



**ALAMEDA COUNTY**  
**AUDITOR-CONTROLLER AGENCY**  
**MELISSA WILK**  
 AUDITOR-CONTROLLER/CLERK-RECORDER

April 8, 2019

Honorable Board of Supervisors  
 County of Alameda  
 1221 Oak Street, Suite 536  
 Oakland, CA 94612

Dear Board Members:

**SUBJECT: AUTHORIZE CONTRACTS WITH FOUR ARTISTS FOR PUBLIC ARTWORK FOR THE ALAMEDA COUNTY DEPARTMENT OF ENVIRONMENTAL HEALTH**

RECOMMENDATIONS:

- A. Authorize the President of the Board to execute Standard Services Agreement Contracts between the County of Alameda and the following four artists for a license to reproduce and use their artwork for public display at the Alameda County Department of Environmental Health for the term of 04/23/19 – 04/22/21, in the total amount of \$7,500:
- i. Elaine Coombs DBA Elaine Coombs Fine Art (Location: San Francisco; Procurement Contract No. 18124) in the amount: \$1,500;
  - ii. Linda Gass (Location: Los Altos; Procurement Contract No. 18127) in the amount: \$1,500;
  - iii. Bhavna Misra (Location: Fremont; Procurement Contract No. 18126) in the amount: \$2,000; and
  - iv. Jane Norling DBA Jane Norling Design (Location: Berkeley; Procurement Contract No. 18125) in the amount: \$2,500
- B. Authorize the Auditor-Controller, or her designee, to amend the exhibits to the agreement as may be needed with no change to the total amount and, by mutual agreement with the artist, allow for the option to renew for two additional one-year terms.

SUMMARY/DISCUSSION:

As part of the County's public art program funded by 2% of capital construction projects, the Office of the Alameda County Arts Commission developed a public art plan for the Vector Control Services District Laboratory construction project. The artwork will be installed in public areas of

**Office of the Auditor-Controller**  
 1221 Oak St., Suite 249  
 Oakland, CA 94612  
 Tel: (510) 272-6565  
 Fax: (510) 272-6502

**Central Collections Division**  
 1221 Oak St., Suite 220  
 Oakland, CA 94612  
 Tel: (510) 208-9900  
 Fax: (510) 208-9932

**Clerk-Recorder's Office, Main**  
 1106 Madison St., 1<sup>st</sup> Floor  
 Oakland, CA 94607  
 Tel: (510) 272-6362  
 Fax: (510) 208-9858

**Clerk-Recorder's Office, Tri-Valley**  
 7600 Dublin Blvd.  
 Dublin, CA 94568  
 Tel: (510) 272-6362  
 Fax: (510) 208-9858

the Department of Environmental Health where the laboratory is housed. Fifteen artworks by four artists were selected and will be licensed to reproduce on a durable material suitable for public display throughout the building. The artwork will help create a welcoming environment.

SELECTION/CRITERIA:

*The Office of the Alameda County Arts Commission conducted an extensive open competitive process according to the guidelines for selection established by the Alameda County Public Art Program Regulations. The Arts Commission used its registry of prequalified artists/artist teams for the project. To establish the registry, a Request for Qualifications (RFQ) was created and the Arts Commission conducted an extensive distribution and advertisement program. Emphasis was placed on outreach to Alameda County artists. A special effort was placed on outreach to the Southern and Eastern areas of the County, artists interested in collaborating with diverse communities, and artists making community-focused artwork. Qualified professional artists, including women, African American, Latino/Chicano, Native American, Asian/Pacific Islander artists and artists with disabilities were encouraged to apply. The RFQ was distributed and advertised throughout Alameda County and the region by: a) e-mail to over 3,000 individual artists and related arts organizations using the ACAC and partnership organizations' e-mail distribution systems; b) direct mailings of a postcard announcing the release of the RFQ to over 3,000 artists on the Arts Commission's artist and arts organizations roster; c) placement on the County website and other art-related websites; d) multiple press releases distributed to the County's media contacts; e) listings in weekly and monthly on-line and printed arts and public art publications and newsletters; f) postings in public spaces such as arts organizations and libraries; g) advertisements in local Alameda County newspapers and social media; h) multiple postings utilizing social media; and i) outreach to regional arts professionals. The RFQ for the registry was open to artists/artist teams from the 14 Bay Area counties. The contract opportunity for the Department of Environmental Health project was open to artists/artist teams who live, work or have a studio in the 14 counties of the greater Bay Area.*

*This public art project had a unique Artist Selection Committee appointed by the Members of the Arts Commission. The Committee was comprised of four members including staff from the Department of Environmental Health and one community resident who is also an arts professional. The Artist Selection Committee reviewed work in a two-phase process and followed ACAC's standardized selection criteria evaluating the artist's qualifications and the overall quality and appropriateness of the proposed artwork. During the first phase meeting on November 28, 2018, the Committee reviewed digital images and application materials from the project pool and selected a group of seven semi-finalist artists who were asked to create proposals for the project. The proposals were available online for public comment from January 24, 2019 – February 6, 2019. Comments about the proposals were collected from 39 community members and staff and were used by the Selection Committee to help make a decision about the best artwork for the project. During the second phase meeting on February 8, 2019 the Committee followed ACAC's standardized selection criteria and recommended that four artists receive contracts for the project. The General Services Agency Office of Acquisition Policy (OAP) issued Small Local Emerging Business (SLEB) Waivers for each artist/artist team valid through April 22, 2021, for this procurement. The Selection Committee's recommendations to award contracts to the four artists were approved by the Members of the Alameda County Arts Commission on March 13, 2019.*

FINANCING:

There will be no impact to net County cost. Funding for this contract is included in the approved Fiscal Year 2018-19 Vector Control Services District Laboratory construction project budget.

VISION 2026 GOALS:

The public art program is based on the belief that the arts and creativity are an essential part of every successful and thriving community. This program supports Alameda County's Vision 2026 10x goal pathways of a Thriving and Resilient Population and Prosperous and Vibrant Economy.

Respectfully submitted,



Melissa Wilk  
Auditor-Controller/Clerk-Recorder

Enclosures

- c: Susan S. Muranishi, County Administrator  
Donna R. Ziegler, County Counsel  
Colleen Chawla, Director, Health Care Services Agency  
Willie A. Hopkins, Jr., Director, General Services Agency  
Ronald Browder, Director, Environmental Health

**AGREEMENT BETWEEN THE COUNTY OF ALAMEDA  
AND ELAINE COOMBS DBA ELAINE COOMBS FINE ART**

This Agreement is made and entered by and between the County of Alameda (“County”), and **Elaine Coombs dba Elaine Coombs Fine Art** (the “Artist”).

**RECITALS**

WHEREAS the County desires to obtain unique public artwork designed and executed specifically for the County and associated with **the Alameda County Department of Environmental Health Vector Control Services District Laboratory** (“Construction Project”) to be located at **1131 Harbor Bay Parkway, Alameda, CA** (“Site”); and

WHEREAS the County, through the Alameda County Arts Commission (“Commission”), will manage the art design, fabrication and installation (“the Art Project”) in consultation with the **Alameda County Department of Environmental Health**; and

WHEREAS the Artist submitted a proposal for the unique public artwork (“Artist’s Proposal”) which is attached as Exhibit A-1; and

WHEREAS the Artist’s Proposal was selected from a pool of qualified artists by a panel of community members, art professionals, and County staff as the most qualified to create certain artwork for the Site; and

WHEREAS Artist will create a unique public artwork as described in this Agreement, including Exhibits (the “Artwork”); and

WHEREAS the members of the Commission have approved the Artist to proceed with the Artwork; and

WHEREAS the Commission has designated the Alameda County Arts Commission Office, (“ACAC Office”) to manage the Art Project and this Agreement.

**I. ARTWORK DEVELOPMENT**

Now therefore, the parties agree:

**1. Work To Be Completed.** The Artist shall complete the Artwork consistent with development of the Art Project as approved by the Commission specified in this Agreement, including all Exhibits, and as may be modified by this Agreement. If there is any conflict between Exhibit A-1 and any subsequent Exhibit to A (e.g. Exhibit A-2) the provisions and requirements of the subsequent Exhibit(s) shall prevail.

**2. Location.** The location of the Artwork shall be at the Site, or as otherwise determined by the County at its sole discretion. The County retains the right in its sole discretion to relocate the Artwork or not use or display the Artwork. Artist shall deliver the completed Artwork to the individual and location(s) directed by County, which may or may not be the Site.

**3. Cooperation.**

a. The County shall organize and schedule meetings and presentations and provide the Artist written instructions for the information and materials that will be required. The ACAC Office will assist the Artist throughout the Art Project.

b. Artist agrees to cooperate in good faith with the County, including the ACAC Office, the Commission, and their representatives, and others, and to be available as reasonably necessary for consultation during all stages of the Art Project. Artist will participate in all design review processes, including those contained in Exhibit A.

c. There may be other individuals and entities performing work related to the Construction Project, including individuals that may be performing work connected to the Art Project (“Other Workers”). Artist shall not unreasonably impede, hinder or delay any Other Worker in the performance of their work. Artist shall act professionally

at all times, including communications involving the Construction Project and Art Project. Artist agrees to use best efforts to resolve any disputes with Other Workers. In the event of a conflict between Artist and Other Workers, County has the sole discretion to resolve the conflict.

**4. Design Development.** Artist shall provide the Design Development services as outlined in Exhibit A. Artist must obtain model releases for all recognizable figures depicted in the Artwork and supply copies of the releases to the ACAC Office before the Artwork is created. The model release must be acceptable to the ACAC Office, ACAC Office will provide acceptable sample model release for the Artist's use.

**5. Budget.** Artist shall provide a Budget for costs related to the Artwork, unless specifically waived in writing by ACAC Office, including, but not limited to: itemized costs for materials including applicable sales tax; off-site fabrication costs if fabrication is the responsibility of Artist; costs for assistants; Artist's time for coordination, fabrication, supervision and installation and/or consultation on those items; itemized estimates of General Contractor and sub-contractor costs; permits or other fees; insurance; studio and operation expense directly related to the Artwork; consultants' fees; communications; Artist's travel; transportation of the Artwork to Site or other location to be determined; and itemized installation costs. The Artwork Budget shall also include a contingency to cover unforeseen costs that may arise. All budget items and costs are the sole responsibility of Artist.

**6. Maintenance Plan.**

a. Artist shall provide a Maintenance Plan for the Artwork, unless specifically waived in writing by ACAC Office. The Maintenance Plan must include a detailed description of:

- anticipated future maintenance requirements;
- a recommended maintenance schedule;
- anticipated and required care and/or replacement/upgrade of any part of the Artwork and associated moving parts or equipment including any staff time involved in displaying or operating Artwork and the frequency of such staff involvement; and
- written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the Artwork.

b. The Artwork must be durable, taking into consideration if the Site is an unsecured space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Artist shall ensure that all maintenance requirements are reasonable in terms of time and expense.

c. The Artist shall be responsible for making any updates or clarifications to the Maintenance Plan if the maintenance requirements and estimates change over the course of the project.

d. Artist shall provide ACAC Office with a description of all equipment and machinery needed to operate the Artwork (if applicable) and any anticipated or required staffing, supervision or operational needs.

e. An updated Maintenance Plan must be submitted and accepted by ACAC Office prior to the issuance of the Final Notice of Completion of Services.

f. If requested by the ACAC Office, the Artist shall obtain a recommendation from a qualified art conservator on the maintenance of the Artwork and the Artist shall provide a written copy of the conservator's recommendations to the ACAC Office.

**7. Schedule.** The Artist shall complete the Artwork according to the schedule set out in Exhibit A. Time is of the essence in the performance of the Artwork by Artist.

**8. Changes**

a. The goal for the Artwork is a product which represents the creative talents of Artist and satisfies the specifications of the County. The parties recognize that they must consult closely during all stages of development of the Artwork, including without limitation, during design development, fabrication and installation of the Artwork in order to accomplish these goals and that changes to the Artwork may become desirable as the Art Project progresses.

b. Certain specifications of the Artwork, such as, but not limited to, the size, color, design, and material (including grade of the material), of some of the elements of the Artwork may not be identified in Exhibit A. To the extent that any specification for the Artwork is not identified in Exhibit A, Artist shall seek ACAC Office's prior written approval of these specifications before commencing with the Artwork.

c. The parties recognize that the shift in scale from preliminary drawings and models to a full-scale work may require artistic adjustments. Artist has the right to make minor adjustments to the Artwork as Artist deems aesthetically necessary.

d. Any deviation from the Artist's Proposal (Exhibit A-1) in the scope, design, color, size, material, utility and support requirements, texture or location of the Artwork must be approved in writing and in advance by ACAC Office before Artist proceeds with completion of the Artwork. This includes but is not limited to any change that may affect the fabrication, schedule of delivery or installation of the Artwork, preparation of the Site or maintenance of the Artwork.

e. In no event may any adjustment or any change in design increase the Artwork budget or entitle the Artist to additional compensation or payment except as specified in Exhibit B.

## **9. Review, Inspections and Reports:**

a. Interim progress reviews are required by this Agreement. At reasonable times and with advance notice to Artist, County has the right to review the work in progress and to require and receive prompt progress reports from Artist. County shall have the right to visit any facility used by the Artist for the Artwork at reasonable times to inspect and review its progress. In-person meetings may also be held at another location, as directed by County. Artist shall supply digital images of the Artwork in-progress for review if requested by ACAC Office.

b. In the event that any of the elements of the Artwork are to be fabricated at a location away from the Site (collectively, "Off-Site Elements"), the County shall have the right to visit and inspect each of the Off-Site Elements before they are transported to the Site. Artist shall notify ACAC Office in writing when each element of the Artwork is ready for inspection, prior to transporting the Off-Site Element to the Site ("Inspection Notice").

i. After receipt of the Inspection Notice for each Off-Site Element, and, if conducted, inspection of the Off-Site Element, the ACAC Office, will inform Artist in writing either (1) the Off-Site Element has been completed in accordance with the terms of this Agreement and the Off-Site Element it may be transported to the Site ("Transportation Notice to Proceed") or (2) there are defects or deficiencies in the Off-Site Element which must be corrected prior to transportation to the Site, ACAC Office may, at its sole discretion, determine to delay inspection until the Off-Site Element is delivered to the Site or other location.

ii. Delivery. Upon issuance of the Transport Notice to Proceed, Artist shall deliver the Off-Site Elements to the Site or other location as determined by the ACAC Office. Artist shall coordinate with the ACAC Office regarding the time, place and manner of delivery of the Artwork. The County shall have the right to inspect the Off-Site Elements at the time each Off-Site Element arrives in order to determine whether it has been damaged in transit or whether it deviates in any way from the Off-Site Element approved for transportation by the ACAC Office prior to ACAC Office's issuance of the Transport Notice to Proceed, if the ACAC Office elected to inspect off-site, or whether it meets the terms of this Agreement in the event ACAC Office elected to delay its inspection of the Off-Site Element until it arrived at the Site. Artist shall promptly remedy to the satisfaction of the ACAC Office any defect or damage to the Off-Site Element or any deviations from the Off-Site Elements as approved by ACAC Office in the Transport Notice to Proceed.

**10. Artist's Completion Notice.** Artist shall provide written notice to the ACAC Office that the Artwork has been completed ("Completion Notice"). County may, in its sole discretion, visit the Artist's studio to view the completed Artwork. Artist recognizes and agrees that County may review the Artwork and make recommendations for revisions and that additional studio visits may be required by County.

## **11. County's Acceptance or Defect Notice**

a. Upon ACAC Office's receipt and review of the Artist's Completion Notice, ACAC Office shall notify Artist in writing that the Artwork is completed ("Notice of Acceptance of Artwork") or that the Artwork fails to meet the requirements of this Agreement ("Defects Notice").

b. The issuance of a Notice of Acceptance of Artwork shall mean that the County acknowledges completion of the Artwork in substantial conformity with the design. Title to the Artwork from the Artist shall pass to the County upon issuance by the ACAC Office of its Notice of Acceptance of Artwork.

c. Upon ACAC Office's receipt and review of the Artist's Final Maintenance Documents and Final Written Documentation and when all other services related to the Artwork have been completed, ACAC Office shall notify the Artist in writing ("Final Notice of Completion of Services").

d. If the County has determined that the Artist has failed to perform as required by this Agreement, the County shall issue a written Defects Notice to the Artist. That Defects Notice shall identify those services or other conditions or requirements of the Agreement that the Artist has failed to perform. Artist shall promptly remedy, at Artist's own cost, those failures, to the satisfaction of the County.

e. If the Artist disputes the Defects Notice, in whole or in part, the Artist shall submit his or her written response to the County within ten (10) days of receipt of the Defects Notice.

f. If there is resolution of any disputes that arise under paragraph (d) of this section, the ACAC Office shall notify the Artist of its final acceptance of the Artwork pursuant to paragraph (b).

g. If the parties are unable to resolve any disputes that arise under paragraph (d) of this section, The County shall have the right to terminate this Agreement immediately and shall have no further obligations under this Agreement. This right to terminate is in addition to any other rights provided by law.

**12. Final Maintenance Documents.** Artist shall provide the ACAC Office with an updated and accurate Maintenance Plan for the Artwork before issuance of the Final Notice of Completion of Services. Artist shall deliver all information necessary for the County to properly care for and maintain the Artwork, including information regarding the physical make-up of the Artwork, methods and materials, and information about the artistic intent of Artist in the design, fabrication and installation of the Artwork. Artist shall provide the Final Maintenance Documents within thirty (30) days after the submitting the Completion Notice. Unless otherwise agreed in writing upon issuance by ACAC Office of a Final Notice of Completion of Services the County will be responsible for the care and maintenance of the Artwork

**13. Final Written Documentation.** Artist shall deliver a written description of the Artwork before issuance of the Final Notice of Completion of Services. This information may be used for educational, public relations, promotional and other noncommercial purposes. Artist shall provide the Final Written Documentation within thirty (30) days after the submitting the Completion Notice. The written description must include the following:

- a. Artwork information including:
  - Name of Artist(s) - as it should appear in all printed materials
  - Artwork Title
  - Medium
  - Dimensions
- b. Short description of the artwork including:
  - Theme, concept
  - What Artist hopes the viewers will learn or experience when looking at the Artwork.
  - Description of major elements (i.e. objects, people, etc.)
  - Description of process that may be informative to the viewer
- c. Brief Artist biography, please include the following:
  - Date and location of birth
  - Where Artist currently resides
  - If you do not live in Alameda County, please indicate location of studio or employment that qualified you as an "Alameda County Artist", if applicable
  - Education related to art-making
  - Points of significance in the development of Artist's career
  - General philosophy or consistent ideas when making Artwork
  - How did Artist first become involved in making art?
  - What does Artist hope to achieve by making art?

**14. Compensation.**

a. The compensation to be paid to Artist ("Total Price") is set forth in Exhibit B, "Compensation." Such payment shall constitute full and complete compensation for work performed and services rendered, including, but not limited to, professional services and expenses for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals.

b. In the event that the ACAC Office approves a modification of the Artwork to be provided by the Artist which results in cost savings including, but not limited to, the deletion of an element of the Artwork, the substitution of lesser quality materials with no offsetting upgrade of other materials, and the reduction in the Artwork's size, the cost savings attributable to the modification will not be paid to the Artist.

c. No payment to Artist for any work performed or services rendered shall constitute a waiver or release by County of any claims, rights or remedies County may have against Artist under this Agreement or by law, nor shall such payment constitute a waiver by the County of any failure or fault of Artist to satisfactorily perform the services as required under this Agreement.

d. In the event that County determines that work for which it has been invoiced does not meet the terms of this Agreement, County may withhold payment to Artist. In the event County withholds any payment, County shall provide detailed written notice to Artist, via certified mail, return receipt requested, specifying the failure of performance for which County intends to withhold payment. Within fifteen (15) days of Artist's receipt of County's notice, Artist shall

cure County's objection or if County's objections are not capable of cure within fifteen (15) days, Artist shall commence to cure County's objections and then promptly proceed to complete the cure. If Artist disputes County's determination that the Agreement's specifications have not been met, within fifteen (15) days of Artist's receipt of County's notice, Artist shall notify County in writing, via certified mail, return receipt requested. In such event, County shall make reasonable efforts to resolve the dispute; however, the final determination as to whether Artist has complied with the terms of this Agreement will remain with County.

## II. ARTWORK COMPLETION

**15. Commitment by County.** County agrees that unless Artist requests to the contrary in writing, all references to the Artwork and all representations (as set forth in section 28 below) of the Artwork will credit the Artwork to Artist.

**16. Artwork Plaque.** County may at its option fabricate and install an identification plaque for the completed Artwork, which will be a two-dimensional sign that will include the following information: Artist's name, year in which Artwork is completed, Artwork title, funding agency and commissioning agency. No other information will be included on the Artwork Plaque unless the ACAC Office authorizes any modifications or additions. The Artwork Plaque if one is used will be installed at a location in proximity to the Artwork which shall be determined by County at its sole discretion.

**17. Artist's Commitment.** Artist agrees that all formal references to the Artwork shall include the following credit: "From the Collection of the County of Alameda commissioned by the Alameda County Arts Commission," or other language agreed to by the County.

**18. Artist Availability.**

a. After the Notice of Acceptance of Artwork, the Artist shall be available to attend any public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to dedication of the Artwork.

b. During such public presentations by the Artist, the Artist shall acknowledge the County's role in funding the Artwork.

c. The County shall be solely responsible for coordinating public information materials and activities related to public presentations.

d. This paragraph shall survive termination of the Agreement.

**19. County Art Collection.** Upon issuance of the Final Notice of Completion of Services, the County shall accession the Artwork into the County Art Collection.

**20. Repairs and Restoration.** County shall have the right to determine when and if repairs and restorations to the Artwork will be made. It is the policy of County to consult with Artist regarding repairs and restoration which are undertaken during Artist's lifetime when that is practical. In the event that County makes repairs or restoration not approved by Artist, Artist shall have the right, at Artist's sole option and only remedy, to have Artist's association with Artwork severed.

**21. Standards of Repair and Restoration.** Although the County strives to maintain the County Art Collection in good repair and condition, County is not required by this Agreement to maintain the Artwork to any particular standard. County may allow the Artwork to deteriorate in accordance with the Artwork's life span, if deemed appropriate by County or if County lacks sufficient funds for required maintenance and/or conservation. If the Artwork suffers deterioration, County shall have sole discretion to determine whether to (a) remove the Artwork from display, (b) replace any portion of the Artwork, (c) translate any component into new media, (d) maintain the Artwork on display despite its deteriorated condition or (e) take any other action or combination of actions regarding the Artwork.

**22. Life Span.** The anticipated life span of the Artwork is set forth in the Exhibits. After that time, the County in its sole discretion may re-evaluate the Artwork to determine if it retains its identity as a work of art and, if not, whether to take appropriate action, including the possibility of destroying the Artwork. If no life span is specified in the Exhibits or pursuant to a subsequent Agreement modification, the anticipated life span of the Artwork shall be twenty-five (25) years. If prior to that time County determines that, through decay, vandalism or other forces, the Artwork has lost its integrity to the point where it should be destroyed, the County shall first make efforts to offer the Artwork to Artist provided Artist



pays for all costs and expenses, including but not limited to costs, associated with dismantling, removal, storage or transportation of the Artwork.

**23. County Right to Transfer Artwork.** County shall have the right to donate or sell the Artwork at any time. Before exercising this right, County may at its sole option provide written notice to Artist, at Artist's last known address, providing the Artist the option to purchase the Artwork for the greater of (i) the Total Price or (ii) the amount of any offer which County has received for the purchase of the Artwork. In addition to that greater amount, Artist must agree to pay all costs associated with the dismantling, removal and transportation of the Artwork from the Site. That notice shall provide the Artist with thirty (30) calendar days from the date of the notice to provide to the County the Artist's written, unconditional acceptance of that option.

### **III WARRANTIES, COPYRIGHT AND INDEMNIFICATION**

**24. Warranties of Title.** Artist represents and warrants that:

- a. The Artwork is solely the result of the artistic efforts of the Artist.
- b. Artist has not previously sold, assigned, licensed, granted, encumbered, or utilized the Artwork, the Artwork's design or any element thereof, in any manner that may affect or impair the rights granted pursuant to this Agreement.
- c. All work created or performed by Artist under this Agreement, whether created by Artist alone or in collaboration with others, is wholly original with Artist and will not infringe upon or violate the rights of any third party.
- d. Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.
- e. The Artwork is and will remain free and clear of any liens.
- f. The Artwork will be and will remain a unique edition unless otherwise agreed to in writing by the County.

