

# **CITY OF ELK GROVE**



## **Request for Proposals**

**For**

**Bond Road Mural**

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

**Proposals Due by Friday, July 28, 2023 4:00 PM**

**Introduction:**

The City of Elk Grove (City) is accepting proposals from qualified Artists for the Bond Road Mural Project 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.

Proposals must be submitted to the Office of the City Clerk by **July 28, 2023 at 4:00 PM**.

**Electronic Submission:**

Proposals may be submitted electronically in pdf form emailed to the Office of the City Clerk Attn: Jason Lindgren at [jlindgren@elkgrovecity.org](mailto:jlindgren@elkgrovecity.org), with a copy to the Arts Commission at [artcommission@elkgrovecity.org](mailto:artcommission@elkgrovecity.org) prior to the deadline stated above. Proposal shall be clearly marked Bond Road Mural Project. Submittals in pdf format must be fully ADA compliant. Large files may be sent using a cloud-based system such as DropBox. Artists 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 Artist does not receive a confirmation from the City Clerk that the proposal has been received, Artist should assume the transmission failed and either resubmit or arrange for another method of delivery. Artists are also encouraged to contact the City Clerk to confirm receipt of their proposal prior to the deadline. Proposals shall not be accepted by fax.

**Written Submissions:**

If electronic submission is not available, proposals may also be submitted in writing. One signed original, and one USB Flash Drive copy of the proposal must be submitted to the Office of the City Clerk prior to the deadline noted above. Proposal shall be submitted in a sealed envelope clearly marked Bond Road Mural Project 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: [artcommission@elkgrovecity.org](mailto:artcommission@elkgrovecity.org). Such contact shall be for clarification purposes only. The City must receive all questions no later than 4:00 PM July 17, 2023. 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.

**Late Proposals:**

Proposals arriving after the specified date and time shall not be considered, nor will late proposals be opened. Each Artist 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 dispense with the proposal process in accordance with the Elk Grove Municipal Code.

**Proposal Evaluation and Award:**

Evaluation shall be made based on the criteria noted in Attachment A: Evaluation and Selection Criteria. A contract may be awarded to the responsible Artist who best meets the City's needs by demonstrating the competence, and qualifications necessary for the satisfactory performance of the required services, shall not necessarily be based on the lowest priced proposal, but shall be based on a determination of which services offered serve the best interest of the City, except as otherwise provided by law, taking into consideration adherence to the included specifications. A contract may be awarded to the next responsible Artist if the successful Artist refuses or fails to execute the contract. All Artists that were not selected by the City shall be notified in writing. 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 seek services from other sources, in the City's sole discretion.

**Register with the California Secretary of State:**

Unless Artist is a sole proprietorship, Artist 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 Artist 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 Artist. 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 contract(s), (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.

**Local Vendor Preference:**

A bid or proposal from a local vendor for commodities, equipment, and general services will be tabulated as if it were five (5%) percent below the figure actually set forth in the bid or proposal, up to a maximum preference of Fifty Thousand and no/100th (\$50,000.00) Dollars per bid or proposal, to account for the financial advantages accruing to the City by the award of a bid to a local vendor. Bids or proposals submitted in response to this RFP will be evaluated on the basis of a local preference of five (5%) percent of the bid or proposal price.

"Local vendor" means a person or legal entity which has a place of business (other than a post office box) within the City and has a valid, current business license issued by the City. To qualify as a local vendor for the purposes of Section 3.42.230 of this Code, the vendor shall submit with its bid or proposal a completed City-provided affidavit that documents the following: 1) the business has a facility with a City of Elk Grove address, 2) the business has, during at least one (1) year immediately preceding the submission of the bid or proposal, attributed sales tax to the City of Elk Grove, and 3) the business has had a City of Elk Grove business license for at least one (1) year prior to the submission of the bid or proposal. The affidavit can be obtained by accessing the Request for Proposal and Bids section of the City web site, <http://www.elkgrovecity.org/community/request-for-proposal.asp>.

**Validity of Pricing:**

Artists are required to provide a fee structure including the hourly rate of the principals to be assigned to the matter, and proposed cost (line item descriptions and pricing), and expense reimbursements levels, and total costs. No cost increases shall be passed onto the City after the

proposal has been submitted. No attempt shall be made to tie any item or items contained in this RFP with any other business with the City; each proposal must stand on its own.

