

AGREEMENT FOR ARTIST SERVICES

This Agreement ("Agreement"), dated as of _____, 20__ ("Effective Date") is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Cliff Garten & Associates, Inc. (hereinafter "Artist").

RECITALS

WHEREAS, Artist represents that it is duly qualified and experienced in the planning, design, fabrication and installation of public art and related services; and

WHEREAS, in the judgement of the Fire Memorial Task Force, it is necessary and desirable to employ the services of Artist for the Sonoma County Fire Memorial Public Art Project.

NOW THEREFORE, in consideration of the forgoing recitals and the mural covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. Scope of Services.

- 1.1. Artist's Specified Services. Artist shall purchase on Artist's account all labor, supplies, materials and equipment required to design and furnish to the County a public art installation ("Work") to be incorporated into County's Fire Memorial Public Art project ("Project") and fabricate, deliver and install the Work at Nagasawa Community Park, Santa Rosa, CA to the satisfaction of County and in substantial conformance with Artist's Proposal ("Proposal"), to be developed as scheduled and outlined in Exhibit A. Artist shall not commence performance under this Agreement until receiving a written "Notice to Proceed" from the County.

The Work and Project shall all be in accordance, and not cause County to be out of compliance, with that certain Revocable License Agreement between County and the City of Santa Rosa for the Project site at Nagasawa Community Park. Artist acknowledges receipt of said License and opportunity for review of its applicable terms and conditions.

- 1.2. Cooperation With County. Artist shall cooperate with County and County staff in the performance of all work hereunder. The Work, including its materials, form, function, and maintenance, shall be coordinated with the Project, to ensure compatibility, consistency, and functionality with regard to the Project. To the extent of any conflict between the Work and the Project, the Project shall control as determined by County.

2. Payment. Payment to Artist shall not exceed \$320,000 ("Project Budget"), regardless of the number of hours or length of time necessary for Artist to complete the services and regardless of costs of materials or fabrication. Artist shall not be entitled to any additional payment for any expenses incurred in completion of the services, unless as mutually agreed between the parties and on

condition such additional costs are the direct result of material, changed circumstances to site landscaping conditions beyond the reasonable control of the parties.

In accordance with Exhibit A: Schedule for Work, Artist shall be paid for satisfactory completion of each Phase of the Work, as follows:

\$32,000 upon submission certificates of insurance acceptable to the County, execution of this Agreement.

\$100,000 upon completion of Phase 1.

\$80,000 upon completion of 50% fabrication and site design/landscape changes (2.b.i.).

\$40,000 upon completion of 75% fabrication and site design (2.b.ii.).

\$40,000 upon completion of 100% fabrication (2.b.iii.).

\$18,000 upon completion of Phase 3.

\$10,000 upon completion of Phase 4.

Upon completion of each Phase, Artist shall submit its bill[s] for payment in a form approved by County's Auditor and the Head of the County Department receiving the services. The bill[s] shall identify the services completed and the amount charged.

Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Artist for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Artist does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Artist does not qualify, County requires that a completed and signed Form 587 be provided by the Artist in order for payments to be made. If Artist is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the Artist agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Artist has the option to provide County with either a full or partial waiver from the State of California.

Pursuant to California Revenue and Taxation Code Section 6365, this Agreement may qualify to an extent for certain exemption(s) from sales tax as an original work of art for public display. County

will provide Artist with an Exemption Certificate in a format in accordance with Title 18 California Code of Regulations section 1667, *Exemption Certificates*.