**25. Warranties of Quality and Condition.**

- a. Artist represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for three years after the date of issuance of the Final Notice of Completion of Services.
- b. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety. Artist further warrants that the Artwork shall not constitute any threat to the safety of persons or property when used in the manner for which it is designed.
- c. The Artist represents and warrants that reasonable maintenance of the Artwork will not require in excess of those procedures described in the Maintenance Plan submitted by the Artist.
- d. If during the Life Span of the Artwork, the County observes any breach of any Artist warranty that is curable by the Artist, the Artist shall, at the request of the County, cure the breach promptly and consistent with professional conservation standards, at no expense to the County, and to the County's satisfaction.
- e. If after the Life Span of the Artwork the County observes any breach of any Artist warranty described in this Agreement that is curable by the Artist, the County shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist's lifetime. The Artist shall have the right of first refusal to make or supervise repairs or restorations. Should the Artist and County be unable to reach agreement on a reasonable fee or if the Artist is unavailable or unwilling to cure, the County may seek the services of a qualified restorative conservator and maintenance expert.
- f. If within three years the County observes a breach of any Artist warranty described in this Agreement that is not curable or cured by the Artist, the Artist is responsible for reimbursing the County for damages, expenses, losses, costs or fees incurred by the County as a result of the breach.
- g. Artist represents and warrants that general routine cleaning and repair, within the context of foreseeable exposure to the elements and general wear and tear, will maintain the Artwork in an acceptable standard of public display during its Life Span. The Artwork will not experience irreparable conditions, including but not limited to mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.
- h. Artist represents and warrants foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display during its Life Span.

i. To the extent the Artwork incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties to the County.

**26. Copyright General.**

- a. Except as provided in this Agreement, Artist shall retain all copyrights in the Artwork under the Copyright Act of 1976, 17 U.S.C. Sections 101 et seq. as the sole author of the Artwork for the duration of the copyright.
- b. Artist may, at Artist's option, place a copyright notice on the Artwork in the form and manner required to protect copyrights in the Artwork under United States copyright law. If the copyright is registered with the U.S. Copyright Office, Artist shall provide County with a copy of the application for registration, the registration number and the effective date of registration.

**27. Title and Ownership.** Title and ownership to the Artwork shall be exclusively with the County upon the ACAC Office issuing its Notice of Acceptance of Artwork. The County shall have the exclusive right to use and display the Artwork at the Site or any other location selected by County. County shall be entitled not to display and may discard the Artwork as it deems necessary or appropriate.

**28. Representations.**

- a. Artist authorizes County to make, and to authorize the making of, photographs and other two-dimensional representations of the Artwork for educational, public relations, promotional and other noncommercial purposes.
- b. For the purposes of this Agreement, the following are deemed to be representations for noncommercial purposes: representation in exhibition catalogues, books, slides, digital photographs, postcards, correspondence, posters, calendars, websites, email, announcements, and social media; placement in art magazines, art books and art and news sections of newspapers; in general books and magazines not primarily devoted to art but of an educational, architectural, historical or critical nature; video not intended for commercial distribution; television from stations operated for educational purposes or on programs for educational purposes from all stations.
- c. If applicable, on any and all such representations, County shall place a copyright notice, naming the same person or persons listed as the copyright owners on the copyright registration with the U.S. Copyright Office, in the form and manner required to protect the copyrights in the Artwork under the United States copyright law, provided that Artist has registered a copyright in the Artwork with the U.S. Copyright Office.

**29. Indemnification by Artist.**

- a. To the fullest extent permitted by law, Artist agrees to protect, defend, indemnify and hold harmless County, its officers, agents and employees, from and against all liability, claims, lawsuits, actions, expenses, costs and damages, including reasonable attorney fees incurred in the defense thereof (collectively, "Liabilities") arising out of or related to the acts or omissions of Artist or his/her contractors, subcontractors, employees or agents in the performance of this Agreement. The only exception to the obligations imposed by this provision are for those Liabilities that are caused solely by the negligence or willful misconduct of County, its officers, agents and employees.
- b. To the fullest extent permitted by law, Artist also agrees to protect, defend, indemnify and hold harmless the County, its officers, agents and employees from all liability, claims, lawsuits, actions, expenses, costs and damages, including reasonable attorney fees incurred in the defense thereof, related to any assertion or allegation that work performed under this Agreement by Artist, or Artist's contractors, subcontractors, employees or agents constitutes an infringement of any patent, copyright, trademark, trade name or other proprietary right of any party.

**30. Survival.** This entire section, III. Warranties, Copyright and Indemnification, containing the representations, warranties and indemnity provisions shall survive the termination or completion of this Agreement.

**IV. REMOVAL, ALTERATION OR RELOCATION**

**31. Location of Artwork.** The County, having expended considerable public funds to commission the Artwork, intends to display the Artwork at the Site as originally created by Artist and to maintain the Artwork in good condition. The County, however, shall preserve complete flexibility to operate and manage County property in the public's interest. Public artworks commissioned by the County are sometimes integrated into their site, such that they become an integral, permanent and site-specific part of the building's architecture or landscaped environment and removal of the Artwork would result in significant changes to the Artwork and the building's architecture. Therefore, County retains the absolute right to alter the Artwork in County's sole judgment, which may include removal or destruction of the Artwork. For example, County may alter the Artwork to eliminate hazard, to comply with the ADA, to otherwise aid County in the

management of its property and affairs for any other reason. If, during or after the term of this Agreement, County finds the Site to be inappropriate, or another location to be preferable, County has the right to install the Artwork at an alternate location that County chooses in its sole discretion. If the Artwork is free-standing such that it can be removed without significant damage to the Artwork or the Site the County shall take reasonable precautions to minimize alteration of the Artwork during removal.

**32. Alteration or Relocation.** With respect to the Artwork produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, Artist waives any and all claims and rights against County, its officers, agents, employees, successors and assigns, arising under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same or similar nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. If the Artwork is incorporated into a building such that the Artwork cannot be removed from the building without alteration of the Artwork, Artist waives any and all such claims against any future owners of the Site, and its agents, officers and employees, for alteration of the Artwork.

**33. Notice to Artist of Alterations.** If County intends to take any action with respect to the Site or the Artwork that would alter the Artwork, other than routine cleaning and maintenance, the following procedures shall apply:

a. Notice. Where time permits, County shall make reasonable good faith efforts to notify Artist at least 20 calendar days prior to authorizing any alteration of the Artwork, at the last phone number or address provided by Artist to the County. Where time does not permit prior to alteration of the Artwork – for example, in cases of public hazard, accident or unauthorized alteration – County shall make a reasonable effort to notify Artist after such alteration.

b. Consultation. After receiving such notice, Artist shall consult with ACAC Office to determine whether the Artwork can be restored or relocated and attempt to come to a mutually agreeable plan for disposition of the Artwork. If County intends to remove the Artwork, Artist shall consult regarding methods to minimize or repair any alteration to the Artwork caused by such removal and the potential costs of such removal. Such consultation shall be without charge by Artist unless otherwise specifically agreed in writing by the Artist and the ACAC Office.

**34. Restoration.** If the Artwork is altered, with or without prior notice to Artist, and County intends to maintain the Artwork on display, County shall make a reasonable good faith effort to engage Artist in the restoration of the Artwork and to compensate, through a written agreement, Artist for Artist's time and efforts. However, County has no obligation under this Agreement to restore the Artwork to its original condition, to compensate Artist for any restoration work, or to maintain the Artwork on display. If Artist fails or refuses to negotiate with County in good faith with respect to any restoration, County may contract with any other qualified art conservator or artist for such restoration.

**35. Removal by Artist.** Where practical and where time permits, if County intends to take action that will destroy or significantly alter the Artwork, such as destruction of all or part of the Site and County determines that it will not remove the Artwork itself, County may allow the Artist an opportunity to remove the Artwork, at Artist's sole expense. Artist shall have 10 business days from the date of notice to advise the County in writing of his/her election to remove the Artwork. If Artist elects to remove the Artwork, Artist shall have up to, but no more than, 30 days after receipt of the County's notice to complete the removal of the Artwork without any damage to the Site. If Artist elects to remove the Artwork under this provision, title to the Artwork shall revert to Artist upon commencement of removal work by Artist or Artist's agents. If Artist fails to make an election in a timely manner or fails to complete timely removal the Artwork, the County may alter or remove the Artwork in any manner, including destroying it, in County's sole discretion.

**36. Remedies.** If County breaches any of its obligations under this Section, Artist's sole remedies shall be limited to the following:

a. If County inadvertently fails to provide a required prior notice of alteration, County will provide notice as soon as it discovers the omission, and before alteration of the Artwork if that remains possible.

b. If County alters the Artwork without providing Artist notice prior to alteration in accordance with the Notice to Artist of Alterations section above, Artist shall be given the first right of refusal to restore the Artwork at the same location, if County will be returning the Artwork to the Site, and County shall make reasonable efforts to provide funding for the restoration. If County funds cannot be made available after reasonable efforts are made to secure such funding, Artist may, but is not obligated to, restore the Artwork at Artist's sole expense. If Artist elects not to restore the

Artwork, County may retain another artist or conservator to restore it, or may alter the Artwork in any manner, at County's sole discretion.

c. If County Alters the Artwork without Artist's consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of the Artwork in accordance with California Civil Code §987(d) and 17 U.S.C. §106A(a)(2).

**37. Third Parties.** Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, successors or assigns of County, Artist retains Artist's moral rights in the Artwork, as established in the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 and 989), or any other local, state, federal or international moral rights laws that protect the integrity of works of art. Accordingly, nothing herein shall prevent Artist from pursuing a claim for alteration of the Artwork against a third party who is not an officer, employee, agent, successor or assign of County or working at the direction of the County. County has no obligation to pursue claims against third parties to remedy or prevent alteration of the Artwork. However, as owner of the Artwork, County may pursue claims against third parties for damages or to restore the Artwork if the Artwork has been altered without County's authorization.

**38. Survival.** This entire section IV. Removal, Alteration Or Relocation shall survive the termination or completion of this Agreement.

## V. GENERAL PROVISIONS

**39. Insurance:** Artist shall at all times during the term of the Agreement maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of Artist's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Artist's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Artist's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self insurance shall be called upon to protect it as a named insured. Any subcontracts entered into by Artist shall require the subcontractor to comply with the insurance requirements of this Agreement.

**40. Risk of Loss.** Until the Artwork is formally and finally accepted by County upon issuance of the written Notice of Acceptance of Artwork, any damage to, theft or vandalism to, or acts of nature affecting the Artwork are the responsibility of Artist, including, but not limited to, any loss occurring during the fabrication, storage, transportation, or delivery or installation of the Artwork.

**41. Artist as Independent Contractor.** Artist's relationship with County is strictly and solely that of independent contractor. No relationship of employer and employee is created by this Agreement. Artist is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Artist nor for any obligations or liabilities incurred by Artist. Nothing contained in this Agreement shall be construed to place County and Artist in the relationship of partners. Artist acknowledges and agrees that Artist shall not represent or hold itself out as authorized agent of County with power to bind in any manner.

**42. Personnel and Subcontractors.**

a. Artist has, or will secure at Artist's expense, all assistance and workers required to perform and complete all Artwork. All persons retained (whether paid or volunteer) by Artist shall possess licenses and permits as necessary.

b. If any part of Artwork depends upon the work of any other person for proper execution or results, Artist shall, prior to proceeding with such work, promptly report in writing to County any discrepancies or defects in such other work which Artist is aware of, or which can be identified upon reasonable inspection, that would render it unsuitable for proper execution and results. Failure to so notify County shall constitute the Artist's acceptance of such work as suitable.

c. Pursuant to Section 1861 of the Labor Code, Artist represents that it/he/she is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and Artist shall comply with that and all Labor Code provisions as applicable provisions before commencing the performance of the work of this Agreement.

d. This section intentionally omitted.

**43. Termination on Death.** Except for payments due and payable to Artist pursuant to Exhibit B at the time of death, Artist's rights under this Agreement cease with Artist's death and do not extend to Artist's heirs, successors or assigns. Any copyright held by Artist as the sole author shall continue pursuant the Copyright Act of 1976, 17 U.S.C. § 101 et seq., the life of the author plus 70 years as of the Artwork.

**44. Authorship and Destruction.** To the extent permitted by law, the provisions of this Agreement prevail over laws regarding authorship and destruction of art, including without limitation, California Civil Code Section 987 and Title 17 U.S.C. Section 106A et seq.

**45. Assignability.**

a. The parties agree that the expertise and experience of Artist are material considerations for this Agreement. Except as may be specifically authorized under this Agreement, Artist shall not assign or transfer any interest in this Agreement nor the performance of any of Artist's obligations hereunder. Any attempt by Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by ACAC Office. However, nothing in this section shall be deemed to prevent Artist, at Artist's sole expense, from relying on or utilizing the services of such other consultant or contractor as Artist may require to complete the Artwork or other services provided for in this Agreement so long as the ACAC Office has provided prior written approval of such consultant or contractor.

b. County shall have the right to assign or transfer any and all of County's rights and obligations under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the County.

**46. Compliance With Law.** Artist shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

**47. Nondiscrimination.** Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, marital status or national origin, in connection with or related to the performance of this Agreement.

**48. Gifts.** Artist agrees to abide by County's prohibition against the acceptance of any gift by a County officer or designated employee. Artist agrees not to offer any County officer or designated employee any gift. The offer or giving of any gift prohibited by the County shall constitute a material breach of this Agreement by Artist. In addition to any other remedies County may have in law or equity, County may terminate this Agreement for such breach.

**49. Use of County Property.** Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.

**50. Termination With or Without Cause.** County has and reserves the right to suspend, terminate or abandon this Agreement with or without cause at any time upon giving written notice to the Artist. In the event that the County should abandon, terminate or suspend the Artist's work for any reason including lack or absence of funding, and absent breach by Artist or County not accepting any part of Artwork, the Artist shall be entitled to payment for services actually performed prior to the date of notice to the Artist that the County has or will suspend, terminate or abandon this Agreement.

**51. Remedies.**

a. The remedies under this Agreement are cumulative and are in addition to the rights available to the parties at law or in equity.

b. Without limiting the generality of subsection A, above, if Artist breaches this Agreement, County has the right to terminate this Agreement and, at its option, proceed with the fabrication and installation of the Artwork without utilizing the services of the Artist. If County exercises its option to proceed, then County, upon Artist's written request will refrain from referencing the Artwork as the work of Artist.

c. If County notices Artist of its intent to terminate this Agreement, Artist has the option to purchase back the work if each of the following conditions are met:

i. Within 5 days of receiving the notice from the County, Artist provides written notice to the ACAC Office that Artist intends to purchase back all rights to the Artwork.

- ii. At the time of notice by the Artist, the Artwork, as determined by County, is not substantially completed.
- iii. Artist returns all amounts paid by County under this Agreement within 5 days of the notice of termination, or such other reasonable time as agreed to by County. If the full amount is not timely repaid to County, it may exercise its option to proceed with any remedy it has under the Agreement and by law, however, upon Artist's written request will refrain from referencing the Artwork as a work created by Artist.

**52. Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

**53. Notices.**

a. All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox.

Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (e.g. Federal Express/ United Parcel Service) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

b. Submittals, requests, notices and reports (collectively, "Notices") required under this Agreement shall be delivered personally or through the mail, postage prepaid, to the addresses stated below. Addresses for purpose of giving notice are as follows:

For Artist:

**Elaine Coombs**



For County:

Alameda County Arts Commission  
1106 Madison Street, Suite 336  
Oakland, CA 94607  
Phone: (510) 208-9646

c. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

d. Any party may change its address by giving the other party notice of the change in any manner permitted by this Agreement.

e. Artists agree for the duration of Artists' life, to provide ACAC Office with Artists' current mailing address, phone number and e-mail address in the event Artists' address, phone number or e-mail address, as specified above, should change.

**54. Governing Law and Venue.** This Agreement shall be governed by the laws of the State of California. In the event that a suit shall be brought related to this Agreement, venue shall be Alameda County Superior Court or the United States District Court for the Northern District of California, Oakland, California.

**55. Headings.** Headings herein are for convenience of reference only and shall in no way affect interpretation of the

Agreement.

**56. Advertising or Publicity.** Artist shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance. Artist may identify and include the Artwork, including identifying the County as owner and the location of the Artwork, on Artist's resume or other listings of professional work.

**57. Assurance of Performance.** If at any time ACAC Office believes Artist may not be adequately performing its obligations under this Agreement or that Artist may fail to complete the Artwork as required by this Agreement, ACAC Office may request from Artist prompt written assurances of performance and a written plan acceptable to ACAC Office, to correct the observed deficiencies in Artist's performance. Artist shall provide such written assurances and written plan within ten (10) calendar days of its receipt of ACAC Office's request and shall thereafter diligently commence and fully perform such written plan. Artist acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.

**58. Amendments for Artwork.** This Agreement may be amended by the parties for adjustments or modifications are needed to the artwork design and scope, including modification of the Scope of Work, Exhibit B, and any related items. The Commission Director may approve and execute amendments for the purpose of adjustments or modifications to the artwork design and scope.

**59. Entire Agreement.** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between County and Artist relating to the subject matter of this Agreement. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

**60. Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**61. Artist Collaboration.** Each person or entity who or that is collectively referred to herein as "Artist" has agreed to collaboratively work with, partner or otherwise associate with each other person or entity who is collectively identified as "Artist." As such, and notwithstanding any agreement between those persons or entities to the contrary, each such person and entity who signs this Agreement agrees to be jointly, severally and individually responsible to the County to perform the duties and obligations provided for in this Agreement and for the acts or omissions of each of those other persons or entities."

**62. Force Majeure.** Neither party shall be deemed to be in default in the performance of the terms of this Agreement if a party is prevented from performing by causes beyond its control, including without being limited to: acts of God, including earthquakes; interference, laws, regulations, rulings or decisions by a governmental agency, or a board or commission; delays in construction or completion of the Construction Project; or catastrophe resulting from flood, fire, explosion. If any of the stated contingencies occur, the party delayed by force majeure shall immediately give the other party written notice of the cause of delay. The party delayed by force majeure shall use reasonable diligence to correct the cause of the delay, if correctable.

COUNTY of ALAMEDA


ARTIST

\_\_\_\_\_  
PRESIDENT  
BOARD OF SUPERVISORS



Address

APPROVED AS TO FORM:

  
\_\_\_\_\_  
COUNTY COUNSEL

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.



## EXHIBIT A-1 ARTIST'S PROPOSAL

**Elaine Coombs**

**Concept/Theme and Main Idea:** For many years now, my artwork has attempted to convey how I see and experience our natural landscape. The forest is my spiritual haven, a personal refuge. It is a peaceful place to relax, walk, meditate, and be with my own thoughts. Silence is found here, until I listen closely and then it becomes alive in its own chorus. My spirit soars as my body restores balance. I feel the presence of the tall, thick trunks that bend as they hit the sky, like guardians that shield me from the world beyond. I believe there are many such spaces as these, places that give people peace and clarity and help us remember our innate wellness. When viewers look at my artwork, I hope to impart similar positive feelings of well-being, ease, relaxation, joy, and security, akin to my own experience in nature.

I believe that the programs and services of the ACDEH, as presented to us on December 14, 2018, aim to create and maintain a sense of security and well-being in our lives, by finding and neutralizing potential health risks in our environment. It is of great benefit to our community that there is a government body of trained individuals looking after our welfare in this manner. I would be very proud to have my artwork be a small part of the positive impact that this Department has on the community and its future health. Art can be a reminder of an ideal to which we all strive. I believe my paintings can effectively communicate this positive vision to a general audience, and therefore is an excellent match to the goals of this project and to that of the Department.

**Description of Process and Materials:** My paintings start by selecting an image from photographs that I've taken on my nature walks. I reference these photos to capture the light and shadow at a particular time of day, the basic composition and the color palette. I have painted many locations in the Bay Area, but over time, the actual site has become less important, and instead it has become more about creating the feeling of a place by capturing a moment in time that I want to preserve and share.

Before painting, I lightly draw in the trunks or branches with a colored pencil, which serves as my reference point for the composition. Then these linear elements are filled in with a palette knife and acrylic paint. From this point, the image unfolds in an intuitive way. I usually start top to bottom from one corner, slowly adding the dots of paint, referring to the photograph as I go. The image begins to emerge. Everything is painted with a palette knife only, and my special technique creates the appearance of dotted, textural areas, evoking shimmering light through leaves. It is a meticulously handmade process that makes the painting look pixelated, therefore creating a very contemporary version of the landscape.



*Connection 1*



*Connection 2*



*Courageously*

**Exhibit A-2 intentionally omitted.**

**EXHIBIT A-3**  
**REPRODUCTIONS AND LICENSING**

The County desires to license the right to create Reproductions of the Artwork listed in Exhibit A-1 and Artist hereby grants County such a license.

**1. Site.** The Reproduction of the Artwork will be placed at the following Site:

Alameda County Department of Public Health, 1131 Harbor Bay Parkway, Alameda, California.

**2. Reproduction Plan.** The County shall provide basic information on how the County intends to create the Reproduction (the “Reproduction Plan”). County will include in the Reproduction Plan the number of Reproductions it intends to make, however, County has the right to create fewer or additional Reproductions. The County may request Artist’s comments on any revisions to the Reproduction Plan, however, the County has sole discretion to change any or all of the Reproduction Plan including how the Reproduction will be created.

The County intends to make one Reproduction of each Artwork using dye-infused metal imaging.

The County intends to make the Reproductions in the following sizes. All sizes are approximate and the County has the right to alter the size of any Reproduction.

- a. *Connection 1:* 22” x 30”
- b. *Connection 2:* 22” x 30”
- c. *Courageously:* 36” x 30”

The anticipated life span of each Reproduction is 25 years.

The Artist will supply high-resolution and high-quality digital files of the Artwork *Connection 1* and *Connection 2*. If the County determines that a higher quality digital file is necessary, Artist will cooperate with ACAC Office in obtaining further photography, including delivering and picking up the Artwork at a location specified by ACAC Office.

Artist will deliver the Artwork *Courageously* to a location and at a time provided by the ACAC Office so that it may be photographed and digitized. Following the completion of the photography, Artist will promptly (within 3 business days) pick-up the Artwork.

The high resolution digital images will only be used to produce the Reproductions as dye-infused metal imaging.

The ACAC Office will be responsible for arranging and the costs associated with digitizing the Artwork for use by the fabricator.

The ACAC Office will hire, or arrange for the hiring of, a fabricator and installer of the Reproductions.

Artist will retain ownership of the original Artwork.

Paragraph 27 of the main agreement, located in Section III, WARRANTIES, COPYRIGHT AND INDEMNIFICATION is deleted and replaced with the following: Title and Ownership. Title and ownership to the Reproduction of the Artwork shall be exclusively with the County upon the ACAC Office issuing its Notice of Acceptance of Artwork. The County shall have the exclusive right to use and display the Reproduction of Artwork at the Site or any other location selected by County. County shall be entitled not to display and may discard the Reproduction of the Artwork as it deems necessary or appropriate.

**3. Reproduction Fee.** The total amount to be paid to Artist for the Reproduction will be **\$500** per piece of Artwork regardless of the number of actual reproductions created or used. For example, if Artwork consists of two distinct

watercolors (images) and the Reproduction Plan is for one of the watercolors to be used to create 20 limited edition prints and the other used to create 60 limited edition prints, Artist will be paid \$1000.

**4. Reproduction Image.** Reproductions will be made in a professional and tasteful manner at the sole and reasonable judgment of the ACAC Office.

**5. Copyright.** Subject to usage rights and licenses granted to County hereunder, Artist shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement.

**6. License.** Artist grants to County, and to County’s agents, authorized contractors and assigns, an unlimited, non-exclusive and irrevocable license to create representations of the Reproductions in all media throughout the universe. This license specifically includes, but is not limited to, the following:

a. Use and Display. County may use and display the representations.

b. Replacement. County may fabricate a replacement Reproduction(s), should the original Reproduction(s) undergo damage beyond repair.

c. Exclusion. The license granted hereunder does not include the right to create any 3-dimensional reproductions of the artwork or any 2-dimensional reproductions on items to be sold to the public (“Merchandise”) such as tote-bags, T-shirts, coffee mugs and similar Merchandise unless specifically identified in the Reproduction Plan that is included on the Agreement, or in a written Amendment to this Agreement signed by the Artist.

