

**Meeting Date:** 10/14/2014

**Report Type:** Consent

**Report ID:** 2014-00762

**Title:** Artwork for North Natomas Regional Park (L19921000)

**Location:** District 1

**Recommendation:** Pass a Motion authorizing the City Manager or his designee to enter into an agreement with Mark Grieve and Ilana Spector for the fabrication and installation of artwork at the entrance of North Natomas Regional Park for a not-to-exceed amount of \$138,000.

**Contact:** Shelly Willis, Executive Director, (916) 808-3971, Sacramento Metropolitan Arts Commission; Jody Ulich, Director, (916) 808-5105, Convention & Cultural Services

**Presenter:** None

**Department:** Convention & Cultural Services

**Division:** Metro Arts-APP

**Dept ID:** 17001821

**Attachments:**

1-Description/Analysis

2-Contract

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**City Attorney Review**

Approved as to Form

Kourtney Burdick

10/8/2014 9:07:12 AM

**Approvals/Acknowledgements**

Department Director or Designee: Jody Ulich - 9/26/2014 1:05:09 PM

## Description/Analysis

**Issue Detail:** As part of the North Natomas Regional Park (NNRP) public art project, staff recommends City Council authorize the execution of an agreement with Mark Grieve and Ilana Spector to fabricate and install the artwork identified in Attachment 3 at North Natomas Regional Park.

**Policy Considerations:** The Sacramento Metropolitan Arts Commission's (the "Commission's") approval of the purchase of an artwork for NNRP meets standard Art in Public Places (APP) policies and procedures and the goal of site-specific public art.

**Economic Impacts:** None

**Environmental Considerations:** California Environmental Quality Act (CEQA): Under the CEQA guidelines, Title 14, Section 15378(b), continuing administrative activities do not constitute a project and are therefore exempt from CEQA review.

**Sustainability:** The proposed artwork will be part of the City's permanent public art collection and be maintained by the City.

**Commission/Committee Action:** Under City Code section 2.84.130, the Commission has the authority to provide for the nature, selection, and placement of artwork projects. For the NNRP, the Commission approved the design for the Artwork, recommending it for purchase by the City for placement at the entrance of NNRP.

**Rationale for Recommendation:** As envisioned by staff, the goals of the NNRP public art project are to:

- enhance the enjoyment and quality of life for City residents and visitors;
- increase the public's experience of contemporary art;
- relate to the site;
- be engaging, educational, and have other enduring qualities;
- be a monumental gateway entrance to the park; and
- have a baseball theme.

The Agreement is being recommended for approval because:

- The artists have the ability and experience to complete the project as proposed
- Funding has been set aside for this purpose
- The artists were selected in an open competition
- The Artwork designs were approved by the Sacramento Metropolitan Arts Commission

If approved by City Council, the Artwork will be fabricated and installed by Mark Grieves and Ilana Spector.

**Financial Considerations:** Mark Grieves and Ilana Spector will fabricate and install the Artwork for an amount not-to-exceed \$138,000. The Planning Area 10: Art in Public Places Capital Improvement Program (L19921000) has sufficient Park Development Impact Fee Funds (Fund 3204) available for this agreement.

**Local Business Enterprise (LBE):** The open call to artists for this project was released prior to establishment of the City's current LBE program.

## CONTRACT TO PURCHASE ARTWORK

**Mark Grieve and Ilana Spector**  
**2975 Sonoma Mountain Road, Petaluma, CA 94954**  
**(415) 850-3690**  
**markdgrieve@gmail.com**  
**("Artist")**

### RECITALS

- A. The City's Art in Public Places ("APP") program, as set forth in Chapter 2.84 of the Sacramento City Code, requires at least two percent of the total construction costs for eligible projects be spent on public artwork. The Sacramento Metropolitan Arts Commission ("SMAC") is charged with providing for the nature, selection, and placement of these artworks.
- B. Through the APP program, funds have been allocated for the selection, purchase and placement of artwork to be installed at North Natomas Regional Park located at 1839 North Bend Drive, near the intersection of Del Paso Road and Truxel Road, in Sacramento, California ("Work") (eCAPS#: L19921004). The 30' x 50' artwork, by Artist, is to be located at the entry plaza to the North Natomas Regional Park. It is a landmark gateway comprised of hundreds of painted baseball bats arranged into an archway resting atop two concrete pedestals.

