

CITY OF ELK GROVE



Request for Proposals

For

Civic Center Public Art

**City Clerk's Office
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758**

Proposals Due by: July 21, 2017 at 4:00 p.m.

Introduction:

The City of Elk Grove (City) is accepting proposals from qualified Artists (Artists) for Civic Center Public Art in accordance with the included specifications, terms, and conditions shown in this Request for Proposals (RFP). Prospective respondents are advised to read this information over carefully prior to submitting a proposal.

One signed original, nine (9) copies, and one USB Flash Drive copy of the proposals must be submitted to the Office of the City Clerk by 4:00 p.m. on Friday, July 21st. Proposal shall be submitted in a sealed envelope clearly marked Civic Center Public Art and addressed to:

**OFFICE OF THE CITY CLERK
CITY OF ELK GROVE
8401 Laguna Palms Way
Elk Grove, CA 95758**

Questions regarding this RFP are to be directed by e-mail to: Nathan Bagwill, Senior Budget Analyst (Interim), nbagwill@elkgrovecity.org. Such contact shall be for clarification purposes only. The City must receive all questions no later than 5:00 p.m. on Friday, July 14th. Material changes, if any, to the scope of services or proposal procedures shall only be transmitted by written addendum and posted to the City web site. Addendums and answers to submitted questions will be available via the City of Elk Grove web site under "Notice" for the RFP announcement.

Proposals shall not be accepted by fax or electronically.

Late Proposals:

Proposals arriving after the specified date and time shall not be considered, nor will late proposals be opened. Each Service Provider assumes responsibility for timely submission of its proposal.

Withdrawal or Modifications of Proposals:

Any proposal may be withdrawn or modified by a written request signed by the Artist and received by the City Clerk prior to the final time and date for the receipt of proposals. Once the deadline is past, Artists are obligated to fulfill the terms of their proposal.

Proposal Acceptance and Rejection:

The City reserves the right to accept any proposal, reject any and all proposals, and to call for new proposals or disperse with the proposal process in accordance with the Elk Grove Municipal Code.

Proposal Evaluation and Award:

Artists may propose on one or more art projects as described in Exhibit A. Detailed information on the specific locations for public art is included in Exhibit B (Artworks A through E). There are eight unique art projects that have been identified as the site for public art. Evaluation shall be made based on the criteria noted in Exhibit C: Evaluation and Selection Criteria.

One or more contracts may be awarded to the responsible Artist(s) who best meets the City's needs by demonstrating the competence, qualifications and proposal that serve the best interest of the City, taking into consideration adherence to the included specifications. Nothing herein shall obligate the City to award a contract to any responding Artist. Any contract awarded will be non-exclusive, and the City reserves the right to award contracts to one or more artists in the City's sole discretion.

Disclosure of Submitted Materials:

After selection and execution of the contracts, (or prior thereto if required by law) all information and materials provided in each submittal received is subject to disclosure through a Public Records Request pursuant to the California Public Records Act, or otherwise as may be required by law. The City, in its sole discretion, may release any submitted materials, regardless of whether such materials are marked by respondents as confidential or otherwise as protected.

Waiver of Irregularities:

The City retains the right, in its sole discretion, to waive any irregularities in proposals that do not comply with the strict requirements of this RFP, and the City reserves the right to award a contract to an Artist

submitting any such non-compliant proposal, all in the City's sole discretion.

Samples and Demonstrations:

When required, the City may request full demonstrations prior to award. When such demonstrations are requested, the Artist shall respond promptly and arrange a demonstration at a convenient location. Failure to provide samples or demonstrations as specified by the City may result in rejection of a proposal.

Installation

The successful Artist(s) will supply all products and services in compliance with the awarded contract at the location(s) designated by the City.

Acceptance and Conditions

The products and services supplied in response to the RFP shall remain the property of the Artist until a physical inspection is made and the artwork(s) is/are accepted to the satisfaction of the City. The products and services must comply fully with the terms of the RFP, be of the required quality and new unless specified by the City. Any substitutes of products or services not meeting specifications will be rejected, and returned if applicable, at the Artist's(s)' expense. The City will make payment only after receipt and acceptance of the artwork.

Payment Terms:

Payment shall be made as set forth in the contract attached hereto as Exhibit D. In submitting proposals under these specifications, Artists should take into account all discounts, both trade and time, allowed in accordance with the payment terms.

Performance:

It is the intention of the City to acquire artwork(s) as specified herein from an Artist that will give prompt and convenient service.

Term of Contract:

The term of the contract will be for a specific period of time as outlined in the below Scope of Work, commencing upon execution. The City anticipates the contract to be for a term commensurate with the scope outlined per art piece. The City reserves the right to set the term for a period deemed to be in the best interest of the City, and terminate the contract as set forth therein.

Amendments:

If, in the course of the performance of the contract, Artist or the City proposes changes to the artwork(s), and informal consultation with the other party indicates that a change in the terms and conditions of the contract may be warranted, Artist or the City may request a change in the contract. The parties to the contract will meet to discuss and negotiate the required documents. Upon completion of those negotiations, the negotiated documents will be submitted to the City for approval. Upon approval by the City, a Notice to Proceed with the approved changes will be submitted to Artist(s). Any amendment to the Contract will not render ineffective or invalidate any unaffected portions of the Contract. Nothing in this section obligates the City to agree to any change order or other amendment, and the City may withhold such agreement in its sole discretion.

(See next page for Guidelines for Proposal)

Guidelines for Proposal

The following guidelines are provided for standardizing the preparation and submission of proposals. Proposals shall be submitted on 8-1/2" x 11" paper with easy to read font size and style. No more than 25 pages in length.