**7. Artist Warranty:** Artist warrants that Artist owns all rights to the Artwork and has the sole and complete authority to grant the use of the Artwork to the County.

**8. No Right to Approval.** The Artist agrees that Artist will not make any claims against the County, its officers, agents and employees arising out of use and Reproductions. The Artist waives his right to inspect or approve the final draft or finished version of the Reproductions including any written material that may be created in connection therewith.

**9. No Guarantee of Reproduction.** Nothing in this Exhibit or the Agreement is a representation, promise or guarantee that any reproduction of the Artwork will be used part of a Reproduction Plan. Artist shall only be paid a Reproduction Fee if the Artwork is part of a Reproduction Plan and Reproductions are actually created and used by County.

**10. Schedule of Activities and Deliverables.**

a. Schedule

Activity or Deliverable	Due Date
1. Evidence of Insurance	Prior to start of work
2. Artist Delivers Artwork to a location provided by the ACAC Office so that it may be photographed and digitized. Artist delivers Digital Files of Artwork.	TBD
3. Final Written Documentation Due	TBD
4. On-going communications, coordination and meetings with ACAC Office	On-going

b. TBD Dates. Dates to be determined (TBD), if any, shall be determined by County, which may consult with Artist, but County shall have the sole discretion and authority to determine the dates.

c. Modification of Schedule. The parties agree that the schedule of performance set forth above may, by mutual agreement, be modified in writing without the necessity of a formal amendment to this Agreement

**EXHIBIT B**  
**COMPENSATION**

1. **Fee.** Payment to Artist for Artwork, including all expenses relating thereto, **shall not exceed One Thousand and Five Hundred Dollars (\$1,500.00)**. This fee includes all costs and expenses and is the maximum total amount that may be paid. County will not make any additional payment for Artist's expenses. This amount is not a guarantee of the amount to be paid, as it includes optional work and, if identified in the Budget Summary Chart, a contingency amount.

2. **Budget Summary Chart.**

<b>Description</b>	<b>Not to Exceed Amount</b>
Reproduction Fee (\$500 per Artwork )	\$1,500.00

3. **Interim Payments.** There are no in interim payments for this Contract.

4. **Invoicing Schedule and Interim Payments.** Artists shall submit an invoice, in a format acceptable to County, at the milestones identified below. For each benchmark, the following amounts may, at County's discretion, be paid to Artist following the County's receipt, review and approval of an invoice from Artist indicating that the appropriate milestone as described below has been reached:

<b>Benchmark</b>	<b>Amount</b>
1. Delivery of Artwork to Photographer and Approval of Final Written Documentation	Up to \$1,500.00

Notwithstanding the foregoing, Artist expressly acknowledges that approval of an invoice to permit an interim payment is solely for the benefit of Artist. Unless and until the ACAC Office issues a Final Notice of Completion of Services, no payment and/or interim approval shall constitute acceptance or approval of the Artwork by County nor shall it be construed as a waiver of County's right to require that Artist and the Artwork conform strictly to the terms of this Agreement. Interim payments are at the sole discretion of the County and County retains the right to not make any payment until completion of the Artwork and full acceptance by County.

5. **Tax Identification Number.** No later than the date of Artist's execution of this Agreement, Artist shall provide County with Artist's Tax Identification Numbers and any proof of Artist's Tax Identification Numbers as requested by County.

6. **Sales Tax.** The County and the Artist acknowledge that they are aware of Revenue and Taxation Code section 6365, which, among other things, exempts from sales tax sales to counties of original works of art. The County and the Artist acknowledge that they believe that such exemption applies to the transaction described in this contract.

7. **Timing.** County will make reasonable efforts to make the payments described above to the Artist within thirty (30) days after receipt, review and approval by County of invoices.

8. **Payee.** Payments will be made to: **Elaine Coombs**

9. Intentionally omitted.

10. **Contingency Draw.** There is no contingency draw for this Contract.

**EXHIBIT C**

**COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS**

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
<b>A</b>	<b>Commercial General Liability</b> Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
<b>B</b>	<b>Commercial or Business Automobile Liability</b> All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
<b>C</b>	<b>Workers' Compensation (WC) and Employers Liability (EL)</b> Required for all contractors with employees	WC: Statutory Limits EL: \$1,000,000 per accident for bodily injury or disease
<b>D</b>	<p><b><u>Endorsements and Conditions:</u></b></p> <ol style="list-style-type: none"> <li><b>ADDITIONAL INSURED:</b> All insurance required above with the exception of Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.</li> <li><b>DURATION OF COVERAGE:</b> All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement.</li> <li><b>REDUCTION OR LIMIT OF OBLIGATION:</b> All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties.</li> <li><b>INSURER FINANCIAL RATING:</b> Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.</li> <li><b>SUBCONTRACTORS:</b> Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.</li> <li><b>JOINT VENTURES:</b> If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:             <ul style="list-style-type: none"> <li>– Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above.</li> <li>– Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".</li> </ul> </li> <li><b>CANCELLATION OF INSURANCE:</b> All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation.</li> <li><b>CERTIFICATE OF INSURANCE:</b> Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices provision.</li> </ol>	

**AGREEMENT BETWEEN THE COUNTY OF ALAMEDA  
AND JANE NORLING DBA JANE NORLING DESIGN**

This Agreement is made and entered by and between the County of Alameda (“County”), and **Jane Norling dba Jane Norling Design** (the “Artist”).

**RECITALS**

WHEREAS the County desires to obtain unique public artwork designed and executed specifically for the County and associated with **the Alameda County Department of Environmental Health Vector Control Services District Laboratory** (“Construction Project”) to be located at **1131 Harbor Bay Parkway, Alameda, CA** (“Site”); and

WHEREAS the County, through the Alameda County Arts Commission (“Commission”), will manage the art design, fabrication and installation (“the Art Project”) in consultation with the **Alameda County Department of Environmental Health**; and

WHEREAS the Artist submitted a proposal for the unique public artwork (“Artist’s Proposal”) which is attached as Exhibit A-1; and

WHEREAS the Artist’s Proposal was selected from a pool of qualified artists by a panel of community members, art professionals, and County staff as the most qualified to create certain artwork for the Site; and

WHEREAS Artist will create a unique public artwork as described in this Agreement, including Exhibits (the “Artwork”); and

WHEREAS the members of the Commission have approved the Artist to proceed with the Artwork; and

WHEREAS the Commission has designated the Alameda County Arts Commission Office, (“ACAC Office”) to manage the Art Project and this Agreement.

**I. ARTWORK DEVELOPMENT**

Now therefore, the parties agree:

**1. Work To Be Completed.** The Artist shall complete the Artwork consistent with development of the Art Project as approved by the Commission specified in this Agreement, including all Exhibits, and as may be modified by this Agreement. If there is any conflict between Exhibit A-1 and any subsequent Exhibit to A (e.g. Exhibit A-2) the provisions and requirements of the subsequent Exhibit(s) shall prevail.

**2. Location.** The location of the Artwork shall be at the Site, or as otherwise determined by the County at its sole discretion. The County retains the right in its sole discretion to relocate the Artwork or not use or display the Artwork. Artist shall deliver the completed Artwork to the individual and location(s) directed by County, which may or may not be the Site.

**3. Cooperation.**

a. The County shall organize and schedule meetings and presentations and provide the Artist written instructions for the information and materials that will be required. The ACAC Office will assist the Artist throughout the Art Project.

b. Artist agrees to cooperate in good faith with the County, including the ACAC Office, the Commission, and their representatives, and others, and to be available as reasonably necessary for consultation during all stages of the Art Project. Artist will participate in all design review processes, including those contained in Exhibit A.

c. There may be other individuals and entities performing work related to the Construction Project, including individuals that may be performing work connected to the Art Project (“Other Workers”). Artist shall not unreasonably impede, hinder or delay any Other Worker in the performance of their work. Artist shall act professionally

at all times, including communications involving the Construction Project and Art Project. Artist agrees to use best efforts to resolve any disputes with Other Workers. In the event of a conflict between Artist and Other Workers, County has the sole discretion to resolve the conflict.

**4. Design Development.** Artist shall provide the Design Development services as outlined in Exhibit A. Artist must obtain model releases for all recognizable figures depicted in the Artwork and supply copies of the releases to the ACAC Office before the Artwork is created. The model release must be acceptable to the ACAC Office, ACAC Office will provide acceptable sample model release for the Artist's use.

**5. Budget.** Artist shall provide a Budget for costs related to the Artwork, unless specifically waived in writing by ACAC Office, including, but not limited to: itemized costs for materials including applicable sales tax; off-site fabrication costs if fabrication is the responsibility of Artist; costs for assistants; Artist's time for coordination, fabrication, supervision and installation and/or consultation on those items; itemized estimates of General Contractor and sub-contractor costs; permits or other fees; insurance; studio and operation expense directly related to the Artwork; consultants' fees; communications; Artist's travel; transportation of the Artwork to Site or other location to be determined; and itemized installation costs. The Artwork Budget shall also include a contingency to cover unforeseen costs that may arise. All budget items and costs are the sole responsibility of Artist.

**6. Maintenance Plan.**

a. Artist shall provide a Maintenance Plan for the Artwork, unless specifically waived in writing by ACAC Office. The Maintenance Plan must include a detailed description of:

- anticipated future maintenance requirements;
- a recommended maintenance schedule;
- anticipated and required care and/or replacement/upgrade of any part of the Artwork and associated moving parts or equipment including any staff time involved in displaying or operating Artwork and the frequency of such staff involvement; and
- written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the Artwork.

b. The Artwork must be durable, taking into consideration if the Site is an unsecured space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Artist shall ensure that all maintenance requirements are reasonable in terms of time and expense.

c. The Artist shall be responsible for making any updates or clarifications to the Maintenance Plan if the maintenance requirements and estimates change over the course of the project.

d. Artist shall provide ACAC Office with a description of all equipment and machinery needed to operate the Artwork (if applicable) and any anticipated or required staffing, supervision or operational needs.

e. An updated Maintenance Plan must be submitted and accepted by ACAC Office prior to the issuance of the Final Notice of Completion of Services.

f. If requested by the ACAC Office, the Artist shall obtain a recommendation from a qualified art conservator on the maintenance of the Artwork and the Artist shall provide a written copy of the conservator's recommendations to the ACAC Office.

**7. Schedule.** The Artist shall complete the Artwork according to the schedule set out in Exhibit A. Time is of the essence in the performance of the Artwork by Artist.

**8. Changes**

a. The goal for the Artwork is a product which represents the creative talents of Artist and satisfies the specifications of the County. The parties recognize that they must consult closely during all stages of development of the Artwork, including without limitation, during design development, fabrication and installation of the Artwork in order to accomplish these goals and that changes to the Artwork may become desirable as the Art Project progresses.

b. Certain specifications of the Artwork, such as, but not limited to, the size, color, design, and material (including grade of the material), of some of the elements of the Artwork may not be identified in Exhibit A. To the extent that any specification for the Artwork is not identified in Exhibit A, Artist shall seek ACAC Office's prior written approval of these specifications before commencing with the Artwork.

c. The parties recognize that the shift in scale from preliminary drawings and models to a full-scale work may require artistic adjustments. Artist has the right to make minor adjustments to the Artwork as Artist deems aesthetically necessary.

d. Any deviation from the Artist's Proposal (Exhibit A-1) in the scope, design, color, size, material, utility and support requirements, texture or location of the Artwork must be approved in writing and in advance by ACAC Office before Artist proceeds with completion of the Artwork. This includes but is not limited to any change that may affect the fabrication, schedule of delivery or installation of the Artwork, preparation of the Site or maintenance of the Artwork.

e. In no event may any adjustment or any change in design increase the Artwork budget or entitle the Artist to additional compensation or payment except as specified in Exhibit B.

## **9. Review, Inspections and Reports:**

a. Interim progress reviews are required by this Agreement. At reasonable times and with advance notice to Artist, County has the right to review the work in progress and to require and receive prompt progress reports from Artist. County shall have the right to visit any facility used by the Artist for the Artwork at reasonable times to inspect and review its progress. In-person meetings may also be held at another location, as directed by County. Artist shall supply digital images of the Artwork in-progress for review if requested by ACAC Office.

b. In the event that any of the elements of the Artwork are to be fabricated at a location away from the Site (collectively, "Off-Site Elements"), the County shall have the right to visit and inspect each of the Off-Site Elements before they are transported to the Site. Artist shall notify ACAC Office in writing when each element of the Artwork is ready for inspection, prior to transporting the Off-Site Element to the Site ("Inspection Notice").

i. After receipt of the Inspection Notice for each Off-Site Element, and, if conducted, inspection of the Off-Site Element, the ACAC Office, will inform Artist in writing either (1) the Off-Site Element has been completed in accordance with the terms of this Agreement and the Off-Site Element it may be transported to the Site ("Transportation Notice to Proceed") or (2) there are defects or deficiencies in the Off-Site Element which must be corrected prior to transportation to the Site, ACAC Office may, at its sole discretion, determine to delay inspection until the Off-Site Element is delivered to the Site or other location.

ii. Delivery. Upon issuance of the Transport Notice to Proceed, Artist shall deliver the Off-Site Elements to the Site or other location as determined by the ACAC Office. Artist shall coordinate with the ACAC Office regarding the time, place and manner of delivery of the Artwork. The County shall have the right to inspect the Off-Site Elements at the time each Off-Site Element arrives in order to determine whether it has been damaged in transit or whether it deviates in any way from the Off-Site Element approved for transportation by the ACAC Office prior to ACAC Office's issuance of the Transport Notice to Proceed, if the ACAC Office elected to inspect off-site, or whether it meets the terms of this Agreement in the event ACAC Office elected to delay its inspection of the Off-Site Element until it arrived at the Site. Artist shall promptly remedy to the satisfaction of the ACAC Office any defect or damage to the Off-Site Element or any deviations from the Off-Site Elements as approved by ACAC Office in the Transport Notice to Proceed.

**10. Artist's Completion Notice.** Artist shall provide written notice to the ACAC Office that the Artwork has been completed ("Completion Notice"). County may, in its sole discretion, visit the Artist's studio to view the completed Artwork. Artist recognizes and agrees that County may review the Artwork and make recommendations for revisions and that additional studio visits may be required by County.

## **11. County's Acceptance or Defect Notice**

a. Upon ACAC Office's receipt and review of the Artist's Completion Notice, ACAC Office shall notify Artist in writing that the Artwork is completed ("Notice of Acceptance of Artwork") or that the Artwork fails to meet the requirements of this Agreement ("Defects Notice").

b. The issuance of a Notice of Acceptance of Artwork shall mean that the County acknowledges completion of the Artwork in substantial conformity with the design. Title to the Artwork from the Artist shall pass to the County upon issuance by the ACAC Office of its Notice of Acceptance of Artwork.

c. Upon ACAC Office's receipt and review of the Artist's Final Maintenance Documents and Final Written Documentation and when all other services related to the Artwork have been completed, ACAC Office shall notify the Artist in writing ("Final Notice of Completion of Services").

d. If the County has determined that the Artist has failed to perform as required by this Agreement, the County shall issue a written Defects Notice to the Artist. That Defects Notice shall identify those services or other conditions or requirements of the Agreement that the Artist has failed to perform. Artist shall promptly remedy, at Artist's own cost, those failures, to the satisfaction of the County.

e. If the Artist disputes the Defects Notice, in whole or in part, the Artist shall submit his or her written response to the County within ten (10) days of receipt of the Defects Notice.



f. If there is resolution of any disputes that arise under paragraph (d) of this section, the ACAC Office shall notify the Artist of its final acceptance of the Artwork pursuant to paragraph (b).

g. If the parties are unable to resolve any disputes that arise under paragraph (d) of this section, The County shall have the right to terminate this Agreement immediately and shall have no further obligations under this Agreement. This right to terminate is in addition to any other rights provided by law.

**12. Final Maintenance Documents.** Artist shall provide the ACAC Office with an updated and accurate Maintenance Plan for the Artwork before issuance of the Final Notice of Completion of Services. Artist shall deliver all information necessary for the County to properly care for and maintain the Artwork, including information regarding the physical make-up of the Artwork, methods and materials, and information about the artistic intent of Artist in the design, fabrication and installation of the Artwork. Artist shall provide the Final Maintenance Documents within thirty (30) days after the submitting the Completion Notice. Unless otherwise agreed in writing upon issuance by ACAC Office of a Final Notice of Completion of Services the County will be responsible for the care and maintenance of the Artwork

**13. Final Written Documentation.** Artist shall deliver a written description of the Artwork before issuance of the Final Notice of Completion of Services. This information may be used for educational, public relations, promotional and other noncommercial purposes. Artist shall provide the Final Written Documentation within thirty (30) days after the submitting the Completion Notice. The written description must include the following:

- a. Artwork information including:
  - Name of Artist(s) - as it should appear in all printed materials
  - Artwork Title
  - Medium
  - Dimensions
- b. Short description of the artwork including:
  - Theme, concept
  - What Artist hopes the viewers will learn or experience when looking at the Artwork.
  - Description of major elements (i.e. objects, people, etc.)
  - Description of process that may be informative to the viewer
- c. Brief Artist biography, please include the following:
  - Date and location of birth
  - Where Artist currently resides
  - If you do not live in Alameda County, please indicate location of studio or employment that qualified you as an "Alameda County Artist", if applicable
  - Education related to art-making
  - Points of significance in the development of Artist's career
  - General philosophy or consistent ideas when making Artwork
  - How did Artist first become involved in making art?
  - What does Artist hope to achieve by making art?

**14. Compensation.**

a. The compensation to be paid to Artist ("Total Price") is set forth in Exhibit B, "Compensation." Such payment shall constitute full and complete compensation for work performed and services rendered, including, but not limited to, professional services and expenses for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals.

b. In the event that the ACAC Office approves a modification of the Artwork to be provided by the Artist which results in cost savings including, but not limited to, the deletion of an element of the Artwork, the substitution of lesser quality materials with no offsetting upgrade of other materials, and the reduction in the Artwork's size, the cost savings attributable to the modification will not be paid to the Artist.

c. No payment to Artist for any work performed or services rendered shall constitute a waiver or release by County of any claims, rights or remedies County may have against Artist under this Agreement or by law, nor shall such payment constitute a waiver by the County of any failure or fault of Artist to satisfactorily perform the services as required under this Agreement.

d. In the event that County determines that work for which it has been invoiced does not meet the terms of this Agreement, County may withhold payment to Artist. In the event County withholds any payment, County shall provide detailed written notice to Artist, via certified mail, return receipt requested, specifying the failure of performance for which County intends to withhold payment. Within fifteen (15) days of Artist's receipt of County's notice, Artist shall

cure County's objection or if County's objections are not capable of cure within fifteen (15) days, Artist shall commence to cure County's objections and then promptly proceed to complete the cure. If Artist disputes County's determination that the Agreement's specifications have not been met, within fifteen (15) days of Artist's receipt of County's notice, Artist shall notify County in writing, via certified mail, return receipt requested. In such event, County shall make reasonable efforts to resolve the dispute; however, the final determination as to whether Artist has complied with the terms of this Agreement will remain with County.

## II. ARTWORK COMPLETION

**15. Commitment by County.** County agrees that unless Artist requests to the contrary in writing, all references to the Artwork and all representations (as set forth in section 28 below) of the Artwork will credit the Artwork to Artist.

**16. Artwork Plaque.** County may at its option fabricate and install an identification plaque for the completed Artwork, which will be a two-dimensional sign that will include the following information: Artist's name, year in which Artwork is completed, Artwork title, funding agency and commissioning agency. No other information will be included on the Artwork Plaque unless the ACAC Office authorizes any modifications or additions. The Artwork Plaque if one is used will be installed at a location in proximity to the Artwork which shall be determined by County at its sole discretion.

**17. Artist's Commitment.** Artist agrees that all formal references to the Artwork shall include the following credit: "From the Collection of the County of Alameda commissioned by the Alameda County Arts Commission," or other language agreed to by the County.

**18. Artist Availability.**

a. After the Notice of Acceptance of Artwork, the Artist shall be available to attend any public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to dedication of the Artwork.

b. During such public presentations by the Artist, the Artist shall acknowledge the County's role in funding the Artwork.

c. The County shall be solely responsible for coordinating public information materials and activities related to public presentations.

d. This paragraph shall survive termination of the Agreement.

**19. County Art Collection.** Upon issuance of the Final Notice of Completion of Services, the County shall accession the Artwork into the County Art Collection.

**20. Repairs and Restoration.** County shall have the right to determine when and if repairs and restorations to the Artwork will be made. It is the policy of County to consult with Artist regarding repairs and restoration which are undertaken during Artist's lifetime when that is practical. In the event that County makes repairs or restoration not approved by Artist, Artist shall have the right, at Artist's sole option and only remedy, to have Artist's association with Artwork severed.

**21. Standards of Repair and Restoration.** Although the County strives to maintain the County Art Collection in good repair and condition, County is not required by this Agreement to maintain the Artwork to any particular standard. County may allow the Artwork to deteriorate in accordance with the Artwork's life span, if deemed appropriate by County or if County lacks sufficient funds for required maintenance and/or conservation. If the Artwork suffers deterioration, County shall have sole discretion to determine whether to (a) remove the Artwork from display, (b) replace any portion of the Artwork, (c) translate any component into new media, (d) maintain the Artwork on display despite its deteriorated condition or (e) take any other action or combination of actions regarding the Artwork.

**22. Life Span.** The anticipated life span of the Artwork is set forth in the Exhibits. After that time, the County in its sole discretion may re-evaluate the Artwork to determine if it retains its identity as a work of art and, if not, whether to take appropriate action, including the possibility of destroying the Artwork. If no life span is specified in the Exhibits or pursuant to a subsequent Agreement modification, the anticipated life span of the Artwork shall be twenty-five (25) years. If prior to that time County determines that, through decay, vandalism or other forces, the Artwork has lost its integrity to the point where it should be destroyed, the County shall first make efforts to offer the Artwork to Artist provided Artist

pays for all costs and expenses, including but not limited to costs, associated with dismantling, removal, storage or transportation of the Artwork.

**23. County Right to Transfer Artwork.** County shall have the right to donate or sell the Artwork at any time. Before exercising this right, County may at its sole option provide written notice to Artist, at Artist's last known address, providing the Artist the option to purchase the Artwork for the greater of (i) the Total Price or (ii) the amount of any offer which County has received for the purchase of the Artwork. In addition to that greater amount, Artist must agree to pay all costs associated with the dismantling, removal and transportation of the Artwork from the Site. That notice shall provide the Artist with thirty (30) calendar days from the date of the notice to provide to the County the Artist's written, unconditional acceptance of that option.

### **III WARRANTIES, COPYRIGHT AND INDEMNIFICATION**

**24. Warranties of Title.** Artist represents and warrants that:

- a. The Artwork is solely the result of the artistic efforts of the Artist.
- b. Artist has not previously sold, assigned, licensed, granted, encumbered, or utilized the Artwork, the Artwork's design or any element thereof, in any manner that may affect or impair the rights granted pursuant to this Agreement.
- c. All work created or performed by Artist under this Agreement, whether created by Artist alone or in collaboration with others, is wholly original with Artist and will not infringe upon or violate the rights of any third party.
- d. Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.
- e. The Artwork is and will remain free and clear of any liens.
- f. The Artwork will be and will remain a unique edition unless otherwise agreed to in writing by the County.

**25. Warranties of Quality and Condition.**

- a. Artist represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for three years after the date of issuance of the Final Notice of Completion of Services.
- b. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety. Artist further warrants that the Artwork shall not constitute any threat to the safety of persons or property when used in the manner for which it is designed.
- c. The Artist represents and warrants that reasonable maintenance of the Artwork will not require in excess of those procedures described in the Maintenance Plan submitted by the Artist.
- d. If during the Life Span of the Artwork, the County observes any breach of any Artist warranty that is curable by the Artist, the Artist shall, at the request of the County, cure the breach promptly and consistent with professional conservation standards, at no expense to the County, and to the County's satisfaction.
- e. If after the Life Span of the Artwork the County observes any breach of any Artist warranty described in this Agreement that is curable by the Artist, the County shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist's lifetime. The Artist shall have the right of first refusal to make or supervise repairs or restorations. Should the Artist and County be unable to reach agreement on a reasonable fee or if the Artist is unavailable or unwilling to cure, the County may seek the services of a qualified restorative conservator and maintenance expert.
- f. If within three years the County observes a breach of any Artist warranty described in this Agreement that is not curable or cured by the Artist, the Artist is responsible for reimbursing the County for damages, expenses, losses, costs or fees incurred by the County as a result of the breach.
- g. Artist represents and warrants that general routine cleaning and repair, within the context of foreseeable exposure to the elements and general wear and tear, will maintain the Artwork in an acceptable standard of public display during its Life Span. The Artwork will not experience irreparable conditions, including but not limited to mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.
- h. Artist represents and warrants foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display during its Life Span.

i. To the extent the Artwork incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties to the County.