3. Term of Agreement. The term of this Agreement shall be from the Effective Date to June 30, 2028, unless terminated earlier in accordance with the provisions of Article 4 below or as may be extended by County.
4. Termination.
 - 4.1. Termination for Convenience. Notwithstanding any other provision of this Agreement, at any time and without need for cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving five days written notice to Artist, providing that Artist is paid for all work and expenses up to date of termination as set forth in Section 4.5 below.
 - 4.2. Termination for Cause. Notwithstanding any other provision of this Agreement, should Artist fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Artist written notice of such termination, stating the reason for termination.
 - 4.3. Delivery of Work Product and Final Payment Upon Termination. In the event of termination, Artist, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Artist or Artist's subcontractors, Artists, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination, and Artist shall be paid for all work and expenses up to date of termination as set forth in Section 4.5 below.
 - 4.4. Performance Made Impossible. In the event it shall become impossible for Artist to complete the Work because of illness, death, injury, or other force majeure, this Agreement may be terminated at the sole discretion of County, and, in such event, all completed work, materials, and supplies related to the Work shall be delivered to County and shall, along with the Proposal, become County's sole property. County shall thereafter have no obligation to make any additional or further payments to Artist, and Artist shall have no further or additional claims against County with respect to the Work or such portion thereof as may be completed, or the Proposal, or with respect to any matter whatsoever pertaining to, affected by or embodied in this Agreement. In the event of such termination, County may take such action as may appear to it appropriate under the circumstances, including, without limitation of the generality of the foregoing, commissioning another artist to complete the Work. In the event that County completes the Work or arranges to have it completed, Artist's name shall be publicly displayed at, on or near the Work, if requested by Artist.
 - 4.5. Payment Upon Termination. Upon termination of this Agreement by County, Artist shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total

payment specified in the Agreement as the services satisfactorily rendered hereunder by Artist bear to the total services otherwise required to be performed for such total payment; provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Artist.

- 4.6. Authority to Terminate. The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Economic Development Collaborative Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Artist Warranties.

- 5.1. Artist Personal Involvement. Artist's personal involvement with and delivery of the Work were a material inducement to County to enter into this Agreement, and without which the County would not have entered into this Agreement. Notwithstanding any subcontracting or involvement of other parties in the Work, all of which shall remain under supervision and control of Artist, Artist shall remain primarily and personally engaged in and responsible for all creative and artistic decisions and craftsmanship as to the Work.
- 5.2. Standard of Care. County has relied upon the professional ability and training of Artist as a material inducement to enter into this Agreement. Artist hereby agrees and warrants that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Artist's work by County shall not operate as a waiver or release.
- 5.3. Restoration of Work Site. Artist agrees and warrants that, within 30 days after the Work is accepted by the County, Artist shall restore the Work site (including the entire area affected by the installation of the Work) to a state and condition that is substantially identical to that which existed when the Work was begun. Artist further agrees and warrants that, within the period specified herein, Artist shall repair or replace, as is determined necessary by County, and to the reasonable satisfaction of County, all property (real, personal or otherwise), which has been damaged, injured or otherwise adversely affected by the acts or omissions of Artist, or Artist's agents, contractors, or employees. Artist shall be solely responsible for all expenses and costs which may be necessary to comply with the requirements of this paragraph, and County shall have no responsibility or liability therefore.
- 5.4. Originality of Work. Artist warrants that the Work is solely the product of Artist's own creative efforts, that Artist owns or has acquired all proprietary and creative rights related to the Work and necessary to grant the license and ownership rights granted herein, and that the Work does not and will not infringe the rights of any person or entity. Artist also warrants that, unless otherwise stipulated in writing, the Work is original, that it is an edition of one (1), and that Artist shall not sell, license, perform or reproduce a copy of, or anything substantially similar to, the Work without the prior written consent of County.

- 5.5. Work Free from Defects. Artist shall warrant and maintain the Work free from all faults or defects related to material or workmanship for a period of one year after the Work is accepted by County.
- 5.6. Status of Artist. The parties intend that Artist, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Artist is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Artist expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees. Any terms in this Agreement referring to direction or changes to the Work from County shall be construed as providing for direction as to policy and the result of Artist's work only, and not as to the means by which such a result is obtained.
- 5.7. No Suspension or Debarment. Artist warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Artist also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Artist becomes debarred, Artist has the obligation to inform the County.
- 5.8. Taxes. Artist agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income, sales, and FICA taxes. Artist agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Artist's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Artist agrees to furnish County with proof of payment of taxes on these earnings.
- 5.9. Conflict of Interest. Artist warrants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Artist further warrants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Artist shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Artist's or such other person's financial interests.
- 5.10. Statutory Compliance/Living Wage Ordinance. Artist agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Artist expressly acknowledges and agrees that this Agreement [is/may be] subject to the provisions of Article

XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

5.11. Prevailing Wage. With respect to any portion of the Work, including as may be subject to subcontract, that constitutes “public work” within the meaning of Labor Code section 1720, Artist shall comply, and ensure compliance, with all applicable wage and hour laws, including without limitation Labor Code Sections 1775, 1776, 1777.5 1813 and 1815 and California Code of Regulations, Title 8, Section 16000, et seq. Artist shall properly document such compliance, including registration of all covered contracts with the Department of Industrial Regulations. County shall have the right to inspect all documentation to confirm compliance with this section at any time up to five years from project completion.

