federal Fair Labor Standards Act and must indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Consultant's employees for which the County may be found jointly or solely liable.

2.20 Injury and Illness Prevention Program

Consultant will be required to comply with the State of California's Cal OSHA's regulations. California Code of Regulations Title 8 Section 3203 requires all California employers to have a written, effective Injury and Illness Prevention Program (IIPP) that addresses hazards pertaining to the particular workplace covered by the program.

2.21 Prevailing Wage

2.21.1 This Section shall apply to Consultant and its subcontractors that perform Prevailing-Wage Work on a Public Works project under this Agreement. Whether work under this Agreement involves Prevailing Wage-Work is a fact dependent analysis depending on the nature of off-site fabrication conditions, on-site construction, and/or installation work, and type of workers hired.

2.21.2 DEFINITIONS

2.21.2.1 "DIR" means the California Department of Industrial Relations.

2.21.2.2 "Public Works" means construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds. (Labor Code § 1720.)

2.21.2.3 "Prevailing-Wage Work" means any hourly or per diem work done by workers employed in a trade (e.g. welder, cement mason, or carpenter) covered by a determination of the Director of the Department of Industrial Relations ("DIR") on a Public Works project. Prevailing-Wage

Work does not include work performed by volunteers or the California Conservation Corps. (Labor Code § 1720.4)

2.21.2.4 "Prevailing Wage" means the effective rates set by the DIR for the specified trade. (<https://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>)

2.21.2.5 "Subcontractor" means any person or entity that Consultant contracts with to perform Prevailing-Wage Work under this Agreement.

2.21.3 The construction, alteration, demolition, installation, or repair of public art with County funds constitutes Public Works as defined in section 1720 of the California Labor Code. Therefore, this Agreement may include both prevailing wage and non-prevailing wage work. Therefore, Consultant and Subcontractors must comply with the requirements of Labor Code section 1720 et seq. and the Prevailing Wage Requirements as specified in this section. These include, but are not limited to:

2.21.3.1 Payment of Prevailing Wage

Consultant and Subcontractors are required to pay, at a minimum, Prevailing Wage to hourly and/or per diem workers who are hired to perform a trade covered by a determination published by the Director of the ("DIR").

2.21.3.2 Payroll Records

Consultant and/or its Subcontractor(s) shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, or worker performing Prevailing-Wage Work.

2.21.3.3 Consultant and Subcontractors shall provide their payroll records, in the format prescribed by the Labor Commissioner, directly to the Labor Commissioner or County within 10-days of a request for such records. Consultant and Subcontractors shall maintain and report payroll records in compliance with California Labor Code section 1776.

2.21.3.4 Posting Jobsite Notices

The County shall be responsible for posting jobsite notices onsite at active County Public Works projects where civic art is installed. However, when civic art is installed off-site, or after completion of an active County Public Works site, its shall be Consultant's, or the responsible Subcontractor's, responsibility to have jobsite notices posted at the site of installation. (Labor Code § 1771.4.)

2.21.3.5 Apprentices

Consultant and its Subcontractors shall comply with the provisions of California Labor Code section 1777.5 relating to the utilization of apprentices for Prevailing-Wage Work. (<https://www.dir.ca.gov/Public-Works/Apprentices.html>.)

2.21.3.6 Subcontractors

Consultant shall ensure that all subcontractors employing workers for Prevailing-Wage Work under this Agreement comply with California's Prevailing Wage laws (Labor Code §§ 1720 et seq.) and the requirements of this Exhibit when applicable. Subcontractors

performing Prevailing-Wage Work under this Agreement must be registered with the DIR before they commence work. (Labor Code § 1725.5, <https://www.dir.ca.gov/Public-Works/Contractor-Registration.html>).

2.21.4 By executing this Agreement, Consultant hereby acknowledges that:

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

2.21.4.2 If applicable, subcontract agreements for installation or construction of the artwork shall require subcontractor to comply with California Prevailing Wage law and the requirements of the Prevailing Wage Requirements herein.

2.21.5 Violations

Consultant and Subcontractor(s) are hereby noticed that violations of California Prevailing Wage Laws may result in fines or penalties, including but not limited to, the penalties described in California Labor Code section 1775.

2.22 COVID-19 Vaccinations of County Contractor Personnel

2.22.1 At Consultant's sole cost, Consultant must comply with Chapter 2.212 (COVID-19 Vaccinations of County Contractor Personnel) of County Code Title 2 - Administration, Division 4. All employees of Consultant and persons working on its behalf, including but not limited to, Subcontractors of any tier (collectively, “Consultant Personnel”), must be fully vaccinated against the novel coronavirus 2019 (“COVID-19”) prior to (1) interacting in person with County employees, interns, volunteers, and commissioners (“County workforce members”), (2) working on County owned or controlled property while performing services under this Contract, and/or (3) coming into contact with the public while performing services under this Contract (collectively, “In-Person Services”).

2.22.2 Consultant Personnel are considered “fully vaccinated” against COVID-19 two (2) weeks or more after they have received (1) the second dose in a 2-dose COVID-19 vaccine series (e.g. Pfizer-BioNTech or Moderna), (2) a single-dose COVID-19 vaccine (e.g. Johnson and Johnson [J&J]/Janssen), or (3) the final dose of any COVID-19 vaccine authorized by the World Health Organization (“WHO”).