**26. Copyright General.**

- a. Except as provided in this Agreement, Artist shall retain all copyrights in the Artwork under the Copyright Act of 1976, 17 U.S.C. Sections 101 et seq. as the sole author of the Artwork for the duration of the copyright.
- b. Artist may, at Artist's option, place a copyright notice on the Artwork in the form and manner required to protect copyrights in the Artwork under United States copyright law. If the copyright is registered with the U.S. Copyright Office, Artist shall provide County with a copy of the application for registration, the registration number and the effective date of registration.

**27. Title and Ownership.** Title and ownership to the Artwork shall be exclusively with the County upon the ACAC Office issuing its Notice of Acceptance of Artwork. The County shall have the exclusive right to use and display the Artwork at the Site or any other location selected by County. County shall be entitled not to display and may discard the Artwork as it deems necessary or appropriate.

**28. Representations.**

- a. Artist authorizes County to make, and to authorize the making of, photographs and other two-dimensional representations of the Artwork for educational, public relations, promotional and other noncommercial purposes.
- b. For the purposes of this Agreement, the following are deemed to be representations for noncommercial purposes: representation in exhibition catalogues, books, slides, digital photographs, postcards, correspondence, posters, calendars, websites, email, announcements, and social media; placement in art magazines, art books and art and news sections of newspapers; in general books and magazines not primarily devoted to art but of an educational, architectural, historical or critical nature; video not intended for commercial distribution; television from stations operated for educational purposes or on programs for educational purposes from all stations.
- c. If applicable, on any and all such representations, County shall place a copyright notice, naming the same person or persons listed as the copyright owners on the copyright registration with the U.S. Copyright Office, in the form and manner required to protect the copyrights in the Artwork under the United States copyright law, provided that Artist has registered a copyright in the Artwork with the U.S. Copyright Office.

**29. Indemnification by Artist.**

- a. To the fullest extent permitted by law, Artist agrees to protect, defend, indemnify and hold harmless County, its officers, agents and employees, from and against all liability, claims, lawsuits, actions, expenses, costs and damages, including reasonable attorney fees incurred in the defense thereof (collectively, "Liabilities") arising out of or related to the acts or omissions of Artist or his/her contractors, subcontractors, employees or agents in the performance of this Agreement. The only exception to the obligations imposed by this provision are for those Liabilities that are caused solely by the negligence or willful misconduct of County, its officers, agents and employees.
- b. To the fullest extent permitted by law, Artist also agrees to protect, defend, indemnify and hold harmless the County, its officers, agents and employees from all liability, claims, lawsuits, actions, expenses, costs and damages, including reasonable attorney fees incurred in the defense thereof, related to any assertion or allegation that work performed under this Agreement by Artist, or Artist's contractors, subcontractors, employees or agents constitutes an infringement of any patent, copyright, trademark, trade name or other proprietary right of any party.

**30. Survival.** This entire section, III. Warranties, Copyright and Indemnification, containing the representations, warranties and indemnity provisions shall survive the termination or completion of this Agreement.

**IV. REMOVAL, ALTERATION OR RELOCATION**

**31. Location of Artwork.** The County, having expended considerable public funds to commission the Artwork, intends to display the Artwork at the Site as originally created by Artist and to maintain the Artwork in good condition. The County, however, shall preserve complete flexibility to operate and manage County property in the public's interest. Public artworks commissioned by the County are sometimes integrated into their site, such that they become an integral, permanent and site-specific part of the building's architecture or landscaped environment and removal of the Artwork would result in significant changes to the Artwork and the building's architecture. Therefore, County retains the absolute right to alter the Artwork in County's sole judgment, which may include removal or destruction of the Artwork. For example, County may alter the Artwork to eliminate hazard, to comply with the ADA, to otherwise aid County in the

management of its property and affairs for any other reason. If, during or after the term of this Agreement, County finds the Site to be inappropriate, or another location to be preferable, County has the right to install the Artwork at an alternate location that County chooses in its sole discretion. If the Artwork is free-standing such that it can be removed without significant damage to the Artwork or the Site the County shall take reasonable precautions to minimize alteration of the Artwork during removal.

**32. Alteration or Relocation.** With respect to the Artwork produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, Artist waives any and all claims and rights against County, its officers, agents, employees, successors and assigns, arising under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same or similar nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. If the Artwork is incorporated into a building such that the Artwork cannot be removed from the building without alteration of the Artwork, Artist waives any and all such claims against any future owners of the Site, and its agents, officers and employees, for alteration of the Artwork.

**33. Notice to Artist of Alterations.** If County intends to take any action with respect to the Site or the Artwork that would alter the Artwork, other than routine cleaning and maintenance, the following procedures shall apply:

a. Notice. Where time permits, County shall make reasonable good faith efforts to notify Artist at least 20 calendar days prior to authorizing any alteration of the Artwork, at the last phone number or address provided by Artist to the County. Where time does not permit prior to alteration of the Artwork – for example, in cases of public hazard, accident or unauthorized alteration – County shall make a reasonable effort to notify Artist after such alteration.

b. Consultation. After receiving such notice, Artist shall consult with ACAC Office to determine whether the Artwork can be restored or relocated and attempt to come to a mutually agreeable plan for disposition of the Artwork. If County intends to remove the Artwork, Artist shall consult regarding methods to minimize or repair any alteration to the Artwork caused by such removal and the potential costs of such removal. Such consultation shall be without charge by Artist unless otherwise specifically agreed in writing by the Artist and the ACAC Office.

**34. Restoration.** If the Artwork is altered, with or without prior notice to Artist, and County intends to maintain the Artwork on display, County shall make a reasonable good faith effort to engage Artist in the restoration of the Artwork and to compensate, through a written agreement, Artist for Artist's time and efforts. However, County has no obligation under this Agreement to restore the Artwork to its original condition, to compensate Artist for any restoration work, or to maintain the Artwork on display. If Artist fails or refuses to negotiate with County in good faith with respect to any restoration, County may contract with any other qualified art conservator or artist for such restoration.

**35. Removal by Artist.** Where practical and where time permits, if County intends to take action that will destroy or significantly alter the Artwork, such as destruction of all or part of the Site and County determines that it will not remove the Artwork itself, County may allow the Artist an opportunity to remove the Artwork, at Artist's sole expense. Artist shall have 10 business days from the date of notice to advise the County in writing of his/her election to remove the Artwork. If Artist elects to remove the Artwork, Artist shall have up to, but no more than, 30 days after receipt of the County's notice to complete the removal of the Artwork without any damage to the Site. If Artist elects to remove the Artwork under this provision, title to the Artwork shall revert to Artist upon commencement of removal work by Artist or Artist's agents. If Artist fails to make an election in a timely manner or fails to complete timely removal the Artwork, the County may alter or remove the Artwork in any manner, including destroying it, in County's sole discretion.

**36. Remedies.** If County breaches any of its obligations under this Section, Artist's sole remedies shall be limited to the following:

a. If County inadvertently fails to provide a required prior notice of alteration, County will provide notice as soon as it discovers the omission, and before alteration of the Artwork if that remains possible.

b. If County alters the Artwork without providing Artist notice prior to alteration in accordance with the Notice to Artist of Alterations section above, Artist shall be given the first right of refusal to restore the Artwork at the same location, if County will be returning the Artwork to the Site, and County shall make reasonable efforts to provide funding for the restoration. If County funds cannot be made available after reasonable efforts are made to secure such funding, Artist may, but is not obligated to, restore the Artwork at Artist's sole expense. If Artist elects not to restore the

Artwork, County may retain another artist or conservator to restore it, or may alter the Artwork in any manner, at County's sole discretion.

c. If County Alters the Artwork without Artist's consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of the Artwork in accordance with California Civil Code §987(d) and 17 U.S.C. §106A(a)(2).

**37. Third Parties.** Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, successors or assigns of County, Artist retains Artist's moral rights in the Artwork, as established in the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 and 989), or any other local, state, federal or international moral rights laws that protect the integrity of works of art. Accordingly, nothing herein shall prevent Artist from pursuing a claim for alteration of the Artwork against a third party who is not an officer, employee, agent, successor or assign of County or working at the direction of the County. County has no obligation to pursue claims against third parties to remedy or prevent alteration of the Artwork. However, as owner of the Artwork, County may pursue claims against third parties for damages or to restore the Artwork if the Artwork has been altered without County's authorization.

**38. Survival.** This entire section IV. Removal, Alteration Or Relocation shall survive the termination or completion of this Agreement.

## V. GENERAL PROVISIONS

**39. Insurance:** Artist shall at all times during the term of the Agreement maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of Artist's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Artist's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Artist's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self insurance shall be called upon to protect it as a named insured. Any subcontracts entered into by Artist shall require the subcontractor to comply with the insurance requirements of this Agreement.

**40. Risk of Loss.** Until the Artwork is formally and finally accepted by County upon issuance of the written Notice of Acceptance of Artwork, any damage to, theft or vandalism to, or acts of nature affecting the Artwork are the responsibility of Artist, including, but not limited to, any loss occurring during the fabrication, storage, transportation, or delivery or installation of the Artwork.

**41. Artist as Independent Contractor.** Artist's relationship with County is strictly and solely that of independent contractor. No relationship of employer and employee is created by this Agreement. Artist is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Artist nor for any obligations or liabilities incurred by Artist. Nothing contained in this Agreement shall be construed to place County and Artist in the relationship of partners. Artist acknowledges and agrees that Artist shall not represent or hold itself out as authorized agent of County with power to bind in any manner.

**42. Personnel and Subcontractors.**

a. Artist has, or will secure at Artist's expense, all assistance and workers required to perform and complete all Artwork. All persons retained (whether paid or volunteer) by Artist shall possess licenses and permits as necessary.

b. If any part of Artwork depends upon the work of any other person for proper execution or results, Artist shall, prior to proceeding with such work, promptly report in writing to County any discrepancies or defects in such other work which Artist is aware of, or which can be identified upon reasonable inspection, that would render it unsuitable for proper execution and results. Failure to so notify County shall constitute the Artist's acceptance of such work as suitable.

c. Pursuant to Section 1861 of the Labor Code, Artist represents that it/he/she is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and Artist shall comply with that and all Labor Code provisions as applicable provisions before commencing the performance of the work of this Agreement.

d. This section intentionally omitted.

**43. Termination on Death.** Except for payments due and payable to Artist pursuant to Exhibit B at the time of death, Artist's rights under this Agreement cease with Artist's death and do not extend to Artist's heirs, successors or assigns. Any copyright held by Artist as the sole author shall continue pursuant the Copyright Act of 1976, 17 U.S.C. § 101 et seq., the life of the author plus 70 years as of the Artwork.

**44. Authorship and Destruction.** To the extent permitted by law, the provisions of this Agreement prevail over laws regarding authorship and destruction of art, including without limitation, California Civil Code Section 987 and Title 17 U.S.C. Section 106A et seq.

**45. Assignability.**

a. The parties agree that the expertise and experience of Artist are material considerations for this Agreement. Except as may be specifically authorized under this Agreement, Artist shall not assign or transfer any interest in this Agreement nor the performance of any of Artist's obligations hereunder. Any attempt by Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by ACAC Office. However, nothing in this section shall be deemed to prevent Artist, at Artist's sole expense, from relying on or utilizing the services of such other consultant or contractor as Artist may require to complete the Artwork or other services provided for in this Agreement so long as the ACAC Office has provided prior written approval of such consultant or contractor.

b. County shall have the right to assign or transfer any and all of County's rights and obligations under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the County.

**46. Compliance With Law.** Artist shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

**47. Nondiscrimination.** Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, marital status or national origin, in connection with or related to the performance of this Agreement.

**48. Gifts.** Artist agrees to abide by County's prohibition against the acceptance of any gift by a County officer or designated employee. Artist agrees not to offer any County officer or designated employee any gift. The offer or giving of any gift prohibited by the County shall constitute a material breach of this Agreement by Artist. In addition to any other remedies County may have in law or equity, County may terminate this Agreement for such breach.

**49. Use of County Property.** Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.

**50. Termination With or Without Cause.** County has and reserves the right to suspend, terminate or abandon this Agreement with or without cause at any time upon giving written notice to the Artist. In the event that the County should abandon, terminate or suspend the Artist's work for any reason including lack or absence of funding, and absent breach by Artist or County not accepting any part of Artwork, the Artist shall be entitled to payment for services actually performed prior to the date of notice to the Artist that the County has or will suspend, terminate or abandon this Agreement.

**51. Remedies.**

a. The remedies under this Agreement are cumulative and are in addition to the rights available to the parties at law or in equity.

b. Without limiting the generality of subsection A, above, if Artist breaches this Agreement, County has the right to terminate this Agreement and, at its option, proceed with the fabrication and installation of the Artwork without utilizing the services of the Artist. If County exercises its option to proceed, then County, upon Artist's written request will refrain from referencing the Artwork as the work of Artist.

c. If County notices Artist of its intent to terminate this Agreement, Artist has the option to purchase back the work if each of the following conditions are met:

i. Within 5 days of receiving the notice from the County, Artist provides written notice to the ACAC Office that Artist intends to purchase back all rights to the Artwork.

- ii. At the time of notice by the Artist, the Artwork, as determined by County, is not substantially completed.
- iii. Artist returns all amounts paid by County under this Agreement within 5 days of the notice of termination, or such other reasonable time as agreed to by County. If the full amount is not timely repaid to County, it may exercise its option to proceed with any remedy it has under the Agreement and by law, however, upon Artist's written request will refrain from referencing the Artwork as a work created by Artist.

**52. Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

**53. Notices.**

a. All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox.

Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (e.g. Federal Express/ United Parcel Service) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

b. Submittals, requests, notices and reports (collectively, "Notices") required under this Agreement shall be delivered personally or through the mail, postage prepaid, to the addresses stated below. Addresses for purpose of giving notice are as follows:

For Artist:

**Jane Norling**



For County:

Alameda County Arts Commission  
1106 Madison Street, Suite 336  
Oakland, CA 94607  
Phone: (510) 208-9646

c. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

d. Any party may change its address by giving the other party notice of the change in any manner permitted by this Agreement.

e. Artists agree for the duration of Artists' life, to provide ACAC Office with Artists' current mailing address, phone number and e-mail address in the event Artists' address, phone number or e-mail address, as specified above, should change.

**54. Governing Law and Venue.** This Agreement shall be governed by the laws of the State of California. In the event that a suit shall be brought related to this Agreement, venue shall be Alameda County Superior Court or the United States District Court for the Northern District of California, Oakland, California.

**55. Headings.** Headings herein are for convenience of reference only and shall in no way affect interpretation of the



Agreement.

**56. Advertising or Publicity.** Artist shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance. Artist may identify and include the Artwork, including identifying the County as owner and the location of the Artwork, on Artist's resume or other listings of professional work.

**57. Assurance of Performance.** If at any time ACAC Office believes Artist may not be adequately performing its obligations under this Agreement or that Artist may fail to complete the Artwork as required by this Agreement, ACAC Office may request from Artist prompt written assurances of performance and a written plan acceptable to ACAC Office, to correct the observed deficiencies in Artist's performance. Artist shall provide such written assurances and written plan within ten (10) calendar days of its receipt of ACAC Office's request and shall thereafter diligently commence and fully perform such written plan. Artist acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.

**58. Amendments for Artwork.** This Agreement may be amended by the parties for adjustments or modifications are needed to the artwork design and scope, including modification of the Scope of Work, Exhibit B, and any related items. The Commission Director may approve and execute amendments for the purpose of adjustments or modifications to the artwork design and scope.

**59. Entire Agreement.** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between County and Artist relating to the subject matter of this Agreement. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

**60. Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**61. Artist Collaboration.** Each person or entity who or that is collectively referred to herein as "Artist" has agreed to collaboratively work with, partner or otherwise associate with each other person or entity who is collectively identified as "Artist." As such, and notwithstanding any agreement between those persons or entities to the contrary, each such person and entity who signs this Agreement agrees to be jointly, severally and individually responsible to the County to perform the duties and obligations provided for in this Agreement and for the acts or omissions of each of those other persons or entities."

**62. Force Majeure.** Neither party shall be deemed to be in default in the performance of the terms of this Agreement if a party is prevented from performing by causes beyond its control, including without being limited to: acts of God, including earthquakes; interference, laws, regulations, rulings or decisions by a governmental agency, or a board or commission; delays in construction or completion of the Construction Project; or catastrophe resulting from flood, fire, explosion. If any of the stated contingencies occur, the party delayed by force majeure shall immediately give the other party written notice of the cause of delay. The party delayed by force majeure shall use reasonable diligence to correct the cause of the delay, if correctable.

COUNTY of ALAMEDA

ARTIST

\_\_\_\_\_  
PRESIDENT  
BOARD OF SUPERVISORS

\_\_\_\_\_  
Add

APPROVED AS TO FORM:

  
\_\_\_\_\_  
COUNTY COUNSEL

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

**EXHIBIT A-1**  
**ARTIST'S PROPOSAL**

**Jane Norling**

The Department of Environmental Health is an essential public service that shelters the population of Alameda County by protecting people's health. I think of the building itself as a shelter, in a sense, containing the knowledge, skills, training, problem-solving & organizational abilities of public employees, along with the instruments, tools, data, research, outreach connections they use to maintain a healthy environment.

For visitors and employees entering the ACDEH building, I envision a sense of protective calm created through beautiful water and greenery imagery suggesting open space beyond room confines and which connects to the aquatic/island atmosphere coming in from the windows. My ongoing series of paintings, *Shaped by Water*, focused on the relationship of water and land, works well creating a sense of peace and relaxation in public buildings and in private settings.

My interest in this project matches my ongoing purpose in making art— to create artwork addressing the needs of the general public and for working people in the places where work takes place. The Department of Environmental Health guides residents of Alameda County in creating a healthy environment for Alameda County. A healthy environment for Alameda County can be reflected in the beauty of the Department building's artwork.

I am a painter and graphic artist. As painter, I work on canvas, panel, paper or walls combining drawing with oil and/or acrylic paint. I use photography to collect the images I want to paint, focusing on landscapes I travel through and of people I want to present for specific purposes. My most recent public artwork, an Alameda County Arts Commission project, is *Alameda County Water*, a 6-part largescale landscape painting printed in ceramic ink to glass, permanently located at 1111 Jackson Street, Oakland.



*Anjali the Water*



*Basrika the Water*



*A Step Into the Woods*



*Breath of Relief*



*Love the Woods*

**Exhibit A-2 intentionally omitted.**

**EXHIBIT A-3**  
**REPRODUCTIONS AND LICENSING**

The County desires to license the right to create Reproductions of the Artwork listed in Exhibit A-1 and Artist hereby grants County such a license.

1. **Site.** The Reproduction of the Artwork will be placed at the following Site:

Alameda County Department of Public Health, 1131 Harbor Bay Parkway, Alameda, California.

2. **Reproduction Plan.** The County shall provide basic information on how the County intends to create the Reproduction (the "Reproduction Plan"). County will include in the Reproduction Plan the number of Reproductions it intends to make, however, County has the right to create fewer or additional Reproductions. The County may request Artist's comments on any revisions to the Reproduction Plan, however, the County has sole discretion to change any or all of the Reproduction Plan including how the Reproduction will be created.

The County intends to make one Reproduction of each Artwork using dye-infused metal imaging.

The County intends to make the Reproductions in the following sizes. All sizes are approximate and the County has the right to alter the size of any Reproduction.

- a. *A Step in the Woods*: approx. 36" x 49"
- b. *Anjali the Water*: approx. 48" x 24"
- c. *Basrika the Water*: approx. 48" x 24"
- d. *Breath of Relief*: approx. 36" x 49"
- e. *Love the Woods*: approx. 32" x 32"

The anticipated life span of each Reproductions is 25 years.

Artist will deliver the Artwork to a location and at a time provided by the ACAC Office so that it may be photographed and digitized. Following the completion of the photography, Artist will promptly (within 3 business days) pick-up the Artwork. The high resolution digital images will only be used to produce the Reproductions as dye-infused metal imaging.

The ACAC Office will be responsible for arranging and the costs associated with digitizing the Artwork for use by the fabricator.

The ACAC Office will hire, or arrange for the hiring of, a fabricator and installer of the Reproductions.

Artist will retain ownership of the original Artwork.

Paragraph 27 of the main agreement, located in Section III, WARRANTIES, COPYRIGHT AND INDEMNIFICATION is deleted and replaced with the following: Title and Ownership. Title and ownership to the Reproduction of the Artwork shall be exclusively with the County upon the ACAC Office issuing its Notice of Acceptance of Artwork. The County shall have the exclusive right to use and display the Reproduction of Artwork at the Site or any other location selected by County. County shall be entitled not to display and may discard the Reproduction of the Artwork as it deems necessary or appropriate.

3. **Reproduction Fee.** The total amount to be paid to Artist for the Reproduction will be **\$500** per piece of Artwork regardless of the number of actual reproductions created or used. For example, if Artwork consists of two distinct watercolors (images) and the Reproduction Plan is for one of the watercolors to be used to create 20 limited edition prints and the other used to create 60 limited edition prints, Artist will be paid \$1000.

4. **Reproduction Image.** Reproductions will be made in a professional and tasteful manner at the sole and reasonable judgment of the ACAC Office.

**5. Copyright.** Subject to usage rights and licenses granted to County hereunder, Artist shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement.

**6. License.** Artist grants to County, and to County’s agents, authorized contractors and assigns, an unlimited, non-exclusive and irrevocable license to create representations of the reproductions in all media throughout the universe. This license specifically includes, but is not limited to, the following:

a. Use and Display. County may use and display the representations.

b. Replacement. County may fabricate a replacement Reproduction(s), should the original Reproduction(s) undergo damage beyond repair.

c. Exclusion. The license granted hereunder does not include the right to create any 3-dimensional reproductions of the artwork or any 2-dimensional reproductions on items to be sold to the public (“Merchandise”) such as tote-bags, T-shirts, coffee mugs and similar Merchandise unless specifically identified in the Reproduction Plan that is included on the Agreement, or in a written Amendment to this Agreement signed by the Artist.

**7. Artist Warranty:** Artist warrants that Artist owns all rights to the Artwork and has the sole and complete authority to grant the use of the Artwork to the County.

**8. No Right to Approval.** The Artist agrees that Artist will not make any claims against the County, its officers, agents and employees arising out of use and reproductions. The Artist waives his right to inspect or approve the final draft or finished version of the Reproductions including any written material that may be created in connection therewith.

**9. No Guarantee of Reproduction.** Nothing in this Exhibit or the Agreement is a representation, promise or guarantee that any Reproduction of the Artwork will be used part of a Reproduction Plan. Artist shall only be paid a Reproduction Fee if the Artwork is part of a Reproduction Plan and reproductions are actually created and used by County.

**10. Schedule of Activities and Deliverables.**

a. Schedule

<b>Activity or Deliverable</b>	<b>Due Date</b>
1. Evidence of Insurance	Prior to start of work
2. Artist Delivers Artwork to a location provided by the ACAC Office so that it may be photographed and digitized.	TBD
3. Final Written Documentation Due	TBD
4. On-going communications, coordination and meetings with ACAC Office	On-going

b. TBD Dates. Dates to be determined (TBD), if any, shall be determined by County, which may consult with Artist, but County shall have the sole discretion and authority to determine the dates.

c. Modification of Schedule. The parties agree that the schedule of performance set forth above may, by mutual agreement, be modified in writing without the necessity of a formal amendment to this Agreement.

**EXHIBIT B**  
**COMPENSATION**

1. **Fee.** Payment to Artist for Artwork, including all expenses relating thereto, **shall not exceed Two Thousand and Five Hundred Dollars (\$2,500.00)**. This fee includes all costs and expenses and is the maximum total amount that may be paid. County will not make any additional payment for Artist's expenses. This amount is not a guarantee of the amount to be paid, as it includes optional work and, if identified in the Budget Summary Chart, a contingency amount.

2. **Budget Summary Chart.**

Description	Not to Exceed Amount
Reproduction Fee (\$500 per Artwork )	\$2,500.00

3. **Interim Payments.** There are no in interim payments for this Contract.