NOW THEREFORE, the parties mutually agree as follows:

1. **Scope of Work.** Subject to the terms and conditions set forth in this Agreement, Artist shall:
  - A. Purchase on Artist's account all labor, supplies, materials and equipment required to design and furnish to the City an exterior artwork ("Work") at the North Natomas Regional Park located at 1839 North Bend Drive in Sacramento ("Site"), to the satisfaction of City and in substantial conformance with Artist's Design Proposal ("Proposal") to be developed as scheduled and outlined in Exhibit A.
  - B. The Work shall be placed and located as described in the Proposal.
  - C. Artist shall not commence performance of any of the services identified in section 1.A until receiving a written "Notice to Proceed" from the City for each Phase and Milestone of this project.
2. **Payment.** The total of all fees paid to Artist for the performance of all services set forth in this Agreement shall not exceed \$138,000.

Payments to Artist shall be made within 60 days after receipt of Artist's invoices. Artist shall be responsible for the cost of supplying all documentation necessary to verify the billings to the satisfaction of City. Artist agrees that City has no obligations regarding commissions or any agreements with galleries or agents with whom Artist may have contracted. City is not responsible for paying sales tax.

Payments to Artist will be made as follows:

- A. Five thousand dollars (\$5,000) upon execution of this Agreement and dispatch of purchase order;
- B. Fifteen thousand dollars (\$15,000) upon completion of Phase I: Design Proposal;
- C. Thirty-five thousand dollars (\$35,000) upon completion of Phase 2a: Engineering drawings approved and any required permits obtained;
- D. Thirty-eight thousand dollars (\$38,000) upon completion of Phase 2b: Fabrication at 100% completion;
- E. Twenty-five thousand dollars (\$25,000) upon completion of Phase 2c: Transport, installation, and acceptance of the Work by the City; and
- F. Ten thousand dollars (\$10,000) upon completion of Phase 3: Acceptance of the Work by City, and satisfactory completion and submission to city of the Maintenance Report attached hereto as Exhibit B, and of 20 high resolution digital images documenting the processes of Work fabrication and installation and of completed Work submitted on a compact disc (CD).
- G. In addition, the City shall reserve a contingency of \$10,000 ("Contingency") to address unforeseen and unpredictable circumstances that are discovered during the fabrication of the Work and are beyond the control of the Artist, as determined by the City in its sole discretion. The Contingency, or a portion thereof, may only be used upon the City's express written authorization. Artist understands it has no right to the Contingency and absent unforeseen and unpredictable circumstances that are beyond the Artist's control, as determined by the City, Artist's total compensation under this Agreement shall not exceed \$128,000.

No payment shall be made if Artist is in default of this Agreement or if any milestone or Phase is not completed to the satisfaction of City. City shall be the sole determiner of when a milestone or Phase has been completed to its satisfaction.

3. **Time of Performance; Documentation of Work.** Time is of the essence in this Agreement. Artist shall dedicate such time and effort as is necessary to fulfill Artist's obligations to completely finish and install the Work to the satisfaction of City within the timelines set forth in the Schedule, except as the Work may be

delayed by circumstances described in section 19, below. City shall make its staff and contractors reasonably available to Artist for consultation and assistance in order to achieve the purposes of this Agreement. Artist shall provide to the City twenty (20) high resolution (300 dpi minimum) digital images documenting the processes of Work fabrication and installation. Artist shall also provide City with a complete schedule for the maintenance of the Work in the form reflected in Exhibit B hereto.

4. **Artist Warranties.**

- A. **Restoration of Work Site.** Artist agrees and warrants that, within 30 days after the Work is accepted by the City, Artist shall restore the Work site (including the entire area affected by the fabrication and installation of the Work) to a state and condition that is substantially similar 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 City, and to the reasonable satisfaction of City, all property (real, personal or otherwise), which has been damaged, injured or otherwise adversely affected by the acts or omissions of Artist, 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 City shall have no responsibility or liability therefore.
- B. **Originality of Work.** Artist warrants that the Work is original and is solely the product of Artist's own creative efforts and does 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 substantially similar copy of the Work without the prior written consent of City. However, nothing contained herein shall prevent the Artist from creating future works in her style and manner of working.
- C. **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 City.
- D. **Compliance with all Laws.** Artist agrees to fabricate and install the Work in conformance with all applicable laws.

5. **Transfer of Title to Work.** Title to the Work shall remain in Artist until City has accepted the Work as completed and it is installed to the satisfaction of City. When City has so certified, title shall transfer to City. Artist shall bear all risk of loss of the Work until title has been transferred to City, and City agrees to inspect Work and accept Work within thirty (30) days of Artist's notification of completion, unless the provisions of 7 A. or B. apply.