One signed original, nine (9) copies, and one CD//USB Flash Drive copy of the proposals must be submitted to the Office of the City Clerk by 4:00 p.m. on Friday, July 21st. Proposal shall be submitted in a sealed envelope clearly marked Civic Center Public Art and addressed to:

**OFFICE OF THE CITY CLERK
CITY OF ELK GROVE
8401 Laguna Palms Way
Elk Grove, CA 95758**

Proposals shall contain the following information in the order listed:

1. Introductory letter

The introductory letter should be addressed to:

Nathan Bagwill
Senior Budget Analyst (Interim)
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758

The letter should state the artist's name submitting the proposal, their mailing address, telephone number and e-mail. The letter shall address the artist's understanding of the project based on this RFP as well as a statement discussing the artist's interest and qualifications for this type of work. Artist shall clearly outline which artwork pieces are being proposed as well as note the different project timeframes based on artwork location (interior schedule versus exterior schedule).

2. Table of Contents

The artist shall insert a comprehensive table of contents denoting sections three through nine of the proposal as indicated below.

3. Qualifications and Experience

Describe the artist's capability for actually undertaking and performing the work. List types and locations of similar work performed by the artist in the last five (5) years that best characterizes the quality and past performance. Include names and current phone numbers for contact on work quality and performance. References may be contacted as part of the selection process. The City is not requesting similar work examples be provided on slides, but rather printed hardcopy on paper.

4. Work Plan

A written proposal statement not-to-exceed 4,000 words specifying and describing the concept and materials, proposed budget and installation requirements. The proposal should include a written and visual explanation of the artwork. The visual explanation is considered to be the Conceptual Design of the project. This must include draft to-scale drawings of all proposed design elements, a written description of the materials to be used, a project timeline, and costs for all aspects related to design development, project construction, and installation. Artists are required to provide line item descriptions and pricing, applicable sales tax (as separate line item), and a total final price. No cost increases shall be passed onto the City after the proposal has been submitted.

5. Conflict of Interest Statement

The artist shall disclose any financial, business, or other relationship with the City that may have an impact upon the outcome of this contract.

6. Supportive Information/References

This section may include graphs, charts, photos, resumes, references, and any other relevant information in support of the Service Provider's qualifications.

7. Pricing

This section should include the cost for artwork(s) and services outlined in the Scope of Work, and must specifically itemize the fees for the services stated under the Specifications section of the Scope of Work. Artists are required to provide line item descriptions and pricing, applicable sales tax, and a total final price. No cost increases shall be passed onto the City after the proposal has been submitted. Tax is to be listed as a separate line item.

8. Installation

Indicate the approximate date of installation, at the specified location as listed in the RFP according to the City's project schedule listed below.

9. Artwork Contract:

Attached to the RFP (Exhibit D) is a copy of the City of Elk Grove's Contract to Purchase Artwork (Contract). The City's Contract may be modified, in the City's sole discretion, to address the specific provisions of this RFP and Artists should note that any specifications or other requirements specific to this RFP shall be included in the Contract and Contract's exhibits following an award of the Contract. Please review the Contract carefully and note in your proposal any exceptions or alterations to the Contract. Alterations or changes to the Contract that are not in the Artist's(s)' response shall not be allowed after the selection of the Artist. This includes alterations, exceptions, or changes to the insurance and indemnity provisions. By requiring these requests up front, the City can compare all respondents on an equal basis. However, the City reserves the right, in its sole discretion, to accept or reject any and all proposed changes to the City's standard Contract. For reference, the insurance amounts that appear in the attached Contract are summarized below.

TYPE	SINGLE LIMIT / OCCURRENCE	AGGREGATE	ENDORSEMENTS***
General Liability (1C)	\$1,000,000	\$1,000,000	Additional Insured Waiver of Subrogation
Auto Liability (2C)	\$1,000,000 Hired & Non-Owned		Additional Insured Waiver of Subrogation
Work Comp (3A) Employer's Liability	Statutory \$1,000,000 each		Waiver of Subrogation

*****Must be actual endorsements. Typed statements on Certificates of Liability are unacceptable. This is a summary only. Please refer to the insurance section and/or exhibit of this contract for specific requirements.**

(See next page for Scope of Work)

EXHIBIT A SCOPE OF WORK

BACKGROUND

The City of Elk Grove, CA, is inviting artists to submit proposals for the commissioning of artwork for the new Civic Center. The City is developing a multi-phased Civic Center on 76 acres just east of Big Horn Boulevard and south of Elk Grove Boulevard. The project is broken into various phases with the first-phase including an Aquatics Complex, Commons Area, and a Community Center which includes a Senior Center and Veterans Hall. Future planned phases include a children's museum, library, performing arts center, and nature preserve. Once complete, these facilities combined will provide a new hub in Elk Grove with recreational spaces and experiences serving all ages.

Construction of the City's Aquatics Center and the Common's Area is expected to break ground in spring of 2017 and open in May 2018.

Construction of the City's Community Center (Senior Center and Veterans Hall) is expected to break ground in Spring of 2018 and open in Spring 2019.

The City recently adopted a Percent for the Arts program which has an allocation of \$500,000 for public art for Phase 1 Civic Center projects. The City is seeking to enter into contracts with one or more artists.

Commons Area

The Commons is designed to serve as an outdoor gathering space for the Elk Grove community. In addition to the various flanking building indoor/outdoor spaces such as cafes and concessions, the Commons is activated by a small stage, splash fountain, picnic tables, bocce court, fire pit and informal lawn carpets. The Commons' two parallel walks are sized for hosting farmers' markets and community festivals. The outdoor setting for the Civic Center is envisioned as a grand, walkable Campus Park, with vegetation, colors and textures drawing inspiration from the site's many existing trees and open meadow as well as the context of the Cosumnes River and Central Valley.





Community Center

The Community Center is a single-story building that is approximately 31,500 gross square feet. The building features three areas that cover the following aspects: Community Hall, which includes the main hall, Senior Center, and Veterans Hall.

CIVIC CENTER DRIVE ENTRY + VETS HALL



01.26.17

ELK GROVE COMMUNITY/SENIOR CENTER



OBJECTIVES

Public art at the Civic Center is meant to create an engaging and exciting atmosphere for both the interior and exterior spaces. The commissioned artworks should engage and challenge the public, be distinctive, and inspire curiosity and conversation. The city is interested in receiving proposals that are colorful, expressionistic, historical, creative and/or energetic. Themes have been established for many of the artworks that reflect our community.