4. **Invoicing Schedule and Interim Payments.** Artists shall submit an invoice, in a format acceptable to County, at the milestones identified below. For each benchmark, the following amounts may, at County's discretion, be paid to Artist following the County's receipt, review and approval of an invoice from Artist indicating that the appropriate milestone as described below has been reached:

Benchmark	Amount
1. Delivery of Artwork to Photographer and Approval of Final Written Documentation	Up to \$2,500.00

Notwithstanding the foregoing, Artist expressly acknowledges that approval of an invoice to permit an interim payment is solely for the benefit of Artist. Unless and until the ACAC Office issues a Final Notice of Completion of Services, no payment and/or interim approval shall constitute acceptance or approval of the Artwork by County nor shall it be construed as a waiver of County's right to require that Artist and the Artwork conform strictly to the terms of this Agreement. Interim payments are at the sole discretion of the County and County retains the right to not make any payment until completion of the Artwork and full acceptance by County.

5. **Tax Identification Number.** No later than the date of Artist's execution of this Agreement, Artist shall provide County with Artist's Tax Identification Numbers and any proof of Artist's Tax Identification Numbers as requested by County.

6. **Sales Tax.** The County and the Artist acknowledge that they are aware of Revenue and Taxation Code section 6365, which, among other things, exempts from sales tax sales to counties of original works of art. The County and the Artist acknowledge that they believe that such exemption applies to the transaction described in this contract.

7. **Timing.** County will make reasonable efforts to make the payments described above to the Artist within thirty (30) days after receipt, review and approval by County of invoices.

8. **Payee.** Payments will be made to: **Jane Norling**

9. Intentionally omitted.

10. **Contingency Draw.** There is no contingency draw in this Contract.

**EXHIBIT C**

**COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS**

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
<b>A</b>	<b>Commercial General Liability</b> Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
<b>B</b>	<b>Commercial or Business Automobile Liability</b> All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
<b>C</b>	<b>Workers' Compensation (WC) and Employers Liability (EL)</b> Required for all contractors with employees	WC: Statutory Limits EL: \$1,000,000 per accident for bodily injury or disease
<b>D</b>	<p><b><u>Endorsements and Conditions:</u></b></p> <ol style="list-style-type: none"> <li><b>ADDITIONAL INSURED:</b> All insurance required above with the exception of Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.</li> <li><b>DURATION OF COVERAGE:</b> All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement.</li> <li><b>REDUCTION OR LIMIT OF OBLIGATION:</b> All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties.</li> <li><b>INSURER FINANCIAL RATING:</b> Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.</li> <li><b>SUBCONTRACTORS:</b> Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.</li> <li><b>JOINT VENTURES:</b> If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:             <ul style="list-style-type: none"> <li>– Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above.</li> <li>– Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".</li> </ul> </li> <li><b>CANCELLATION OF INSURANCE:</b> All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation.</li> <li><b>CERTIFICATE OF INSURANCE:</b> Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices provision.</li> </ol>	

**AGREEMENT BETWEEN THE COUNTY OF ALAMEDA  
AND BHAVNA MISRA**

This Agreement is made and entered by and between the County of Alameda (“County”), and **Bhavna Misra** (the “Artist”).

**RECITALS**

WHEREAS the County desires to obtain unique public artwork designed and executed specifically for the County and associated with **the Alameda County Department of Environmental Health Vector Control Services District Laboratory** (“Construction Project”) to be located at **1131 Harbor Bay Parkway, Alameda, CA** (“Site”); and

WHEREAS the County, through the Alameda County Arts Commission (“Commission”), will manage the art design, fabrication and installation (“the Art Project”) in consultation with the **Alameda County Department of Environmental Health**; and

WHEREAS the Artist submitted a proposal for the unique public artwork (“Artist’s Proposal”) which is attached as Exhibit A-1; and

WHEREAS the Artist’s Proposal was selected from a pool of qualified artists by a panel of community members, art professionals, and County staff as the most qualified to create certain artwork for the Site; and

WHEREAS Artist will create a unique public artwork as described in this Agreement, including Exhibits (the “Artwork”); and

WHEREAS the members of the Commission have approved the Artist to proceed with the Artwork; and

WHEREAS the Commission has designated the Alameda County Arts Commission Office, (“ACAC Office”) to manage the Art Project and this Agreement.

**I. ARTWORK DEVELOPMENT**

Now therefore, the parties agree:

**1. Work To Be Completed.** The Artist shall complete the Artwork consistent with development of the Art Project as approved by the Commission specified in this Agreement, including all Exhibits, and as may be modified by this Agreement. If there is any conflict between Exhibit A-1 and any subsequent Exhibit to A (e.g. Exhibit A-2) the provisions and requirements of the subsequent Exhibit(s) shall prevail.

**2. Location.** The location of the Artwork shall be at the Site, or as otherwise determined by the County at its sole discretion. The County retains the right in its sole discretion to relocate the Artwork or not use or display the Artwork. Artist shall deliver the completed Artwork to the individual and location(s) directed by County, which may or may not be the Site.

**3. Cooperation.**

a. The County shall organize and schedule meetings and presentations and provide the Artist written instructions for the information and materials that will be required. The ACAC Office will assist the Artist throughout the Art Project.

b. Artist agrees to cooperate in good faith with the County, including the ACAC Office, the Commission, and their representatives, and others, and to be available as reasonably necessary for consultation during all stages of the Art Project. Artist will participate in all design review processes, including those contained in Exhibit A.

c. There may be other individuals and entities performing work related to the Construction Project, including individuals that may be performing work connected to the Art Project (“Other Workers”). Artist shall not unreasonably impede, hinder or delay any Other Worker in the performance of their work. Artist shall act professionally



at all times, including communications involving the Construction Project and Art Project. Artist agrees to use best efforts to resolve any disputes with Other Workers. In the event of a conflict between Artist and Other Workers, County has the sole discretion to resolve the conflict.

**4. Design Development.** Artist shall provide the Design Development services as outlined in Exhibit A. Artist must obtain model releases for all recognizable figures depicted in the Artwork and supply copies of the releases to the ACAC Office before the Artwork is created. The model release must be acceptable to the ACAC Office, ACAC Office will provide acceptable sample model release for the Artist's use.

**5. Budget.** Artist shall provide a Budget for costs related to the Artwork, unless specifically waived in writing by ACAC Office, including, but not limited to: itemized costs for materials including applicable sales tax; off-site fabrication costs if fabrication is the responsibility of Artist; costs for assistants; Artist's time for coordination, fabrication, supervision and installation and/or consultation on those items; itemized estimates of General Contractor and sub-contractor costs; permits or other fees; insurance; studio and operation expense directly related to the Artwork; consultants' fees; communications; Artist's travel; transportation of the Artwork to Site or other location to be determined; and itemized installation costs. The Artwork Budget shall also include a contingency to cover unforeseen costs that may arise. All budget items and costs are the sole responsibility of Artist.

**6. Maintenance Plan.**

a. Artist shall provide a Maintenance Plan for the Artwork, unless specifically waived in writing by ACAC Office. The Maintenance Plan must include a detailed description of:

- anticipated future maintenance requirements;
- a recommended maintenance schedule;
- anticipated and required care and/or replacement/upgrade of any part of the Artwork and associated moving parts or equipment including any staff time involved in displaying or operating Artwork and the frequency of such staff involvement; and
- written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the Artwork.

b. The Artwork must be durable, taking into consideration if the Site is an unsecured space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Artist shall ensure that all maintenance requirements are reasonable in terms of time and expense.

c. The Artist shall be responsible for making any updates or clarifications to the Maintenance Plan if the maintenance requirements and estimates change over the course of the project.

d. Artist shall provide ACAC Office with a description of all equipment and machinery needed to operate the Artwork (if applicable) and any anticipated or required staffing, supervision or operational needs.

e. An updated Maintenance Plan must be submitted and accepted by ACAC Office prior to the issuance of the Final Notice of Completion of Services.

f. If requested by the ACAC Office, the Artist shall obtain a recommendation from a qualified art conservator on the maintenance of the Artwork and the Artist shall provide a written copy of the conservator's recommendations to the ACAC Office.

**7. Schedule.** The Artist shall complete the Artwork according to the schedule set out in Exhibit A. Time is of the essence in the performance of the Artwork by Artist.

**8. Changes**

a. The goal for the Artwork is a product which represents the creative talents of Artist and satisfies the specifications of the County. The parties recognize that they must consult closely during all stages of development of the Artwork, including without limitation, during design development, fabrication and installation of the Artwork in order to accomplish these goals and that changes to the Artwork may become desirable as the Art Project progresses.

b. Certain specifications of the Artwork, such as, but not limited to, the size, color, design, and material (including grade of the material), of some of the elements of the Artwork may not be identified in Exhibit A. To the extent that any specification for the Artwork is not identified in Exhibit A, Artist shall seek ACAC Office's prior written approval of these specifications before commencing with the Artwork.

c. The parties recognize that the shift in scale from preliminary drawings and models to a full-scale work may require artistic adjustments. Artist has the right to make minor adjustments to the Artwork as Artist deems aesthetically necessary.

d. Any deviation from the Artist's Proposal (Exhibit A-1) in the scope, design, color, size, material, utility and support requirements, texture or location of the Artwork must be approved in writing and in advance by ACAC Office before Artist proceeds with completion of the Artwork. This includes but is not limited to any change that may affect the fabrication, schedule of delivery or installation of the Artwork, preparation of the Site or maintenance of the Artwork.

e. In no event may any adjustment or any change in design increase the Artwork budget or entitle the Artist to additional compensation or payment except as specified in Exhibit B.

## **9. Review, Inspections and Reports:**

a. Interim progress reviews are required by this Agreement. At reasonable times and with advance notice to Artist, County has the right to review the work in progress and to require and receive prompt progress reports from Artist. County shall have the right to visit any facility used by the Artist for the Artwork at reasonable times to inspect and review its progress. In-person meetings may also be held at another location, as directed by County. Artist shall supply digital images of the Artwork in-progress for review if requested by ACAC Office.

b. In the event that any of the elements of the Artwork are to be fabricated at a location away from the Site (collectively, "Off-Site Elements"), the County shall have the right to visit and inspect each of the Off-Site Elements before they are transported to the Site. Artist shall notify ACAC Office in writing when each element of the Artwork is ready for inspection, prior to transporting the Off-Site Element to the Site ("Inspection Notice").

i. After receipt of the Inspection Notice for each Off-Site Element, and, if conducted, inspection of the Off-Site Element, the ACAC Office, will inform Artist in writing either (1) the Off-Site Element has been completed in accordance with the terms of this Agreement and the Off-Site Element it may be transported to the Site ("Transportation Notice to Proceed") or (2) there are defects or deficiencies in the Off-Site Element which must be corrected prior to transportation to the Site, ACAC Office may, at its sole discretion, determine to delay inspection until the Off-Site Element is delivered to the Site or other location.

ii. Delivery. Upon issuance of the Transport Notice to Proceed, Artist shall deliver the Off-Site Elements to the Site or other location as determined by the ACAC Office. Artist shall coordinate with the ACAC Office regarding the time, place and manner of delivery of the Artwork. The County shall have the right to inspect the Off-Site Elements at the time each Off-Site Element arrives in order to determine whether it has been damaged in transit or whether it deviates in any way from the Off-Site Element approved for transportation by the ACAC Office prior to ACAC Office's issuance of the Transport Notice to Proceed, if the ACAC Office elected to inspect off-site, or whether it meets the terms of this Agreement in the event ACAC Office elected to delay its inspection of the Off-Site Element until it arrived at the Site. Artist shall promptly remedy to the satisfaction of the ACAC Office any defect or damage to the Off-Site Element or any deviations from the Off-Site Elements as approved by ACAC Office in the Transport Notice to Proceed.

**10. Artist's Completion Notice.** Artist shall provide written notice to the ACAC Office that the Artwork has been completed ("Completion Notice"). County may, in its sole discretion, visit the Artist's studio to view the completed Artwork. Artist recognizes and agrees that County may review the Artwork and make recommendations for revisions and that additional studio visits may be required by County.

## **11. County's Acceptance or Defect Notice**

a. Upon ACAC Office's receipt and review of the Artist's Completion Notice, ACAC Office shall notify Artist in writing that the Artwork is completed ("Notice of Acceptance of Artwork") or that the Artwork fails to meet the requirements of this Agreement ("Defects Notice").

b. The issuance of a Notice of Acceptance of Artwork shall mean that the County acknowledges completion of the Artwork in substantial conformity with the design. Title to the Artwork from the Artist shall pass to the County upon issuance by the ACAC Office of its Notice of Acceptance of Artwork.

c. Upon ACAC Office's receipt and review of the Artist's Final Maintenance Documents and Final Written Documentation and when all other services related to the Artwork have been completed, ACAC Office shall notify the Artist in writing ("Final Notice of Completion of Services").

d. If the County has determined that the Artist has failed to perform as required by this Agreement, the County shall issue a written Defects Notice to the Artist. That Defects Notice shall identify those services or other conditions or requirements of the Agreement that the Artist has failed to perform. Artist shall promptly remedy, at Artist's own cost, those failures, to the satisfaction of the County.

e. If the Artist disputes the Defects Notice, in whole or in part, the Artist shall submit his or her written response to the County within ten (10) days of receipt of the Defects Notice.

f. If there is resolution of any disputes that arise under paragraph (d) of this section, the ACAC Office shall notify the Artist of its final acceptance of the Artwork pursuant to paragraph (b).

g. If the parties are unable to resolve any disputes that arise under paragraph (d) of this section, The County shall have the right to terminate this Agreement immediately and shall have no further obligations under this Agreement. This right to terminate is in addition to any other rights provided by law.

**12. Final Maintenance Documents.** Artist shall provide the ACAC Office with an updated and accurate Maintenance Plan for the Artwork before issuance of the Final Notice of Completion of Services. Artist shall deliver all information necessary for the County to properly care for and maintain the Artwork, including information regarding the physical make-up of the Artwork, methods and materials, and information about the artistic intent of Artist in the design, fabrication and installation of the Artwork. Artist shall provide the Final Maintenance Documents within thirty (30) days after the submitting the Completion Notice. Unless otherwise agreed in writing upon issuance by ACAC Office of a Final Notice of Completion of Services the County will be responsible for the care and maintenance of the Artwork

**13. Final Written Documentation.** Artist shall deliver a written description of the Artwork before issuance of the Final Notice of Completion of Services. This information may be used for educational, public relations, promotional and other noncommercial purposes. Artist shall provide the Final Written Documentation within thirty (30) days after the submitting the Completion Notice. The written description must include the following:

- a. Artwork information including:
  - Name of Artist(s) - as it should appear in all printed materials
  - Artwork Title
  - Medium
  - Dimensions
- b. Short description of the artwork including:
  - Theme, concept
  - What Artist hopes the viewers will learn or experience when looking at the Artwork.
  - Description of major elements (i.e. objects, people, etc.)
  - Description of process that may be informative to the viewer
- c. Brief Artist biography, please include the following:
  - Date and location of birth
  - Where Artist currently resides
  - If you do not live in Alameda County, please indicate location of studio or employment that qualified you as an "Alameda County Artist", if applicable
  - Education related to art-making
  - Points of significance in the development of Artist's career
  - General philosophy or consistent ideas when making Artwork
  - How did Artist first become involved in making art?
  - What does Artist hope to achieve by making art?

**14. Compensation.**

a. The compensation to be paid to Artist ("Total Price") is set forth in Exhibit B, "Compensation." Such payment shall constitute full and complete compensation for work performed and services rendered, including, but not limited to, professional services and expenses for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals.

b. In the event that the ACAC Office approves a modification of the Artwork to be provided by the Artist which results in cost savings including, but not limited to, the deletion of an element of the Artwork, the substitution of lesser quality materials with no offsetting upgrade of other materials, and the reduction in the Artwork's size, the cost savings attributable to the modification will not be paid to the Artist.

c. No payment to Artist for any work performed or services rendered shall constitute a waiver or release by County of any claims, rights or remedies County may have against Artist under this Agreement or by law, nor shall such payment constitute a waiver by the County of any failure or fault of Artist to satisfactorily perform the services as required under this Agreement.

d. In the event that County determines that work for which it has been invoiced does not meet the terms of this Agreement, County may withhold payment to Artist. In the event County withholds any payment, County shall provide detailed written notice to Artist, via certified mail, return receipt requested, specifying the failure of performance for which County intends to withhold payment. Within fifteen (15) days of Artist's receipt of County's notice, Artist shall

cure County's objection or if County's objections are not capable of cure within fifteen (15) days, Artist shall commence to cure County's objections and then promptly proceed to complete the cure. If Artist disputes County's determination that the Agreement's specifications have not been met, within fifteen (15) days of Artist's receipt of County's notice, Artist shall notify County in writing, via certified mail, return receipt requested. In such event, County shall make reasonable efforts to resolve the dispute; however, the final determination as to whether Artist has complied with the terms of this Agreement will remain with County.

## II. ARTWORK COMPLETION

**15. Commitment by County.** County agrees that unless Artist requests to the contrary in writing, all references to the Artwork and all representations (as set forth in section 28 below) of the Artwork will credit the Artwork to Artist.

**16. Artwork Plaque.** County may at its option fabricate and install an identification plaque for the completed Artwork, which will be a two-dimensional sign that will include the following information: Artist's name, year in which Artwork is completed, Artwork title, funding agency and commissioning agency. No other information will be included on the Artwork Plaque unless the ACAC Office authorizes any modifications or additions. The Artwork Plaque if one is used will be installed at a location in proximity to the Artwork which shall be determined by County at its sole discretion.

**17. Artist's Commitment.** Artist agrees that all formal references to the Artwork shall include the following credit: "From the Collection of the County of Alameda commissioned by the Alameda County Arts Commission," or other language agreed to by the County.

**18. Artist Availability.**

a. After the Notice of Acceptance of Artwork, the Artist shall be available to attend any public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to dedication of the Artwork.

b. During such public presentations by the Artist, the Artist shall acknowledge the County's role in funding the Artwork.

c. The County shall be solely responsible for coordinating public information materials and activities related to public presentations.

d. This paragraph shall survive termination of the Agreement.

**19. County Art Collection.** Upon issuance of the Final Notice of Completion of Services, the County shall accession the Artwork into the County Art Collection.

**20. Repairs and Restoration.** County shall have the right to determine when and if repairs and restorations to the Artwork will be made. It is the policy of County to consult with Artist regarding repairs and restoration which are undertaken during Artist's lifetime when that is practical. In the event that County makes repairs or restoration not approved by Artist, Artist shall have the right, at Artist's sole option and only remedy, to have Artist's association with Artwork severed.

**21. Standards of Repair and Restoration.** Although the County strives to maintain the County Art Collection in good repair and condition, County is not required by this Agreement to maintain the Artwork to any particular standard. County may allow the Artwork to deteriorate in accordance with the Artwork's life span, if deemed appropriate by County or if County lacks sufficient funds for required maintenance and/or conservation. If the Artwork suffers deterioration, County shall have sole discretion to determine whether to (a) remove the Artwork from display, (b) replace any portion of the Artwork, (c) translate any component into new media, (d) maintain the Artwork on display despite its deteriorated condition or (e) take any other action or combination of actions regarding the Artwork.

**22. Life Span.** The anticipated life span of the Artwork is set forth in the Exhibits. After that time, the County in its sole discretion may re-evaluate the Artwork to determine if it retains its identity as a work of art and, if not, whether to take appropriate action, including the possibility of destroying the Artwork. If no life span is specified in the Exhibits or pursuant to a subsequent Agreement modification, the anticipated life span of the Artwork shall be twenty-five (25) years. If prior to that time County determines that, through decay, vandalism or other forces, the Artwork has lost its integrity to the point where it should be destroyed, the County shall first make efforts to offer the Artwork to Artist provided Artist

pays for all costs and expenses, including but not limited to costs, associated with dismantling, removal, storage or transportation of the Artwork.

**23. County Right to Transfer Artwork.** County shall have the right to donate or sell the Artwork at any time. Before exercising this right, County may at its sole option provide written notice to Artist, at Artist's last known address, providing the Artist the option to purchase the Artwork for the greater of (i) the Total Price or (ii) the amount of any offer which County has received for the purchase of the Artwork. In addition to that greater amount, Artist must agree to pay all costs associated with the dismantling, removal and transportation of the Artwork from the Site. That notice shall provide the Artist with thirty (30) calendar days from the date of the notice to provide to the County the Artist's written, unconditional acceptance of that option.

### **III WARRANTIES, COPYRIGHT AND INDEMNIFICATION**

**24. Warranties of Title.** Artist represents and warrants that:

- a. The Artwork is solely the result of the artistic efforts of the Artist.
- b. Artist has not previously sold, assigned, licensed, granted, encumbered, or utilized the Artwork, the Artwork's design or any element thereof, in any manner that may affect or impair the rights granted pursuant to this Agreement.
- c. All work created or performed by Artist under this Agreement, whether created by Artist alone or in collaboration with others, is wholly original with Artist and will not infringe upon or violate the rights of any third party.
- d. Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.
- e. The Artwork is and will remain free and clear of any liens.
- f. The Artwork will be and will remain a unique edition unless otherwise agreed to in writing by the County.

**25. Warranties of Quality and Condition.**

- a. Artist represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for three years after the date of issuance of the Final Notice of Completion of Services.
- b. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety. Artist further warrants that the Artwork shall not constitute any threat to the safety of persons or property when used in the manner for which it is designed.
- c. The Artist represents and warrants that reasonable maintenance of the Artwork will not require in excess of those procedures described in the Maintenance Plan submitted by the Artist.
- d. If during the Life Span of the Artwork, the County observes any breach of any Artist warranty that is curable by the Artist, the Artist shall, at the request of the County, cure the breach promptly and consistent with professional conservation standards, at no expense to the County, and to the County's satisfaction.
- e. If after the Life Span of the Artwork the County observes any breach of any Artist warranty described in this Agreement that is curable by the Artist, the County shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist's lifetime. The Artist shall have the right of first refusal to make or supervise repairs or restorations. Should the Artist and County be unable to reach agreement on a reasonable fee or if the Artist is unavailable or unwilling to cure, the County may seek the services of a qualified restorative conservator and maintenance expert.
- f. If within three years the County observes a breach of any Artist warranty described in this Agreement that is not curable or cured by the Artist, the Artist is responsible for reimbursing the County for damages, expenses, losses, costs or fees incurred by the County as a result of the breach.
- g. Artist represents and warrants that general routine cleaning and repair, within the context of foreseeable exposure to the elements and general wear and tear, will maintain the Artwork in an acceptable standard of public display during its Life Span. The Artwork will not experience irreparable conditions, including but not limited to mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.
- h. Artist represents and warrants foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display during its Life Span.

i. To the extent the Artwork incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties to the County.

**26. Copyright General.**

- a. Except as provided in this Agreement, Artist shall retain all copyrights in the Artwork under the Copyright Act of 1976, 17 U.S.C. Sections 101 et seq. as the sole author of the Artwork for the duration of the copyright.
- b. Artist may, at Artist's option, place a copyright notice on the Artwork in the form and manner required to protect copyrights in the Artwork under United States copyright law. If the copyright is registered with the U.S. Copyright Office, Artist shall provide County with a copy of the application for registration, the registration number and the effective date of registration.

**27. Title and Ownership.** Title and ownership to the Artwork shall be exclusively with the County upon the ACAC Office issuing its Notice of Acceptance of Artwork. The County shall have the exclusive right to use and display the Artwork at the Site or any other location selected by County. County shall be entitled not to display and may discard the Artwork as it deems necessary or appropriate.

**28. Representations.**

- a. Artist authorizes County to make, and to authorize the making of, photographs and other two-dimensional representations of the Artwork for educational, public relations, promotional and other noncommercial purposes.
- b. For the purposes of this Agreement, the following are deemed to be representations for noncommercial purposes: representation in exhibition catalogues, books, slides, digital photographs, postcards, correspondence, posters, calendars, websites, email, announcements, and social media; placement in art magazines, art books and art and news sections of newspapers; in general books and magazines not primarily devoted to art but of an educational, architectural, historical or critical nature; video not intended for commercial distribution; television from stations operated for educational purposes or on programs for educational purposes from all stations.
- c. If applicable, on any and all such representations, County shall place a copyright notice, naming the same person or persons listed as the copyright owners on the copyright registration with the U.S. Copyright Office, in the form and manner required to protect the copyrights in the Artwork under the United States copyright law, provided that Artist has registered a copyright in the Artwork with the U.S. Copyright Office.

