

**Meeting Date:** 3/15/2016

**Report Type:** Consent

**Report ID:** 2016-00310

**Title:** Contract to Purchase Artwork for the Golden 1 Center

**Location:** District 4

**Recommendation:** Pass a Motion authorizing the City Manager or City Manager's designee to:  
1) enter into an agreement with Bryan Valenzuela for the fabrication and installation of artwork at the Golden 1 Center in an amount not-to-exceed \$315,000; and 2) enter into minor amendments to the aforementioned agreement subject to approval as to form by the City Attorney or his designee.

**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-Background
- 3-Contract

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### **City Attorney Review**

Approved as to Form  
Maila Hansen  
3/8/2016 11:22:56 AM

### **Approvals/Acknowledgements**

Department Director or Designee: Jody Ulich - 2/25/2016 3:38:08 PM

## Description/Analysis

**Issue Detail:** As set forth in Section 2.84.130 of the City Code, the Sacramento Metropolitan Arts Commission (SMAC) recommends selection of artwork for the Art in Public Places (APP) program. This report recommends that City Council authorize the City Manager or his designee to 1) execute an agreement with Sacramento artist Bryan Valenzuela for a not-to-exceed amount of \$315,000 for the fabrication and installation of artwork to be placed in the southwest escalator well of the Golden 1 Center, and 2) enter into minor amendments to the aforementioned agreement subject to approval as to form by the City Attorney or his designee.

**Policy Considerations:** SMAC's approval of the purchase of artwork for the Golden 1 Center satisfies the APP program policies and procedures and the program goal of site-specific public art.

**Economic Impacts:** None.

**Environmental Considerations:** The proposed contract is part of a project, the Golden 1 Center (P13-065), for which the City Council certified an environmental impact report, and adopted a mitigation-monitoring program, findings of fact, and a statement of overriding considerations on May 20, 2014.

**Sustainability:** Not applicable.

**Commission/Committee Action:** In accordance with City Code section 2.84.080 (E), SMAC has the authority to make recommendations to the City on all artworks to be acquired by the City either by purchase or gift.

On February 19, 2016, SMAC unanimously approved the design for the artwork mentioned above. SMAC recommends that the City purchase this artwork for placement at the Golden 1 Center site outlined above.

**Rationale for Recommendation:** SMAC is recommending the purchase of this artwork because it is of the highest artistic quality. The artwork increases the public's experience of contemporary art, and is engaging, educational, and has other enduring qualities. The artist was selected pursuant to an open and competitive process, and funding has been set aside for the purchase of this artwork. The artist is a regional artist who lives in Sacramento, California. Finally, this artist was chosen because he has the ability and experience to complete the project as proposed.

**Financial Considerations:** Sufficient funding for the contract is available in the Golden 1 Center public art program (M17600300). Of the \$9.4 million budget, \$1.5 million has been set aside for the selection, purchase, and placement of art created by regional artists, to pay for the removal of artworks from the K Street Mall, and program administration. The \$1.5 million comes from the Marcy Friedman ESC APP Fund (Fund 2609, \$1 million) and the CIP Reimbursable Fund (Fund 3702, \$500,000).

**Local Business Enterprise (LBE):** Not applicable.

## **Project Background**

In accordance with the City of Sacramento's Art in Public Places (APP) policies and procedures, the Sacramento Metropolitan Arts Commission (SMAC), at their regularly scheduled meeting on May 1, 2014, appointed a 9-member panel to make recommendations for the Golden 1 Center Public Art Program.