6. **Performance Made Impossible.** In the event it shall become impossible for Artist to complete the Work because of illness, death or injury, this Agreement may be terminated at the sole discretion of City, and, in such event, all completed work, materials, and supplies related to the Work shall be delivered to City and shall, along with the Proposal, become City's sole property. City shall thereafter have no obligation to make any additional or further payments to Artist, and Artist shall have no further or additional claims against City 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, City 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 City completes the Work or arranges to have it completed, Artist's name shall be publicly displayed at, on or near the Work, unless Artist and City mutually agree otherwise.
7. **Acceptance of Work.** City agrees to accept the completed Work unless:
  - A. The Work was not completed in substantial conformance with the Proposal or the Specifications, or
  - B. The Work as completed or any portion thereof does not conform to a reasonable standard of artistic or technical quality. City 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 City for City's acceptance. Where the Artist disputes this finding, the dispute may, if the Parties so agree, be submitted to Arts Arbitration and Mediation Services ("A.A.M.S."), of California Lawyers for the Arts, Sacramento for resolution., and any decision by A.A.M.S. shall be binding upon City and Artist and neither shall have any further recourse or cause of action regarding the matters so resolved, or
  - C. Upon the City's refusal to accept the Work for the reasons stated in subparagraphs A or B, City 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 Artist. Both remedies shall be independent and cumulative and in addition to any other remedy available to the City 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. However, nothing contained herein shall limit City's available remedies at law and equity.
  - D. No payments to Artist shall be deemed as a waiver of City's right to refuse to accept the Work.
8. **City Maintenance of Work.** City agrees to reasonably ensure that the Work is properly maintained and protected. City agrees that it will not intentionally destroy, damage, alter, modify or change the Work in any way. If an alteration should

occur, either intentionally or unintentionally, the Work will no longer be represented as the work of the Artist without his or her written permission. This does not preclude the City's right to move or remove the Work from display or deaccession the Work. In the event it becomes necessary to change the placement of the Work, City shall confer with Artist concerning placement, though the ultimate placement of the Work is solely within the City's discretion.

9. **Repair of Work.** In the event repair of the Work is required, City may give Artist the opportunity to perform the repairs for a reasonable fee. In the case of disagreement between City and Artist as to what constitutes a reasonable fee, the fee determined by an independent conservator selected by City shall be considered a reasonable fee. In the event Artist refuses to make the repairs for such fee, City may arrange for repairs by another qualified person. 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 City without advance notice to Artist, and such repairs shall not constitute an artistic alteration. City shall thereafter notify Artist as soon as is practicable.
10. **Work Authorship.** Artist shall retain the copyright to the Work and the right to claim authorship of the Work. City 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, City shall no longer represent the Work to be the Work of Artist if Artist gives written notice to City that Artist denies authorship of the Work on the grounds stated in this paragraph. In the event City disputes the right of Artist to deny authorship, the matter may be submitted to A.A.M.S for mediation or arbitration. If the parties select arbitration, the determination by A.A.M.S shall be binding upon City and Artist and neither shall have any further recourse or cause of action regarding the matters so determined.
11. **Artist Payment of Contractors and Employees.** In the event Artist hires or contracts with employees, subcontractors, or material suppliers, Artist shall pay these employees, subcontractors, or material suppliers out of the payments made to Artist by City for completion of the phase of work for which the employees, subcontractors, or material suppliers provided labor or materials and provide proof of payment to the City prior to completion of the next phase of work. In the case of nonpayment of wages or other amounts due the employees, subcontractors, or material suppliers herein, City may withhold from Artist out of payments due a sum sufficient to pay such persons the amounts owed by Artist absent evidence satisfactory to the City of a legal basis for such nonpayment. All subcontractors shall be properly licensed pursuant to the Contractors State License Law (Business and Professions Code sections 7000 et seq.). Before performing any work, each subcontractor shall provide to the City and Artist evidence that the subcontractor has workers' compensation insurance coverage if this insurance is required by state law.
12. **Indemnity.** Artist shall defend, hold harmless and indemnify City and SMUD, their officers and employees, and each and every one of them, from and against any and all claims, actions, damages, costs, liabilities, demands, losses,

judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by City's and/or SMUD's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Claims"), including but not limited to Claims arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, that arise out of, pertain to or relate solely to any negligent act or omission, recklessness or willful misconduct of Artist, its subcontractors or agents, and their respective officers and employees, in connection with performance of or failure to perform this Agreement, whether or not such Claims are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from the sole negligence or willful misconduct of City or SMUD, their subcontractors or agents, and their respective officers and employees. The existence or acceptance by City of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of City's or SMUD's rights under this Section 12, nor shall the limits of such insurance limit the liability of Artist hereunder. The provisions of this Section 12 shall survive any expiration or termination of this Agreement.