**29. Indemnification by Artist.**

- a. To the fullest extent permitted by law, Artist agrees to protect, defend, indemnify and hold harmless County, its officers, agents and employees, from and against all liability, claims, lawsuits, actions, expenses, costs and damages, including reasonable attorney fees incurred in the defense thereof (collectively, "Liabilities") arising out of or related to the acts or omissions of Artist or his/her contractors, subcontractors, employees or agents in the performance of this Agreement. The only exception to the obligations imposed by this provision are for those Liabilities that are caused solely by the negligence or willful misconduct of County, its officers, agents and employees.
- b. To the fullest extent permitted by law, Artist also agrees to protect, defend, indemnify and hold harmless the County, its officers, agents and employees from all liability, claims, lawsuits, actions, expenses, costs and damages, including reasonable attorney fees incurred in the defense thereof, related to any assertion or allegation that work performed under this Agreement by Artist, or Artist's contractors, subcontractors, employees or agents constitutes an infringement of any patent, copyright, trademark, trade name or other proprietary right of any party.

**30. Survival.** This entire section, III. Warranties, Copyright and Indemnification, containing the representations, warranties and indemnity provisions shall survive the termination or completion of this Agreement.

**IV. REMOVAL, ALTERATION OR RELOCATION**

**31. Location of Artwork.** The County, having expended considerable public funds to commission the Artwork, intends to display the Artwork at the Site as originally created by Artist and to maintain the Artwork in good condition. The County, however, shall preserve complete flexibility to operate and manage County property in the public's interest. Public artworks commissioned by the County are sometimes integrated into their site, such that they become an integral, permanent and site-specific part of the building's architecture or landscaped environment and removal of the Artwork would result in significant changes to the Artwork and the building's architecture. Therefore, County retains the absolute right to alter the Artwork in County's sole judgment, which may include removal or destruction of the Artwork. For example, County may alter the Artwork to eliminate hazard, to comply with the ADA, to otherwise aid County in the

management of its property and affairs for any other reason. If, during or after the term of this Agreement, County finds the Site to be inappropriate, or another location to be preferable, County has the right to install the Artwork at an alternate location that County chooses in its sole discretion. If the Artwork is free-standing such that it can be removed without significant damage to the Artwork or the Site the County shall take reasonable precautions to minimize alteration of the Artwork during removal.

**32. Alteration or Relocation.** With respect to the Artwork produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, Artist waives any and all claims and rights against County, its officers, agents, employees, successors and assigns, arising under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same or similar nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. If the Artwork is incorporated into a building such that the Artwork cannot be removed from the building without alteration of the Artwork, Artist waives any and all such claims against any future owners of the Site, and its agents, officers and employees, for alteration of the Artwork.

**33. Notice to Artist of Alterations.** If County intends to take any action with respect to the Site or the Artwork that would alter the Artwork, other than routine cleaning and maintenance, the following procedures shall apply:

a. Notice. Where time permits, County shall make reasonable good faith efforts to notify Artist at least 20 calendar days prior to authorizing any alteration of the Artwork, at the last phone number or address provided by Artist to the County. Where time does not permit prior to alteration of the Artwork – for example, in cases of public hazard, accident or unauthorized alteration – County shall make a reasonable effort to notify Artist after such alteration.

b. Consultation. After receiving such notice, Artist shall consult with ACAC Office to determine whether the Artwork can be restored or relocated and attempt to come to a mutually agreeable plan for disposition of the Artwork. If County intends to remove the Artwork, Artist shall consult regarding methods to minimize or repair any alteration to the Artwork caused by such removal and the potential costs of such removal. Such consultation shall be without charge by Artist unless otherwise specifically agreed in writing by the Artist and the ACAC Office.

**34. Restoration.** If the Artwork is altered, with or without prior notice to Artist, and County intends to maintain the Artwork on display, County shall make a reasonable good faith effort to engage Artist in the restoration of the Artwork and to compensate, through a written agreement, Artist for Artist's time and efforts. However, County has no obligation under this Agreement to restore the Artwork to its original condition, to compensate Artist for any restoration work, or to maintain the Artwork on display. If Artist fails or refuses to negotiate with County in good faith with respect to any restoration, County may contract with any other qualified art conservator or artist for such restoration.

**35. Removal by Artist.** Where practical and where time permits, if County intends to take action that will destroy or significantly alter the Artwork, such as destruction of all or part of the Site and County determines that it will not remove the Artwork itself, County may allow the Artist an opportunity to remove the Artwork, at Artist's sole expense. Artist shall have 10 business days from the date of notice to advise the County in writing of his/her election to remove the Artwork. If Artist elects to remove the Artwork, Artist shall have up to, but no more than, 30 days after receipt of the County's notice to complete the removal of the Artwork without any damage to the Site. If Artist elects to remove the Artwork under this provision, title to the Artwork shall revert to Artist upon commencement of removal work by Artist or Artist's agents. If Artist fails to make an election in a timely manner or fails to complete timely removal the Artwork, the County may alter or remove the Artwork in any manner, including destroying it, in County's sole discretion.

**36. Remedies.** If County breaches any of its obligations under this Section, Artist's sole remedies shall be limited to the following:

a. If County inadvertently fails to provide a required prior notice of alteration, County will provide notice as soon as it discovers the omission, and before alteration of the Artwork if that remains possible.

b. If County alters the Artwork without providing Artist notice prior to alteration in accordance with the Notice to Artist of Alterations section above, Artist shall be given the first right of refusal to restore the Artwork at the same location, if County will be returning the Artwork to the Site, and County shall make reasonable efforts to provide funding for the restoration. If County funds cannot be made available after reasonable efforts are made to secure such funding, Artist may, but is not obligated to, restore the Artwork at Artist's sole expense. If Artist elects not to restore the

Artwork, County may retain another artist or conservator to restore it, or may alter the Artwork in any manner, at County's sole discretion.

c. If County Alters the Artwork without Artist's consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of the Artwork in accordance with California Civil Code §987(d) and 17 U.S.C. §106A(a)(2).

**37. Third Parties.** Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, successors or assigns of County, Artist retains Artist's moral rights in the Artwork, as established in the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 and 989), or any other local, state, federal or international moral rights laws that protect the integrity of works of art. Accordingly, nothing herein shall prevent Artist from pursuing a claim for alteration of the Artwork against a third party who is not an officer, employee, agent, successor or assign of County or working at the direction of the County. County has no obligation to pursue claims against third parties to remedy or prevent alteration of the Artwork. However, as owner of the Artwork, County may pursue claims against third parties for damages or to restore the Artwork if the Artwork has been altered without County's authorization.

**38. Survival.** This entire section IV. Removal, Alteration Or Relocation shall survive the termination or completion of this Agreement.

## V. GENERAL PROVISIONS

**39. Insurance:** Artist shall at all times during the term of the Agreement maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of Artist's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Artist's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Artist's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self insurance shall be called upon to protect it as a named insured. Any subcontracts entered into by Artist shall require the subcontractor to comply with the insurance requirements of this Agreement.

**40. Risk of Loss.** Until the Artwork is formally and finally accepted by County upon issuance of the written Notice of Acceptance of Artwork, any damage to, theft or vandalism to, or acts of nature affecting the Artwork are the responsibility of Artist, including, but not limited to, any loss occurring during the fabrication, storage, transportation, or delivery or installation of the Artwork.

**41. Artist as Independent Contractor.** Artist's relationship with County is strictly and solely that of independent contractor. No relationship of employer and employee is created by this Agreement. Artist is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Artist nor for any obligations or liabilities incurred by Artist. Nothing contained in this Agreement shall be construed to place County and Artist in the relationship of partners. Artist acknowledges and agrees that Artist shall not represent or hold itself out as authorized agent of County with power to bind in any manner.

**42. Personnel and Subcontractors.**

a. Artist has, or will secure at Artist's expense, all assistance and workers required to perform and complete all Artwork. All persons retained (whether paid or volunteer) by Artist shall possess licenses and permits as necessary.

b. If any part of Artwork depends upon the work of any other person for proper execution or results, Artist shall, prior to proceeding with such work, promptly report in writing to County any discrepancies or defects in such other work which Artist is aware of, or which can be identified upon reasonable inspection, that would render it unsuitable for proper execution and results. Failure to so notify County shall constitute the Artist's acceptance of such work as suitable.

c. Pursuant to Section 1861 of the Labor Code, Artist represents that it/he/she is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and Artist shall comply with that and all Labor Code provisions as applicable provisions before commencing the performance of the work of this Agreement.



d. This section intentionally omitted.

**43. Termination on Death.** Except for payments due and payable to Artist pursuant to Exhibit B at the time of death, Artist's rights under this Agreement cease with Artist's death and do not extend to Artist's heirs, successors or assigns. Any copyright held by Artist as the sole author shall continue pursuant the Copyright Act of 1976, 17 U.S.C. § 101 et seq., the life of the author plus 70 years as of the Artwork.

**44. Authorship and Destruction.** To the extent permitted by law, the provisions of this Agreement prevail over laws regarding authorship and destruction of art, including without limitation, California Civil Code Section 987 and Title 17 U.S.C. Section 106A et seq.

**45. Assignability.**

a. The parties agree that the expertise and experience of Artist are material considerations for this Agreement. Except as may be specifically authorized under this Agreement, Artist shall not assign or transfer any interest in this Agreement nor the performance of any of Artist's obligations hereunder. Any attempt by Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by ACAC Office. However, nothing in this section shall be deemed to prevent Artist, at Artist's sole expense, from relying on or utilizing the services of such other consultant or contractor as Artist may require to complete the Artwork or other services provided for in this Agreement so long as the ACAC Office has provided prior written approval of such consultant or contractor.

b. County shall have the right to assign or transfer any and all of County's rights and obligations under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the County.

**46. Compliance With Law.** Artist shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

**47. Nondiscrimination.** Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, marital status or national origin, in connection with or related to the performance of this Agreement.

**48. Gifts.** Artist agrees to abide by County's prohibition against the acceptance of any gift by a County officer or designated employee. Artist agrees not to offer any County officer or designated employee any gift. The offer or giving of any gift prohibited by the County shall constitute a material breach of this Agreement by Artist. In addition to any other remedies County may have in law or equity, County may terminate this Agreement for such breach.

**49. Use of County Property.** Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.

**50. Termination With or Without Cause.** County has and reserves the right to suspend, terminate or abandon this Agreement with or without cause at any time upon giving written notice to the Artist. In the event that the County should abandon, terminate or suspend the Artist's work for any reason including lack or absence of funding, and absent breach by Artist or County not accepting any part of Artwork, the Artist shall be entitled to payment for services actually performed prior to the date of notice to the Artist that the County has or will suspend, terminate or abandon this Agreement.

**51. Remedies.**

a. The remedies under this Agreement are cumulative and are in addition to the rights available to the parties at law or in equity.

b. Without limiting the generality of subsection A, above, if Artist breaches this Agreement, County has the right to terminate this Agreement and, at its option, proceed with the fabrication and installation of the Artwork without utilizing the services of the Artist. If County exercises its option to proceed, then County, upon Artist's written request will refrain from referencing the Artwork as the work of Artist.

c. If County notices Artist of its intent to terminate this Agreement, Artist has the option to purchase back the work if each of the following conditions are met:

i. Within 5 days of receiving the notice from the County, Artist provides written notice to the ACAC Office that Artist intends to purchase back all rights to the Artwork.

- ii. At the time of notice by the Artist, the Artwork, as determined by County, is not substantially completed.
- iii. Artist returns all amounts paid by County under this Agreement within 5 days of the notice of termination, or such other reasonable time as agreed to by County. If the full amount is not timely repaid to County, it may exercise its option to proceed with any remedy it has under the Agreement and by law, however, upon Artist's written request will refrain from referencing the Artwork as a work created by Artist.

**52. Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

**53. Notices.**

a. All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox.

Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (e.g. Federal Express/ United Parcel Service) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

b. Submittals, requests, notices and reports (collectively, "Notices") required under this Agreement shall be delivered personally or through the mail, postage prepaid, to the addresses stated below. Addresses for purpose of giving notice are as follows:

For Artist:

**Bhavna Misra**



For County:

Alameda County Arts Commission  
1106 Madison, Suite 336  
Oakland, CA 94607  
Phone: (510) 208-9646

c. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

d. Any party may change its address by giving the other party notice of the change in any manner permitted by this Agreement.

e. Artists agree for the duration of Artists' life, to provide ACAC Office with Artists' current mailing address, phone number and e-mail address in the event Artists' address, phone number or e-mail address, as specified above, should change.

**54. Governing Law and Venue.** This Agreement shall be governed by the laws of the State of California. In the event that a suit shall be brought related to this Agreement, venue shall be Alameda County Superior Court or the United States District Court for the Northern District of California, Oakland, California.

**55. Headings.** Headings herein are for convenience of reference only and shall in no way affect interpretation of the

Agreement.

**56. Advertising or Publicity.** Artist shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance. Artist may identify and include the Artwork, including identifying the County as owner and the location of the Artwork, on Artist's resume or other listings of professional work.

**57. Assurance of Performance.** If at any time ACAC Office believes Artist may not be adequately performing its obligations under this Agreement or that Artist may fail to complete the Artwork as required by this Agreement, ACAC Office may request from Artist prompt written assurances of performance and a written plan acceptable to ACAC Office, to correct the observed deficiencies in Artist's performance. Artist shall provide such written assurances and written plan within ten (10) calendar days of its receipt of ACAC Office's request and shall thereafter diligently commence and fully perform such written plan. Artist acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.

**58. Amendments for Artwork.** This Agreement may be amended by the parties for adjustments or modifications are needed to the artwork design and scope, including modification of the Scope of Work, Exhibit B, and any related items. The Commission Director may approve and execute amendments for the purpose of adjustments or modifications to the artwork design and scope.

**59. Entire Agreement.** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between County and Artist relating to the subject matter of this Agreement. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

**60. Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

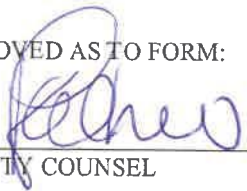
**61. Artist Collaboration.** Each person or entity who or that is collectively referred to herein as "Artist" has agreed to collaboratively work with, partner or otherwise associate with each other person or entity who is collectively identified as "Artist." As such, and notwithstanding any agreement between those persons or entities to the contrary, each such person and entity who signs this Agreement agrees to be jointly, severally and individually responsible to the County to perform the duties and obligations provided for in this Agreement and for the acts or omissions of each of those other persons or entities."

**62. Force Majeure.** Neither party shall be deemed to be in default in the performance of the terms of this Agreement if a party is prevented from performing by causes beyond its control, including without being limited to: acts of God, including earthquakes; interference, laws, regulations, rulings or decisions by a governmental agency, or a board or commission; delays in construction or completion of the Construction Project; or catastrophe resulting from flood, fire, explosion. If any of the stated contingencies occur, the party delayed by force majeure shall immediately give the other party written notice of the cause of delay. The party delayed by force majeure shall use reasonable diligence to correct the cause of the delay, if correctable.

\_\_\_\_\_  
PRESIDENT  
BOARD OF SUPERVISORS

\_\_\_\_\_  
\_\_\_\_\_  
Address \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
COUNTY COUNSEL

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

## EXHIBIT A-1 ARTIST'S PROPOSAL

**Bhavna Misra**

**Description of Concept/ Theme:** I am proposing a collection of artworks “*Celebration of Colors*”, a series of landscapes, painted in full palette color schemes. The proposed oil paintings are the result of creative compositions of contemporary California landscapes using traditional yet timeless oil medium. These paintings are inspired by the range of colors found in nature. With a focus on regions of bay area and surroundings, some site appropriate national parks’ landscapes are also included. I hope the viewers would relate to local scenes and popular nearby vacation destinations. Presented collection of work highlights the hills and parks of East Bay region such as Fremont, Newark, Sunol, Oakland, wilderness of Sunol, and the beach views near Albany and Alameda. Through my landscapes, I hope to express the essence of the environment by breaking it down to its very necessary components. No single work can hope to simplify the complex spirit of a landscape, much less the infinitely well-organized ecology that sustains it all. So, in an attempt to capture this complicated vastness, I try to elaborate on the essential elements through lyrical color schemes. By presenting nature in its purest, raw form, I invite the viewer to enjoy the lively colors that surround us and notice the need of protecting our planet and its unconditional beauty.

**Description of Interest:** This proposal is prepared with these points in mind--

1. Audience - Broad appeal to a wide audience of visitors that connect with local and popular regional landscapes and find it appealing
2. Setting - A pleasant visual experience suitable for a welcoming public space
3. Representation – Given the display duration the contemporary work is proposed that will stay relevant for a long time
4. Technique – The work is aimed to appeal general public and art connoisseurs alike
5. Cohesive Body of work – The paintings are unified by thematic relevance of nature genre

### **Process and Material**

My work showcases carefully chosen compositions and respect for accuracy. The paintings display distinct brush-strokes with generous paint in each, rich with vibrant & pure colors. I practice environmentally friendly paints and supplies wherever possible. Except for portraiture, where I pride myself in tight likeness, I often take artistic liberty to represent the objects less formally and employ colors to convey mood and spirit. My preferred medium is oil and I also use pastel, graphite, and watercolors.



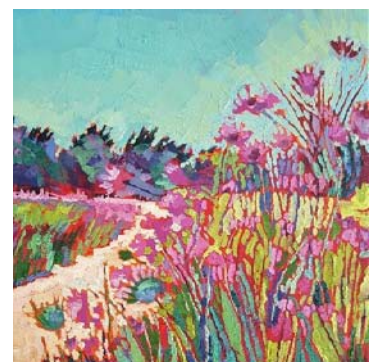
*Super Bloom*



*Quiet Blue*



*Lily Pond*



*Floral Noon*

**Exhibit A-2 intentionally omitted.**

**EXHIBIT A-3**  
**REPRODUCTIONS AND LICENSING**

The County desires to license the right to create Reproductions of the Artwork listed in Exhibit A-1 and Artist hereby grants County such a license.

1. **Site.** The Reproduction of the Artwork will be placed at the following Site:

Alameda County Department of Public Health, 1131 Harbor Bay Parkway, Alameda, California.

2. **Reproduction Plan.** The County shall provide basic information on how the County intends to create the Reproduction (the "Reproduction Plan"). County will include in the Reproduction Plan the number of Reproductions it intends to make, however, County has the right to create fewer or additional Reproductions. The County may request Artist's comments on any revisions to the Reproduction Plan, however, the County has sole discretion to change any or all of the Reproduction Plan including how the Reproduction will be created.

The County intends to make one Reproduction of each Artwork using dye-infused metal imaging.

The County intends to make the Reproductions in the following sizes. All sizes are approximate and the County has the right to alter the size of any Reproduction.

- a. *Floral Noon*: 36" x 36"
- b. *Lily Pond*: 36" x 36"
- c. *Quiet Blue*: 36" x 36"
- d. *Super Bloom*: 36" x 36"

The anticipated life span of each Reproduction is 25 years.

Artist will deliver the Artwork to a location and at a time provided by the ACAC Office so that it may be photographed and digitized. Following the completion of the photography, Artist will promptly (within 3 business days) pick-up the Artwork. The high resolution digital images will only be used to produce the Reproductions as dye-infused metal imaging

The ACAC Office will be responsible for arranging and the costs associated with digitizing the Artwork for use by the fabricator.

The ACAC Office will hire, or arrange for the hiring of, a fabricator and installer of the Reproductions.

Artist will retain ownership of the original Artwork. Paragraph 27 of the main agreement, located in Section III, WARRANTIES, COPYRIGHT AND INDEMNIFICATION is deleted and replaced with the following: Title and Ownership. Title and ownership to the Reproduction of the Artwork shall be exclusively with the County upon the ACAC Office issuing its Notice of Acceptance of Artwork. The County shall have the exclusive right to use and display the Reproduction of Artwork at the Site or any other location selected by County. County shall be entitled not to display and may discard the Reproduction of the Artwork as it deems necessary or appropriate.

3. **Reproduction Fee.** The total amount to be paid to Artist for the Reproduction will be **\$500** per piece of Artwork regardless of the number of actual reproductions created or used. For example, if Artwork consists of two distinct watercolors (images) and the Reproduction Plan is for one of the watercolors to be used to create 20 limited edition prints and the other used to create 60 limited edition prints, Artist will be paid \$1000.

4. **Reproduction Image.** Reproductions will be made in a professional and tasteful manner at the sole and reasonable judgment of the ACAC Office.

5. **Copyright.** Subject to usage rights and licenses granted to County hereunder, Artist shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement.

6. **License.** Artist grants to County, and to County’s agents, authorized contractors and assigns, an unlimited, non-exclusive and irrevocable license to create representations of the Reproductions in all media throughout the universe. This license specifically includes, but is not limited to, the following:

a. Use and Display. County may use and display the representations.

b. Replacement. County may fabricate a replacement Reproduction(s), should the original Reproduction(s) undergo damage beyond repair.

c. Exclusion. The license granted hereunder does not include the right to create any 3-dimensional reproductions of the artwork or any 2-dimensional reproductions on items to be sold to the public (“Merchandise”) such as tote-bags, T-shirts, coffee mugs and similar Merchandise unless specifically identified in the Reproduction Plan that is included on the Agreement, or in a written Amendment to this Agreement signed by the Artist.

7. **Artist Warranty:** Artist warrants that Artist owns all rights to the Artwork and has the sole and complete authority to grant the use of the Artwork to the County.

8. **No Right to Approval.** The Artist agrees that Artist will not make any claims against the County, its officers, agents and employees arising out of use and reproductions. The Artist waives his right to inspect or approve the final draft or finished version of the Reproductions including any written material that may be created in connection therewith.

9. **No Guarantee of Reproduction.** Nothing in this Exhibit or the Agreement is a representation, promise or guarantee that any reproduction of the Artwork will be used part of a Reproduction Plan. Artist shall only be paid a Reproduction Fee if the Artwork is part of a Reproduction Plan and reproductions are actually created and used by County.

10. **Schedule of Activities and Deliverables.**

a. Schedule

Activity or Deliverable	Due Date
1. Evidence of Insurance	Prior to start of work
2. Artist Delivers Artwork to a location provided by the ACAC Office so that it may be photographed and digitized.	TBD
3. Final Written Documentation Due	TBD
4. On-going communications, coordination and meetings with ACAC Office	On-going

b. TBD Dates. Dates to be determined (TBD), if any, shall be determined by County, which may consult with Artist, but County shall have the sole discretion and authority to determine the dates.

c. Modification of Schedule. The parties agree that the schedule of performance set forth above may, by mutual agreement, be modified in writing without the necessity of a formal amendment to this Agreement.

**EXHIBIT B**  
**COMPENSATION**

1. **Fee.** Payment to Artist for Artwork, including all expenses relating thereto, **shall not exceed Two Thousand Dollars (\$2,000.00)**. This fee includes all costs and expenses and is the maximum total amount that may be paid. County will not make any additional payment for Artist's expenses. This amount is not a guarantee of the amount to be paid, as it includes optional work and, if identified in the Budget Summary Chart, a contingency amount.

2. **Budget Summary Chart.**

Description	Not to Exceed Amount
Reproduction Fee (\$500 per Artwork )	\$2,000.00

3. **Interim Payments.** There are no in interim payments for this Contract.

4. **Invoicing Schedule and Interim Payments.** Artists shall submit an invoice, in a format acceptable to County, at the milestones identified below. For each benchmark, the following amounts may, at County's discretion, be paid to Artist following the County's receipt, review and approval of an invoice from Artist indicating that the appropriate milestone as described below has been reached:

Benchmark	Amount
1. Delivery of Artwork to Photographer and Approval of Final Written Documentation	Up to \$2,000.00

Notwithstanding the foregoing, Artist expressly acknowledges that approval of an invoice to permit an interim payment is solely for the benefit of Artist. Unless and until the ACAC Office issues a Final Notice of Completion of Services, no payment and/or interim approval shall constitute acceptance or approval of the Artwork by County nor shall it be construed as a waiver of County's right to require that Artist and the Artwork conform strictly to the terms of this Agreement. Interim payments are at the sole discretion of the County and County retains the right to not make any payment until completion of the Artwork and full acceptance by County.

5. **Tax Identification Number.** No later than the date of Artist's execution of this Agreement, Artist shall provide County with Artist's Tax Identification Numbers and any proof of Artist's Tax Identification Numbers as requested by County.