Panel Members are:

- René de Guzman, Senior Curator of Art, Oakland Museum of California
- Marcy Friedman, Philanthropist; Arts Advocate
- Cheryl Holben, Chair, Sacramento Metropolitan Arts Commission
- Dr. Paul Jacobs, Executive Chairman, QualComm
- Lial Jones, Director, Crocker Art Museum
- Lizzetta LeFalle-Collins, Freelance Curator/Guest Curator, Museum of the African Diaspora
- Annabeth Rosen, Artist; Professor of Art, UC Davis
- Rob Rothblatt, Design Principal, AECOM
- Rachel Teagle, Director, Jan Shrem and Maria Manetti Shrem Museum of Art

On March 10, 2015, the City Council accepted a \$1 million donation from Marcy Friedman to purchase work for the Golden 1 Center by regional artists who are based in any of the following counties: Sacramento, El Dorado, Placer, Sutter, Yolo, Amador, Calaveras, San Joaquin, Contra Costa, Solano, Butte, Alameda, Marin, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma. This donation is part of the APP program and has been designated for artwork by regional artists.

On April 15, 2015, the Golden 1 Center Public Art Program panel approved the overall art plan for the Golden 1 Center, including the purchase of artwork by regional artists, as requested by Marcy Friedman. The art plan outlined artwork budgets, designated sites for artworks, and delineated the artist selection process. SMAC approved the art plan on April 29, 2015.

The selection process for the purchase of artwork by regional artists began at the end of May 2015. A Request for Qualifications (RFQ) was widely distributed to artists residing in the northern California counties listed above, and 135 eligible applications were received by the deadline, July 6, 2015. The majority of the artists wished to be considered for more than one of the four sites identified in the art plan.

The panel met again on July 31, 2015 and selected 15 finalists, including Bryan Valenzuela, who were chosen to prepare individual proposals which were presented to the panel on October 27 and 29, 2015. Bryan continued to refine his concept and presented it on December 8, 2015. The panel asked him to develop his proposal further.

On February 3, 2016, the panel met and again discussed his proposal, and approved it at a subsequent meeting on February 12, 2016. On February 19, SMAC unanimously approved the artist's concept.

If this contract is approved by City Council, the Artwork will be fabricated, and then installed at its designated site.

**Description of Project by Bryan Valenzuela**

Bryan proposes a suspended sculpture comprised of two separate channels that wind, twist and cascade through the arena's southwest escalator atrium. These two river channels will intersect at the halfway point around a structural beam in the center of the room, merging into one channel, flowing to the spatial edge beyond the escalator. The material of the piece will consist of approximately 400 individual hollow blown-glass spheres in three sizes: 12 inches, 16 inches and 20 inches in diameter. Each sphere will be translucent, adorned with abstracted aquarelle designs of varying intensity in primarily blue and turquoise shades. A reflective gold color will be added to the design, evoking glints of gold in the river, hinting at the 19th-century history of the area. The spheres will be suspended from the ceiling, supported by approximately 115 separate stainless steel spines that curve around, run parallel to, and surge over one another. As a whole, the piece references the new building as a place where ideas and individuals can converge, with the hope of generating a ripple effect of prosperity for this region.





**About Bryan Valenzuela**

Bryan Valenzuela resides in Sacramento and holds a Bachelor of Arts Degree from California State University, Sacramento. For more than a decade, he has worked to perfect a unique drawing technique involving the atomization of the figure by carving out shape and light with handwritten text. Though virtually unnoticeable from afar, once the viewer steps closer to each work they are engulfed in a barrage of words intermingled with other mixed media elements such as needle and thread, acrylic paint, and collage. He was awarded “Best in Show” at the 2015 California State Fair Fine Arts Competition. He has also participated in the “Big Names, Small Art Auction” at the Crocker Art Museum. When not working in the studio, he's composing and recording music, and performing and touring with the band Exquisite Corps.

### **Artwork Maintenance**

The artist is cognizant of the highly public location for the artwork and all materials and fabrication methods will be approved by Sacramento Metropolitan Arts Commission staff for durability and longevity. The city will be responsible for the ongoing maintenance of the artwork.

## CONTRACT TO PURCHASE ARTWORK

This Agreement is made at Sacramento, California, as of \_\_\_\_\_ ("Effective Date"), by and between the City of Sacramento, a municipal corporation ("City"), and

**Bryan Valenzuela**  
**2716 T Street**  
**Sacramento, CA 95818**  
916-813-6398  
drbval@gmail.com

("Artist"). The City and Artist may be referred to collectively as "Parties" or in the singular as "Party," as the context requires.