13. **Insurance.** During the entire term of this Agreement, Artist shall maintain the insurance coverage described in this Section 13.

Full compensation for all premiums that Artist is required to pay for the insurance coverage described herein shall be included in the compensation paid to Artist under this Agreement. No additional compensation will be provided for Artist's insurance premiums.

It is understood and agreed by the Artist that its liability to the City and/or SMUD 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.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury,

with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Artist.

No automobile liability insurance shall be required if Artist completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." AS/WG (Artist initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the City by selecting the option below:

\_\_\_\_\_ Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the Artist.

No Workers' Compensation insurance shall be required if Artist completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." AS/WG (Artist initials)

- (4) Professional Liability Insurance providing coverage on a claims made basis for errors, omissions or malpractice with limits of not less than one million (\$1,000,000) dollars if required by the City by selecting the option below:

\_\_\_\_\_ Professional liability insurance is required and must be continued for at least \_\_\_\_\_ year(s) following the completion of all Services and Additional Services under this Agreement.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The City and SMUD, their officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of Artist, products and completed operations of Artist, and premises owned, leased or used by Artist. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the City by selecting the option below:

Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The City, their officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Except for professional liability, Artist's insurance coverage shall be primary insurance as respects City, their officials, employees and volunteers. Any insurance or self-insurance maintained by City, their officials, employees or volunteers shall be in excess of Artist's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, their officials, employees or volunteers.
- (3) Coverage shall state that Artist's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) City will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 13 must be declared to and approved by the City's Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) Artist shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the APP Administrator. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be

signed by an authorized representative of the insurance carrier.

- (2) The City may withdraw its offer of contract or terminate this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement or when demanded by City. The City may withhold payments to the Artist and/or terminate the Agreement if the insurance is canceled or Artist otherwise ceases to be insured as required herein.

F. Subcontractors

Artist shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subparagraph A, above.

14. **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 those rights are limited by this Agreement. Artist agrees to give a credit substantially in the following form: "Original owned by the City of Sacramento" in any public showing of reproductions of the Work. Artist authorizes City and its assigns to make photographs, drawings, and other two dimensional reproductions of the Work without prior consent of Artist if used solely for noncommercial purposes, advertising, descriptive brochures, and similar purposes. All reproductions by City 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.
15. **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 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.
16. **Location of Work.** The final location of the Work shall be determined by the City's architect, engineer, or Arts Commission following consultation with Artist.
17. **Dispute Resolution.** If any dispute is submitted to a third party for resolution, all fees, expenses, and costs connected therewith shall be borne jointly and equally by City and Artist. The previous sentence notwithstanding, each party shall bear their own attorneys' fees and costs. Each and every obligation under this Agreement to submit any matter to a third party for resolution is conditioned upon the foregoing two sentences of this paragraph. If any matter is to be submitted to A.A.M.S, and if at the time such submission is called for, A.A.M.S is not in existence or is not able or willing to provide such resolution service, then the

matter shall be submitted for resolution to the American Arbitration Association in accordance with their procedures then in use.

18. **Artist Change of Address.** Artist shall notify SMAC 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 SMAC of Artist's current address. All rights of Artist pursuant to this Agreement shall be personal to Artist and shall terminate upon either the legal disability or incompetence of Artist or upon the death of Artist, except as provided Artist under copyright laws.
19. **Excuse from Performance.** In the event Artist's performance of any of his obligations or undertakings under this Agreement is delayed, interrupted, or prevented by an act of God, unforeseen conditions, unusually severe weather, or occurrences that are beyond the control of either party to this Agreement, Artist shall be excused from any further performance for whatever period of time after the occurrence necessary to remedy the effects of that occurrence. Artist shall notify City in writing within ten (10) days after any occurrence described in this section that may delay Artist performance. City shall amend the Schedule when, in its determination, Artist's performance has been excused, and the delay or interruption has resulted in a material change in the time for performance.

