



Request for Qualifications (RFQ)

for

Old Town Plaza Public Art Project

Public Art RFQ Response
City Clerk's Office
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758

**Statement of Qualifications Deadline is
Thursday, January 21, 2021 4:00 p.m.**



City of Elk Grove CALL TO ARTISTS

Request for Qualifications (RFQ)

Deadline: Thursday, January 21, 2021 4:00 p.m.

REQUEST FOR QUALIFICATIONS (RFQ): The City of Elk Grove invites artists and artist teams to submit their qualifications for the Old Town Plaza public art project. The total budget for the project is \$63,000 and includes all costs to design, fabricate, and install the artwork

ABOUT ELK GROVE: In 1850, Elk Grove was established as a hotel and a stop for the stage coach. It is located about 15 miles south of historic Sutter's Fort in Sacramento, California and thus became a crossroads for business, entertainment, mail service and agriculture, and acted as home base for gold miners in nearby communities. After it played a part in the early gold rush and statehood history in California, a close-knit community evolved with a distinctly rural and western lifestyle. Despite its close proximity to California's capital city, Elk Grove remained quietly independent of Sacramento's growth and development as it expanded into adjoining countryside areas until the 1980s. Agriculture has always been a central part of Elk Grove's economy. It is a diverse community that has experienced rapid growth over the past decade. Today, technology, professional services, and commercial and retail enterprises also contribute to the economy.

WHAT IS INCLUDED IN THE RFQ: The RFQ includes the following:

- Plans and descriptions of the Old Town Plaza
- Artist eligibility and evaluation criteria
- Artist selection timeline
- Application
- Sample Contract

ABOUT THE OLD TOWN PLAZA and PAVILLION SITE

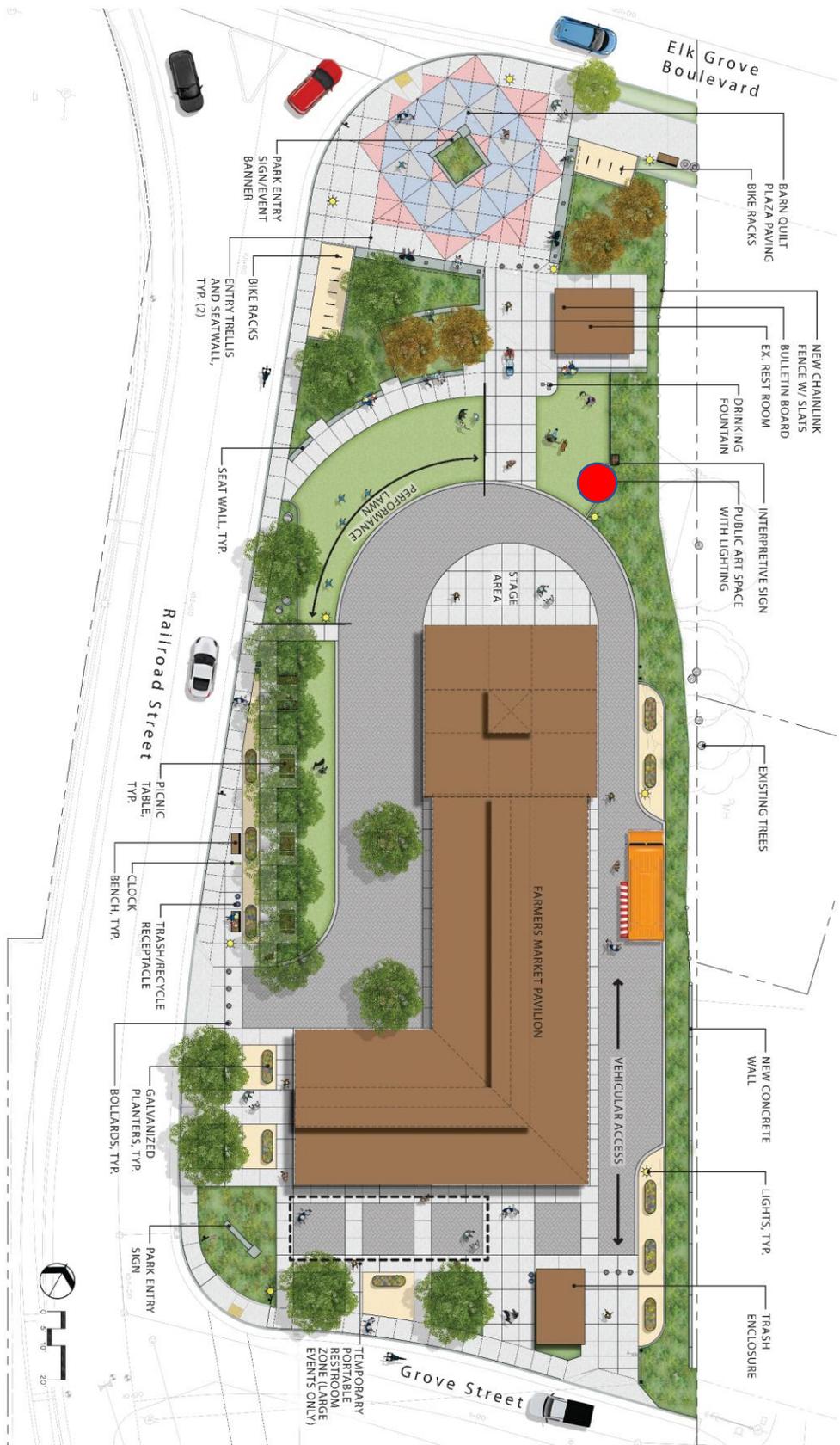
Old Town Plaza is located in Old Town Elk Grove where the community began in 1850. It started at present day Elk Grove Boulevard and Highway 99. When the railroad came through in 1868 the town relocated to one mile east to the railroad tracks. The buildings at the original site are mostly gone now, but in "Old Town" there are many historical buildings still in use today.