2.22.3 Prior to assigning Consultant Personnel to perform In-Person Services, Consultant must obtain proof that such Consultant Personnel have been fully vaccinated by confirming Consultant Personnel is vaccinated through any of the following documentation: (1) official COVID-19 Vaccination Record Card (issued by the Department of Health and Human Services, CDC or WHO Yellow Card), which includes the name of the person vaccinated, type of vaccine provided, and date of the last dose administered (“Vaccination Record Card”); (2) copy (including a photographic copy) of a Vaccination Record Card; (3) Documentation of vaccination from a licensed medical provider; (4) a digital record that includes a quick response (“QR”) code that when scanned by a SMART HealthCard reader displays to the reader client name, date of birth, vaccine dates, and vaccine type, and the QR code confirms the vaccine record as an official record of the State of California; or (5) documentation of vaccination from Consultants who follow the CDPH vaccination records guidelines and standards. Consultant must also provide written notice to County before the start of work under this Contract that its

Consultant Personnel are in compliance with the requirements of this section. Consultant must retain such proof of vaccination for the document retention period set forth in this Contract and must provide such records to the County for audit purposes, when required by County.

2.22.4 Consultant will evaluate any medical or sincerely held religious exemption request of its Consultant Personnel, as required by law. If Consultant has determined that Consultant Personnel is exempt pursuant to a medical or sincerely held religious reason, the Consultant must also maintain records of the Consultant Personnel's testing results. The Consultant must provide such records to the County for audit purposes, when required by County. The unvaccinated exempt Consultant Personnel must meet the following requirements prior to (1) interacting in person with County workforce members, (2) working on County owned or controlled property while performing services under this Contract, and/or (3) coming into contact with the public while performing services under this Contract:

2.22.4.1 Test for COVID-19 with either a polymerase chain reaction (PCR) or antigen test has an Emergency Use Authorization (EUA) by the FDA or is operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services. Testing must occur at least weekly, or more frequently as required by County or other applicable law, regulation or order.

2.22.4.2 Wear a mask that is consistent with CDC recommendations at all times while on County controlled or owned property, and while engaging with members of the public and County workforce members.

2.22.4.3 Engage in proper physical distancing, as determined by the applicable County department that the Contract is with.

2.22.4.4 In addition to complying with the requirements of this section, Consultant must also comply with all other applicable local, departmental, State, and federal laws, regulations and requirements for COVID-19. A completed Exhibit F (COVID-19 Vaccination Certification of Compliance) is a required part of any agreement with the County.

3 INDEMNIFICATION AND INSURANCE

3.1 Indemnification

The Consultant must indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, agents and volunteers (County Indemnitees) from and against any and all liability, including but not limited to demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from and/or relating to this Contract, except for such loss or damage arising from the sole negligence or willful misconduct of the County indemnitees.

3.2 General Provisions for all Insurance Coverage

3.2.1 Without limiting Consultant's indemnification of County, and in the performance of this Contract and until all of its obligations pursuant to this Contract have been met, Consultant must provide and maintain at its own expense insurance coverage satisfying the requirements specified in Section 11 of the Agreement. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Consultant pursuant to this Contract. The County in no way warrants that the Required Insurance is sufficient to protect the Consultant for liabilities which may arise from or relate to this Contract.

3.2.2 Evidence of Coverage and Notice to County

- 3.2.2.1** Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Consultant's General Liability policy, must be delivered to County at the address shown below and provided prior to commencing services under this Contract.
- 3.2.2.2** Renewal Certificates must be provided to County not less than ten (10) days prior to Consultant's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Consultant and/or subcontractor insurance policies at any time.
- 3.2.2.3** Certificates must identify all Required Insurance coverage types and limits specified herein, reference this Contract by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate must match the name of the Consultant identified as the contracting party in this Contract. Certificates must provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand dollars (\$50,000), and list any County required endorsement forms.
- 3.2.2.4** Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Consultant, its insurance broker(s) and/or insurer(s), will be construed as a waiver of any of the Required Insurance provisions.
- 3.2.2.5** Certificates and copies of any required endorsements must be e-mailed to the County Project Manager or sent to:
- County of Los Angeles
Department of Arts and Culture
Civic Art Division
1055 Wilshire Boulevard, Suite 800
Los Angeles, CA 90017
- 3.2.2.6** Consultant also must promptly report to County any injury or property damage accident or incident, including any injury to a Consultant employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Consultant. Consultant also must promptly notify County of any third party claim or suit filed against Consultant or any of its subcontractors which arises from or relates to this Contract and could result in the filing of a claim or lawsuit against Consultant and/or County.

3.2.3 Additional Insured Status and Scope of Coverage

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, employees and volunteers (collectively County and its Agents) must be provided additional insured status under Consultant's General Liability policy with respect to liability arising out of Consultant's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status must apply with respect to liability and defense of suits arising out of the Consultant's acts or omissions, whether such liability is attributable to the

Consultant or to the County. The full policy limits and scope of protection also must apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

3.2.4 Cancellation of or Changes in Insurance

Consultant must provide County with, or Consultant's insurance policies must contain a provision that County will receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice must be provided to County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Contract, in the sole discretion of the County, upon which the County may suspend or terminate this Contract.

3.2.5 Failure to Maintain Insurance

Consultant's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance will constitute a material breach of the Contract, upon which County immediately may withhold payments due to Consultant, and/or suspend or terminate this Contract. County, at its sole discretion, may obtain damages from Consultant resulting from said breach. Alternatively, the County may purchase the Required Insurance, and without further notice to Consultant, deduct the premium cost from sums due to Consultant or pursue Consultant reimbursement.