In the event that the installation site has not been adequately prepared for receipt of the Work as scheduled, or delivery or installation is delayed due to a material failure on the part of the City or its subcontractors, then the City shall promptly act to address the problem(s) identified by Artist. In such events, timelines for performance by Artist shall be extended as needed, provided, that none of the delays are caused in whole or in part by Artist. Site preparation by City shall not include site measurements, which shall be the sole responsibility of Artist
20. **Public Lecture.** As part of his Agreement, Artist will give one public art lecture regarding the Work after the installation of the Work is completed. Arrangements are to be approved in advance by the APP Administrator.
21. **Conceptual Drawing.** As part of this Agreement, Artist will provide the City of Sacramento, APP program one (1) conceptual drawing or maquette of the proposed artwork.
22. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.
23. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by Artist, and by City, in accordance with applicable provisions of the Sacramento City Code.

24. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
25. **No Waiver.** Neither City acceptance of, or payment for, any work performed by Artist, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
26. **Choice of Law; Venue.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
27. **Assignment Prohibited.** The expertise and experience of Artist are material considerations for this Agreement. Artist shall not assign any right or obligation pursuant to this Agreement without the written consent of the City. Any attempted or purported assignment without City's written consent shall be void and of no effect.
28. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 27, above.
29. **Term; Suspension; Termination.**
  - A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
  - B. City shall have the right at any time to temporarily suspend Artist's performance hereunder, in whole or in part, by giving a written notice of suspension to Artist. If City gives such notice of suspension, Artist shall immediately suspend its activities under this Agreement, as specified in such notice.
  - C. City shall have the right to terminate this Agreement at any time by giving a written notice of termination to Artist. If City gives such notice of termination, Artist shall immediately cease rendering services pursuant to this Agreement. If City and/or terminates this Agreement:

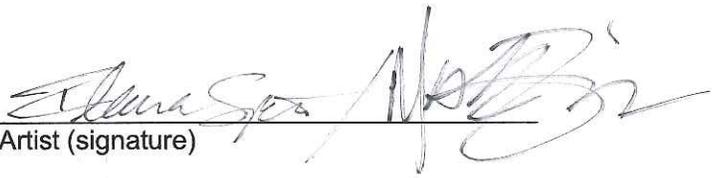
- (1) Artist shall, not later than five days after such notice of termination, deliver to City copies of all information prepared pursuant to this Agreement.
- (2) City shall pay Artist the reasonable value of services rendered; provided, however, City shall not in any manner be liable for lost profits that might have been made by Artist had the Agreement not been terminated. In this regard, Artist shall furnish to City such financial information as in the judgment of the City is necessary for City to determine the reasonable value of the services rendered by Artist. The foregoing is cumulative and does not affect any right or remedy that City may have in law or equity.

**CITY OF SACRAMENTO**

**ARTIST:**

A Municipal Corporation

By:

  
Artist (signature)

\_\_\_\_\_  
Jody Ulich, Director  
Convention and Cultural Services Department  
For John F. Shirey, City Manager

\_\_\_\_\_  
Federal I.D. No.

APPROVED TO AS FORM:

State I.D. No.

  
Kourtney Burdick, Deputy City Attorney

\_\_\_\_\_  
1015002  
City of Sac. Business Op. Tax Cert. No.

ATTEST:

TYPE OF BUSINESS ENTITY (check one):

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

- Individual/Sole Proprietor  
 Partnership  
 Corporation (may require 2 signatures)  
 Limited Liability Company  
 Other (please specify: \_\_\_\_\_)

Attachments Exhibit A - Schedule for  
Completion of work

Exhibit B – Maintenance Report

## EXHIBIT A: SCHEDULE FOR COMPLETION OF WORK

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

1. **Start Date:** Upon receipt of a Notice to Proceed from City.
2. **Phase 1** to be completed by: 1 month after Agreement execution.  
Description: Artist shall develop and deliver a Final Design Proposal ("Proposal") for the Work. The Proposal shall include:
  - a. Final design drawings showing the details and location of the Work, the form, scale of the Artwork columns or base, the design and location for a sign that includes the name of the park, and approved materials. Samples shall be provided by Artist.
  - b. The Proposal shall also include information on 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 City.
  - c. Budget, including the following:
    - Itemized costs for materials including applicable sales tax
    - Off-site fabrication costs
    - Costs of labor for assistants
    - Artist's design fee and time for coordination, fabrication, supervision and installation which may not exceed 15% of the total Work Budget
    - Itemized subcontractor costs
    - Insurance
    - Studio and operation expense
    - Itemized installation costs, including labor and equipment
    - 10% contingency
  - d. Artist, at City's option, shall be available to present the Proposal, in the form approved by the City, at up to three meetings. Artist shall attend up to 3 project meetings and make presentations to City staff, the Commission, the Project Architect, or other individuals and organizations, as needed in person, phone, or Skype. Artist agrees to collaborate closely with City through not more than three in-person meetings and other necessary means of communication to thoroughly integrate the Proposal into the architectural design of the site.
  - e. The City may approve, approve with minor changes, or disapprove the Proposal. In the event that the City disapproves the Proposal, or approves it with minor changes, the Artist, upon written notification by the City, shall respond to the changes in writing and submit up to two design modifications