Artists are required to provide a detailed process on how artwork will be installed and coordinated with the Civic Center Commons Site and Community Senior Center & Veterans Memorial Hall Projects, with all seismic concerns addressed. Artist will install artwork with supervision being provided by the City.

TABLE 1 - PUBLIC ART LOCATIONS AND NOT TO EXCEED BUDGET AMOUNTS

Name	Location	# of pieces	Description	Theme	Not to Exceed Budget
Interior A	Lobby of Community Center	1	Ceiling-hung three dimensional piece	Multicultural	\$125,000
Interior B	Hallway of Community Center	1	Wall mural in hallway	History of Elk Grove	\$25,000
Exterior C	Along Commons Area	1	Iconic art piece in the center of The Commons Area. Should be large, illuminated, and interactive	None	\$200,000

Exterior D	Along Commons Area	1	Kinetic wind sculpture that would be in-line with Elk Grove's Delta Breezes (a common seasonal wind in the area)	Kinetic (movement piece)	\$50,000
Exterior E-H	Along Commons Area	4	Sculpture along the walkway named Avenue of the Arts. (Artists may bid per sculpture individually or for up to all 4 total)	Each piece should represent different themes of visual, music, literature, and dance	Total Budget \$100,000 (\$25,000 for each piece)
	Total # of art pieces	8		Total budget	\$500,000

WALK-THROUGH

All interested artists are invited to attend an information session prior to the close of the RFP on Thursday, June 27, 2017 at 2:00 p.m. The information session will occur at City Hall, 8401 Laguna Palms Way, Elk Grove, CA, 95758. If any proposer is unable to attend this information session, they should be aware that their failure to attend the information session shall not result in the City bearing any additional cost for artwork installation if their proposal is selected. Please RSVP for the information session to Nathan Bagwill at nbagwill@elkgrovecity.org.

There is currently no walk-through scheduled at the site as it is currently under construction, however, it is anticipated that this will occur at a later date.

TIMELINE

The following is the suggested Schedule for Completion of Work. The City is requesting the Artist provide comments and suggestions to this schedule in their Work Plan. Artwork must be fully installed by June 30, 2018, with a minimum of two reviews by City staff and Committee for the Arts.

Schedule for Completion of Work
Exterior Artwork (Pieces titled Exterior C, D, & E-H)

Due Date	Task
4:00 p.m. Friday, July 21, 2017	Request for Proposals due
August 9, 2017	City Council Meeting/Contract Approval
September 1, 2017	Contract start date
May 30, 2018	Artwork final fabrication date
June 30, 2018	Contract final installation date

Schedule for Completion of Work
Interior Artwork (Pieces titled Interior A, B, & C)

Due Date	Task
4:00 p.m. Friday, August 16	Request for Proposals due
October 12, 2017	City Council Meeting/Contract Approval
May XX, 2018	Contract start date
November XX, 2018	Artwork final fabrication date
December XX, 2018	Contract final installation date

BUDGET

The budget to complete each work shall not exceed the individual artwork budget as listed above in Table 1, including sales tax; inclusive in this are ALL COSTS for fabrication, installation, and transportation of artworks, as well as artists’ fees and site preparation.

All costs associated with every phase of the project, including the artist’s design and management fees, travel expenses associated with the project, production of all design documents up to and including construction documents, costs for the fabrication, transportation, and installation of the artwork, mechanical and electrical requirements, fees for permits, insurance, licenses, taxes, and all other applicable costs related to the project shall be included in the project cost proposal.

SELECTION PROCESS

Artists will be selected through an Open Call to artists whereby their proposals shall be evaluated by a Review Committee comprised of City’s Committee for the Arts members and City staff (Architect, Assistant City Manager, and Facilities Manager). All reviews conducted throughout the project will be reviewed and subject to approval by both the Committee for the Arts and the City staff in accordance with the criteria described in Exhibit C.

The Review Committee will present all recommendations to the City Council for concurrence and feedback prior to any award of one or more contracts.

If selected as a finalist, artists will be invited to visit the project site and meet with the Design Team so that they can better understand the scope of the project.