5.12. Nondiscrimination. Without limiting any other provision hereunder, Artist shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County’s Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

5.13. AIDS Discrimination. Artist agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

5.14. Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Artist.

6. Transfer of Title to Work. Title to the Work shall remain in Artist until County has accepted the Work as completed and it is installed to the satisfaction of County. When County has so certified, title shall transfer to County. Artist shall bear all risk of loss of the Work until title has been transferred to County.

The parties intend this Agreement to constitute an express transfer of the right of ownership in the Work, in accordance with the California Art Preservation Act and California Civil Code Section 988.

7. Acceptance of Work. County agrees to accept the completed Work unless:

- A. The Work was not completed in substantial conformance with the Proposal or the Construction Drawings, or
- B. The Work as completed or any portion thereof does not conform to a reasonable standard of artistic or technical quality. County shall provide its reasons for this finding to Artist in writing

no later than ten (10) days after Artist has tendered the Work to the County for County's acceptance.

Upon the County's refusal to accept the Work for the reasons stated in Article 7.A or 7.B, County shall have the right to: 1) request that Artist correct the deficiencies in the Work within a reasonable time, or 2) terminate this Agreement and recover all sums previously paid to the Artist. Both remedies shall be independent and cumulative and in addition to any other remedy available to the County at law or equity. Enforcement of one such remedy shall not be exclusive nor shall it be deemed an election of such remedy to the exclusion of any other or further remedy.

No payments to Artist shall be deemed as a waiver of County's right to refuse to accept the Work.

8. County Maintenance of Work. County agrees to reasonably ensure that the Work is properly maintained and protected. County agrees that it will not intentionally destroy, damage, alter, modify or change the Work in any way. In the event it becomes necessary, as determined by County, to relocate the Work, County shall confer with Artist concerning placement. Notwithstanding any of the foregoing, the County retains the absolute right to, temporarily and permanently, move the location of the Work, remove the Work from display, or deaccession the Work. The County shall notify Artist in the event of any substantial alteration, damage, or relocation of the Work.
9. Repair of Work. In the event repair of the Work is required, County may, but is not required to, give Artist the opportunity to perform the repairs for a reasonable fee. In the case of disagreement between County and Artist as to what constitutes a reasonable fee, the fee determined by an independent conservator selected by County shall be considered a reasonable fee. In the event Artist refuses to make the repairs for such fee, County may arrange for repairs by any other person selected by County. When emergency repairs are necessary in order to prevent the loss of or further damage to the Work, such repairs shall be undertaken or arranged by County without advance notice to Artist, and such repairs shall not constitute an artistic alteration.
10. Work Authorship. Artist shall retain the right to claim authorship of the Work. County shall ensure that Artist's name is publicly displayed on, at, or near the Work. In the event the Work is substantially damaged or altered, County shall no longer represent the Work to be the Work of Artist if Artist gives written notice to County that Artist denies authorship of the Work.
11. Copyright. Artist expressly reserves every right available to Artist at common law or under the Federal Copyright Act to control the making and dissemination of copies or reproduction of the Work except as otherwise stated in this Agreement. Artist agrees to give a credit substantially in the following form: "Original owned by the County of Sonoma County" in any public showing of reproductions of the Work. Artist authorizes and grants County and its assigns an unlimited, non-exclusive, and irrevocable license to make and use photographs, drawings, and other two-dimensional reproductions of the Work without prior consent of Artist if used solely for non-commercial purposes, advertising, tourism promotion, descriptive brochures, and similar purposes. All reproductions by County shall contain a copyright notice substantially in the following form: "©, Artist's name, date", in such a manner and location as shall comply with the U.S. Copyright laws.