to the Proposal. Artist recognizes and agrees that the City will review the Proposal as revised and may make additional request for changes regarding the revised Proposal.

3. **Phase 2:** to be completed by: 12 months after City approval of the Proposal.  
Description: Fabrication and Installation of the Work.
  - a. Milestone 2a: Engineering drawings approved and any required permits obtained.
  - b. Milestone 2b: 100% completion of Work and ready for delivery to site
  - c. Milestone 2c: Transportation and installation of Work
4. **Phase 3:** to be completed by : 1 month after Phase 2 is completed  
Description: Acceptance of the Work by City, and satisfactory completion and submission to city of the Maintenance Report attached hereto as Exhibit B, and of 20 high resolution digital images documenting the processes of Work fabrication and installation and of completed Work submitted on a compact disc (CD).

City must approve Work at each phase before Artist proceeds with the succeeding phase.

**In no event shall Artist begin work on any Milestone or Phase without first receiving a written Notice to Proceed from City.**

**EXHIBIT B**  
**MAINTENANCE REPORT**

Artist: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Studio Phone: \_\_\_\_\_ Email Address: \_\_\_\_\_

1. Title of the Artwork: \_\_\_\_\_

2. Medium or material: \_\_\_\_\_

3. Edition information, if applicable: \_\_\_\_\_

4. Date and place executed: \_\_\_\_\_

5. Collaborating artist(s), if applicable. \_\_\_\_\_

\_\_\_\_\_

1. Maker(s) other than Artist (fabricators, technicians), if applicable. Include names, addresses, phone numbers and element worked on.

\_\_\_\_\_

7. Location of signature and copyright mark, if it occurs.

\_\_\_\_\_

\_\_\_\_\_

8. Exhibitions pertaining only to the above-named work, if any.

\_\_\_\_\_

\_\_\_\_\_

9. Published reviews or articles concerning the above named work.

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10. Dimensions (please measure in both inches and centimeters; record height first, then width, then depth if needed or diameter; if a work is irregular or circular in shape, state as such in parenthesis; if work involves multiple pieces, measure the significant parts as well as the whole; measure the work separately from the frame or pedestal; include the dimensions of the frame or pedestal.)

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11. Materials used in the execution of the Artwork (be technical and specific).

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2. Technique or construction methods used in the execution of the Artwork  
(Attach fabrication drawings, if necessary).

---

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13. Material finish on the Artwork (glaze, paint color and type, sanding, grit, tool pattern, patina, surface sealer, etc).

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14. Foundation/installation structure (include armature bolt/pin size, grout, etc.).

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15. Handling instructions.

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

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17. Describe recommended general routine maintenance and care for the Artwork (cleaning agent(s), procedure(s) timetable, etc.).

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18. Special handling and/or storage instructions.

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19. Special cautions or concerns regarding the Artwork.

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20. Packing, shipping or storage instructions (should the need arise).

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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/09/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> 707-773-3601      707-773-3964 Unique Insurance Service, Inc. DBA: Agency Service Bureau P.O. Box 750997 Petaluma, CA 94975	<b>CONTACT NAME:</b> Mollie Caldwell <b>PHONE (A/C, No, Ext):</b> 707-773-3601 <b>FAX (A/C, No):</b> 707-773-3964 <b>E-MAIL ADDRESS:</b> mollie@asbagent.com														
<b>INSURED</b> Mark Grieve 7975 Sonoma Mountain Road Petaluma, CA 94954	<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A : Liberty Mutual Insurance</td> <td></td> </tr> <tr> <td>INSURER B :</td> <td></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Liberty Mutual Insurance		INSURER B :		INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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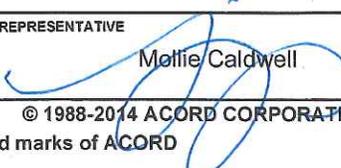
**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>		BKS 56302500	09/15/2014	09/15/2015	EACH OCCURRENCE \$ \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ \$500,000 MED EXP (Any one person) \$ \$15,000 PERSONAL & ADV INJURY \$ \$1,000,000 GENERAL AGGREGATE \$ \$2,000,000 PRODUCTS - COMP/OP AGG \$ \$2,000,000 \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED      RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N/A				PER STATUTE      OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate Holder is named as Additional Insured.