3.2.6 Insurer Financial Ratings

Coverage must be placed with insurers acceptable to the County with A.M. Best ratings of not less than A: VII unless otherwise approved by County.

3.2.7 Consultant's Insurance Must Be Primary

Consultant's insurance policies, with respect to any claims related to this Contract, must be primary with respect to all other sources of coverage available to Consultant. Any County maintained insurance or self-insurance coverage must be in excess of and not contribute to any Consultant coverage.

3.2.8 Waivers of Subrogation

To the fullest extent permitted by law, the Consultant hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Contract. The Consultant must require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

3.2.9 Subcontractor Insurance Coverage Requirements

Consultant must include all subcontractors as insureds under Consultant's own policies or must provide County with each subcontractor's separate evidence of insurance coverage. Consultant will be responsible for verifying each subcontractor complies with the Required Insurance provisions herein and must require that each subcontractor name the County and Consultant as additional insureds on the subcontractor's General Liability policy. Consultant must obtain County's prior review and approval of any subcontractor request for modification of the Required Insurance.

3.2.10 Deductibles and Self-Insured Retentions (SIRs)

Consultant's policies will not obligate the County to pay any portion of any Consultant deductible or SIR. The County retains the right to require Consultant to reduce or eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing Consultant's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond must be executed by a corporate surety licensed to transact business in the State of California.

3.2.11 Claims Made Coverage

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date will precede the effective date of this Contract. Consultant understands and agrees it will maintain such coverage for a period of not less than three (3) years following Contract expiration, termination, or cancellation.

3.2.12 Application of Excess Liability Coverage

Consultants may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

3.2.13 Separation of Insureds

All liability policies must provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

3.2.14 Alternative Risk Financing Programs

The County reserves the right to review, and then approve, Consultant use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements, and captive insurance to satisfy the Required Insurance provisions. The County and its Agents must be designated as an Additional Covered Party under any approved program.

3.2.15 County Review and Approval of Insurance Requirements

The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

4 COMPLIANCE WITH COUNTY REQUIREMENTS

4.1 Drug Free Workplace Compliance

The Consultant hereby warrants and certifies that it shall comply with Board Policy 9.050 and the California Drug-Free Workplace Act of 1990 (Cal. Gov. Code § 8350 et seq.), as amended, including provision of the requisite certification as set forth therein; and the federal Drug-Free Workplace Act of 1988, including its implementing regulations (29 CFR Part 98 commencing with §98.600), as applicable.

4.2 Warranty Against Contingent Fees

4.2.1 The Consultant warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any Contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Consultant for the purpose of securing business.

4.2.2 For breach of this warranty, the County will have the right to terminate this Contract and, at its sole discretion, deduct from the Contract price or consideration, or

otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

4.3 Warranty of Compliance with County's Defaulted Property Tax Reduction Program

Consultant acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

Unless Consultant qualifies for an exemption or exclusion, Consultant warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this contract will maintain compliance, with Los Angeles County Code Chapter 2.206.

4.4 Time Off for Voting

The Consultant must notify its employees and must require each subcontractor to notify and provide to its employees, information regarding the time off for voting law ([Elections Code Section 14000](#)). Not less than ten (10) days before every statewide election, every Consultant and subcontractors must keep posted conspicuously at the place of work, if practicable, or elsewhere where it can be seen as employees come or go to their place of work, a notice setting forth the provisions of [Section 14000](#).

4.5 Jury Service Program

4.5.1 Jury Service Program

This Contract is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code.

4.5.2 Written Employee Jury Service Policy

4.5.2.1 Unless the Consultant has demonstrated to the County's satisfaction either that the Consultant is not a "contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that the Consultant qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), the Consultant must have and adhere to a written policy that provides that its Employees will receive from the Consultant, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Consultant or that the Consultant deduct from the Employee's regular pay the fees received for jury service.

4.5.2.2 For purposes of this paragraph, "Consultant" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County Consultant and has received or will receive an aggregate sum of fifty thousand dollars (\$50,000) or more in any twelve (12) month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full-time employee of the Consultant. "Full-time" means forty (40) hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Consultant has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of ninety (90) days or less within a twelve (12) month period are not considered full-time for purposes of the Jury Service Program. If the Consultant uses any subcontractor to perform services

for the County under the Contract, the subcontractor will also be subject to the provisions of this paragraph. The provisions of this paragraph will be inserted into any such subcontract agreement and a copy of the Jury Service Program must be attached to the agreement.

4.5.2.3 If the Consultant is not required to comply with the Jury Service Program when the Contract commences, the Consultant will have a continuing obligation to review the applicability of its “exception status” from the Jury Service Program, and the Consultant must immediately notify the County if the Consultant at any time either comes within the Jury Service Program’s definition of “contractor” or if the Consultant no longer qualifies for an exception to the Jury Service Program. In either event, the Consultant must immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Contract and at its sole discretion, that the Consultant demonstrate, to the County’s satisfaction that the Consultant either continues to remain outside of the Jury Service Program’s definition of “contractor” and/or that the Consultant continues to qualify for an exception to the Program.

4.5.2.4 Consultant’s violation of this paragraph of the Contract may constitute a material breach of the Contract. In the event of such material breach, County may, in its sole discretion, terminate the Contract and/or bar the Consultant from the award of future County contracts for a period of time consistent with the seriousness of the breach.

4.6 Zero Tolerance Policy on Human Trafficking

Consultant acknowledges that the County has established a Zero Tolerance Policy on Human Trafficking prohibiting Consultants from engaging in human trafficking.