6. **Sales Tax.** The County and the Artist acknowledge that they are aware of Revenue and Taxation Code section 6365, which, among other things, exempts from sales tax sales to counties of original works of art. The County and the Artist acknowledge that they believe that such exemption applies to the transaction described in this contract.

7. **Timing.** County will make reasonable efforts to make the payments described above to the Artist within thirty (30) days after receipt, review and approval by County of invoices.

8. **Payee.** Payments will be made to: **Bhavna Misra**

9. Intentionally omitted.

10. **Contingency Draw.** There is no contingency draw for this Contract.



**EXHIBIT C**

**COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS**

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
<b>A</b>	<b>Commercial General Liability</b> Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
<b>B</b>	<b>Commercial or Business Automobile Liability</b> All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
<b>C</b>	<b>Workers' Compensation (WC) and Employers Liability (EL)</b> Required for all contractors with employees	WC: Statutory Limits EL: \$1,000,000 per accident for bodily injury or disease
<b>D</b>	<p><b><u>Endorsements and Conditions:</u></b></p> <ol style="list-style-type: none"> <li><b>ADDITIONAL INSURED:</b> All insurance required above with the exception of Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.</li> <li><b>DURATION OF COVERAGE:</b> All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement.</li> <li><b>REDUCTION OR LIMIT OF OBLIGATION:</b> All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties.</li> <li><b>INSURER FINANCIAL RATING:</b> Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.</li> <li><b>SUBCONTRACTORS:</b> Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.</li> <li><b>JOINT VENTURES:</b> If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:             <ul style="list-style-type: none"> <li>– Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above.</li> <li>– Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".</li> </ul> </li> <li><b>CANCELLATION OF INSURANCE:</b> All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation.</li> <li><b>CERTIFICATE OF INSURANCE:</b> Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices provision.</li> </ol>	

**AGREEMENT BETWEEN THE COUNTY OF ALAMEDA  
AND LINDA GASS**

This Agreement is made and entered by and between the County of Alameda (“County”), and **Linda Gass** (the “Artist”).

**RECITALS**

WHEREAS the County desires to obtain unique public artwork designed and executed specifically for the County and associated with **the Alameda County Department of Environmental Health Vector Control Services District Laboratory** (“Construction Project”) to be located at **1131 Harbor Bay Parkway, Alameda, CA** (“Site”); and

WHEREAS the County, through the Alameda County Arts Commission (“Commission”), will manage the art design, fabrication and installation (“the Art Project”) in consultation with the **Alameda County Department of Environmental Health**; and

WHEREAS the Artist submitted a proposal for the unique public artwork (“Artist’s Proposal”) which is attached as Exhibit A-1; and

WHEREAS the Artist’s Proposal was selected from a pool of qualified artists by a panel of community members, art professionals, and County staff as the most qualified to create certain artwork for the Site; and

WHEREAS Artist will create a unique public artwork as described in this Agreement, including Exhibits (the “Artwork”); and

WHEREAS the members of the Commission have approved the Artist to proceed with the Artwork; and

WHEREAS the Commission has designated the Alameda County Arts Commission Office, (“ACAC Office”) to manage the Art Project and this Agreement.

**I. ARTWORK DEVELOPMENT**

Now therefore, the parties agree:

**1. Work To Be Completed.** The Artist shall complete the Artwork consistent with development of the Art Project as approved by the Commission specified in this Agreement, including all Exhibits, and as may be modified by this Agreement. If there is any conflict between Exhibit A-1 and any subsequent Exhibit to A (e.g. Exhibit A-2) the provisions and requirements of the subsequent Exhibit(s) shall prevail.

**2. Location.** The location of the Artwork shall be at the Site, or as otherwise determined by the County at its sole discretion. The County retains the right in its sole discretion to relocate the Artwork or not use or display the Artwork. Artist shall deliver the completed Artwork to the individual and location(s) directed by County, which may or may not be the Site.

**3. Cooperation.**

a. The County shall organize and schedule meetings and presentations and provide the Artist written instructions for the information and materials that will be required. The ACAC Office will assist the Artist throughout the Art Project.

b. Artist agrees to cooperate in good faith with the County, including the ACAC Office, the Commission, and their representatives, and others, and to be available as reasonably necessary for consultation during all stages of the Art Project. Artist will participate in all design review processes, including those contained in Exhibit A.

c. There may be other individuals and entities performing work related to the Construction Project, including individuals that may be performing work connected to the Art Project (“Other Workers”). Artist shall not unreasonably impede, hinder or delay any Other Worker in the performance of their work. Artist shall act professionally at all times, including communications involving the Construction Project and Art Project. Artist agrees to use best efforts

to resolve any disputes with Other Workers. In the event of a conflict between Artist and Other Workers, County has the sole discretion to resolve the conflict.

**4. Design Development.** Artist shall provide the Design Development services as outlined in Exhibit A. Artist must obtain model releases for all recognizable figures depicted in the Artwork and supply copies of the releases to the ACAC Office before the Artwork is created. The model release must be acceptable to the ACAC Office, ACAC Office will provide acceptable sample model release for the Artist's use.

**5. Budget.** Artist shall provide a Budget for costs related to the Artwork, unless specifically waived in writing by ACAC Office, including, but not limited to: itemized costs for materials including applicable sales tax; off-site fabrication costs if fabrication is the responsibility of Artist; costs for assistants; Artist's time for coordination, fabrication, supervision and installation and/or consultation on those items; itemized estimates of General Contractor and sub-contractor costs; permits or other fees; insurance; studio and operation expense directly related to the Artwork; consultants' fees; communications; Artist's travel; transportation of the Artwork to Site or other location to be determined; and itemized installation costs. The Artwork Budget shall also include a contingency to cover unforeseen costs that may arise. All budget items and costs are the sole responsibility of Artist.

**6. Maintenance Plan.**

a. Artist shall provide a Maintenance Plan for the Artwork, unless specifically waived in writing by ACAC Office. The Maintenance Plan must include a detailed description of:

- anticipated future maintenance requirements;
- a recommended maintenance schedule;
- anticipated and required care and/or replacement/upgrade of any part of the Artwork and associated moving parts or equipment including any staff time involved in displaying or operating Artwork and the frequency of such staff involvement; and
- written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the Artwork.

b. The Artwork must be durable, taking into consideration if the Site is an unsecured space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Artist shall ensure that all maintenance requirements are reasonable in terms of time and expense.

c. The Artist shall be responsible for making any updates or clarifications to the Maintenance Plan if the maintenance requirements and estimates change over the course of the project.

d. Artist shall provide ACAC Office with a description of all equipment and machinery needed to operate the Artwork (if applicable) and any anticipated or required staffing, supervision or operational needs.

e. An updated Maintenance Plan must be submitted and accepted by ACAC Office prior to the issuance of the Final Notice of Completion of Services.

f. If requested by the ACAC Office, the Artist shall obtain a recommendation from a qualified art conservator on the maintenance of the Artwork and the Artist shall provide a written copy of the conservator's recommendations to the ACAC Office.

**7. Schedule.** The Artist shall complete the Artwork according to the schedule set out in Exhibit A. Time is of the essence in the performance of the Artwork by Artist.

**8. Changes**

a. The goal for the Artwork is a product which represents the creative talents of Artist and satisfies the specifications of the County. The parties recognize that they must consult closely during all stages of development of the Artwork, including without limitation, during design development, fabrication and installation of the Artwork in order to accomplish these goals and that changes to the Artwork may become desirable as the Art Project progresses.

b. Certain specifications of the Artwork, such as, but not limited to, the size, color, design, and material (including grade of the material), of some of the elements of the Artwork may not be identified in Exhibit A. To the extent that any specification for the Artwork is not identified in Exhibit A, Artist shall seek ACAC Office's prior written approval of these specifications before commencing with the Artwork.

c. The parties recognize that the shift in scale from preliminary drawings and models to a full-scale work may require artistic adjustments. Artist has the right to make minor adjustments to the Artwork as Artist deems aesthetically necessary.

d. Any deviation from the Artist's Proposal (Exhibit A-1) in the scope, design, color, size, material, utility and support requirements, texture or location of the Artwork must be approved in writing and in advance by ACAC Office before Artist proceeds with completion of the Artwork. This includes but is not limited to any change that may affect the fabrication, schedule of delivery or installation of the Artwork, preparation of the Site or maintenance of the Artwork.

e. In no event may any adjustment or any change in design increase the Artwork budget or entitle the Artist to additional compensation or payment except as specified in Exhibit B.

## **9. Review, Inspections and Reports:**

a. Interim progress reviews are required by this Agreement. At reasonable times and with advance notice to Artist, County has the right to review the work in progress and to require and receive prompt progress reports from Artist. County shall have the right to visit any facility used by the Artist for the Artwork at reasonable times to inspect and review its progress. In-person meetings may also be held at another location, as directed by County. Artist shall supply digital images of the Artwork in-progress for review if requested by ACAC Office.

b. In the event that any of the elements of the Artwork are to be fabricated at a location away from the Site (collectively, "Off-Site Elements"), the County shall have the right to visit and inspect each of the Off-Site Elements before they are transported to the Site. Artist shall notify ACAC Office in writing when each element of the Artwork is ready for inspection, prior to transporting the Off-Site Element to the Site ("Inspection Notice").

i. After receipt of the Inspection Notice for each Off-Site Element, and, if conducted, inspection of the Off-Site Element, the ACAC Office, will inform Artist in writing either (1) the Off-Site Element has been completed in accordance with the terms of this Agreement and the Off-Site Element it may be transported to the Site ("Transportation Notice to Proceed") or (2) there are defects or deficiencies in the Off-Site Element which must be corrected prior to transportation to the Site, ACAC Office may, at its sole discretion, determine to delay inspection until the Off-Site Element is delivered to the Site or other location.

ii. Delivery. Upon issuance of the Transport Notice to Proceed, Artist shall deliver the Off-Site Elements to the Site or other location as determined by the ACAC Office. Artist shall coordinate with the ACAC Office regarding the time, place and manner of delivery of the Artwork. The County shall have the right to inspect the Off-Site Elements at the time each Off-Site Element arrives in order to determine whether it has been damaged in transit or whether it deviates in any way from the Off-Site Element approved for transportation by the ACAC Office prior to ACAC Office's issuance of the Transport Notice to Proceed, if the ACAC Office elected to inspect off-site, or whether it meets the terms of this Agreement in the event ACAC Office elected to delay its inspection of the Off-Site Element until it arrived at the Site. Artist shall promptly remedy to the satisfaction of the ACAC Office any defect or damage to the Off-Site Element or any deviations from the Off-Site Elements as approved by ACAC Office in the Transport Notice to Proceed.

**10. Artist's Completion Notice.** Artist shall provide written notice to the ACAC Office that the Artwork has been completed ("Completion Notice"). County may, in its sole discretion, visit the Artist's studio to view the completed Artwork. Artist recognizes and agrees that County may review the Artwork and make recommendations for revisions and that additional studio visits may be required by County.

## **11. County's Acceptance or Defect Notice**

a. Upon ACAC Office's receipt and review of the Artist's Completion Notice, ACAC Office shall notify Artist in writing that the Artwork is completed ("Notice of Acceptance of Artwork") or that the Artwork fails to meet the requirements of this Agreement ("Defects Notice").

b. The issuance of a Notice of Acceptance of Artwork shall mean that the County acknowledges completion of the Artwork in substantial conformity with the design. Title to the Artwork from the Artist shall pass to the County upon issuance by the ACAC Office of its Notice of Acceptance of Artwork.

c. Upon ACAC Office's receipt and review of the Artist's Final Maintenance Documents and Final Written Documentation and when all other services related to the Artwork have been completed, ACAC Office shall notify the Artist in writing ("Final Notice of Completion of Services").

d. If the County has determined that the Artist has failed to perform as required by this Agreement, the County shall issue a written Defects Notice to the Artist. That Defects Notice shall identify those services or other conditions or requirements of the Agreement that the Artist has failed to perform. Artist shall promptly remedy, at Artist's own cost, those failures, to the satisfaction of the County.

e. If the Artist disputes the Defects Notice, in whole or in part, the Artist shall submit his or her written response to the County within ten (10) days of receipt of the Defects Notice.

f. If there is resolution of any disputes that arise under paragraph (d) of this section, the ACAC Office shall notify the Artist of its final acceptance of the Artwork pursuant to paragraph (b).

g. If the parties are unable to resolve any disputes that arise under paragraph (d) of this section, The County shall have the right to terminate this Agreement immediately and shall have no further obligations under this Agreement. This right to terminate is in addition to any other rights provided by law.

**12. Final Maintenance Documents.** Artist shall provide the ACAC Office with an updated and accurate Maintenance Plan for the Artwork before issuance of the Final Notice of Completion of Services. Artist shall deliver all information necessary for the County to properly care for and maintain the Artwork, including information regarding the physical make-up of the Artwork, methods and materials, and information about the artistic intent of Artist in the design, fabrication and installation of the Artwork. Artist shall provide the Final Maintenance Documents within thirty (30) days after the submitting the Completion Notice. Unless otherwise agreed in writing upon issuance by ACAC Office of a Final Notice of Completion of Services the County will be responsible for the care and maintenance of the Artwork

**13. Final Written Documentation.** Artist shall deliver a written description of the Artwork before issuance of the Final Notice of Completion of Services. This information may be used for educational, public relations, promotional and other noncommercial purposes. Artist shall provide the Final Written Documentation within thirty (30) days after the submitting the Completion Notice. The written description must include the following:

- a. Artwork information including:
  - Name of Artist(s) - as it should appear in all printed materials
  - Artwork Title
  - Medium
  - Dimensions
- b. Short description of the artwork including:
  - Theme, concept
  - What Artist hopes the viewers will learn or experience when looking at the Artwork.
  - Description of major elements (i.e. objects, people, etc.)
  - Description of process that may be informative to the viewer
- c. Brief Artist biography, please include the following:
  - Date and location of birth
  - Where Artist currently resides
  - If you do not live in Alameda County, please indicate location of studio or employment that qualified you as an "Alameda County Artist", if applicable
  - Education related to art-making
  - Points of significance in the development of Artist's career
  - General philosophy or consistent ideas when making Artwork
  - How did Artist first become involved in making art?
  - What does Artist hope to achieve by making art?

**14. Compensation.**

a. The compensation to be paid to Artist ("Total Price") is set forth in Exhibit B, "Compensation." Such payment shall constitute full and complete compensation for work performed and services rendered, including, but not limited to, professional services and expenses for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals.

b. In the event that the ACAC Office approves a modification of the Artwork to be provided by the Artist which results in cost savings including, but not limited to, the deletion of an element of the Artwork, the substitution of lesser quality materials with no offsetting upgrade of other materials, and the reduction in the Artwork's size, the cost savings attributable to the modification will not be paid to the Artist.

c. No payment to Artist for any work performed or services rendered shall constitute a waiver or release by County of any claims, rights or remedies County may have against Artist under this Agreement or by law, nor shall such payment constitute a waiver by the County of any failure or fault of Artist to satisfactorily perform the services as required under this Agreement.

d. In the event that County determines that work for which it has been invoiced does not meet the terms of this Agreement, County may withhold payment to Artist. In the event County withholds any payment, County shall provide detailed written notice to Artist, via certified mail, return receipt requested, specifying the failure of performance for which County intends to withhold payment. Within fifteen (15) days of Artist's receipt of County's notice, Artist shall

cure County's objection or if County's objections are not capable of cure within fifteen (15) days, Artist shall commence to cure County's objections and then promptly proceed to complete the cure. If Artist disputes County's determination that the Agreement's specifications have not been met, within fifteen (15) days of Artist's receipt of County's notice, Artist shall notify County in writing, via certified mail, return receipt requested. In such event, County shall make reasonable efforts to resolve the dispute; however, the final determination as to whether Artist has complied with the terms of this Agreement will remain with County.

## II. ARTWORK COMPLETION

**15. Commitment by County.** County agrees that unless Artist requests to the contrary in writing, all references to the Artwork and all representations (as set forth in section 28 below) of the Artwork will credit the Artwork to Artist.

**16. Artwork Plaque.** County may at its option fabricate and install an identification plaque for the completed Artwork, which will be a two-dimensional sign that will include the following information: Artist's name, year in which Artwork is completed, Artwork title, funding agency and commissioning agency. No other information will be included on the Artwork Plaque unless the ACAC Office authorizes any modifications or additions. The Artwork Plaque if one is used will be installed at a location in proximity to the Artwork which shall be determined by County at its sole discretion.

**17. Artist's Commitment.** Artist agrees that all formal references to the Artwork shall include the following credit: "From the Collection of the County of Alameda commissioned by the Alameda County Arts Commission," or other language agreed to by the County.

**18. Artist Availability.**

a. After the Notice of Acceptance of Artwork, the Artist shall be available to attend any public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to dedication of the Artwork.

b. During such public presentations by the Artist, the Artist shall acknowledge the County's role in funding the Artwork.

c. The County shall be solely responsible for coordinating public information materials and activities related to public presentations.

d. This paragraph shall survive termination of the Agreement.

**19. County Art Collection.** Upon issuance of the Final Notice of Completion of Services, the County shall accession the Artwork into the County Art Collection.

**20. Repairs and Restoration.** County shall have the right to determine when and if repairs and restorations to the Artwork will be made. It is the policy of County to consult with Artist regarding repairs and restoration which are undertaken during Artist's lifetime when that is practical. In the event that County makes repairs or restoration not approved by Artist, Artist shall have the right, at Artist's sole option and only remedy, to have Artist's association with Artwork severed.

**21. Standards of Repair and Restoration.** Although the County strives to maintain the County Art Collection in good repair and condition, County is not required by this Agreement to maintain the Artwork to any particular standard. County may allow the Artwork to deteriorate in accordance with the Artwork's life span, if deemed appropriate by County or if County lacks sufficient funds for required maintenance and/or conservation. If the Artwork suffers deterioration, County shall have sole discretion to determine whether to (a) remove the Artwork from display, (b) replace any portion of the Artwork, (c) translate any component into new media, (d) maintain the Artwork on display despite its deteriorated condition or (e) take any other action or combination of actions regarding the Artwork.

**22. Life Span.** The anticipated life span of the Artwork is set forth in the Exhibits. After that time, the County in its sole discretion may re-evaluate the Artwork to determine if it retains its identity as a work of art and, if not, whether to take appropriate action, including the possibility of destroying the Artwork. If no life span is specified in the Exhibits or pursuant to a subsequent Agreement modification, the anticipated life span of the Artwork shall be twenty-five (25) years. If prior to that time County determines that, through decay, vandalism or other forces, the Artwork has lost its integrity to the point where it should be destroyed, the County shall first make efforts to offer the Artwork to Artist provided Artist

pays for all costs and expenses, including but not limited to costs, associated with dismantling, removal, storage or transportation of the Artwork.

**23. County Right to Transfer Artwork.** County shall have the right to donate or sell the Artwork at any time. Before exercising this right, County may at its sole option provide written notice to Artist, at Artist's last known address, providing the Artist the option to purchase the Artwork for the greater of (i) the Total Price or (ii) the amount of any offer which County has received for the purchase of the Artwork. In addition to that greater amount, Artist must agree to pay all costs associated with the dismantling, removal and transportation of the Artwork from the Site. That notice shall provide the Artist with thirty (30) calendar days from the date of the notice to provide to the County the Artist's written, unconditional acceptance of that option.

### **III WARRANTIES, COPYRIGHT AND INDEMNIFICATION**

**24. Warranties of Title.** Artist represents and warrants that:

- a. The Artwork is solely the result of the artistic efforts of the Artist.
- b. Artist has not previously sold, assigned, licensed, granted, encumbered, or utilized the Artwork, the Artwork's design or any element thereof, in any manner that may affect or impair the rights granted pursuant to this Agreement.
- c. All work created or performed by Artist under this Agreement, whether created by Artist alone or in collaboration with others, is wholly original with Artist and will not infringe upon or violate the rights of any third party.
- d. Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.
- e. The Artwork is and will remain free and clear of any liens.
- f. The Artwork will be and will remain a unique edition unless otherwise agreed to in writing by the County.

**25. Warranties of Quality and Condition.**

- a. Artist represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for three years after the date of issuance of the Final Notice of Completion of Services.
- b. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety. Artist further warrants that the Artwork shall not constitute any threat to the safety of persons or property when used in the manner for which it is designed.
- c. The Artist represents and warrants that reasonable maintenance of the Artwork will not require in excess of those procedures described in the Maintenance Plan submitted by the Artist.
- d. If during the Life Span of the Artwork, the County observes any breach of any Artist warranty that is curable by the Artist, the Artist shall, at the request of the County, cure the breach promptly and consistent with professional conservation standards, at no expense to the County, and to the County's satisfaction.
- e. If after the Life Span of the Artwork the County observes any breach of any Artist warranty described in this Agreement that is curable by the Artist, the County shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist's lifetime. The Artist shall have the right of first refusal to make or supervise repairs or restorations. Should the Artist and County be unable to reach agreement on a reasonable fee or if the Artist is unavailable or unwilling to cure, the County may seek the services of a qualified restorative conservator and maintenance expert.
- f. If within three years the County observes a breach of any Artist warranty described in this Agreement that is not curable or cured by the Artist, the Artist is responsible for reimbursing the County for damages, expenses, losses, costs or fees incurred by the County as a result of the breach.
- g. Artist represents and warrants that general routine cleaning and repair, within the context of foreseeable exposure to the elements and general wear and tear, will maintain the Artwork in an acceptable standard of public display during its Life Span. The Artwork will not experience irreparable conditions, including but not limited to mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.
- h. Artist represents and warrants foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display during its Life Span.

i. To the extent the Artwork incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties to the County.

**26. Copyright General.**

- a. Except as provided in this Agreement, Artist shall retain all copyrights in the Artwork under the Copyright Act of 1976, 17 U.S.C. Sections 101 et seq. as the sole author of the Artwork for the duration of the copyright.
- b. Artist may, at Artist's option, place a copyright notice on the Artwork in the form and manner required to protect copyrights in the Artwork under United States copyright law. If the copyright is registered with the U.S. Copyright Office, Artist shall provide County with a copy of the application for registration, the registration number and the effective date of registration.

**27. Title and Ownership.** Title and ownership to the Artwork shall be exclusively with the County upon the ACAC Office issuing its Notice of Acceptance of Artwork. The County shall have the exclusive right to use and display the Artwork at the Site or any other location selected by County. County shall be entitled not to display and may discard the Artwork as it deems necessary or appropriate.

**28. Representations.**

- a. Artist authorizes County to make, and to authorize the making of, photographs and other two-dimensional representations of the Artwork for educational, public relations, promotional and other noncommercial purposes.
- b. For the purposes of this Agreement, the following are deemed to be representations for noncommercial purposes: representation in exhibition catalogues, books, slides, digital photographs, postcards, correspondence, posters, calendars, websites, email, announcements, and social media; placement in art magazines, art books and art and news sections of newspapers; in general books and magazines not primarily devoted to art but of an educational, architectural, historical or critical nature; video not intended for commercial distribution; television from stations operated for educational purposes or on programs for educational purposes from all stations.
- c. If applicable, on any and all such representations, County shall place a copyright notice, naming the same person or persons listed as the copyright owners on the copyright registration with the U.S. Copyright Office, in the form and manner required to protect the copyrights in the Artwork under the United States copyright law, provided that Artist has registered a copyright in the Artwork with the U.S. Copyright Office.

**29. Indemnification by Artist.**

- a. To the fullest extent permitted by law, Artist agrees to protect, defend, indemnify and hold harmless County, its officers, agents and employees, from and against all liability, claims, lawsuits, actions, expenses, costs and damages, including reasonable attorney fees incurred in the defense thereof (collectively, "Liabilities") arising out of or related to the acts or omissions of Artist or his/her contractors, subcontractors, employees or agents in the performance of this Agreement. The only exception to the obligations imposed by this provision are for those Liabilities that are caused solely by the negligence or willful misconduct of County, its officers, agents and employees.
- b. To the fullest extent permitted by law, Artist also agrees to protect, defend, indemnify and hold harmless the County, its officers, agents and employees from all liability, claims, lawsuits, actions, expenses, costs and damages, including reasonable attorney fees incurred in the defense thereof, related to any assertion or allegation that work performed under this Agreement by Artist, or Artist's contractors, subcontractors, employees or agents constitutes an infringement of any patent, copyright, trademark, trade name or other proprietary right of any party.