The Old Town Plaza is located adjacent to the railroad tracks and is a gathering space for the community. Events at Old Town Plaza range from concerts to Farmer's Markets and festivals. The area surrounding Old Town Plaza is shown in the photograph below.



Old Town Elk Grove

The project concept plan (shown below) includes a formal entrance to the Plaza with trellis structures, seating, site lighting, bike parking, park signage, and hardscape and landscape features. The plaza is a flexible space and is expected to be used year-round for events, performances, small art and book fairs, a farmer's market, movie nights, yoga classes, and more. The site for the artwork is shown in red at the entrance to the pavilion.



MASTER PLAN

OLD TOWN PLAZA - ELK GROVE
FEBRUARY 27, 2020

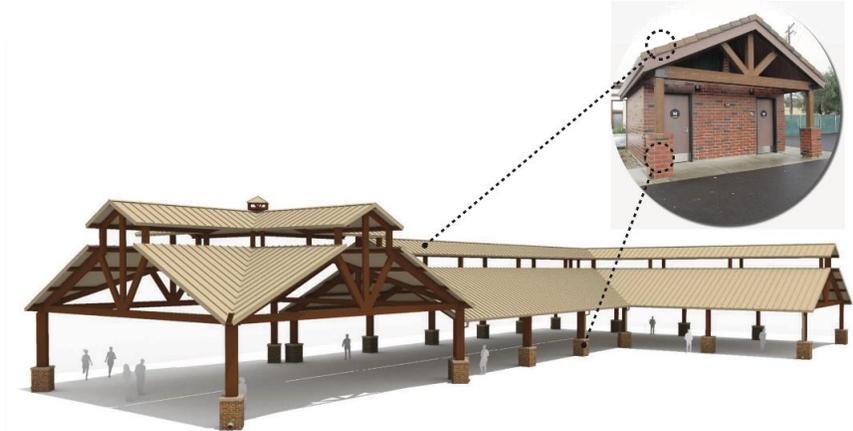




Old Town Plaza site under construction

The main feature of the project is a 9,400 square-foot open space pavilion, shown below.

Design elements reflecting the City’s railroad history and the historic downtown are incorporated throughout the site. If selected, applicants must consider this theme in the artwork design.