If a Consultant or member of Consultant’s staff is convicted of a human trafficking offense, the County will require that the Consultant or member of Consultant’s staff be removed immediately from performing services under the Contract. County will not be under any obligation to disclose confidential information regarding the offenses other than those required by law.

Disqualification of any member of Consultant’s staff pursuant to this paragraph will not relieve Consultant of its obligation to complete all work in accordance with the terms and conditions of this Contract.

4.7 County Policy of Equity

The Consultant acknowledges that the County takes its commitment to preserving the dignity and professionalism of the workplace very seriously, as set forth in the County Policy of Equity (CPOE) (<https://ceop.lacounty.gov/>). The Consultant further acknowledges that the County strives to provide a workplace free from discrimination, harassment, retaliation and inappropriate conduct based on a protected characteristic, and which may violate the CPOE. The Consultant, its employees and subcontractors acknowledge and certify receipt and understanding of the CPOE. Failure of the Consultant, its employees or its subcontractors to uphold the County's expectations of a workplace free from harassment and discrimination, including inappropriate conduct based on a protected characteristic, may subject the Consultant to termination of contractual agreements as well as civil liability.

4.8 Consideration of Hiring County Employees Targeted for Layoffs or are on a County Re-Employment List

Should the Consultant require additional or replacement personnel after the effective date of this Contract to perform the services set forth herein, the Consultant must give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Contract.

4.9 Consultant's Warranty of Adherence to County's Child Support Compliance Program

4.9.1 The Consultant acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through contracts are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

4.9.2 As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Consultant's duty under this Contract to comply with all applicable provisions of law, the Consultant warrants that it is now in compliance and will during the term of this Contract, maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and will implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

4.10 Consideration of Hiring GAIN-GROW Participants

4.10.1 Should the Consultant require additional or replacement personnel after the effective date of this Contract, the Consultant will give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the Consultant's minimum qualifications for the open position. For this purpose, consideration will mean that the Consultant will interview qualified candidates. The County will refer GAIN-GROW participants by job category to the Consultant. Consultants must report all job openings with job requirements to: GAINGROW@DPSS.LACOUNTY.GOV and BSERVICES@WDACS.LACOUNTY.GOV and DPSS will refer qualified GAIN/GROW job candidates.

4.10.2 In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees must be given first priority.

4.11 Notice to Employees Regarding the Federal Earned Income Credit

The Consultant must notify its employees, and will require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice must be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

4.12 Consultant's Acknowledgement of County's Commitment to Safely Surrendered Baby Law

The Consultant acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Consultant understands that it is the County's policy to encourage all County Consultants to voluntarily post the County's poster, Exhibit

G (Safely Surrendered Baby Law) in a prominent position at the Consultant's place of business. The Consultant will also encourage its subcontractors, if any, to post this poster in a prominent position in the subcontractor's place of business. Information and posters for printing are available at <https://lacounty.gov/residents/family-services/child-safety/safe-surrender/>.

4.12.1 Notice to Employees Regarding the Safely Surrendered Baby Law

The Consultant must notify and provide to its employees, and will require each subcontractor to notify and provide to its employees, information regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The information is set forth in Exhibit G (Safely Surrendered Baby Law) of this Contract. Additional information is available at <https://lacounty.gov/residents/family-services/child-safety/safe-surrender/>.

4.13 Recycled Bond Paper

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Consultant agrees to use recycled-content paper to the maximum extent possible on this Contract.

4.14 County Preference Programs

4.14.1 Local Small Business Enterprise (LSBE) Preference Program

If the Consultant had requested and was granted the Local Small Business Enterprise preference:

4.14.1.1 This Contract is subject to the provisions of the County's ordinance entitled LSBE Preference Program, as codified in Chapter 2.204 of the Los Angeles County Code.

4.14.1.2 The Consultant will not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a LSBE.

4.14.1.3 The Consultant will not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a LSBE.

4.14.1.4 If the Consultant has obtained certification as a LSBE by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this contract to which it would not otherwise have been entitled, will:

- 1)** Pay to the County any difference between the contract amount and what the County's costs would have been if the contract had been properly awarded;
- 2)** In addition to the amount described in subdivision (1), be assessed a penalty in an amount of not more than ten (10) percent of the amount of the contract; and

- 3) Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

The above penalties will also apply to any business that has previously obtained proper certification, however, as a result of a change in their status would no longer be eligible for certification and fails to notify the State and the Department of Consumer and Business Affairs of this information prior to responding to a solicitation or accepting a contract award.

4.14.2 Social Enterprise (SE) Preference Program

If the Consultant had requested and was granted the Social Enterprise preference:

- 4.14.2.1 This Contract is subject to the provisions of the County's ordinance entitled SE Preference Program, as codified in Chapter 2.205 of the Los Angeles County Code.
- 4.14.2.2 Consultant must not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a SE.
- 4.14.2.3 Consultant must not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a SE.
- 4.14.2.4 If Consultant has obtained County certification as a SE by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this contract to which it would not otherwise have been entitled, Consultant will:
 - 1) Pay to the County any difference between the contract amount and what the County's costs would have been if the contract had been properly awarded;
 - 2) In addition to the amount described in subdivision (1) above, the Consultant will be assessed a penalty in an amount of not more than ten percent (10%) of the amount of the contract; and
 - 3) Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

The above penalties will also apply to any entity that has previously obtained proper certification, however, as a result of a change in their status would no longer be eligible for certification, and fails to notify the Department of Consumer and Business Affairs of this information prior to responding to a solicitation or accepting a contract award.