EXHIBIT B

SPECIFICATIONS OF WORK

Interior A – Ceiling-hung three dimensional art piece

Number of Artists: 1 artist

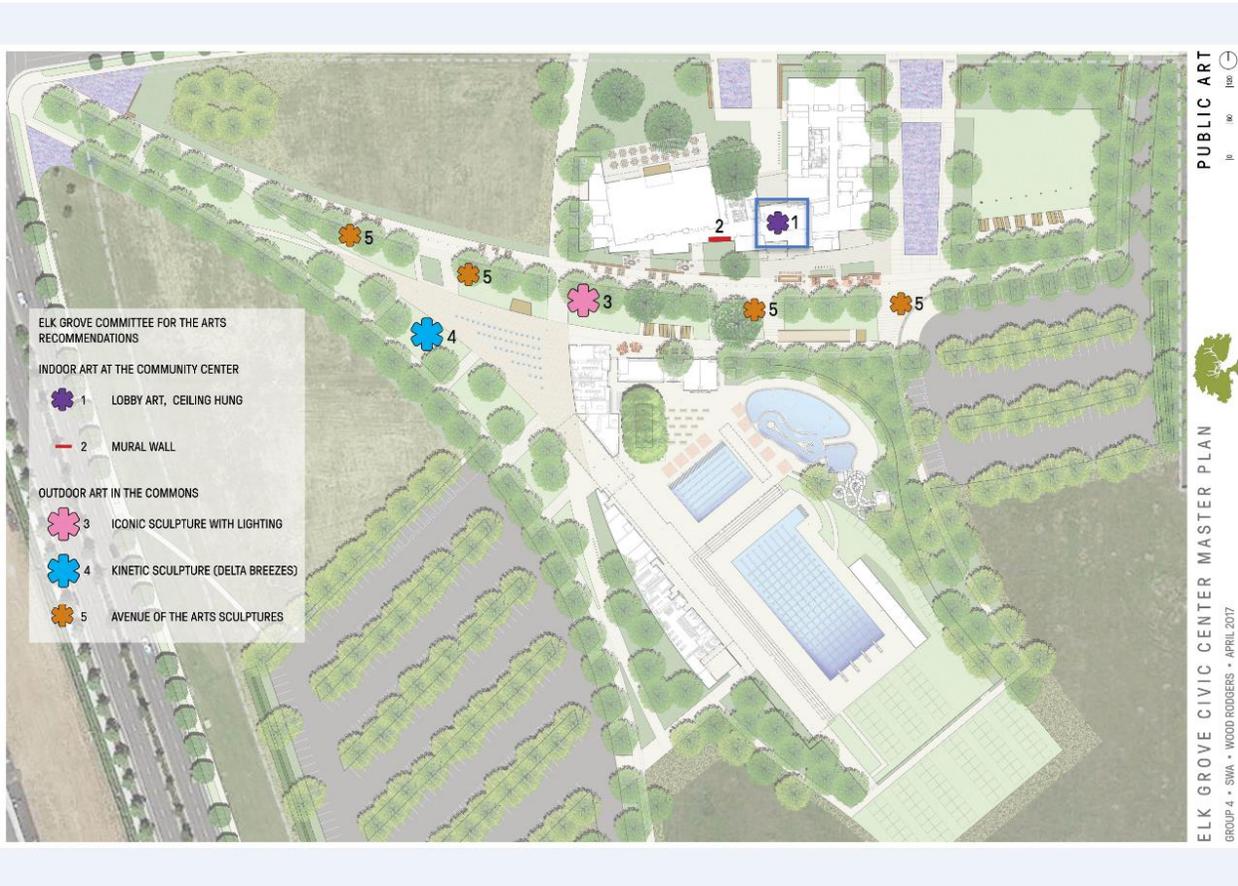
Not to Exceed Budget: \$125,000

Artist Selection: Open Competition

Site Description: Ceiling-hung three dimensional art piece in the lobby of the Community Center with a multicultural theme

Scale: 10 feet in height by 15 feet in diameter





Interior B – Wall mural in the hallway of the Community Center

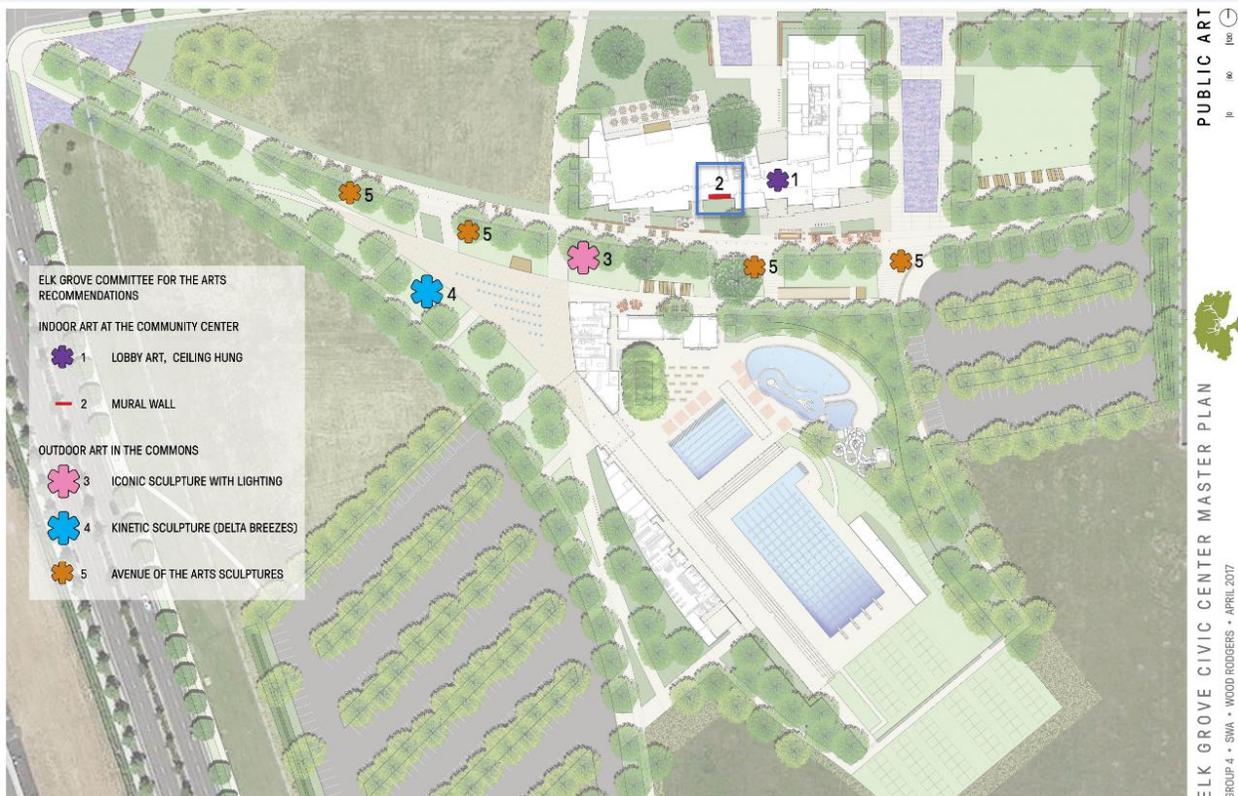
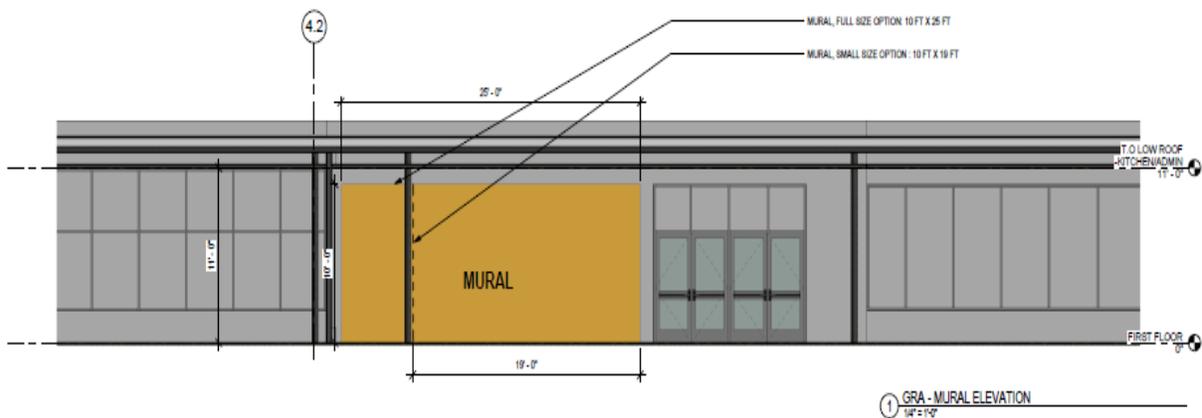
Number of Artists: 1 artist