For more information on Old Town Plaza, please visit the project website at:
http://www.elkgrovecity.org/city_hall/departments_divisions/public_works/capital_improvement/s/old_town_plaza_improvements/old_town_plaza_improvements

ARTIST SELECTION PROCESS: Qualifications will be evaluated by a Review Committee comprised of two (2) members of the City’s Arts Commission, a community representative, and up to three (3) arts professionals. Based on artist/artist team qualifications, the Review Committee may select up to 3 finalists for each project to prepare proposals. Finalists will be paid \$600 for their proposal. These recommendations will be reviewed by the Elk Grove Arts Commission for feedback prior to issuing Service Purchase Orders to the selected finalists.

The Service Purchase Orders will pay the artists/artist teams to prepare project proposals for the artwork.

The Review Committee will review proposals and make recommendations to the Elk Grove Arts Commission. The Elk Grove Arts Commission will review the Review Committee’s recommendations and make recommendations to City Council. The recommended proposal for the project will then be approved by the Elk Grove City Council.

- Step one:** Request for Qualifications (RFQ) distributed nationally.
- Step two:** The Review Committee will select up to three finalists based on the quality of the artist/artist teams past work and qualifications.
- Step three:** The Review Committee’s recommendations will be sent to the Elk Grove Arts Commission for review and approval.
- Step four:** Selected finalists will be given an orientation to the site to understand the scope of the projects, and issued a Service Purchase Order to prepare a formal project proposal(s).
- Step five:** The Review Committee will review the proposals and make recommendations to the Art Commission.
- Step six:** The Arts Commission will review the Committee’s artist proposal recommendations and make recommendations to the Elk Grove City Council.
- Step seven:** Elk Grove City Council approves or disapproves contract for construction of the artwork.

TIMELINE

Statement of Qualifications due:	January 21, 2021, 4:00 p.m.
Review Committee Selects Artists:	February 2021
Proposals Due:	April 2021

Proposal Review by Committee:	April 2021
Elk Grove Art Commission Review:	April 2021
Elk Grove City Council review:	May 2021
Selected artist/artist team given notice-to-proceed:	May 2021
Fabrication of artwork:	May – Oct. 2021
Artwork installed:	Oct. 2021

APPLICATION: The application is on page ten (10). Please complete the application and mail or hand deliver to the address listed on the application by the deadline of Thursday, January 21, 2021 by 4:00 pm.

Applications may also be submitted electronically in pdf form, and emailed to City Clerk Jason Lindgren at jlindgren@elkgrovecity.org, with a copy to Lana Yoshimura, Community Event Center Manager at arts@elkgrovecity.org, prior to the deadline stated above. All pdfs must be fully ADA compliant. Large files may be sent using a cloud-based system such as Dropbox. Consultants shall be responsible for ensuring that proposals submitted electronically are received by the City Clerk prior to the deadline. Proposals that are not received prior to the deadline shall not be considered by the City, even if the late submission is due to a technical or other error, including, without limitation, the City's inability to open or access the electronic file. If the proposing Consultant does not receive a confirmation from the City Clerk that the proposal has been received, Consultant should assume the transmission failed and either resubmit or arrange for another method of delivery. Consultants are also encouraged to contact the City Clerk to confirm receipt of their proposal prior to the deadline. Proposals by fax will not be accepted.

Questions regarding this RFQ are to be directed by e-mail to: Lana Yoshimura, Community Event Center Manager, arts@elkgrovecity.org. Such contact shall be for clarification purposes only. The City must receive all questions no later than Monday, January 4, 2021. 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 RFQ announcement.

LATE SUBMISSIONS: Submissions arriving after the specified date and time shall not be considered. Applicants assume responsibility for timely submission of their statement of qualifications.

WITHDRAWAL OR MODIFICATION OF SUBMISSION: Once the submission has been accepted by the City, Artists may withdraw the submission but will NOT be able to modify it.

ACCEPTANCE AND REJECTION: The City reserves the right to accept any submission, reject all submissions, and to call for new submissions or dispense with the submission process in accordance with the Elk Grove Municipal Code.