**30. Survival.** This entire section, III. Warranties, Copyright and Indemnification, containing the representations, warranties and indemnity provisions shall survive the termination or completion of this Agreement.

**IV. REMOVAL, ALTERATION OR RELOCATION**

**31. Location of Artwork.** The County, having expended considerable public funds to commission the Artwork, intends to display the Artwork at the Site as originally created by Artist and to maintain the Artwork in good condition. The County, however, shall preserve complete flexibility to operate and manage County property in the public's interest. Public artworks commissioned by the County are sometimes integrated into their site, such that they become an integral, permanent and site-specific part of the building's architecture or landscaped environment and removal of the Artwork would result in significant changes to the Artwork and the building's architecture. Therefore, County retains the absolute right to alter the Artwork in County's sole judgment, which may include removal or destruction of the Artwork. For example, County may alter the Artwork to eliminate hazard, to comply with the ADA, to otherwise aid County in the



management of its property and affairs for any other reason. If, during or after the term of this Agreement, County finds the Site to be inappropriate, or another location to be preferable, County has the right to install the Artwork at an alternate location that County chooses in its sole discretion. If the Artwork is free-standing such that it can be removed without significant damage to the Artwork or the Site the County shall take reasonable precautions to minimize alteration of the Artwork during removal.

**32. Alteration or Relocation.** With respect to the Artwork produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, Artist waives any and all claims and rights against County, its officers, agents, employees, successors and assigns, arising under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same or similar nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. If the Artwork is incorporated into a building such that the Artwork cannot be removed from the building without alteration of the Artwork, Artist waives any and all such claims against any future owners of the Site, and its agents, officers and employees, for alteration of the Artwork.

**33. Notice to Artist of Alterations.** If County intends to take any action with respect to the Site or the Artwork that would alter the Artwork, other than routine cleaning and maintenance, the following procedures shall apply:

a. Notice. Where time permits, County shall make reasonable good faith efforts to notify Artist at least 20 calendar days prior to authorizing any alteration of the Artwork, at the last phone number or address provided by Artist to the County. Where time does not permit prior to alteration of the Artwork – for example, in cases of public hazard, accident or unauthorized alteration – County shall make a reasonable effort to notify Artist after such alteration.

b. Consultation. After receiving such notice, Artist shall consult with ACAC Office to determine whether the Artwork can be restored or relocated and attempt to come to a mutually agreeable plan for disposition of the Artwork. If County intends to remove the Artwork, Artist shall consult regarding methods to minimize or repair any alteration to the Artwork caused by such removal and the potential costs of such removal. Such consultation shall be without charge by Artist unless otherwise specifically agreed in writing by the Artist and the ACAC Office.

**34. Restoration.** If the Artwork is altered, with or without prior notice to Artist, and County intends to maintain the Artwork on display, County shall make a reasonable good faith effort to engage Artist in the restoration of the Artwork and to compensate, through a written agreement, Artist for Artist's time and efforts. However, County has no obligation under this Agreement to restore the Artwork to its original condition, to compensate Artist for any restoration work, or to maintain the Artwork on display. If Artist fails or refuses to negotiate with County in good faith with respect to any restoration, County may contract with any other qualified art conservator or artist for such restoration.

**35. Removal by Artist.** Where practical and where time permits, if County intends to take action that will destroy or significantly alter the Artwork, such as destruction of all or part of the Site and County determines that it will not remove the Artwork itself, County may allow the Artist an opportunity to remove the Artwork, at Artist's sole expense. Artist shall have 10 business days from the date of notice to advise the County in writing of his/her election to remove the Artwork. If Artist elects to remove the Artwork, Artist shall have up to, but no more than, 30 days after receipt of the County's notice to complete the removal of the Artwork without any damage to the Site. If Artist elects to remove the Artwork under this provision, title to the Artwork shall revert to Artist upon commencement of removal work by Artist or Artist's agents. If Artist fails to make an election in a timely manner or fails to complete timely removal the Artwork, the County may alter or remove the Artwork in any manner, including destroying it, in County's sole discretion.

**36. Remedies.** If County breaches any of its obligations under this Section, Artist's sole remedies shall be limited to the following:

a. If County inadvertently fails to provide a required prior notice of alteration, County will provide notice as soon as it discovers the omission, and before alteration of the Artwork if that remains possible.

b. If County alters the Artwork without providing Artist notice prior to alteration in accordance with the Notice to Artist of Alterations section above, Artist shall be given the first right of refusal to restore the Artwork at the same location, if County will be returning the Artwork to the Site, and County shall make reasonable efforts to provide funding for the restoration. If County funds cannot be made available after reasonable efforts are made to secure such funding, Artist may, but is not obligated to, restore the Artwork at Artist's sole expense. If Artist elects not to restore the

Artwork, County may retain another artist or conservator to restore it, or may alter the Artwork in any manner, at County's sole discretion.

c. If County Alters the Artwork without Artist's consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of the Artwork in accordance with California Civil Code §987(d) and 17 U.S.C. §106A(a)(2).

**37. Third Parties.** Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, successors or assigns of County, Artist retains Artist's moral rights in the Artwork, as established in the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 and 989), or any other local, state, federal or international moral rights laws that protect the integrity of works of art. Accordingly, nothing herein shall prevent Artist from pursuing a claim for alteration of the Artwork against a third party who is not an officer, employee, agent, successor or assign of County or working at the direction of the County. County has no obligation to pursue claims against third parties to remedy or prevent alteration of the Artwork. However, as owner of the Artwork, County may pursue claims against third parties for damages or to restore the Artwork if the Artwork has been altered without County's authorization.

**38. Survival.** This entire section IV. Removal, Alteration Or Relocation shall survive the termination or completion of this Agreement.

## **V. GENERAL PROVISIONS**

**39. Insurance:** Artist shall at all times during the term of the Agreement maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of Artist's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Artist's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Artist's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self insurance shall be called upon to protect it as a named insured. Any subcontracts entered into by Artist shall require the subcontractor to comply with the insurance requirements of this Agreement.

**40. Risk of Loss.** Until the Artwork is formally and finally accepted by County upon issuance of the written Notice of Acceptance of Artwork, any damage to, theft or vandalism to, or acts of nature affecting the Artwork are the responsibility of Artist, including, but not limited to, any loss occurring during the fabrication, storage, transportation, or delivery or installation of the Artwork.

**41. Artist as Independent Contractor.** Artist's relationship with County is strictly and solely that of independent contractor. No relationship of employer and employee is created by this Agreement. Artist is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Artist nor for any obligations or liabilities incurred by Artist. Nothing contained in this Agreement shall be construed to place County and Artist in the relationship of partners. Artist acknowledges and agrees that Artist shall not represent or hold itself out as authorized agent of County with power to bind in any manner.

**42. Personnel and Subcontractors.**

a. Artist has, or will secure at Artist's expense, all assistance and workers required to perform and complete all Artwork. All persons retained (whether paid or volunteer) by Artist shall possess licenses and permits as necessary.

b. If any part of Artwork depends upon the work of any other person for proper execution or results, Artist shall, prior to proceeding with such work, promptly report in writing to County any discrepancies or defects in such other work which Artist is aware of, or which can be identified upon reasonable inspection, that would render it unsuitable for proper execution and results. Failure to so notify County shall constitute the Artist's acceptance of such work as suitable.

c. Pursuant to Section 1861 of the Labor Code, Artist represents that it/he/she is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and Artist shall comply with that and all Labor Code provisions as applicable provisions before commencing the performance of the work of this Agreement.

d. This section intentionally omitted.

**43. Termination on Death.** Except for payments due and payable to Artist pursuant to Exhibit B at the time of death, Artist's rights under this Agreement cease with Artist's death and do not extend to Artist's heirs, successors or assigns. Any copyright held by Artist as the sole author shall continue pursuant the Copyright Act of 1976, 17 U.S.C. § 101 et seq., the life of the author plus 70 years as of the Artwork.

**44. Authorship and Destruction.** To the extent permitted by law, the provisions of this Agreement prevail over laws regarding authorship and destruction of art, including without limitation, California Civil Code Section 987 and Title 17 U.S.C. Section 106A et seq.

**45. Assignability.**

a. The parties agree that the expertise and experience of Artist are material considerations for this Agreement. Except as may be specifically authorized under this Agreement, Artist shall not assign or transfer any interest in this Agreement nor the performance of any of Artist's obligations hereunder. Any attempt by Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by ACAC Office. However, nothing in this section shall be deemed to prevent Artist, at Artist's sole expense, from relying on or utilizing the services of such other consultant or contractor as Artist may require to complete the Artwork or other services provided for in this Agreement so long as the ACAC Office has provided prior written approval of such consultant or contractor.

b. County shall have the right to assign or transfer any and all of County's rights and obligations under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the County.

**46. Compliance With Law.** Artist shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

**47. Nondiscrimination.** Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, marital status or national origin, in connection with or related to the performance of this Agreement.

**48. Gifts.** Artist agrees to abide by County's prohibition against the acceptance of any gift by a County officer or designated employee. Artist agrees not to offer any County officer or designated employee any gift. The offer or giving of any gift prohibited by the County shall constitute a material breach of this Agreement by Artist. In addition to any other remedies County may have in law or equity, County may terminate this Agreement for such breach.

**49. Use of County Property.** Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.

**50. Termination With or Without Cause.** County has and reserves the right to suspend, terminate or abandon this Agreement with or without cause at any time upon giving written notice to the Artist. In the event that the County should abandon, terminate or suspend the Artist's work for any reason including lack or absence of funding, and absent breach by Artist or County not accepting any part of Artwork, the Artist shall be entitled to payment for services actually performed prior to the date of notice to the Artist that the County has or will suspend, terminate or abandon this Agreement.

**51. Remedies.**

a. The remedies under this Agreement are cumulative and are in addition to the rights available to the parties at law or in equity.

b. Without limiting the generality of subsection A, above, if Artist breaches this Agreement, County has the right to terminate this Agreement and, at its option, proceed with the fabrication and installation of the Artwork without utilizing the services of the Artist. If County exercises its option to proceed, then County, upon Artist's written request will refrain from referencing the Artwork as the work of Artist.

c. If County notices Artist of its intent to terminate this Agreement, Artist has the option to purchase back the work if each of the following conditions are met:

i. Within 5 days of receiving the notice from the County, Artist provides written notice to the ACAC Office that Artist intends to purchase back all rights to the Artwork.

- ii. At the time of notice by the Artist, the Artwork, as determined by County, is not substantially completed.
- iii. Artist returns all amounts paid by County under this Agreement within 5 days of the notice of termination, or such other reasonable time as agreed to by County. If the full amount is not timely repaid to County, it may exercise its option to proceed with any remedy it has under the Agreement and by law, however, upon Artist's written request will refrain from referencing the Artwork as a work created by Artist.

**52. Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

**53. Notices.**

a. All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox.

Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (e.g. Federal Express/ United Parcel Service) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

b. Submittals, requests, notices and reports (collectively, "Notices") required under this Agreement shall be delivered personally or through the mail, postage prepaid, to the addresses stated below. Addresses for purpose of giving notice are as follows:

For Artist:

**Linda Gass**



For County:

Alameda County Arts Commission  
1106 Madison Street, Suite 336  
Oakland, CA 94607  
Phone: (510) 208-9646

c. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

d. Any party may change its address by giving the other party notice of the change in any manner permitted by this Agreement.

e. Artists agree for the duration of Artists' life, to provide ACAC Office with Artists' current mailing address, phone number and e-mail address in the event Artists' address, phone number or e-mail address, as specified above, should change.

**54. Governing Law and Venue.** This Agreement shall be governed by the laws of the State of California. In the event that a suit shall be brought related to this Agreement, venue shall be Alameda County Superior Court or the United States District Court for the Northern District of California, Oakland, California.

**55. Headings.** Headings herein are for convenience of reference only and shall in no way affect interpretation of the

Agreement.

**56. Advertising or Publicity.** Artist shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance. Artist may identify and include the Artwork, including identifying the County as owner and the location of the Artwork, on Artist's resume or other listings of professional work.

**57. Assurance of Performance.** If at any time ACAC Office believes Artist may not be adequately performing its obligations under this Agreement or that Artist may fail to complete the Artwork as required by this Agreement, ACAC Office may request from Artist prompt written assurances of performance and a written plan acceptable to ACAC Office, to correct the observed deficiencies in Artist's performance. Artist shall provide such written assurances and written plan within ten (10) calendar days of its receipt of ACAC Office's request and shall thereafter diligently commence and fully perform such written plan. Artist acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.

**58. Amendments for Artwork.** This Agreement may be amended by the parties for adjustments or modifications are needed to the artwork design and scope, including modification of the Scope of Work, Exhibit B, and any related items. The Commission Director may approve and execute amendments for the purpose of adjustments or modifications to the artwork design and scope.

**59. Entire Agreement.** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between County and Artist relating to the subject matter of this Agreement. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

**60. Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**61. Artist Collaboration.** Each person or entity who or that is collectively referred to herein as "Artist" has agreed to collaboratively work with, partner or otherwise associate with each other person or entity who is collectively identified as "Artist." As such, and notwithstanding any agreement between those persons or entities to the contrary, each such person and entity who signs this Agreement agrees to be jointly, severally and individually responsible to the County to perform the duties and obligations provided for in this Agreement and for the acts or omissions of each of those other persons or entities."

**62. Force Majeure.** Neither party shall be deemed to be in default in the performance of the terms of this Agreement if a party is prevented from performing by causes beyond its control, including without being limited to: acts of God, including earthquakes; interference, laws, regulations, rulings or decisions by a governmental agency, or a board or commission; delays in construction or completion of the Construction Project; or catastrophe resulting from flood, fire, explosion. If any of the stated contingencies occur, the party delayed by force majeure shall immediately give the other party written notice of the cause of delay. The party delayed by force majeure shall use reasonable diligence to correct the cause of the delay, if correctable.

COUNTY of ALAMEDA

ARTIST


---

PRESIDENT  
BOARD OF SUPERVISORS



Address

APPROVED AS TO FORM:

  
\_\_\_\_\_  
COUNTY COUNSEL

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

## EXHIBIT A-1 ARTIST'S PROPOSAL

**Linda Gass**

**Concept/Theme and Main Idea:** The proposed series of work are birds-eye views of San Francisco Bay environments that the ACDEH works to protect. The big idea that I hope people take away my work is that the health and well-being of humans is deeply connected to that of their local environment. The proposed artworks feature familiar local landscapes in pleasing compositions and bright colors. I hope people will feel uplifted by the beauty of the art and inspired to feel more connected to their local natural landscapes. I hope they will feel fascinated by the intricately detailed stitching in my work which offers a new, and often unexpected, way to experience art.

I am an environmental artist who creates work about the connections between humans and the land and the water that sustain them, so the mission of the ACDEH aligns with my own mission to protect the environment and human health. My artwork blends science and art in ways that are similar to those in which the ACDEH blends science and the art of public service. My work scales well to different sizes, reads well from far away and close up, and appears three-dimensional in metal prints (people often walk up to metal prints of my work thinking that it's three-dimensional only to discover they are looking at a flat surface).

My artwork is a good match for the wide variety of visitors to the building because it has several different access points for people to appreciate it: the local landscape subject matter, the birds-eye view / map-like perspective for map-lovers; the bright colors; and the fact that it is originally made from textiles, a familiar medium.

**Description of Process and Materials:** My work begins with a concept, usually an environmental issue that affects our water resources and shows up as a visible mark on the landscape. I do extensive research to learn more about the issue by reading scientific publications, interviewing scientists, and seeking out resource materials such as historical and present day maps and photographs. My research process helps me refine my choice of subject matter and composition for an artwork, typically as seen from the birds-eye, or aerial landscape, point of view. I make the physical artwork by stretching a large piece of white silk and painting it with vibrant liquid silk dyes using watercolor brushes. The dyes are contained by outlining areas with a resist which acts as a barrier. When I am done painting, I steam-set the dyes and then prepare for stitching by making a sandwich with the painting, a very fluffy material called batting and another layer of silk. I then stitch the layers together on the sewing machine with colored embroidery threads to add linear designs and more color to the painting. The stitching also adds texture and detail to the work; the lines of stitches flatten the batting and it stays puffy in between the stitches, giving my work a bas relief look.



*Fields of Salt*



*Threading the Past*



*Sanitary?*

**Exhibit A-2 intentionally omitted.**

**EXHIBIT A-3**  
**REPRODUCTIONS AND LICENSING**

The County desires to license the right to create reproductions of the Artwork listed in Exhibit A-1 and Artist hereby grants County such a license.

1. **Site.** The Reproduction of the Artwork will be placed at the following Site:

Alameda County Department of Public Health, 1131 Harbor Bay Parkway, Alameda, California.

2. **Reproduction Plan.** The County shall provide basic information on how the County intends to create the Reproduction (the “Reproduction Plan”). County will include in the Reproduction Plan the number of Reproductions it intends to make, however, County has the right to create fewer or additional Reproductions. The County may request Artist’s comments on any revisions to the Reproduction Plan, however, the County has sole discretion to change any or all of the Reproduction Plan including how the Reproduction will be created.

The County intends to make one Reproduction of each Artwork using dye-infused metal imaging.

The County intends to make the Reproductions in the following sizes. All sizes are approximate and the County has the right to alter the size of any Reproduction.

- a. *Fields of Salt:* 36” x 36”
- b. *Sanitary?:* 36” x 36”
- c. *Threading the Past:* 36” x 36”

The anticipated life span of each Reproduction is 25 years.

The Artist will supply high-resolution and high-quality digital files of the Artwork. If the County determines that a higher quality digital file is necessary, Artist will cooperate with ACAC Office in obtaining further photography, including delivering and picking up the Artwork at a location specified by ACAC Office. The high resolution digital images will only be used to produce the Reproductions as dye-infused metal imaging.

The ACAC Office will hire, or arrange for the hiring of, a fabricator and installer of the Reproductions.

Artist will retain ownership of the original Artwork.

Paragraph 27 of the main agreement, located in Section III, WARRANTIES, COPYRIGHT AND INDEMNIFICATION is deleted and replaced with the following: Title and Ownership. Title and ownership to the Reproduction of the Artwork shall be exclusively with the County upon the ACAC Office issuing its Notice of Acceptance of Artwork. The County shall have the exclusive right to use and display the Reproduction of Artwork at the Site or any other location selected by County. County shall be entitled not to display and may discard the Reproduction of the Artwork as it deems necessary or appropriate.

3. **Reproduction Fee.** The total amount to be paid to Artist for the Reproduction will be **\$500** per piece of Artwork regardless of the number of actual reproductions created or used. For example, if Artwork consists of two distinct watercolors (images) and the Reproduction Plan is for one of the watercolors to be used to create 20 limited edition prints and the other used to create 60 limited edition prints, Artist will be paid \$1000.

4. **Reproduction Image.** Reproductions will be made in a professional and tasteful manner at the sole and reasonable judgment of the ACAC Office.

5. **Copyright.** Subject to usage rights and licenses granted to County hereunder, Artist shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement.



**6. License.** Artist grants to County, and to County’s agents, authorized contractors and assigns, an unlimited, non-exclusive and irrevocable license to create representations of the reproductions in all media throughout the universe. This license specifically includes, but is not limited to, the following:

- a. Use and Display. County may use and display the representations.
- b. Replacement. County may fabricate a replacement Reproduction(s), should the original Reproduction(s) undergo damage beyond repair.
- c. Exclusion. The license granted hereunder does not include the right to create any 3-dimensional reproductions of the artwork or any 2-dimensional reproductions on items to be sold to the public (“Merchandise”) such as tote-bags, T-shirts, coffee mugs and similar Merchandise unless specifically identified in the Reproduction Plan that is included on the Agreement, or in a written Amendment to this Agreement signed by the Artist.

**7. Artist Warranty:** Artist warrants that Artist owns all rights to the Artwork and has the sole and complete authority to grant the use of the Artwork to the County.

**8. No Right to Approval.** The Artist agrees that Artist will not make any claims against the County, its officers, agents and employees arising out of use and reproductions. The Artist waives his right to inspect or approve the final draft or finished version of the reproductions including any written material that may be created in connection therewith.

**9. No Guarantee of Reproduction.** Nothing in this Exhibit or the Agreement is a representation, promise or guarantee that any reproduction of the Artwork will be used part of a Reproduction Plan. Artist shall only be paid a Reproduction Fee if the Artwork is part of a Reproduction Plan and reproductions are actually created and used by County.

**10. Schedule of Activities and Deliverables.**

a. Schedule

Activity or Deliverable	Due Date
1. Evidence of Insurance	Prior to start of work
2. Artist Delivers Digital Files of Artwork	TBD
3. Final Written Documentation Due	TBD
4. On-going communications, coordination and meetings with ACAC Office	On-going

b. TBD Dates. Dates to be determined (TBD), if any, shall be determined by County, which may consult with Artist, but County shall have the sole discretion and authority to determine the dates.

c. Modification of Schedule. The parties agree that the schedule of performance set forth above may, by mutual agreement, be modified in writing without the necessity of a formal amendment to this Agreement

**EXHIBIT B**  
**COMPENSATION**

1. **Fee.** Payment to Artist for Artwork, including all expenses relating thereto, **shall not exceed One Thousand and Five Hundred Dollars (\$1,500.00)**. This fee includes all costs and expenses and is the maximum total amount that may be paid. County will not make any additional payment for Artist's expenses. This amount is not a guarantee of the amount to be paid, as it includes optional work and, if identified in the Budget Summary Chart, a contingency amount.

2. **Budget Summary Chart.**

Description	Not to Exceed Amount
Reproduction Fee (\$500 per Artwork )	\$1,500.00

3. **Interim Payments.** There are no in interim payments for this Contract.

4. **Invoicing Schedule and Interim Payments.** Artists shall submit an invoice, in a format acceptable to County, at the milestones identified below. For each benchmark, the following amounts may, at County's discretion, be paid to Artist following the County's receipt, review and approval of an invoice from Artist indicating that the appropriate milestone as described below has been reached:

Benchmark	Amount
1. Delivery of High Resolution Image Files and Approval of Final Written Documentation	Up to \$1,500.00

Notwithstanding the foregoing, Artist expressly acknowledges that approval of an invoice to permit an interim payment is solely for the benefit of Artist. Unless and until the ACAC Office issues a Final Notice of Completion of Services, no payment and/or interim approval shall constitute acceptance or approval of the Artwork by County nor shall it be construed as a waiver of County's right to require that Artist and the Artwork conform strictly to the terms of this Agreement. Interim payments are at the sole discretion of the County and County retains the right to not make any payment until completion of the Artwork and full acceptance by County.

5. **Tax Identification Number.** No later than the date of Artist's execution of this Agreement, Artist shall provide County with Artist's Tax Identification Numbers and any proof of Artist's Tax Identification Numbers as requested by County.

6. **Sales Tax.** The County and the Artist acknowledge that they are aware of Revenue and Taxation Code section 6365, which, among other things, exempts from sales tax sales to counties of original works of art. The County and the Artist acknowledge that they believe that such exemption applies to the transaction described in this contract.

7. **Timing.** County will make reasonable efforts to make the payments described above to the Artist within thirty (30) days after receipt, review and approval by County of invoices.

8. **Payee.** Payments will be made to: **Linda Gass**

9. Intentionally omitted.

10. **Contingency Draw.** There is no contingency draw in this Contract.

**EXHIBIT C**

**COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS**

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
<b>A</b>	<b>Commercial General Liability</b> Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
<b>B</b>	<b>Commercial or Business Automobile Liability</b> All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
<b>C</b>	<b>Workers' Compensation (WC) and Employers Liability (EL)</b> Required for all contractors with employees	WC: Statutory Limits EL: \$1,000,000 per accident for bodily injury or disease
<b>D</b>	<p><b><u>Endorsements and Conditions:</u></b></p> <ol style="list-style-type: none"> <li><b>ADDITIONAL INSURED:</b> All insurance required above with the exception of Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.</li> <li><b>DURATION OF COVERAGE:</b> All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement.</li> <li><b>REDUCTION OR LIMIT OF OBLIGATION:</b> All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties.</li> <li><b>INSURER FINANCIAL RATING:</b> Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.</li> <li><b>SUBCONTRACTORS:</b> Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.</li> <li><b>JOINT VENTURES:</b> If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:               <ul style="list-style-type: none"> <li>– Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above.</li> <li>– Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".</li> </ul> </li> <li><b>CANCELLATION OF INSURANCE:</b> All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation.</li> <li><b>CERTIFICATE OF INSURANCE:</b> Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices provision.</li> </ol>	