**No Guarantee of Usage:**

Any quantities listed in this RFP are estimated or projected and are provided for tabulation and information purposes only. No guarantee of quantities is given or implied by the City. Artist must furnish the City's needs as they arise.

**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 a demonstration as specified by the City may result in rejection of a proposal.

**Use of Other Governmental Contracts:**

The City reserves the right to reject any part or all of any proposals received and utilize other available governmental contracts.

**Qualification/Inspection:**

Proposals will only be considered from Artists normally engaged in providing the services specified herein. By responding to this RFP, the Artist consents to the City's right to inspect the Artist's facilities, personnel, and organization at any time, or to take any other action necessary to determine Artist's ability to perform. The City reserves the right to reject proposals where evidence or evaluation is determined to indicate inability to perform. The City reserves the right to interview any or all responding Artists and/or to award a contract without conducting interviews.

**Acceptance and Conditions**

The services rendered in response to the RFP must comply fully with the terms of the RFP. The City will make payment only after the services rendered are reviewed and accepted as complete by the City.

**Other Governmental Entities:**

If the Artist is awarded a contract as a result of this RFP, the Artist shall, if the Artist has sufficient capacity, provide to other governmental agencies, so requesting, the services awarded in accordance with the terms and conditions of the RFP.

**Payment Terms:**

Payment shall be made as set forth in the contract attached hereto as Attachment B. 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 services 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, commencing upon execution. The City anticipates the contract to be for a term of four (4) months. 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 services provided, 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, an amendment to the Contract will be approved by all parties for the change to be implemented. An amendment shall 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.

**Service and support:**

All Artists shall explain how all on-going service and support shall be handled by the Artist and the City of Elk Grove.

**Records:**

The Artist shall maintain complete and accurate records with respect to labor costs, material expenses, and other such information required by City that relates to the performance of services under the contract. The Artist shall maintain adequate records of services provided in sufficient detail to permit an evaluation of the services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible and in a form acceptable to the City, which the City may specify and change from time to time. The Artist shall provide free access to the representatives of City or its designees, at reasonable times, to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings, and activities related to the contract. Such records, together with supporting documents, shall be maintained for City's inspection for a period of at least three (3) years after receipt of final payment.

**(See next page for Guidelines for Proposal)**

## Guidelines for Proposal

The following guidelines are provided for standardizing the preparation and submission of proposals. The intent is to assist respondents in the preparation of their submissions and to assist the City by simplifying the review process providing standards for comparison of submissions.

Statements submitted in response to this RFP shall include a complete response to the requirements in this section in the order presented. Statements should be a straightforward delineation of the respondent's capability to satisfy the intent and requirements of this RFP and should not contain redundancies and conflicting statements.

Digital submissions shall include bookmarks for each section with an easy to read font size and style.

Written proposals shall be printed double sided, submitted on 8-1/2" x 11" recycled paper, with easy to read font size and style. Pages shall be numbered, tabbed, and bound (spiral / comb / three ring binder). Tabbed dividers should separate and identify the response items described below.

Proposals shall contain the following information in the order listed:

1. Introductory letter

The introductory letter should be addressed to:

Elk Grove Arts Commission  
City of Elk Grove  
8401 Laguna Palms Way  
Elk Grove, CA 95758

The letter shall include the Artist's name submitting the proposal, their mailing address, telephone number, and contact name. The letter shall address the Artist's understanding of the project based on this RFP and any other information the Artist has gathered. Include a statement discussing the Artist's interest and qualifications for this type of work. A principal of the firm authorized to legally bind the firm shall sign the letter.

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, including any professional licenses and certificates held by the Artist. List types, locations, and pictures 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.

4. Work Plan

The work plan must state the Artist's ability to meet each specification as outlined in this document. The work plan should address the items of work as described in this RFP. The plan should be simple, easy to read and follow, and address and satisfy the objectives and specifications as listed in the Scope of Work in this RFP.

5. Conflict of Interest Statement

Any activities or relationships of the Artist that might create a conflict of interest for the Artist 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.

6. Supportive Information/References

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

7. Fees / Budget

This section should include the cost for requested 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. Secretary of State

Artist shall acknowledge their understanding of needing to be registered with the California Secretary of State as noted in the RFP language above.