4.14.3 Disabled Veteran Business Enterprise (DVBE) Preference Program

If the Consultant had requested and was granted the Local Small Business DVBE preference:

- 4.14.3.1** This Contract is subject to the provisions of the County's ordinance entitled DVBE Preference Program, as codified in Chapter 2.211 of the Los Angeles County Code.
- 4.14.3.2** Consultant must not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a DVBE.
- 4.14.3.3** Consultant must not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a DVBE.
- 4.14.3.4** If Consultant has obtained certification as a DVBE by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this contract to which it would not otherwise have been entitled, Consultant will:
- 1) Pay to the County any difference between the contract amount and what the County's costs would have been if the contract had been properly awarded;
 - 2) In addition to the amount described in subdivision (1) above, the Consultant will be assessed a penalty in an amount of not more than 10 percent of the amount of the contract; and
 - 3) Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

Notwithstanding any other remedies in this contract, the above penalties will also apply to any business that has previously obtained proper certification, however, as a result of a change in their status would no longer be eligible for certification and fails to notify the State and the Department of Consumer and Business Affairs of this information prior to responding to a solicitation or accepting a contract award.

5 STANDARD CONTRACT TERMS

5.1 Force Majeure

- 5.1.1** Neither party will be liable for such party's failure to perform its obligations under and in accordance with this Contract, if such failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's subcontractors), freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this paragraph as "force majeure events").
- 5.1.2** Notwithstanding the foregoing, a default by a subcontractor of Consultant will not constitute a force majeure event, unless such default arises out of causes beyond the control of both Consultant and such subcontractor, and without any fault or negligence of either of them. In such case, Consultant will not be liable for failure

to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Consultant to meet the required performance schedule. As used in this subparagraph, the term “subcontractor” and “subcontractors” mean subcontractors at any tier.

- 5.1.3** In the event Consultant's failure to perform arises out of a force majeure event, Consultant agrees to use commercially reasonable best efforts to obtain goods or services from other sources, if applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event.

5.2 Termination

- 5.2.1** Termination for Breach of Warranty to Maintain Compliance with County's Child Support Compliance Program

Failure of the Consultant to maintain compliance with the requirements set forth in Paragraph 4.9 (Consultant's Warranty of Adherence to County's Child Support Compliance Program) will constitute default under this Contract. Without limiting the rights and remedies available to the County under any other provision of this Contract, failure of the Consultant to cure such default within ninety (90) calendar days of written notice will be grounds upon which the County may terminate this Contract pursuant to Paragraph 5.2.3 (Termination for Default) and pursue debarment of the Consultant, pursuant to [County Code Chapter 2.202](#).

- 5.2.2** Termination for Convenience

5.2.2.1 This Contract may be terminated, in whole or in part, from time to time, when such action is deemed by the County, in its sole discretion, to be in its best interest. Termination of work hereunder will be effected by notice of termination to the Consultant specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective will be no less than ten (10) days after the notice is sent.

5.2.2.2 After receipt of a notice of termination and except as otherwise directed by the County, the Consultant must:

- 1) Stop work under this Contract on the date and to the extent specified in such notice, and
- 2) Complete performance of such part of the work as would not have been terminated by such notice.

5.2.2.3 All material including books, records, documents, or other evidence bearing on the costs and expenses of the Consultant under this Contract must be maintained by the Consultant in accordance with Paragraph 2.11 (Record Retention and Inspection-Audit Settlement).

- 5.2.3** Termination for Default

5.2.3.1 The County may, by written notice to the Consultant, terminate the whole or any part of this Contract, if, in the judgment of County's Project Director:

- 1) Consultant has materially breached this Contract; or
- 2) Consultant fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required either under this Contract; or

- 3) Consultant fails to demonstrate a high probability of timely fulfillment of performance requirements under this Contract, or of any obligations of this Contract and in either case, fails to demonstrate convincing progress toward a cure within five (5) working days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure.

5.2.3.2 In the event that the County terminates this Contract in whole or in part as provided in Paragraph 5.2, the County may procure, upon such terms and in such manner as the County may deem appropriate, goods and services similar to those so terminated. The Consultant will be liable to the County for any and all excess costs incurred by the County, as determined by the County, for such similar goods and services. The Consultant will continue the performance of this Contract to the extent not terminated under the provisions of this paragraph.

5.2.3.3 Except with respect to defaults of any subcontractor, the Consultant will not be liable for any such excess costs of the type identified in Paragraph 8.43.2 if its failure to perform this Contract arises out of causes beyond the control and without the fault or negligence of the Consultant. Such causes may include but are not limited to: acts of God or of the public enemy, acts of the County in either its sovereign or contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the Consultant. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Consultant and subcontractor, and without the fault or negligence of either of them, the Consultant will not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Consultant to meet the required performance schedule. As used in this paragraph, the term "subcontractor(s)" means subcontractor(s) at any tier.

5.2.3.4 If, after the County has given notice of termination under the provisions of Paragraph 5.2.3 (Termination for Default) it is determined by the County that the Consultant was not in default under the provisions of Paragraph 5.2.3 (Termination for Default) or that the default was excusable under the provisions of subparagraph 5.2.3.1, the rights and obligations of the parties will be the same as if the notice of termination had been issued pursuant to Paragraph 5.2.2 (Termination for Convenience).