Not to Exceed Budget: \$25,000

Artist Selection: Open Competition

Site Description: Wall mural in the hallway of the Community Center with the history of Elk Grove as the theme.

Scale: 10 feet in height by 19 (or 25) feet in diameter



Exterior C – Iconic Sculpture with Lighting

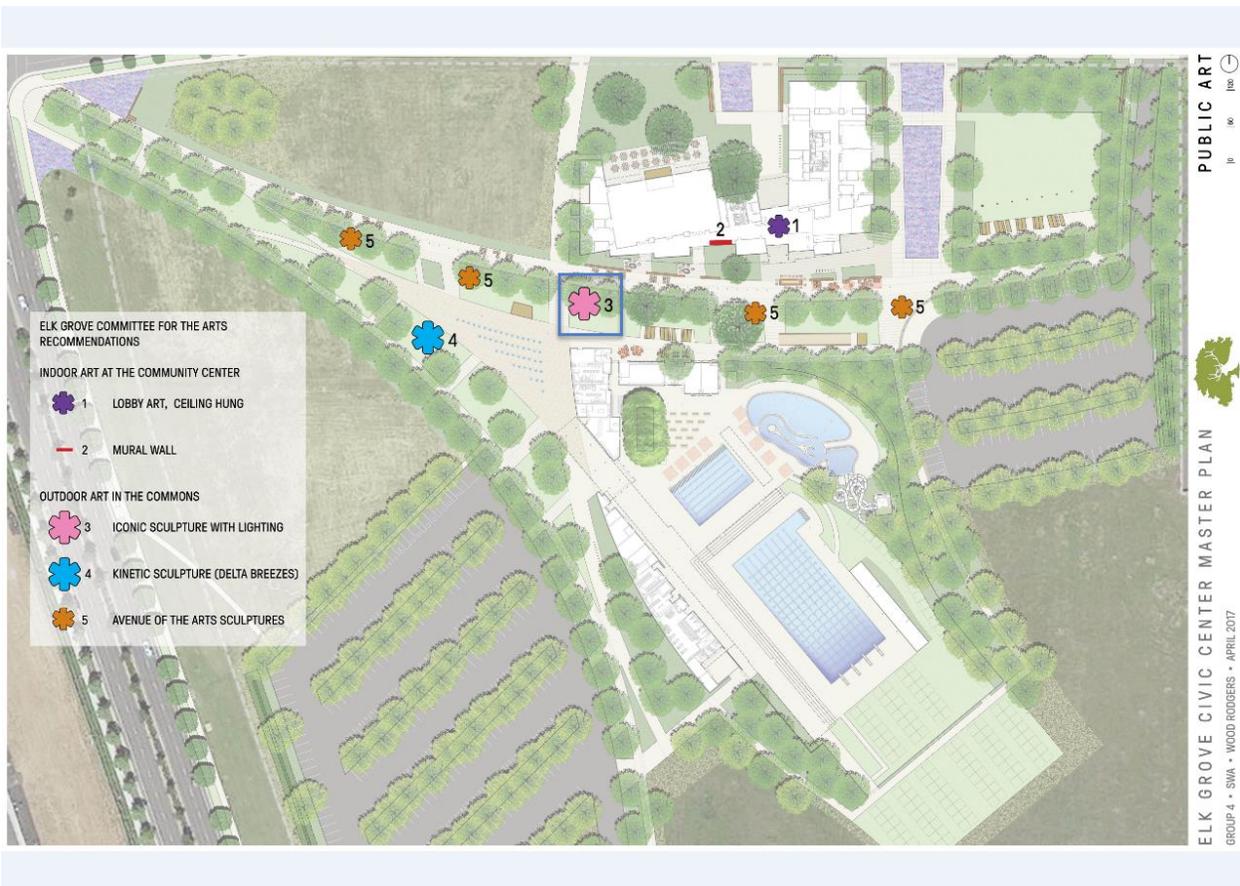
Number of Artists: 1 artist

Not to Exceed Budget: \$200,000

Artist Selection: Open Competition

Site Description: In the center of the Civic Center along The Commons area, this will be the hub of the first phase. There is no specific theme called out.