12. Waiver of VARA and CAPA Rights. With the exception of Artist's rights as to third parties, Artist waives any and all rights Artist may have with respect to the Work and any uses of the Work under the federal Visual Artists Rights Act of 1990 (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art.
13. Assignment and Delegation. All rights of Artist pursuant to this Agreement are personal to Artist and may not be assigned by any act of Artist or by operation of law without the prior written consent of County. Neither party hereto shall assign, delegate, sublet, subcontract, or transfer any aspect of the Work or any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.
14. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

TO: COUNTY:

Economic Development Collaborative
Attn: Creative Sonoma Director
141 Stony Circle, Suite 110
Santa Rosa, CA 95401
CreativeSonoma@sonomacounty.gov

TO: ARTIST:

Cliff Garten & Associates, Inc.
1315 Preston Way
Venice, CA 90921
cgapublic@cliffgartenstudio.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

15. Artist Change of Address. Artist shall notify County in writing of any change of address. Failure to do so shall constitute a waiver of Artist's rights under this Agreement during the time of the

omission. Any waiver of a right pursuant to this Agreement for failure to maintain Artist's current address may be cured prospectively only by notifying County of Artist's current address.

16. Indemnification. Artist agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Artist, that arise out of, pertain to, or relate to Artist's or its agents', employees', contractors', subcontractors', or invitees' negligent acts or obligations under this Agreement. Artist agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Artist's or its agents', employees', contractors', subcontractors', or invitees' negligent acts or obligations under this Agreement. Artist's obligations under this Section apply whether or not there is concurrent or contributory negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at Artist's expense, subject to Artist's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Artist or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.
17. Insurance. During the entire term of this Agreement, Artist shall maintain the insurance coverage as set forth in Exhibit B. Artist represents and acknowledges that the Project Budget is inclusive of all Artist's costs for insurance as required under this Agreement. No additional compensation will be provided for Artist's insurance costs. It is understood and agreed by the Artist that its liability to the County shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the Artist in connection with this Agreement.
18. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.
19. Miscellaneous Provisions.
 - 19.1. No Waiver of Breach. The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.
 - 19.2. Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Artist and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Artist and County acknowledge that they have each had an

adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

- 19.3. Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 19.4. No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 19.5. Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.
- 19.6. Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 19.7. Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 19.8. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 19.9. Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.
- 19.10. Counterpart; Electronic Signatures. The parties agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and together which when executed by the requisite parties shall be deemed to be a complete original agreement. Counterparts may be delivered via facsimile, electronic mail (including PDF) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered, be valid and effective for all purposes, and shall have the same legal force and effect as an original document. This Agreement, and any counterpart, may be electronically signed by each or any of the parties through the use of any commercially available digital and/or electronic signature software or other electronic signature method in compliance with the U.S. federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civil Code § 1633.1 et seq.), or other applicable law. By its use of any electronic signature below, the signing party agrees to have conducted this transaction and to execution of this Agreement by electronic means.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

ARTIST: CLIFF GARTEN &
 ASSOCIATES, INC.

COUNTY: COUNTY OF SONOMA
APPROVED AS TO
SUBSTANCE FOR COUNTY:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Department Director

Date: _____

APPROVED AS TO FORM
FOR COUNTY:

By: _____
Deputy County Counsel

Date: _____

EXHIBIT A: SCHEDULE FOR WORK

The following schedule shall be adhered to in the design, fabrication and installation of the Work:

1. **Start Date:** Upon Agreement execution.
2. **Phase 1** to be completed by: **16 weeks** after Agreement execution, including 12 weeks for community engagement and preliminary design, plus 4 weeks for final site design and sculpture design. **Description: Artist shall develop and deliver an Artist's Proposal ("Proposal") for the Work.**

The development of the Proposal shall include:

- a. Research
- b. Community Engagement:
 - i. Outreach to identified neighborhood(s) and other stakeholders through meetings, emails, and surveys.
 - ii. Meaningful collaboration with identified stakeholder group(s) during design development.
 - iii. Workshops, public meetings, design charettes, surveys, presentations as needed.
 - iv. Collaboration with County and Project Task Force to site and integrate Proposal into site plan.
 - v. Artist shall attend Project meetings and make presentations to County staff, the Project Task Force, stakeholders, neighborhood groups, and other individuals and organizations, when necessary or desirable as solely determined by County. Artist agrees to collaborate closely with County through in-person meetings and other necessary means of communication to thoroughly gather input from and perform outreach to stakeholders and the neighborhood for the development of the Proposal.