5.2.3.5 The rights and remedies of the County provided in this Paragraph 5.2.3 (Termination for Default) will not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

5.2.4 Termination for Improper Consideration

5.2.4.1 The County may, by written notice to the Consultant, immediately terminate the right of the Consultant to proceed under this Contract if it is found that consideration, in any form, was offered or given by the Consultant, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Contract or

securing favorable treatment with respect to the award, amendment, or extension of this Contract or the making of any determinations with respect to the Consultant's performance pursuant to this Contract. In the event of such termination, the County will be entitled to pursue the same remedies against the Consultant as it could pursue in the event of default by the Consultant.

5.2.4.2 The Consultant must immediately report any attempt by a County officer or employee to solicit such improper consideration. The report must be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.

5.2.4.3 Among other items, such improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, or tangible gifts.

5.2.5 Termination for Insolvency

5.2.5.1 The County may terminate this Contract forthwith in the event of the occurrence of any of the following:

- 1) Insolvency of the Consultant. The Consultant will be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Consultant is insolvent within the meaning of the Federal Bankruptcy Code;
- 2) The filing of a voluntary or involuntary petition regarding the Consultant under the Federal Bankruptcy Code;
- 3) The appointment of a Receiver or Trustee for the Consultant; or
- 4) The execution by the Consultant of a general assignment for the benefit of creditors.

5.2.5.2 The rights and remedies of the County provided in this Paragraph 5.2.5 (Termination for Insolvency) will not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

5.2.6 Termination for Non-Adherence of County Lobbyist Ordinance

The Consultant, and each County Lobbyist or County Lobbying firm as defined in [County Code Section 2.160.010](#) retained by the Consultant, must fully comply with the County's Lobbyist Ordinance, [County Code Chapter 2.160](#). Failure on the part of the Consultant or any County Lobbyist or County Lobbying firm retained by the Consultant to fully comply with the County's Lobbyist Ordinance will constitute a material breach of this Contract, upon which the County may in its sole discretion, immediately terminate or suspend this Contract.

5.2.7 Termination for Non-Appropriation of Funds

Notwithstanding any other provision of this Contract, the County will not be obligated for the Consultant's performance hereunder or by any provision of this Contract during any of the County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Contract in the County's Budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract will terminate as of June 30 of the last fiscal year for

which funds were appropriated. The County will notify the Consultant in writing of any such non-allocation of funds at the earliest possible date.

5.2.8 Termination for Breach of Warranty to Maintain Compliance with County's Defaulted Property Tax Reduction Program

Failure of Consultant to maintain compliance with the requirements set forth in Paragraph 4.3 "Warranty of Compliance with County's Defaulted Property Tax Reduction Program" will constitute default under this contract. Without limiting the rights and remedies available to County under any other provision of this contract, failure of Consultant to cure such default within ten (10) days of notice will be grounds upon which County may terminate this contract and/or pursue debarment of Consultant, pursuant to [Los Angeles County Code Chapter 2.206](#).

5.3 Waiver

No waiver by the County of any breach of any provision of this Contract will constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Contract will not be construed as a waiver thereof. The rights and remedies set forth in this Paragraph 5.3 will not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

5.4 Assignment and Delegation/Mergers or Acquisitions

5.4.1 The Consultant must notify the County of any pending acquisitions/mergers of its company unless otherwise legally prohibited from doing so. If the Consultant is restricted from legally notifying the County of pending acquisitions/mergers, then it should notify the County of the actual acquisitions/mergers as soon as the law allows and provide to the County the legal framework that restricted it from notifying the County prior to the actual acquisitions/mergers.

5.4.2 The Consultant must not assign, exchange, transfer, or delegate its rights or duties under this Contract, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment, delegation, or otherwise transfer of its rights or duties, without such consent will be null and void. For purposes of this paragraph, County consent will require a written Amendment to the Contract, which is formally approved and executed by the parties. Any payments by the County to any approved delegate or assignee on any claim under this Contract will be deductible, at County's sole discretion, against the claims, which the Consultant may have against the County.

5.4.3 Any assumption, assignment, delegation, or takeover of any of the Consultant's duties, responsibilities, obligations, or performance of same by any person or entity other than the Consultant, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, will be a material breach of the Contract which may result in the termination of this Contract. In the event of such termination, County will be entitled to pursue the same remedies against Consultant as it could pursue in the event of default by Consultant.

5.5 Subcontracting

5.5.1 The requirements of this Contract may not be subcontracted by the Consultant without the advance approval of the County. Any attempt by the Consultant to subcontract without the prior consent of the County may be deemed a material breach of this Contract.

- 5.5.2** If the Consultant desires to subcontract, the Consultant must provide the following information promptly at the County's request:
- 5.5.2.1** A description of the work to be performed by the subcontractor.
 - 5.5.2.2** A draft copy of the proposed subcontract; and
 - 5.5.2.3** Other pertinent information and/or certifications requested by the County.
- 5.5.3** The Consultant must indemnify, defend, and hold the County harmless with respect to the activities of each and every subcontractor in the same manner and to the same degree as if such subcontractor(s) were the Consultant employees.
- 5.5.4** The Consultant will remain fully responsible for all performances required of it under this Contract, including those that the Consultant has determined to subcontract, notwithstanding the County's approval of the Consultant's proposed subcontract.
- 5.5.5** The County's consent to subcontract will not waive the County's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Contract. The Consultant is responsible to notify its subcontractors of this County right.
- 5.5.6** The County's Project Director is authorized to act for and on behalf of the County with respect to approval of any subcontract and subcontractor employees. After approval of the subcontract by the County, Consultant must forward a fully executed subcontract to the County for their files.
- 5.5.7** The Consultant will be solely liable and responsible for all payments or other compensation to all subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the County's consent to subcontract.
- 5.5.8** The Consultant must obtain certificates of insurance, which establish that the subcontractor maintains all the programs of insurance required by the County from each approved subcontractor. Before any subcontractor employee may perform any work hereunder, Consultant must ensure delivery of all such documents to the County Project Manager.