Scale: 24 feet in height by 16 feet in diameter



Exterior D – Kinetic Wind Sculpture (Delta Breezes)

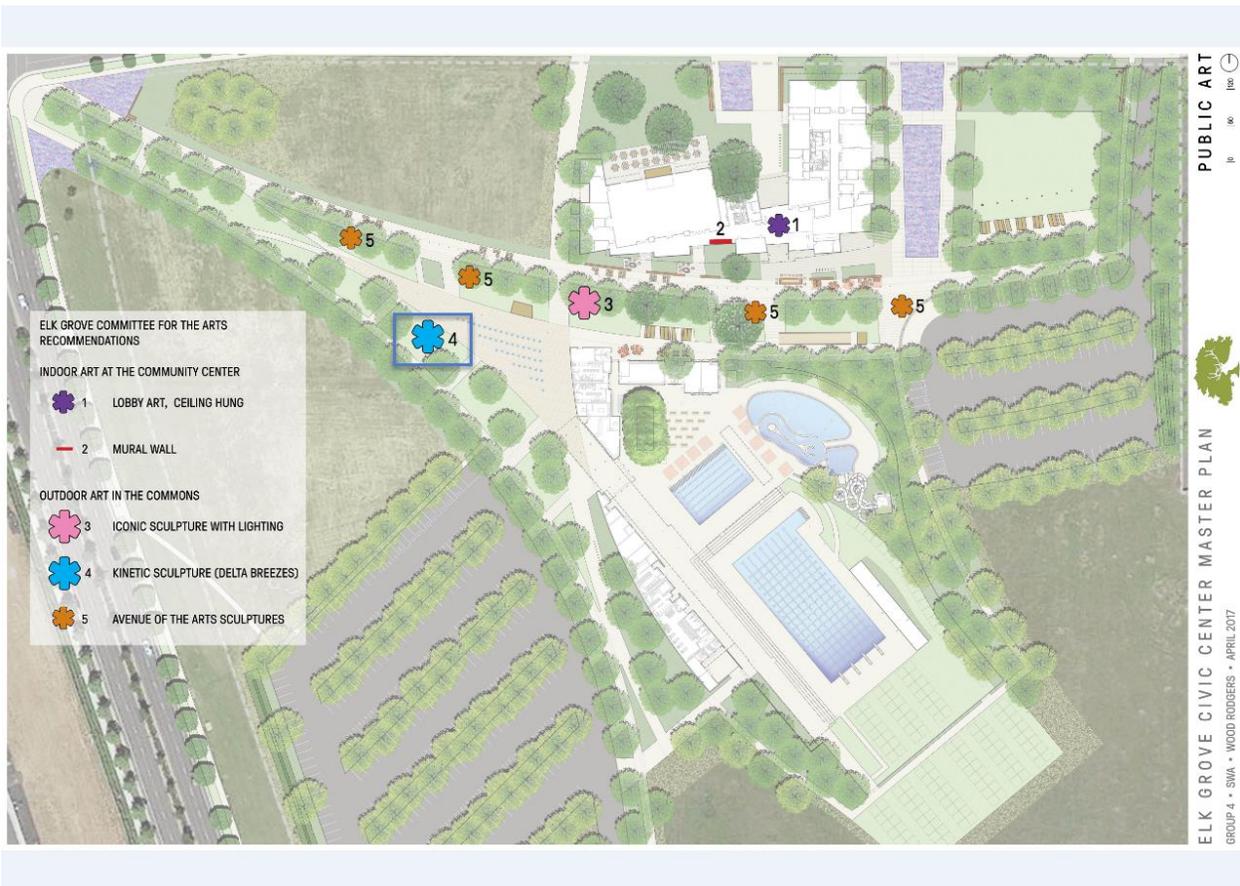
Number of Artists: 1 artist

Not to Exceed Budget: \$50,000

Artist Selection: Open Competition

Site Description: In The Commons area near the outdoor theater/stage in alignment of the Delta Breezes (a common seasonal wind in the area).

Scale: 24 feet in height by 16 feet in diameter



Exterior E – Four sculptures

Number of Artists: up to 4 artists

Not to Exceed Budget: \$25,000 - \$100,000

Artist Selection: Open Competition

Site Description: Total of four sculptures along the walkway through The Commons area representing a theme *Avenue of the Arts*. One sculpture for each artistic medium: Visual art, music, literature, and dance.