The Proposal shall include:

- a. Conceptual drawings, models, animation, and written descriptions relating to the Work as directed by the County.
- b. The Proposal shall show the details and location of the Work, and will include indication of form, scale, and proposed materials. Samples shall be provided by Artist.
- c. The Proposal shall also include information on structural considerations including structural engineering, power requirements (if any), lighting types (if any), site location and accessibility considerations, surface integrity, permanence, and protection against theft and vandalism (collectively, "Design Specifications"). Artist shall provide presentation-quality visual material of the Proposal in conjunction with the review of the Proposal by the County.
- d. Itemized Project Budget including the following:
 - i. Itemized costs for materials including applicable sales tax
 - ii. Off-site fabrication costs including to scale mock up, software development and engineering, material analysis and research
 - iii. Costs of labor for assistants

- iv. Artist's design fee and time for coordination, fabrication, supervision and installation
 - v. Itemized General Contractor and subcontractor costs
 - vi. Permits or other fees
 - vii. Insurance
 - viii. Studio and operation expense, if applicable
 - ix. Lighting for the Work, if applicable
 - x. Travel costs
 - xi. Transportation of Work to site
 - xii. Storage costs both before and during installation, if applicable
 - xiii. Itemized installation costs, including labor and equipment
 - xiv. Contingency, minimum 5%
- (Site design, changes to site are not accounted for and should be separate from the installed artwork)

- e. Artist, at County's option, shall be available to present the Proposal, in the form approved by the County, at one or more meetings. Artist shall attend Project meetings and make presentations to County staff, the Project Task Force, and other individuals and organizations, as needed. Artist agrees to collaborate closely with County through in-person meetings and other necessary means of communication to thoroughly integrate the Work into the design of the site.
- f. The County, including based on decision of its Project Task Force, may approve, approve with changes, or disapprove Artist's Proposal and/or budget. If the County disapproves the Proposal, or approves it with changes, then upon written notification from County, Artist shall respond to the changes in writing and submit up to two design and related budget modifications to County. Artist recognizes and agrees that the County will review the Proposal as revised and may make additional request for changes regarding the revised Proposal.

3. **Phase 2** to be completed by: **52 weeks** after County approval of the Proposal. **Description: Fabrication of Work.**

- a. Phase 2a:
 - i. Finalized design and engineering drawings and specifications (collectively, "Construction Drawings") approved.
 - ii. Artist shall submit a detailed written description of the fabrication and installation methods ("Installation Specifications"). Artist shall submit a detailed fabrication and installation schedule ("Installation Schedule"), describing Artist's specific timelines for completing the Work.
- b. Phase 2b: Artist shall fabricate the Work in accordance with the Proposal and the Construction Drawings approved by the County. Any changes to the Construction Drawings or the Work shall be subject to County's prior written approval, which may or may not be granted in County's reasonable discretion.
 - i. Milestone 2b.i: 50% completion, 100% completion fabrication and landscape design
 - ii. Milestone 2b.ii: 75% fabrication
 - iii. Milestone 2b.iii: 100% completion and approval of sculpture component(s) by County before transportation to site.

4. **Phase 3** to be completed by: **8 weeks** after completion of Phase 2 **Description: Complete installation.** Artist and or Artist's representative will install Work.
5. **Phase 4** to be completed by: **1 week** after completion of Phase 3. **Description: Completion and submission to County of Maintenance Report** ("Exhibit C") and 20 digital images of completed Work.
 - a. Acceptance of the Work by County.

In no event shall Artist begin work without first receiving a written Notice to Proceed from County for each Phase or Milestone. County reserves the right to not proceed with any Phase or Milestone, and no subsequent Phases or Milestones are guaranteed.

EXHIBIT B: Insurance Requirements

Artist ("Contractor") shall maintain and require all of its subcontractors and other agents to maintain the insurance listed below. Contractor shall not commence Work or Project services, nor allow its employees, subcontractors or anyone to commence Work or Project services, until the required insurance has been submitted and approved by County. Any requirement for Contractor to maintain insurance after completion of the Work shall survive this Agreement.

County reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. County's failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or County's failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

Workers Compensation and Employers Liability Insurance

- a. Required if Contractor has employees as defined by the Labor Code of the State of California.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against County and the City of Santa Rosa.
- e. Required Evidence of Insurance:
 - i. Subrogation waiver endorsement; and
 - ii. Certificate of Insurance.