### RECITALS

- A. The City has an Art in Public Places ("APP") program as set forth in City Code Chapter 2.84, which requires at least two percent of the total construction costs for eligible projects be spent on artworks in public places. 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 for the Golden 1 Center in Sacramento, California: (ECAPS#:M176000302). Funds for this project were allocated based on a donation by Marcy Friedman for the purpose of purchasing art by regional artists for the Golden 1 Center. The artwork was selected through a competitive process and approved by the Sacramento Metropolitan Arts Commission.
- C. The artwork is described in Exhibit B, Design Proposal.

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. In accordance with the schedule set forth in Exhibit A, purchase on Artist's account all labor, supplies, materials and equipment required to design and furnish to the City an interior artwork ("Work") at the Golden 1 Center, and fabricate and deliver the Work at the Golden 1 Center to the satisfaction of City and in substantial conformance with Artist's Design Proposal ("Proposal").
  - B. The Work shall be placed and located as described in the Proposal. As described in Exhibit A, Artist shall install the Work, or arrange to have Turner

Construction Company, or any other necessary related entity, install the Work on Artist's behalf.

- C. Artist shall not commence performance of any of the services identified in sections 1.A and 1.B until receiving a written "Notice to Proceed" from the City for each Phase and Milestone of this project.

## 2. **Payment.**

- A. City shall pay Artist up to three hundred thousand dollars (\$300,000), unless unforeseen and unpredictable circumstances occur, in which case the City may pay Artist an additional contingency ("Contingency") amount of up to fifteen thousand dollars (\$15,000). However, payment to Artist under this Agreement shall not exceed the total amount of three hundred fifteen thousand dollars (\$315,000). The City will reserve the Contingency amount of fifteen thousand dollars (\$15,000) 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 \$300,000. Therefore, Artist must design a project in the amount of \$300,000 or less, including the Artist's fee in an amount not to exceed fifty two thousand five hundred dollars (\$52,500).

- B. Payments to Artist shall be made within 30 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.
- C. Payments to Artist will be made upon completion of the following tasks outlined in Exhibit A:
  - (1) Fifteen thousand dollars (\$15,000) upon submission of certificates of insurance acceptable to the City, execution of this Agreement, and dispatch of the Notice to Proceed.
  - (2) Eighty thousand dollars (\$80,000) upon completion of Phase 1.
  - (3) Eighty thousand dollars (\$80,000) upon completion of Phase 2.a milestone.

- (4) Eighty thousand dollars (\$80,000) upon completion of Phase 2.b milestone.
- (5) Forty thousand dollars (\$40,000) upon completion of Phase 3. Following consultation with Turner Construction Company or any other necessary related entity, as required in Exhibit A, this amount for installation may be increased or decreased based on how the installation work will be performed.
- (6) Five-thousand dollars (\$5,000) upon completion of Phase 4.

D. 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.

E. **Prevailing Wage Requirement.** All or part of the work to be performed under this Agreement constitutes "public works" under California Labor Code section 1720 *et seq.* This Agreement is therefore subject to the provisions of Sacramento City Code Chapter 3.60, Article V, which requires, among other things, that Artist pay not less than the prevailing rate of wages, as determined by the Director of the California Department of Industrial Relations pursuant to California Labor Code section 1773. If payment of the prevailing rate of wages is required, Artist and every lower-tier subcontractor shall submit certified payrolls and labor compliance documentation electronically when and as required by City. Artist is responsible for compliance with Sacramento City Code Chapter 3.60, Article V, and shall include these requirements in every subcontract or subagreement. This Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations, as specified in California Labor Code section 1771.4.

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 or arrange for installation of 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) professional quality digital images documenting the processes of Work fabrication and installation, and the completed Work. Artist shall also provide City with a complete schedule for maintenance of the Work in the form reflected in Exhibit C 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, including copyrights, 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 his 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 or arrange for installation of the Work in conformance with all applicable laws.
5. **Transfer of Title to Work.** Title to the Work shall remain with 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)(1) or 7(A)(2) 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.**

A. City agrees to accept the completed Work unless:

- (1) The Work was not completed in substantial conformance with the Proposal or the Specifications, or
- (2) 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.