Scale: 10 feet in height by 10 feet in diameter

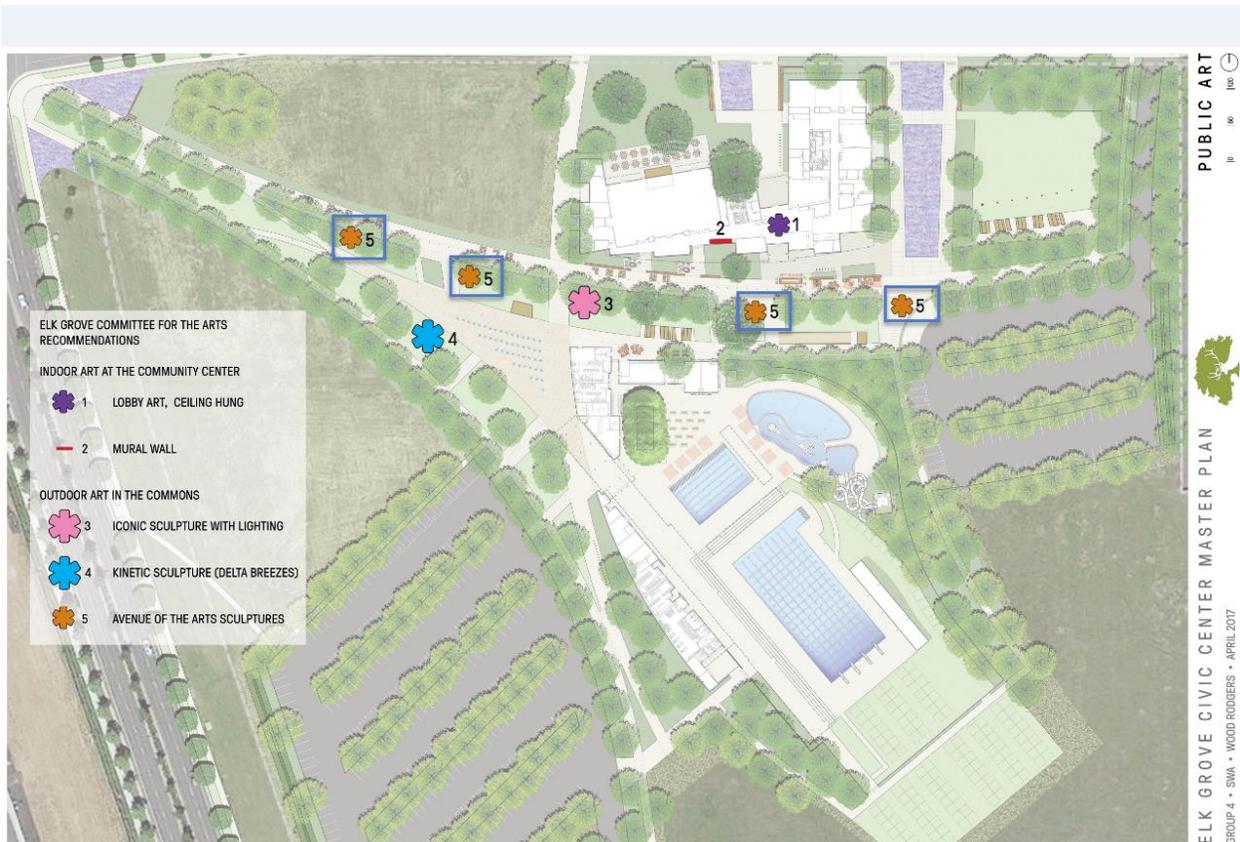


Exhibit C - Evaluation and Selection Criteria

Evaluation Criteria

The following represent the principle selection criteria, which will be considered during the evaluation process:

Artist(s) Qualifications, Experience, and References: Experience in performing work of a closely similar nature and size; experience working with public agencies; a body of work reflecting artistic excellence; experience fabricating and installing permanent artwork suitable for the intended placement; assessment by client references.

Work Plan: Depth of Artist's(s') understanding of City's requirements; overall quality and logic of work plan.

Quality and Responsiveness of the Proposal: Completeness of response in accordance with the RFP instructions.

Rates and Fees: Reasonableness and competitiveness of the rates and fees proposed; adequacy of data in support of figures quoted, basis on which rates and fees are quoted.

Review and Selection Process

City staff will evaluate the merits of the proposals received in accordance with the evaluation factors stated in this RFP and formulate a recommendation. For each evaluation criteria, proposals will be evaluated on their relative strengths, deficiencies, and weaknesses. -The City reserves the right, without the obligation, to conduct interviews with one or more artists prior to award of contract.

Exhibit D- Contract to Purchase Artwork

CONTRACT TO PURCHASE ARTWORK

This Agreement is made at Elk Grove, California, as of _____ (“Effective Date”), by and between the City of Elk Grove, a municipal corporation (“City”), and

Name
Address
Phone/email

(“Artist” or “Consultant”). 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 a Percent for the Arts program as set forth by Resolution of the City Council of Elk Grove dated November 9, 2016, Resolution 2016-226, which allocates a percentage of the total construction costs for eligible projects be spent on artworks in public places. Artworks to be commissioned or purchased by the City are selected through a review process of the Committee for the Arts in coordination with the City’s Public Works department. Once the Committee has a recommendation for artwork related to an eligible project the City Council will consider the recommendation. The City Council has final say on the selection and placement of artwork within the City as well as the appropriation and use of funds from this program.
- B. Through the Percent for the Arts program, funds have been allocated for the selection, purchase and placement of artwork to be installed at the City of Elk Grove’s future Civic Center (CIVIC CENTER). The artist is selected through a competitive process and the artwork concept is to be approved by the City Council.

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 I, purchase on Artist's account all labor, supplies, materials and equipment required to design and furnish to the City an artwork ("Work") at CIVIC CENTER and fabricate, deliver and install the Work at the CIVIC CENTER to the satisfaction of City and in substantial conformance with Artist's Design Proposal (“Proposal”).
 - B. The Work shall be placed and located per the specifications set for in Exhibit II.

- 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.**

- A. XX,XXX dollars (\$).
- 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 as described in Exhibit I:
 - (1) X thousand dollars (\$) upon submission of certificates of insurance acceptable to the City, execution of this Agreement, and dispatch of purchase order.
 - (2) X thousand dollars (\$) upon completion of Phase 1.
 - (3) X thousand dollars (\$) upon completion of Phase 2.a milestone.
 - (4) X thousand dollars (\$) upon completion of Phase 2.b milestone.
 - (5) X thousand dollars (\$) upon completion of Phase 3.
 - (6) X thousand dollars (\$) 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 have sole discretion to determine whether 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) 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 III 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 the Work in conformance with all applicable laws. Specifically, and without limitation, Artist is fully aware of the provisions of Labor Code section 1720 et seq. regarding payment of prevailing wages in connection with public works, and Artist shall comply with such laws, as applicable. Artist's execution of this Agreement is an acknowledgment that it has had the opportunity to obtain independent legal advice and counsel in this regard prior to executing this Agreement. Neither the City nor any of its employees, agents, or representatives have rendered opinions to Artist respecting the applicability of Labor Code section 1720 et seq. to the Work or installation thereof, and Artist has not relied on any such representation in entering into this Agreement. In the event any claim of any kind or nature based on Labor Code section 1720 et seq. (including section 1781) is brought or made against the City in connection with this Agreement, the Work, or its installation, Artist shall defend, indemnify, and hold harmless the City with respect to such claim in accordance with paragraph 12, below.

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 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 the Work was not completed in conformance with the Proposal or the Specifications and to the City's satisfaction.

 - B. Upon the City's refusal to accept the Work for the reasons stated in paragraph 7(A) 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 after City's acceptance of the Work. 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 to be determined. In the event Artist refuses to make the repairs whether due to lack of agreement on the fee, or otherwise, 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.** 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.
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 as determined by a court of competent jurisdiction. Unless and until such determination is made, or as otherwise agreed, artist shall defend, indemnify, and hold harmless the City, its

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. General Liability:

- a. Comprehensive general liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product and completed operations liability.
- b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
- c. Claims-made coverage is not acceptable.
- d. The limits of liability shall not be less than:
 - Each occurrence: One Million Dollars (\$1,000,000)
 - Products & Completed Operations: One Million Dollars (\$1,000,000)
 - Personal & Advertising Injury: One Million Dollars (\$1,000,000)
- e. If a products and completed operations aggregate limit of liability is used, the minimum products and completed operation aggregate shall be twice the each occurrence limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to this contract.