<b>CERTIFICATE HOLDER</b> Ilana Spector 2975 Sonoma Mountain Road Petaluma, CA 94954	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  Mollie Caldwell
---	---

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**COMMERCIAL GENERAL LIABILITY EXTENSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**INDEX**

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With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

**A. NON-OWNED AIRCRAFT**

Under Paragraph 2. Exclusions of Section I – Coverage A - Bodily Injury And Property Damage Liability, exclusion g. Aircraft, Auto Or Watercraft does not apply to an aircraft provided:

1. It is not owned by any insured;
2. It is hired, chartered or loaned with a trained paid crew;
3. The pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating her or him a commercial or airline pilot; and
4. It is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

**B. NON-OWNED WATERCRAFT**

Under Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability, Subparagraph (2) of exclusion g. Aircraft, Auto Or Watercraft is replaced by the following:

This exclusion does not apply to:

- (2) A watercraft you do not own that is:
  - (a) Less than 52 feet long; and
  - (b) Not being used to carry persons or property for a charge.

**C. PROPERTY DAMAGE LIABILITY – ELEVATORS**

1. Under Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability, Subparagraphs (3), (4) and (6) of exclusion j. Damage To Property do not apply if such "property damage" results from the use of elevators. For the purpose of this provision, elevators do not include vehicle lifts. Vehicle lifts are lifts or hoists used in automobile service or repair operations.
2. The following is added to Section IV – Commercial General Liability Conditions, Condition 4. Other Insurance, Paragraph b. Excess Insurance:

The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

**D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)**

If Damage To Premises Rented To You is not otherwise excluded from this Coverage Part:

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury and Property Damage Liability:

- a. The fourth from the last paragraph of exclusion j. Damage To Property is replaced by the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from an automatic fire protection system) to:

- (i) Premises rented to you for a period of 7 or fewer consecutive days; or
- (ii) Contents that you rent or lease as part of a premises rental or lease agreement for a period of more than 7 days.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" to contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in Section III – Limits of Insurance.

- b. The last paragraph of subsection **2. Exclusions** is replaced by the following:  
 Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III – Limits Of Insurance**.
- 2. Paragraph **6.** under **Section III – Limits Of Insurance** is replaced by the following:
  - 6. Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to:
    - a. Any one premise:
      - (1) While rented to you; or
      - (2) While rented to you or temporarily occupied by you with permission of the owner for damage by fire, lightning, explosion, smoke or leakage from automatic protection systems; or
    - b. Contents that you rent or lease as part of a premises rental or lease agreement.
- 3. As regards coverage provided by this provision **D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)** - Paragraph **9.a.** of **Definitions** is replaced with the following:
  - 9.a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with the permission of the owner, or for damage to contents of such premises that are included in your premises rental or lease agreement, is not an "insured contract".

**E. MEDICAL PAYMENTS EXTENSION**

If **Coverage C Medical Payments** is not otherwise excluded, the Medical Payments provided by this policy are amended as follows:

Under Paragraph **1. Insuring Agreement** of **Section I – Coverage C – Medical Payments**, Subparagraph **(b)** of Paragraph **a.** is replaced by the following:

- (b)** The expenses are incurred and reported within three years of the date of the accident; and

**F. EXTENSION OF SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

- 1. Under **Supplementary Payments – Coverages A and B**, Paragraph **1.b.** is replaced by the following:
  - b. Up to **\$3,000** for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- 2. Paragraph **1.d.** is replaced by the following:
  - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to **\$500** a day because of time off from work.

**G. ADDITIONAL INSURED - BY CONTRACT, AGREEMENT OR PERMIT**

- 1. Paragraph **2.** under **Section II – Who Is An Insured** is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by:
  - a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your on going operations for the additional insured that are the subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or

- b. Premises or facilities rented by you or used by you; or
- c. The maintenance, operation or use by you of equipment rented or leased to you by such person or organization; or
- d. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit subject to the following additional provisions:
  - (1) This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of the operations performed for the state or political subdivision;
  - (2) This insurance does not apply to "bodily injury" or "property damage" included within the "completed operations hazard".
  - (3) Insurance applies to premises you own, rent, or control but only with respect to the following hazards:
    - a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
    - (b) The construction, erection, or removal of elevators; or
    - (c) The ownership, maintenance, or use of any elevators covered by this insurance.