B. Upon the City's refusal to accept the Work for the reasons stated in paragraphs 7(A)(1) or 7(A)(2), 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.

C. 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.
12. **Indemnity.** Artist shall defend, hold harmless and indemnify City, its 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 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, its 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 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. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the City.

It is understood and agreed by the Artist that its liability to the City 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, arising out of activities performed by or on behalf of Artists, its sub-consultants, and subcontractors, products and completed operations of Artist, its sub-consultants, and sub-contractors, and premises owned, leased, or used by Artist, its sub-consultants, and subcontractors, 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 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 accident. The policy shall provide coverage for



subcontractors; and premises owned, leased or used by Artist, its sub-consultants, and subcontractors.

- (2) Automobile Liability Insurance: The City, its 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, including excess coverage, shall be primary insurance as respects City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its 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, its 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:VI. 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) For all insurance policy renewals during the term of this Agreement, Artist shall send insurance certificates reflecting the policy renewals directly to:

City of Sacramento  
c/o Ebix RCS

Reference #: (This number will be provided by EBIX after Agreement approval.)

PO Box 257

Portland, MI 48875-0257

- (3) 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 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 non-commercial 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 or engineer 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.**
  - (A) 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.
  - (B) 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.** If requested by the City, 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. **Maquette.** As part of this Agreement, Artist will provide the City of Sacramento, APP program one (1) Maquette and/or drawing 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; Amendment.** 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. The City Manager or his designee is authorized to enter into minor amendments to this Agreement, subject to approval as to form by the City Attorney or his designee.
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 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 by Artist prior to termination; 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.

*[Signature Page Follows]*

**CITY OF SACRAMENTO**  
A Municipal Corporation

**ARTIST:**

By: \_\_\_\_\_  
Print Name: Jody Ulich  
Title: Director, Convention & Cultural  
Services Department

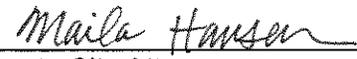
  
Bryan Valenzuela (signature)

For: John F. Shirey, City Manager

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

APPROVED AS TO FORM:

\_\_\_\_\_  
State I.D. No.

  
\_\_\_\_\_  
Deputy City Attorney

1023101  
\_\_\_\_\_  
City of Sacramento 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 - Design Proposal
  - Exhibit C - Maintenance Report

## EXHIBIT A: SCHEDULE FOR COMPLETION OF WORK

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

**Start Date:** Upon receipt of a Notice to Proceed from the City, which is contingent on the City obtaining the necessary legal rights to access the Work site.

**Phase 1:** to be completed 2 months after receipt of the Notice to Proceed

**Description:** Delivery of the following:

- engineering drawings
- estimates from suppliers and fabricators documenting project expenses
- receipt of required permits
- a Final Design Proposal ("Final Proposal") for the Artwork in substantial conformance with the conceptual Design Proposal attached hereto as Exhibit B. The Final Design Proposal shall include:
  - a. Details and location of the Work including an indication of form, scale and proposed materials.
  - b. A detailed written description of the fabrication and installation methods ("Installation Specification").
  - c. A detailed fabrication and installation schedule ("Installation Schedule"), describing Artist's specific timelines for completing the Work.
  - d. A project budget
  - e. Artist, at City's option, shall be available to present the Final Proposal, at one or more project meetings, to City staff, SMAC, the Project Architect, or other individuals and organizations, as needed. Artist agrees to collaborate closely with City through in-person meetings and other necessary means of communication to thoroughly integrate the Final Proposal into the architectural design of the Golden 1 Center.
  - f. The City may approve, with minor changes, or disapprove the Final Proposal. In the event that the City disapproves the Final 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 Final Proposal. Artist recognizes and agrees that the City will review the Final Proposal as revised and may make additional requests for changes regarding the revised Final Proposal.