If Contractor currently has no employees as defined by the Labor Code of the State of California, Contractor agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should any employees be engaged during the term of this Agreement or any extensions of the term.

General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The General Aggregate shall apply separately to each Project. The required limits may be satisfied by a combination of General Liability Insurance and either Commercial Excess or Commercial Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Contractor.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If

the deductible or self-insured retention exceeds \$100,000 it must be approved in advance by County. Contractor is responsible for any deductible or self-insured retention and shall fund it upon County's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving the County.

- d. Insurance shall be continued for one (1) year after completion of the Work.
- e. **The County of Sonoma, the City of Santa Rosa, and their respective employees, officers, and agents** shall be endorsed as additional insureds for liability arising out of ongoing and completed operations by or on behalf of the Contractor in the performance of this Agreement. The foregoing shall continue to be additional insureds for one (1) year after completion of the Work under this Agreement.
- f. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- g. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "F" definition of insured contract in ISO form CG 00 01, or equivalent).
- h. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against County and City.
- i. The policy shall cover inter-insured suits between the additional insureds and Contractor and include a "separation of insureds" or "severability" clause which treats each insured separately.
- j. Required Evidence of Insurance:
 - i. Copy of the additional insured endorsement or policy language granting additional insured status; and
 - ii. Certificate of Insurance.

Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limit may be satisfied by a combination of Automobile Liability Insurance and either Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

4. Professional Liability Insurance

- a. Minimum Limit: \$1,000,000 per claim.
- b. The Contractor shall disclose any deductible or self-insured retention in excess of \$25,000.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- d. Insurance applicable to the work related to the design and construction of the Project shall be continued for two (2) years after completion of the work. Such continuation Insurance may be provided by one of the following: (1) renewal of the existing

policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work.

- e. Required Evidence of Insurance: Certificate of Insurance

5. Standards for Insurance Companies

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

6. Documentation

- a. The Certificate of Insurance must include the following reference: Agreement for Artist Services – Sonoma County Fire Memorial.
- b. Contractor shall submit all required Evidence of Insurance prior to the execution of this Agreement. Contractor agrees to maintain current Evidence of Insurance on file with County as specified above.
- c. The address for Additional Insured endorsements and Certificates of Insurance is: Economic Development Collaborative, Attn: Creative Sonoma Director, 141 Stony Circle, Suite 110, Santa Rosa, CA 95401.
- d. Contractor shall submit required Evidence of Insurance for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Contractor shall provide immediate written notice if: (1) any of the required insurance policies are terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, Contractor shall provide certified copies of required insurance policies within thirty (30) days.

7. Policy Obligations

Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

8. Material Breach

If Contractor fails to maintain insurance which is required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement. County, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, County may purchase the required insurance, and without further notice to Contractor, County may deduct from sums due to Contractor any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.

EXHIBIT C: MAINTENANCE REPORT

Artist Name:

Address:

Home Phone:

Cell Phone:

1. Title of the work:
2. Medium(s) or material(s):
3. Edition information, if applicable:
4. Date and place of creation:
5. Collaborating artists(s), if any:
6. Maker(s) aside from the artist (fabricators, technicians), if any: Include names, addresses, phone numbers, and the elements worked on:
7. Location of signature and copyright mark, if present:
8. Exhibitions related only to the above-named work, if any:
9. Published reviews of articles about the above-named work:
10. Dimensions (in inches): Record height, width, depth, or diameter. If the work is irregular or circular, specify so in parentheses. For multi-part works, measure the significant parts as well as the whole; measure separately from the frame or pedestal. Include dimensions of the frame or pedestal separately:
11. Materials used in creating the work (be specific and technical):
12. Technique or construction methods employed (attach fabrication drawings if needed):
13. Material finish on the work (glaze, paint color and type, sanding, grit, tool pattern, patina, surface sealer, etc.):
14. Foundation/installation structure (include armature bolt/pin size, grout, etc.):

15. Handling instructions:

16. Artist's statement about the work (concept, message, relationship to site, etc.):

17. Recommended routine maintenance and care (cleaning agents, procedures, schedule, etc.):

18. Special handling or storage instructions:

19. Cautions or concerns regarding the work:

20. Packing, shipping, or storage instructions (if needed):