9. Contract to Purchase Artwork:

Attached to the RFP (Attachment E) 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 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 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	\$1,000,000	\$1,000,000	Additional Insured Waiver of Subrogation
Work Comp 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 Agreement for specific requirements

**(See next page for Scope of Work)**

## SCOPE OF WORK

### OBJECTIVES

The Elk Grove Arts Commission is seeking a local artist or team of artists that reside within the boundaries of Sacramento County to complete a mural on the bridge located on Bond Road near Elk Grove-Florin Rd in the City of Elk Grove. The mural will be painted on the concrete bridge located on Bond Road where it crosses the Laguna Creek Trail between Elk Grove-Florin Road and Trout Way.

### PROPOSED ART SITE:

The mural will appear along the parallel concrete walls, of the overpass facing the street side on Bond Road between Elk Grove-Florin Road and Trout Way. The pedestrian bridge on the north side, that includes a trellis, does not have to be addressed as part of the project.





The south wall is 27' wide and 171' in length with end caps on both sides of the bridge which will also need to be painted to be consistent with the mural.



The north wall is approximately 35' wide and 171' in length.



The north wall will require Artist to submit and receive a road closure permit to the City of Elk Grove Public Works Department. Costs of the permit and any road closure requirements should be incorporated into the Artist's project budget.

#### **DESIGN APPLICATION:**

The Arts Commission is seeking a mural which reflects a dynamic and vibrant cityscape. The mural should reflect the bustling and energetic business corridor along Bond Road and Elk Grove-Florin.

#### **GENERAL APPLICATION INFORMATION**

##### **ARTIST ELIGIBILITY:**

- The artist (s) must reside within the boundaries of Sacramento County.
- The selected artist/artist team must be available to begin work immediately and complete the project by December 31, 2023.
- Artist (s) must be able to supply all equipment and supplies to complete the project including obtaining road closure permit for street closure on Bond Road.
- Artist (s) will be responsible for up to two subsequent calls for service to retouch or repair artwork damaged by vandals and/or ordinary wear and tear during the one-year period following the acceptance date. This work shall be completed at no additional cost to the City.
- Artist (s) must meet all City requirements including general liability insurance of \$1 million naming the City as additionally insured.

**EVALUATION CRITERIA:** Criteria for selection of artist/artist teams include, but are not limited to the following:

- An ability to work collaboratively with other design professionals, stakeholders, and staff.
- Creativeness of proposed design.
- Demonstrated successful creative, innovative, and effective approach in comparable projects.
- Reasonableness of the rates and fees proposed
- Artist's ability to carry out the commission, keep the project within budget, and to complete and install the work on schedule.
- Artist's knowledge of and ability to work with durable materials that are appropriate for long-term exposure in a public environment and that require minimal care and long-term maintenance.
- Ability to supply all equipment to complete the mural.

**SELECTION PROCESS:** Initial screening of the proposals will be evaluated by a Review Committee comprised of two (2) members of the City's Arts Commission and one (1) member of the City staff. The Review Committee may select up to three (3) finalists to recommend to the full Arts Commission for

selection.

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

Step one: Request for Proposals (RFP) distributed in the Sacramento region.

Step two: The Review Committee will select up to three (3) finalists based on the quality of the artist/artist proposal.

Step three: The Review Committee's recommendations will be sent to the Elk Grove Arts Commission for review and approval.

Step four: The Arts Commission will review the Committee's artist proposal recommendations and make recommendations to the Elk Grove City Council.

Step five: Elk Grove City Council approves or disapproves contract for creation of the artwork.

#### **TIMELINE**

Request for Proposals Issued:	May 8, 2023
Proposals Due:	July 28, 2023 4PM
Review Committee Selects Finalists:	August 2023
Elk Grove Arts Commission Review:	August 2023
Approval by City Council:	September 2023
Project Completed by:	December 2023

#### **BUDGET**

As part of the submission, the artist or team of artists will submit a budget for the project. The budget should include costs for supplies, permit or road closure, as well as the artist fees.

The project budget will be considered as part of the selection process.

#### **QUALIFICATION CRITERIA**

Applicants must submit the following to be considered for the project:

- Completed application form.
- Verification of Sacramento County residency (current utility bill or similar).
- Proposed design for the mural in JPEG for GIF file format which complies with the design application of a dynamic and vibrant cityscape. The mural should reflect the bustling and energetic business corridor along Bond Road and Elk Grove-Florin.