**Phase 2:** to be completed 6 months after City approval of Phase 1

**Description:** Fabrication of Artwork

Milestone 2a: 50 percent completion of Artwork fabrication and approval by APP staff.

Milestone 2b: 100 percent completion of Artwork fabrication and approval by APP staff before transportation to site.

- a. Artist shall fabricate the Artwork in accordance with all Final Proposal drawings and Construction Drawings approved by the City. To the extent that any specification for the Artwork is not identified in the Final Proposal or in the Construction Drawings, Artist shall seek the City's prior approval of these specifications before commencing with fabrication of the Artwork.
- b. Artist shall notify the City when the Artwork is at 50 percent and 100 percent completion. City must review and approve Artwork at each phase before Artist proceeds with the succeeding phase.

**Phase 3:** to be completed 1 month after City payment for completion of Phase 2b is received by the Artist.

**Description:** Complete installation. Artist shall consult with Turner Construction Company or any other necessary related entity prior to installation, and at Artist's sole expense, arrange for installation by either (1) the required contractors of Turner Construction Company or any other necessary related entity, or (2) Artist's contractors following approval by Turner Construction Company or any other necessary related entity. The Work shall be installed at the location as described in the Final Proposal and in accordance with the installation methods approved by the City.

**Phase 4:** to be completed 1 month after Phase 3 is completed.

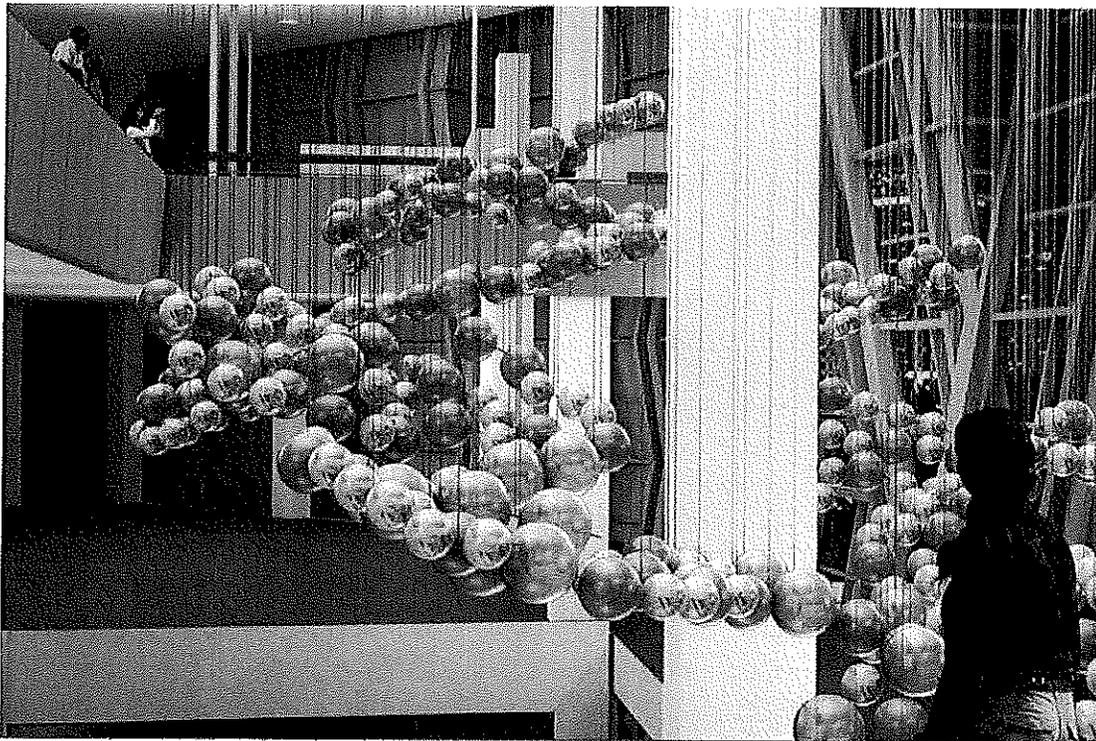
**Description:** Upon completion and installation of the Work, and acceptance of the Work by City, Artist shall satisfactory complete the Maintenance Report attached hereto as Exhibit C, and submit 20 digital images of the fabrication and installation of the Artwork, and the completed Artwork to City. If requested by the City, Artist will deliver one Public Lecture within one year of project completion on a date to be mutually determined by the Artist and SMAC staff.