EVALUATION AND AWARD: This RFQ is to assess qualifications ONLY. Applicants are not required to submit a specific proposal for the artwork initially. If selected as a finalist, artist/artist

teams will be invited to create a proposal. Evaluation shall be made based on the evaluation criteria listed above. One or more contracts may be awarded to Artist(s) who best meet the City's needs. Nothing herein obligates 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.

REGISTER WITH THE CALIFORNIA SECRETARY OF STATE:

Unless Service Provider is a sole proprietorship, Service Provider must be registered and in good standing with the California Secretary of State within 14 days following notification of the City's intent to award a contract to Service Provider and prior to execution of a final contract. Failure to timely register with the Secretary of State may result in the City awarding the contract to another Service Provider. Additional information regarding the registration process may be found on the Secretary of State's website at: <https://businesssearch.sos.ca.gov/>.

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 submittals that do not comply with the strict requirements of this RFQ, and the City reserves the right to award a contract to an artist/artist teams submitting any such non-compliant submittals, all in the City's sole discretion.

CONFLICT OF INTEREST STATEMENT

Artists/artist teams must declare any activities or relationships that might create a conflict of interest for the artist/artist teams or the City, and, if such activities or relationships exist, a description of the facts, legal implications, and possible effects sufficient to permit the City to appreciate the significance of the conflict and to grant any conflict waiver, if appropriate and necessary.

CONTRACT TO PURCHASE ARTWORK

Attached to the RFQ is a copy of the City's standard Contract to Purchase Artwork (Contract). The City's standard Contract may be modified, in the City's sole discretion, to address the specific provisions of this RFQ and Service Providers should note that any specifications or other requirements specific to this RFQ 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 Service Provider's response shall not be allowed after the selection of the Service Provider. 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.

(Application next page)

**City of Elk Grove Public Art Project
APPLICATION**

Please check one or more opportunities you wish to be considered for:

Artist's Name: _____

Address: _____

E-mail Address: _____ Phone: _____

I HAVE ENCLOSED OR ATTACHED THE FOLLOWING:

_____ Resume (four (4) pages maximum)

_____ A brief cover letter (no more than one page) explaining why you are interested in this/these project(s).

_____ Ten (10) images of past work. Images can be JPEG or in a PowerPoint program presentation format. Artist's submitting as a team, may submit up to 20 images.

_____ Annotated Image List:
A numbered list of corresponding submitted images that includes the artwork title, date, medium, and dimensions.

APPLICATION DEADLINE: Thursday, January 21, 2021, 4:00 p.m.

SEND APPLICATION TO: Qualifications must be submitted by mail or hand delivered to the Office of the City Clerk by 4:00 p.m. on January 21, 2021 at the address below:

Public Art RFQ Response
Office of the City Clerk
CITY OF ELK GROVE
8401 Laguna Palms Way
Elk Grove, CA 95758

Qualifications may also be emailed to the City at the following email address: arts@elkgrovecity.org

Questions? Questions regarding this RFQ are to be directed by e-mail to: arts@elkgrovecity.org and must be received by Monday, January 4, 2021. Such contact shall be for clarification purposes only.

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

Artist Name & Contact Information

(“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 Arts Commission in coordination with the City’s Public Works department. Once the Commission 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 Old Town Plaza (OLD TOWN PLAZA). 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 OLD TOWN PLAZA and fabricate, deliver and install the Work at the OLD TOWN PLAZA 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. Sixty-Three thousand dollars (\$63,000).
 - 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) Five thousand dollars (\$5,000) upon submission of evidence of insurance acceptable to the City, execution of this Agreement, and dispatch of purchase order.
 - (2) Ten thousand dollars (\$10,000) upon completion of Phase 1.
 - (3) Fifteen thousand dollars (\$15,000) upon completion of Phase 2.
 - (4) Fifteen thousand dollars (\$15,000) upon completion of Phase 3.a milestone.
 - (5) Ten thousand dollars (\$10,000) upon completion of Phase 3.b milestone.
 - (6) Five thousand dollars (\$5,000) upon completion of Phase 4.
 - (7) Three thousand dollars (\$3,000) upon completion of Phase 5.
 - 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. **Copyright. Artist owns the 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 reproductions of the Work. Artist authorizes the 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.
- D. **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.
- E. **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. 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.
3. 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.
 4. Acceptability of Insurers: Insurance is to be placed with insurers with a Bests' rating of no less than A:VII.
 5. 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.
 6. 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.
 7. 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.
 8. 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.
 9. 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.
 10. Failure of the City to obtain such insurance shall in no way relieve the Consultant from any of its responsibilities under the contract.
 11. 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.
 12. 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.
 13. 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.