#### **ATTACHMENTS**

Attachment A: Evaluation and Selection Criteria

Attachment B: Application

Attachment C: Bond Road Mural Project Site

Attachment D: Timelines

Attachment E: City's Standard Contract to Purchase Artwork

**(See next page for Attachments)**

## ATTACHMENTS

### **Attachment A: Evaluation and Selection Criteria**

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

- An ability to work collaboratively with other design professionals, stakeholders, and staff.
- Creativeness of proposed design.
- Demonstrated successful creative, innovative, and effective approach in comparable projects.
- Reasonableness of the rates and fees proposed.
- Artist's ability to carry out the commission, keep the project within budget, and to complete and install the work on schedule.
- Artist's knowledge of and ability to work with durable materials that are appropriate for long-term exposure in a public environment and that require minimal care and long-term maintenance.
- Ability to supply all equipment to complete the mural.

**SELECTION PROCESS:** Initial screening of the proposals will be evaluated by a Review Committee comprised of two (2) members of the City's Arts Commission and one (1) member of the City staff. The Review Committee may select up to three (3) finalists to recommend to the full Arts Commission for selection.

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

Step one: Request for Proposals (RFP) distributed in the Sacramento region.

Step two: The Review Committee will select up to three (3) finalists based on the quality of the artist/artist proposal.

Step three: The Review Committee's recommendations will be sent to the Elk Grove Arts Commission for review and approval.

Step four: The Arts Commission will review the Committee's artist proposal recommendations and make recommendations to the Elk Grove City Council.

Step five: Elk Grove City Council approves or disapproves contract for creation of the artwork.

ATTACHMENT B

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

**Artist's Name:** \_\_\_\_\_

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

**E-mail Address:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**I HAVE ENCLOSED OR ATTACHED THE FOLLOWING:**

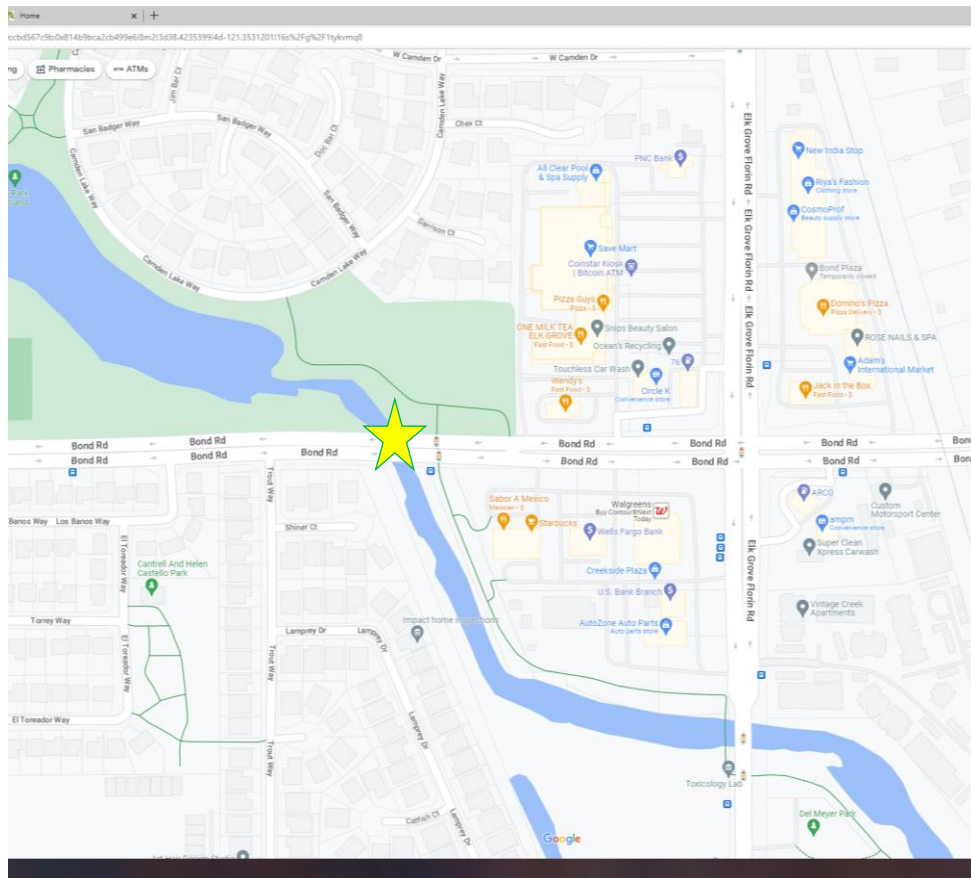
- \_\_\_\_\_ Introduction Letter: A brief cover letter (no more than two pages) explaining why you are interested in the Bond Road Mural Project
- \_\_\_\_\_ Table of Content or Bookmarks (PDF)
- \_\_\_\_\_ Qualifications / Experience / Resume (three (3) pages maximum)
- \_\_\_\_\_ Work Plan: Includes proposed artwork for the mural project
- \_\_\_\_\_ Conflict of Interest Statement
- \_\_\_\_\_ Proof of residency in Sacramento County
- \_\_\_\_\_ Fees / Budget
- \_\_\_\_\_ Secretary of State Acknowledgement
- \_\_\_\_\_ Contract Review / Exceptions