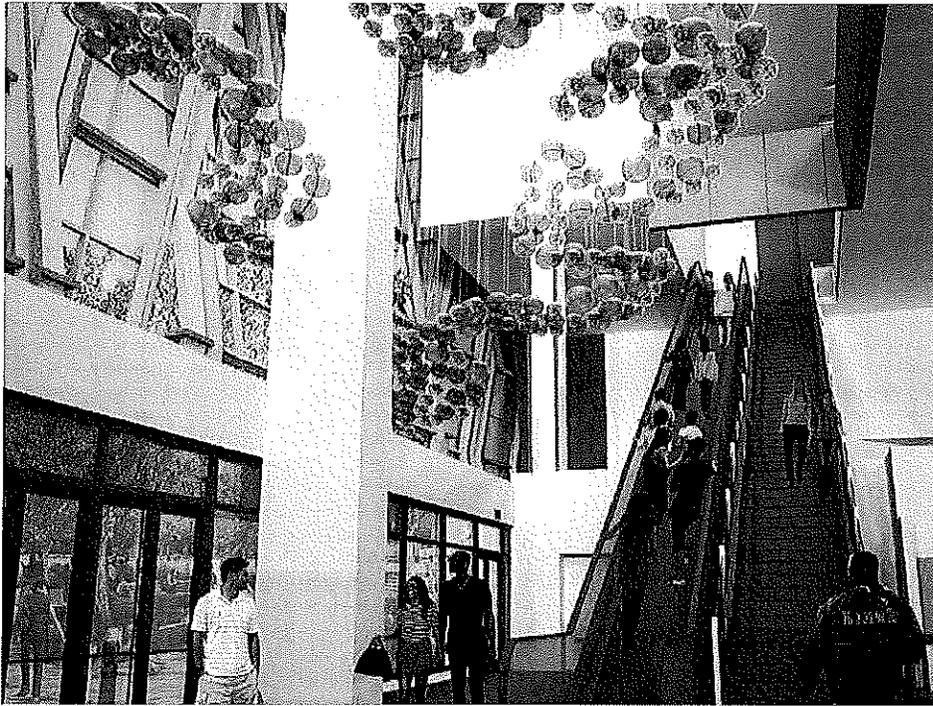
In no event shall Artist begin work on any Milestone or Phase without first receiving a written Notice to Proceed from City.

## EXHIBIT B

### DESIGN PROPOSAL

Bryan Valenzuela proposes a suspended sculpture comprised of two separate channels that wind, twist and cascade through the arena's southwest escalator atrium. These two river channels will intersect at the halfway point around a structural beam in the center of the room, merging into one channel, flowing to the spatial edge beyond the escalator. The material of the piece will consist of approximately 400 individual, hollow blown-glass spheres in three sizes: 12 inches, 16 inches and 20 inches in diameter. Each sphere will be translucent, adorned with abstracted aquarelle designs of varying intensity in primarily blue and turquoise shades. A reflective gold color will be added to the design, evoking glints of gold in the river, hinting at the 19<sup>th</sup>-century history of the area. The spheres will be suspended from the ceiling, supported by approximately 115 separate stainless steel spines that curve around, run parallel to, and surge over one another. As a whole, the piece references the new building as a place where ideas and individuals can converge, with the hope of generating a ripple effect of prosperity for this region.





**EXHIBIT C**  
**MAINTENANCE REPORT**

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

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

\_\_\_\_\_

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

Studio Phone: \_\_\_\_\_

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. \_\_\_\_\_

\_\_\_\_\_

6. 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.