However:

- 1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
- 2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

With respect to Paragraph 1.a. above, a person's or organization's status as an additional insured under this endorsement ends when:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

With respect to Paragraph 1.b. above, a person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such premises or facilities ends.

With respects to Paragraph 1.c. above, this insurance does not apply to any "occurrence" which takes place after the equipment rental or lease agreement has expired or you have returned such equipment to the lessor.

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph b. of Condition 2. **Duties In the Event Of Occurrence, Offense, Claim Or Suit** under **Section IV – Commercial General Liability Conditions**.

2. With respect to the insurance provided by this endorsement, the following are added to Paragraph 2. **Exclusions under Section I - Coverage A - Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

- a. "Bodily injury" or "property damage" arising from the sole negligence of the additional insured.
- b. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.
- c. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
  - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

- d. "Bodily injury" or "property damage" occurring after:
  - (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
  - (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- e. Any person or organization specifically designated as an additional insured for ongoing operations by a separate **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS** endorsement issued by us and made a part of this policy.

3. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or
  - b. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

H. **PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION**

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

Condition 4. **Other Insurance of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

- a. The following is added to Paragraph a. **Primary Insurance:**

If an additional insured's policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.

Paragraphs (a) and (b) above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, includes the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury", or caused in whole or in part by their intoxication by liquor or controlled substances.

The coverage provided by provision J. is excess over any other valid and collectable insurance available to your "employee".

**K. NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES**

Paragraph 3. of Section II - Who Is An Insured is replaced by the following:

3. Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the expiration of the policy period in which the entity was acquired or formed by you;
  - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
  - d. Records and descriptions of operations must be maintained by the first Named Insured.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations or qualifies as an insured under this provision.

**L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES**

Under Section IV – Commercial General Liability Conditions, the following is added to Condition 6. Representations:

Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

**M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT**

Under Section IV – Commercial General Liability Conditions, the following is added to Condition 2. Duties In The Event of Occurrence, Offense, Claim Or Suit:

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an insured listed under Paragraph 1. of Section II – Who Is An Insured or a person who has been designated by them to receive reports of "occurrences", offenses, claims or "suits" shall have received such notice from the agent, servant or "employee".

**N. LIBERALIZATION CLAUSE**

If we revise this Commercial General Liability Extension Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the coverage as of the day the revision is effective in your state.

**O. BODILY INJURY REDEFINED**

Under Section V – Definitions, Definition 3. is replaced by the following:

3. "Bodily Injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

**P. EXTENDED PROPERTY DAMAGE**

Exclusion a. of **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is replaced by the following:

**a. Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

**Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US – WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU**

Under **Section IV – Commercial General Liability Conditions**, the following is added to **Condition 8. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" provided:

1. You and that person or organization have agreed in writing in a contract or agreement that you waive such rights against that person or organization; and
2. The injury or damage occurs subsequent to the execution of the written contract or written agreement.

**b.** The following is added to Paragraph **b. Excess Insurance**:

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

**I. ADDITIONAL INSURED - EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"**

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

**1.** The following is added to Condition **2. Duties In The Event Of Occurrence, Offense, Claim or Suit**:

An additional insured under this endorsement will as soon as practicable:

- a.** Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us;
  - b.** Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and
  - c.** Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.
  - d.** We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured.
- 2.** The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of insurance as stated in the Declarations of this policy and defined in **Section III – Limits of Insurance** of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.

**J. WHO IS AN INSURED - INCIDENTAL MEDICAL ERRORS / MALPRACTICE  
WHO IS AN INSURED - FELLOW EMPLOYEE EXTENSION - MANAGEMENT EMPLOYEES**

Paragraph **2.a.(1)** of **Section II - Who Is An Insured** is replaced with the following:

- (1)** "Bodily injury" or "personal and advertising injury":
- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
  - (b)** To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph **(1) (a)** above;
  - (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1) (a)** or **(b)** above; or
  - (d)** Arising out of his or her providing or failing to provide professional health care services. However, if you are not in the business of providing professional health care services or providing professional health care personnel to others, or if coverage for providing professional health care services is not otherwise excluded by separate endorsement, this provision (Paragraph **(d)**) does not apply.