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

Jason Behrmann, City Manager

APPROVED AS TO FORM:

ARTIST:

Jonathan P. Hobbs, City Attorney

Martin Webb, Artist

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.

Artist understands that it is the City's desire to have the Work installed at Old Town Plaza in September 2021. Artist will make every effort reasonably feasible to meet this deadline. Artist and City understand that time is of the essence and both parties agree to be as responsive and diligent as reasonably feasible towards reaching this September 2021 installation date. City agrees to process invoices for early completion of milestones to the extent reasonably feasible, in-order-to meet the desired deadline.

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 and approval of Final Conceptual Proposal ("Final Concept") in substantial conformance with the artwork design proposal attached hereto as Exhibit II: Specifications of Work.

- The Final Concept shall include a surface design, color palette and overall design that is energetic, exuberant, and fun.
- Artist, at City's option, shall be available to present the Final Concept, at one or more project meetings, to City staff, the Arts Commission, 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 Concept into the architectural design of the Oasis Preschool site.
- The City may approve, with minor changes, or disapprove the Final Concept. In the event that the City disapproves the Final Concept, 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 Concept. Artist recognizes and agrees that the City will review the Final Concept as revised and may make additional requests for changes regarding the revised Final Concept.

Phase 2: to be completed 2 months after the completion and approval of Phase 1: Final Concept.

Description: Delivery of the following:

- engineering drawings
- estimates from suppliers and fabricators documenting project expenses
- receipt of any required permits
- the Final Design Proposal ("Final Design") for the Artwork in conformance with the Final Concept. The Final Design 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 Design, at one or more project meetings, to City staff, the Arts Commission, 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 Design into the Oasis Preschool site.
 - f. The City may approve, with minor changes, or disapprove the Final Proposal. In the event that the City disapproves the Final Design, 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 Design. Artist recognizes and agrees that the City will review the Final Design as revised and may make additional requests for changes regarding the revised Final Design.

Phase 3: to be completed 6 months after City approval of Phase 2

Description: Fabrication of Artwork

Milestone 3a: 50 percent completion of Artwork fabrication and approval by City of Elk Grove staff.

Milestone 3b: 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 Design drawings and Construction Drawings approved by the City. To the extent that any specification for the Artwork is not identified in the Final Design 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 4: to be completed 1 month after City payment for completion of Phase 3b is received by the Artist.

Description: Complete installation. Artist will install artwork at the location as described in the Final Design and in accordance with the installation methods approved by the City

Phase 5: to be completed 1 month after Phase 4 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

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).

Exhibit IV: Certificate of Compliance With Labor Code § 3700, Release and Indemnification

The undersigned, on behalf of and as the duly certified representative of Consultant, certifies as follows:

1. Consultant is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Consultant has complied or will comply with such provisions before commencing the performance of the work of this contract.
2. Should Consultant fail to secure Workers' Compensation coverage as required by the State of California, Consultant shall release, hold harmless, defend and indemnify the City of Elk Grove from and against any damage, liability, claim, cause of action and any other loss, including without limitation, court costs, reasonable attorney's fees and costs resulting from any failure to take and/or maintain Workers' Compensation insurance as required by law. The provisions of this Exhibit shall survive termination, suspension and/or completion of this Contract. It is further understood and agreed that this release and assumption of risk is to be binding on Consultant's successors, heirs and assigns.

CONSULTANT

By: _____

Date: _____

Name: _____

Title: _____