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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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12. 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)  
03/03/2016

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> Cummins Insurance Agency, Inc. License # OC42488 4401 Hazel Avenue, Suite 110 Fair Oaks, CA 95628 Cummins Insurance Agency	<b>CONTACT NAME:</b> Cummins Insurance Agency <b>PHONE (A/C, No, Ext):</b> 916-961-6000 <b>E-MAIL ADDRESS:</b>	<b>FAX (A/C, No):</b> 916-961-3046
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Bryan Valenzuela 2716 T Street Sacramento, CA 95816	<b>INSURER A :</b> Sentinel Insurance Company Ltd <b>NAIC #</b> 11000	
	<b>INSURER B :</b>	
	<b>INSURER C :</b>	
	<b>INSURER D :</b>	
	<b>INSURER E :</b>	
	<b>INSURER F :</b>	

**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 checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X		57SBMRI8996	03/05/2016	03/05/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AG-G \$ 2,000,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <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		N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> 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)

Additional insured: City of Sacramento, its officials, employees, and volunteers per attached.

**CERTIFICATE HOLDER****CANCELLATION**

CITY038  City of Sacramento Art in Public Places 2030 Del Paso Blvd. Sacramento, CA 95815	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 
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**POLICY NUMBER:** 57 SBM RI8996



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

ADDITIONAL INSURED - STATE/POLITICAL SUBDIVISION

THE CITY OF SACRAMENTO, ITS  
OFFICIALS, EMPLOYEES AND VOLUNTEERS  
ART IN PUBLIC PLACES  
2030 DEL PASO BLVD.  
SACRAMENTO CA 95815

## BUSINESS LIABILITY COVERAGE FORM

### 2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

**a. Any Insured**

To any insured, except "volunteer workers".

**b. Hired Person**

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

**c. Injury On Normally Occupied Premises**

To a person injured on that part of premises you own or rent that the person normally occupies.

**d. Workers' Compensation And Similar Laws**

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

**e. Athletics Activities**

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

**f. Products-Completed Operations Hazard**

Included with the "products-completed operations hazard".

**g. Business Liability Exclusions**

Excluded under Business Liability Coverage.

## C. WHO IS AN INSURED

1. If you are designated in the Declarations as:

**a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

**b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

**c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

**d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

**e.** A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

**a. Employees And Volunteer Workers**

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(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), or 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 that "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.

If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

(a) Owned, occupied or used by,

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

**b. Real Estate Manager**

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

**c. Temporary Custodians Of Your Property**

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

**d. Legal Representative If You Die**

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

**e. Unnamed Subsidiary**

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

**3. Newly Acquired Or Formed Organization**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, 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 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

**4. Operator Of Mobile Equipment**

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**5. Operator of Nonowned Watercraft**

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit**

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

## BUSINESS LIABILITY COVERAGE FORM

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

### a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

### b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

**c. Lessors Of Land Or Premises**

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
  - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
  - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

**d. Architects, Engineers Or Surveyors**

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
  - (a) In connection with your premises; or
  - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:  
 This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
  - (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
  - (b) Supervisory, inspection, architectural or engineering activities.

**e. Permits Issued By State Or Political Subdivisions**

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
  - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
  - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

**f. Any Other Party**

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
  - (a) In the performance of your ongoing operations;
  - (b) In connection with your premises owned by or rented to you; or
  - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
    - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
    - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:  
 "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:

## BUSINESS LIABILITY COVERAGE FORM

- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section **D. – Limits Of Insurance**.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E. – Liability And Medical Expenses General Conditions**.

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.

### **D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE**

#### **1. The Most We Will Pay**

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

#### **2. Aggregate Limits**

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

#### **3. Each Occurrence Limit**

Subject to **2.a.** or **2.b.** above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

#### **4. Personal And Advertising Injury Limit**

Subject to **2.b.** above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

#### **5. Damage To Premises Rented To You Limit**

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

#### **6. How Limits Apply To Additional Insureds**

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.