## ATTACHMENT C

### Bond Road Mural Project Site

The mural will appear along the parallel concrete walls, of the overpass facing the street side on Bond Road between Elk Grove-Florin Road and Trout Way. The pedestrian bridge on the north side, that includes a trellis, does not have to be addressed as part of the project.



## Attachment D

### Timelines

DESCRIPTION	DATE
Request for Proposals Issued:	May 8, 2023
Proposals Due:	July 28, 2023, 4PM
Review Committee Selects Finalists:	August 2023
Elk Grove Arts Commission Review:	August 2023
Approval by City Council:	September 2023
Project Completed by:	December 31, 2023

**ATTACHMENT E Sample Contract**

**CONTRACT TO PURCHASE ARTWORK**

This contract to purchase artwork ("Agreement") is made as of \_\_\_\_\_ by and between the City of Elk Grove, a California municipal corporation ("City"), and \_\_\_\_\_ ("Artist").

**WHEREAS**, the City has allocated certain fund for the establishment of artworks in public places to make payments for the purchase or commission of artworks and;

**WHEREAS**, funds have been allocated for the selection, purchase, and placement of artwork for **XXXXXXXX** Project ("Project").

**NOW THEREFORE**, the parties mutually agree as follows:

1. Subject to the terms and conditions set forth in this Agreement, Artist shall:
  - (a) Provide all labor, tools, supplies, materials, and equipment required to **paint** artwork on the **XXXXXX** identified in **Exhibit A**.
  - (b) Submit for approval by the City conceptual drawings, work plans and schedule to complete the Project prior to commencing work.
  - (c) Not interfere with existing public pedestrian and vehicular traffic or deviate from an approved schedule, or work plan without prior written approval by City.
  - (d) Comply with all Federal, State, and local laws including, but not limited to the Public Contract Code and Labor Code regarding prevailing wage, and other laws as appropriate. Artist agrees to pay prevailing wages as applicable and in accordance with California Labor Code Section 1720, et. Seq.
  - (e) Request approval of the City to accept the work when complete. Approved completion of Work, or \_\_\_\_\_, whichever comes first is the Acceptance Date.
2. The City shall pay Artist a fixed price of \$\_\_\_\_\_ for the Work. It is agreed that the City has no obligations regarding commissions or any agreements with galleries or agents with whom Artist may have contracted. Inclusive in this amount are **ALL COSTS** for fabrication, installation and transportation of artwork, as well as artist's fees, site preparation, materials, labor, and taxes. This compensation amount also includes compensation to the Artist for up to two subsequent calls by the City to retouch and repair artwork damaged by vandals and/or ordinary wear and tear during the one-year period following the Acceptance Date of the work.

Payment to Artist will be made as follows:

Initial Payment of \$\_\_\_\_\_, after the work plan is approved

Final Payment of \$\_\_\_\_\_, after the Project has been accepted by the city in accordance with Section 1(e) above.

Artist hereby directs that all payments shall be made payable to \_\_\_\_\_ and remitted to:

Name: \_\_\_\_\_

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

\_\_\_\_\_



3. Artist shall dedicate such time and effort as is necessary to fulfill Artist's obligations to completely finish and install the Work to satisfaction of the City pursuant to the Agreement on or before \_\_\_\_\_ ("Completion Date"). Time and strict punctual performance are of the essence in this Agreement. However, the City, in its sole discretion, may extend the Completion Date if it determines there have been excusable delays that have prevented Artist from finishing and installing by the completion Date, extensions, if any, must be in writing and signed by the parties to this Agreement.
4. Artist agrees and warrants that, prior to request for acceptance of the work, Artist shall restore the project site (including the entire area affected by the fabrication and installation of the Work) to a state and condition that is substantially identical to that which existed when the project was begun. Artist further agrees and warrants that Artist shall repair or replace, as is determined necessary by 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 therefor.
5. Artist shall exercise every reasonable precaution to protect streams, lakes, reservoirs, and canals from pollution with fuels, oils, bitumens, calcium chloride, and other harmful materials and shall conduct and schedule his/her operations so as to avoid or minimize muddying and silting of said streams, lakes, reservoirs, and canals. Care shall be exercised to preserve vegetation beyond the limits of construction. The Artist shall comply with Section 5650 of the California Fish and Game Code and all other applicable statutes and regulations relating to the prevention and abatement of water pollution.
6. Artist agrees that the contract prices paid for the Work shall include full compensation for all labor, tools, supplies, materials, and equipment required for the project including all taxes which the Artist is required to pay, whether imposed by Federal, State, or local governments.
7. Artist warrants that the performance, design, and Work being purchased is original and the product of Artist's own creative efforts and does not infringe the right of any person. Artist also warrants that, unless otherwise stipulated in writing, the Work is original, an edition of one (1), and that Artist shall not sell, license, perform, or reproduce a substantially identical copy of the Work without the prior consent of the City.
8. Artist shall warrant and maintain the Work free from all faults or defects arising from material and workmanship for a period of one (1) year after the Completion Date.
9. Artist agrees to fabricate and install the Work in conformance with all applicable laws.
10. Artist shall not assign any portion of the Work required pursuant to this Agreement without first obtaining the written consent of the City, which consent may be withheld in the sole discretion of the City.
11. Regardless of any payment the City may make to Artist prior to the Acceptance Date, all work performed on City property shall be owned by City, except that Artist shall bear all risk of loss to the Work until the City provides written notice that the Work is completed and installed to the satisfaction of City pursuant to Section 1(e) above.

- (a) The City agrees to accept the completed Work unless it can show that the Work was not executed substantially in accordance with this contract.
12. Artist shall be responsible for up to two subsequent calls by the City to retouch and repair artwork damaged by vandals and/or ordinary wear and tear during the one (1) year period following the Acceptance Date. This work shall be completed at no additional cost to City.
  13. Artist shall retain the right to claim authorship of the Work. Upon approval by the City, the Artist may request that they be allowed to sign or otherwise provide some method of designating the work as that of the Artist. The approval of such method is at the sole discretion of the City.
  14. The Artist shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the lawful prosecution of the work. All permits and licenses shall be obtained in sufficient time to prevent delays to the Work.
  15. Artist shall indemnify and save harmless, the City, its officers, agents, employees, and contractors, and each and every one of them, from and against all actions, damages, costs, liability, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by the city's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to the extent such Liabilities are caused by or arise from any negligent act or omission, recklessness or willful misconduct of Artist, its subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether or not (i) such Liabilities are also caused in part by the passive negligence of the city, its officers, agents, employees, or contractors, (ii) the city, its officers, agents, employees or contractors reviewed, accepted, or approved any service or work product performed or provided by Artist, or (iii) such Liabilities are litigated, settled or reduced to judgment.
- Artist shall, upon the City's request, defend at Artist's sole cost any action, claim, suit, cause of action or portion thereof that asserts or alleges Liabilities caused by or arising from any negligent act or omission, recklessness or willful misconduct of the Artist or its subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether such action, claim, suit, cause of action or portion thereof is well founded or not.
16. During the entire term of this Agreement, Artist shall maintain the insurance coverage described in this Section.

TYPE	SINGLE LIMIT / OCCURRENCE	AGGREGATE	ENDORSEMENTS***
General Liability	\$1,000,000	\$1,000,000	Additional Insured Waiver of Subrogation
Work Comp 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 Agreement for specific requirements**