2. Automobile Liability:

- a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of hired, and non-owned automobiles.

- b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbols 8, and 9 (hired, and non-owned).
 - c. The limits of liability per accident shall not be less than:
 - Combined Single Limit: One Million Dollars (\$1,000,000)
 - d. If general liability coverage, as required above, is provided by the Commercial General Liability form, the automobile liability policy shall include an endorsement providing automobile contractual liability.
3. Worker's Compensation
- a. Worker's Compensation Insurance, with coverage as required by the State of California (unless the Consultant is a qualified self-insurer with the State of California), and Employers Liability coverage. The Consultant shall execute a certificate in compliance with Labor Code Section 1861.
 - b. Employer's Liability Coverage shall not be less than the statutory requirements.
 - c. If an injury occurs to any employee of the Consultant for which the employee or his dependents, in the event of his death, may be entitled to compensation from the City under the provisions of the Acts, for which compensation is claimed from the City, there will be retained out of the sums due the Consultant under this Contract, an amount sufficient to cover such compensation as fixed by the Acts, until such compensation is paid or it is determined that no compensation is due. If the City is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due to the Consultant.
 - d. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by the Consultant.
4. Other Insurance Provisions: The general liability coverage shall contain the following provisions and endorsements:
- a. The City, its officials, employees, agents and volunteers shall be covered and specifically named as additional insured as respects liability arising out of activities performed by or on behalf of the Consultant, products and completed operations of the Consultant, premises owned, occupied, or used by the Consultant, or automobiles owned, leased, hired, or borrowed by the Consultant on a separate endorsement acceptable to the Risk Manager.
 - b. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by the Consultant.
 - c. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.

- d. Provision or endorsement stating that for any claims related to this contract, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.
 - e. Any failure to comply with reporting or other provisions of the policies on the part of the Consultant, including breaches of warranties, shall not affect Consultant's requirement to provide coverage to the City, its officers, officials, employees, agents or volunteers.
5. Acceptability of Insurers: Insurance is to be placed with insurers with a Bests' rating of no less than A:VII.
6. Any deductibles, aggregate limits, pending claims or lawsuits that may diminish the aggregate limits, or self-insured retention(s), must be declared to, and approved by, the City.
7. The Consultant shall furnish the City with certificates of insurance and original endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this Contract. At any time at the written request of the City, Consultant agrees to furnish a duplicate original or certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.
8. The City, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving 30 days written notice.
9. The Consultant shall serve the City notice, in writing by certified mail, within 2 days of any notices received from any insurance carriers providing insurance coverage under this Agreement that concern the suspension, voidance, cancellation, termination, reduction in coverage or limits, non-renewal, or material changes of coverage proposed or otherwise.
10. If the Consultant fails to procure or maintain insurance as required by this section, and any Supplementary Conditions, or fails to furnish the City with proof of such insurance, the City, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the City shall be deducted and retained from any sums due the Consultant under the contract.
11. Failure of the City to obtain such insurance shall in no way relieve the Consultant from any of its responsibilities under the contract.

12. The making of progress payments to the Consultant shall not be construed as relieving the Consultant or its Sub-Consultants or agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
 13. The failure of the City to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.
 14. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under the Contract.
14. **Property of the City.** It is mutually agreed that the Work, and all materials and components prepared by Artist related thereto under this Agreement, shall become the property of City, and Artist shall have no property right therein whatsoever. Immediately upon termination and/or completion of this Agreement, City shall be entitled to, and Artist shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by Artist in performing this Agreement which is not Artist's privileged information, as defined by law, or Artist's personnel information, along with all other property belonging exclusively to City which is in Artist's possession. Publication of any information derived from work performed or data obtained in connection with services rendered under this Agreement must be approved in writing by City. Additionally, it is agreed that the Parties intend this to be an agreement for services and each considers the products and results of the services to be rendered by Artist hereunder to be work made for hire. Artist acknowledges and agrees that the Work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by the City.
 15. **Waiver of VARA and CAPA Rights.** To the fullest extent permitted by law, 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. **Artist Change of Address.** Artist shall notify City of Elk Grove 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 City of Elk Grove 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 reasonable 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 City of Elk Grove.

21. **Model.** As part of this Agreement, Artist will provide the City of Elk Grove one (1) Model 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.** 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 Elk Grove 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 signed 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 30 days 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.

ATTEST:

CITY OF ELK GROVE,
a Municipal Corporation

Jason Lindgren, City Clerk

Laura S. Gill, City Manager

APPROVED AS TO FORM:

ARTIST:

Jonathan P. Hobbs, City Attorney

NAME

Attachments

Exhibit I – Schedule for Completion of Work

Exhibit II - Specifications for Work

Exhibit III - Maintenance Report

EXHIBIT I: 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.

Phase 1: to be completed 2 months after execution of Agreement

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 I 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, The Committee for the Arts, 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 .
 - 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 City of Elk Grove staff.

Milestone 2b: 100 percent completion of Artwork fabrication and approval by City of Elk Grove 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 will install artwork 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 III, and submit 20 high resolution digital images of the fabrication and installation of the Artwork, and the completed Artwork to City. Artist will submit proof of all Final and Special Inspection documents. 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 City of Elk Grove staff.

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

EXHIBIT II: SPECIFICATIONS OF WORK

(To be inserted based on specific artwork(s) being provided)

EXHIBIT III: 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.

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

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.)

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

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

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

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

15. Handling instructions.

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

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

18. Special handling and/or storage instructions.

19. Special cautions or concerns regarding the Artwork.

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