5.6 Governing Law, Jurisdiction, and Venue

This Contract will be governed by, and construed in accordance with, the laws of the State of California. The Consultant agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder will be exclusively in the County of Los Angeles.

5.7 Validity

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances will not be affected thereby.

5.8 Interpretation

No provision of this Agreement is to be interpreted for or against either party because that party or that party's legal representative drafted such provision.

5.9 Authorization Warranty

The Consultant represents and warrants that the person executing this Contract for the Consultant is an authorized agent who has actual authority to bind the Consultant to each

and every term, condition, and obligation of this Contract and that all requirements of the Consultant have been fulfilled to provide such actual authority.

5.10 Entire Agreement

5.10.1 This Contract constitutes the entire, full, complete and exclusive statement of understanding between the parties which supersede all previous written or oral agreements, and all prior communications between the parties relating to the subject matter of this Contract.

5.10.2 Consultant warrants that he/she has received a copy of this Agreement, including all exhibits thereto, and upon execution of this Agreement, it shall be Consultant's responsibility to retain on file, and to abide by the entire Contract.

5.11 Counterparts and Electronic Signatures and Representations

This Contract may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same Contract. The email or electronic signature of the Parties will be deemed to constitute original signatures, and electronic copies hereof will be deemed to constitute duplicate originals.

The County and the Consultant hereby agree to regard electronic representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Amendments prepared pursuant to Section 4 (Changes and Amendments) of the Agreement and received via email or electronic signature, as legally sufficient evidence that such legally binding signatures have been affixed to Amendments to this Contract.

6 Survival

In addition to any terms and conditions of this Agreement that expressly survive expiration or termination of this Agreement by their terms, the following provisions shall survive the expiration or termination of this Agreement for any reason:

- Paragraph 1.0 (Definitions)
- Paragraph 2.1 (Compliance with Applicable Law)
- Paragraph 2.10 (Publicity)
- Paragraph 2.11 (Records)
- Paragraph 3.1 (Indemnification)
- Paragraph 3.2 (General Provisions for all Insurance Coverage)
- Paragraph 5.1 (Force Majeure)
- Paragraphs 5.2 (Termination)
- Paragraph 5.3 (Waiver)
- Paragraph 5.6 (Governing Law, Jurisdiction, and Venue)
- Paragraph 5.7 (Validity)
- Paragraph 6.0 (Survival)

EXHIBIT B

SCOPE OF WORK, SCHEDULE, AND PAYMENT MILESTONES

EXHIBIT C
ARTIST AGREEMENT

WHEREAS, the Los Angeles County Department of Arts and Culture ("COUNTY") has contracted CONSULTANT to oversee artist selection and delivery of the Artwork as described in Exhibit B;

WHEREAS, CONSULTANT has contracted with ARTIST to design [or design, fabricate and install] an Artwork to be displayed at the Premises; and

NOW THEREFORE, ARTIST hereby grants and releases the following rights.

1. COPYRIGHT

- 1.1. ARTIST shall retain all copyrights to the Artwork and Artwork Studies pursuant to the Copyright Act of 1976 (17 U.S.C. 101 et seq. as amended, and any successor act).
- 1.2. ARTIST shall register a copyright of the Artwork in the ARTIST's name with the United States Register of Copyrights, at no additional cost to the COUNTY, and shall provide the COUNTY with a copy of the application for registration, the registration number and the effective date of the registration.
- 1.3. ARTIST shall make best efforts to enforce and defend any attempt(s) to infringe upon ARTIST's copyright. In the event ARTIST fails to act within a reasonable time after written notice from the COUNTY, ARTIST shall assign to the COUNTY and the CONSULTANT the ARTIST's right to enforce and defend the copyright.

2. LICENSES

- 2.1. **Non-Commercial Reproductions.** ARTIST hereby grants the COUNTY an irrevocable and exclusive worldwide license to reproduce, distribute, and/or display two-dimensional reproductions of the Artwork for any educational or non-commercial purpose including, without limitation, advertising, brochures, postcards, media publicity, and catalogues or similar publications. All such reproductions shall bear a copyright notice in ARTIST's name.
 - 2.1.1. Commercial Reproductions. COUNTY may not make reproductions of the Artwork for commercial purposes, including, but not limited to t-shirts, posters or other reproductions for sale, without a separate license agreement to be negotiated by ARTIST and COUNTY, including additional terms and royalties.
- 2.2. **Design Plans and Drawings.** ARTIST hereby grants to the COUNTY the right to reproduce and retain copies of the design plans and drawings produced and used by the ARTIST in the design and installation of the Artwork for the purposes of (1) fulfilling its responsibilities as owner of the Artwork and (2) public exhibition related to the display of the Artwork.

3. WAIVERS

- 3.1. **Reproductions and Derivative Artworks.** Because the Artwork will be unique, ARTIST shall waive the right to make or to authorize others to make two or three-dimensional reproductions of the Artwork, or to make derivative works based on the copyrighted Artwork, except with prior written permission by the COUNTY.