17. Artist expressly reserved every right available to Artist at common law or under the Federal Copyright Act to control the making and dissemination of copies or reproduction of the Work except as those rights are limited by this Agreement. Artist agrees to give a credit substantially in the following form: "Original owned by the City of Elk Grove" in any public showing of 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. All reproductions by the City shall contain a copyright notice substantially in the following form: "Copyright c, Artist's name, date", in such a manner and location as shall comply with the U.S. Copyright laws.
18. The City agrees to maintain for a reasonable period of time a record of this Agreement and of the location and disposition of the Work.
19. In the event Artist believes that the City has failed to faithfully perform this Agreement, Artist shall notify the City Manager in writing of such failure. Such notice shall specify in detail each and every failure of the City and the reason such failure is a breach of the Agreement.
20. If any matter is to be submitted to a third party for resolution, all fees, expenses, and costs connected therewith shall be borne jointly and equally by the City and Artist.
21. Artist shall notify the City of Elk Grove in writing of any change of address; in the event Artist fails to comply with this requirement, Artist waives his or her rights under this Agreement until Artist does not comply. 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 the Copyright Laws.
22. As part of this Agreement, Artist will give one public art lecture regarding the Work after the installation of the Work is completed. The time, date, location, and other arrangements for the lecture are to be approved in advance by the City.
23. This Agreement is the entire agreement of the parties and supersedes all prior negotiations and agreements whether written or oral. This Agreement may be amended only by written agreement and no purported oral amendment to this Agreement shall be valid. Artist and City agree and acknowledge that the provisions of this Agreement shall be valid. Artist and City agree and acknowledge that the provisions of this Agreement have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Agreement shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Agreement.
24. Non-Discrimination/Non-Preferential Treatment Statement: In performing this Agreement, the parties shall not discriminate or grant preferential treatment on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, and shall comply to the fullest extent allowed by law, with all applicable local, state, and federal laws relating to nondiscrimination.

Approved to as form:

**ARTIST**

By: \_\_\_\_\_  
Attorney for Artist

By: \_\_\_\_\_  
**Name, Title**

Approved as to form:

**CITY OF ELK GROVE**

By: \_\_\_\_\_  
Jonathan P. Hobbs, City Attorney

By: \_\_\_\_\_  
Jason Behrmann, City Manager

ATTEST TO:

By: \_\_\_\_\_  
Jason Lindgren, City Clerk

Dated: \_\_\_\_\_

**EXHIBIT A**

**DESCRIPTION OF SERVICES**

## **EXHIBIT B**

### **INSURANCE REQUIREMENTS**

#### **Insurance Requirements**

Prior to commencement of any work under this Contract, Organization shall provide to the City proof of, and maintain in full force and effect at all times during the term of the Contract, at its sole cost and expense, policies of insurance as set forth herein. Organization shall comply with all reporting and other provisions of the policies of insurance as set forth herein including, but not limited to, timely reporting of claims and suits. Further, should Organization maintain any programs of self-insurance, Organization shall comply with the applicable fulfillment of any self-insured retentions.

1. General Liability:

- a. Comprehensive general liability insurance including, but not limited to, protection for claims of bodily injury and property damage 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)
Aggregate:	One Million Dollars (\$1,000,000)
- e. The City, its officials, employees, agents and authorized volunteers shall be covered and specifically named as additional insured as respects liability arising out of activities performed by or on behalf of the Organization, products and completed operations of the Organization, premises owned, occupied, or used by the Organization, or automobiles leased, hired, or borrowed by the Organization on a separate endorsement acceptable to the City.
- f. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents, and authorized volunteers for losses arising from work performed by the Organization.
- g. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents, or authorized volunteers.
- h. Provision or endorsement stating that for any claims related to this Agreement, the Organization's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents, and authorized volunteers to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officials, employees, agents, or authorized volunteers shall be in excess of the Organization's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.

2. Worker's Compensation

- a. Worker's Compensation Insurance, with coverage as required by the State of California (unless the Organization is a qualified self-insurer with the State of California), and Employers Liability coverage. The Organization shall execute

a certificate in compliance with Labor Code Section 1861, on the form provided in Exhibit E.

- b. Employer's Liability Coverage shall not be less than One Million Dollars (\$1,000,000).
  - c. If an injury occurs to any employee of the Organization for which the employee or the employee's dependents, in the event of the employee's 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 Organization under this Agreement, 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 Organization.
  - d. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents, and authorized volunteers for losses arising from work performed by the Organization.
3. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII.**
  4. 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.
  5. The Organization 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 Agreement. At the written request of the City, Organization agrees to furnish a duplicate original or certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.
  6. The City, due to unforeseen risk or exhaustion, failure, or dilution of Organization's insurance coverage, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of this Agreement by giving 30 days written notice.
  7. The Organization 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.
  8. If the Organization 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 Organization under this Agreement.

9. Failure of the City to obtain such insurance shall in no way relieve the Organization from any of its responsibilities under this Agreement.
10. The making of progress payments to the Organization shall not be construed as relieving the Organization or its Sub-contractors or agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
11. 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 this Agreement.

The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Organization are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Organization under this Agreement.