- 3.2. **CAPA and VARA.** the ARTIST hereby waives any rights under the Visual Artists Rights Act (“VARA”) as codified in 17 U.S.C. sections 106, 106A(a), 113, and the California Art Preservation Act (“CAPA”), as codified in Cal. Civ. Code § 987, in favor of the express contractual provisions elucidated herein under.
- 3.2.1. Moral Rights. ARTIST shall have the right to claim authorship of the Artwork and the right to disavow authorship. ARTIST shall have the right to prevent the use of their name as the author of the work of the Artwork in the event of any physical defacement, mutilation, alteration, or destruction of the Artwork.
- 3.2.2. Ownership Acknowledgment. ARTIST acknowledges that the Artwork, when installed, will be incorporated within and made a part of the Premises in such a way that removing the Artwork from the Premises may cause destruction, distortion, mutilation or other modification of the Artwork.
- 3.2.3. Removal, Relocation, and Modification. ARTIST acknowledges that the COUNTY shall have the absolute right incidental to its ownership of the Premises and the Artwork to remove, relocate, replace, transport, or store in whole or in part (such actions being referred to herein as “Removal”), or to alter, change, modify, or destroy (such actions being referred to herein as “Alterations”), the Artwork at such times as the COUNTY shall deem necessary in order to exercise its powers and responsibilities with regard to the Premises. The County shall make a good faith effort to notify the Artist in writing at least thirty (30) days in advance of such Removal or Alteration, to discuss methods of removal, transportation and conservation, and Artist shall have a right to reasonable compensation with respect to advice and/or services provided in support of such Removal or Alteration.
- 3.2.4. Repairs. The COUNTY reserves the right to make minor or emergency repairs without consultation provided the work is performed in accordance with recognized principles of conservation. In the event the COUNTY desires to make repairs to or to restore the Artwork during the Artist’s lifetime and such work does not comply with the written maintenance guidelines, the COUNTY shall make a good faith effort to notify the Artist in writing at least thirty (30) days in advance to request that Artist advise COUNTY about the proposed repair or restoration, and Artist shall have a right to reasonable compensation with respect to such advice and/or services provided.
- 3.2.5. Imminent Hazards. In the event the COUNTY determines that the Artwork presents an imminent hazard, the COUNTY may remove, modify, or repair the Artwork without prior consultation. The COUNTY shall make a good faith effort to notify the Artist within thirty (30) days of such action to discuss options for the final disposition, reinstallation, maintenance or deaccession of the Artwork.
- 3.2.6. Deaccession. In the event the COUNTY decides to deaccession the Artwork, the Artist shall have the first right of refusal to purchase the Artwork, providing it is not integrated into a larger piece or a structure, and/or can be removed without destruction of the artwork. The COUNTY shall follow the procedures for deaccession identified in the Civic Art Procedures.
- 3.2.7. Enforcement. ARTIST’s remedies hereunder shall be limited to an action seeking injunctive relief and no breach shall not give rise to any cause of action against the COUNTY for money damages. ARTIST’s remedies hereunder shall be limited to

the life of the ARTIST, or limited to the anticipated life of the Artwork as defined in the Agreement, whichever is less. No action may be maintained to enforce any liability under this section unless brought within three years of the act complained of or one year after discovery of the act, whichever is longer.

4. ARTIST REPRESENTATIONS AND WARRANTIES

- 4.1. **Original Artwork.** ARTIST represents and warrants that the Artwork shall be an original creation and the result of the artistic efforts of ARTIST and that it will be installed free of any liens, claims or other encumbrances of any type. Further, ARTIST shall not knowingly infringe upon any copyright or trademark.
- 4.2. **Artwork Edition.** ARTIST represents and warrants that the Artwork shall be unique and an edition of one (1) and that ARTIST will not execute or authorize another party to execute another work of the same or substantially similar design as the artwork commissioned pursuant to this Agreement.
- 4.3. **Artwork Studies.** ARTIST represents and warrants that all Artwork Studies created or prepared by the ARTIST pursuant or related to this Agreement will be provided to and become the sole and exclusive property of the COUNTY, as selected by the COUNTY.
- 4.4. **Artwork Lifespan.** ARTIST represents and warrants that the anticipated lifespan of the Artwork shall be a minimum of 25 years from the date of the COUNTY's Acceptance Notice.
- 4.5. **Material Warranties.** ARTIST represents and warrants that the Artwork shall be fabricated, assembled and installed in permanent, non-fugitive materials that will not tend to degrade or fade over the life of the Artwork; and will be free of defects in workmanship and materials.
- 4.6. **Warranty Against Defects.** In the event that any defects become apparent in the workmanship or materials within one (1) years of the date of the COUNTY's Acceptance Notice, ARTIST will remedy any defects at ARTIST's expense. This Section does not apply to any inherent defects in the Artwork that are specifically disclosed in the Design and accepted by the COUNTY in writing. The COUNTY may, in its sole discretion, require the ARTIST to obtain additional warranties for material or labor from specified subcontractors or suppliers for a duration deemed necessary. Any warranties obtained by the ARTIST for materials or labor shall be assignable to the COUNTY and a copy of the warranty shall be provided to the COUNTY upon delivery of the Artwork.

5. SEVERABILITY

If any provision of this section or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect any other provisions or applications of this section which can be effected without the invalid provision or application, and to this end the provisions of this section are severable.

Print Name:

ARTIST's Signature:

Date: