



REQUEST FOR QUALIFICATIONS (“RFQ”) for

Airline Support Building Public Art Opportunity

Published Date:	April 23, 2019
Deadline to Submit Written Questions:	May 6, 2019
Statement of Qualifications Due Date:	May 22, 2019

A. **Project Description/Summary:** The San Diego County Regional Airport Authority (“Authority”) seeks statements of qualifications (“SOQ”) from artists or multiple artists as a team (“Artist”) to design, fabricate, transport and deliver, and consult during installation for an Artwork to be installed by the Authority for the Airline Support Building.

Background: The Airline Support Building (ASB) is a new building on the south side of the airfield, just north of N. Harbor Drive and east of the existing Administration Building. Its intended use will be to serve belly cargo, provisioning and ground service equipment maintenance for multiple airline tenants, who will be collocated into a single building and separated by demising walls. It is proposed to be a 2-story building approximately 600 ft long, 137 ft wide and 33 ft high with a total square footage of approximately 93,000 sf. The actual building construction is anticipated to begin in September, 2019 and is scheduled to be complete by July, 2020. It is anticipated that tenant improvements of their individual lease areas would begin at this time so that the building could be operational by October of 2020.

Project Description: An Artist or Artist team will be selected to design, fabricate, transport and deliver, and consult during the installation of a permanent artwork for the Airline Support Public Art Opportunity. The proposed Artwork will be sited in front of security fencing that surrounds a secured Airside apron area used by airline tenants for staging of cargo and ground equipment. The artwork is expected to double as a screening element and may take the form of a screen, wall relief, or multiple successive sculptural elements. The artwork should resonate with the Airport’s commitment to environmental stewardship. It should contemplate the unique siting of the Airport, the ecological conditions and history of the site, as well as the native flora and fauna. The artwork should also consider wind or solar power to activate kinetic or lighting components. The selected artist or artist team will be encouraged to propose use of sustainable construction or fabrication methods and other strategies through which the artwork can support the Airport’s sustainability efforts. The artwork is expected to provide a distinct experience both during the day and evening. Finally, as primary views of the work are from moving vehicles, the artwork should offer a dynamic experience from this vantage point.

The Artist selected for this opportunity will collaborate closely with the Authority's design team throughout the design, construction, and installation process.

This RFQ describes the public art opportunity, the scope of work, the selection process, the minimum qualifications, and minimum information that must be included in response to this RFQ. Artist and or Artist teams determined to be qualified to provide the requested services listed in this RFQ, as solely determined by the Authority, may be invited to participate in an interview process. The Authority will reimburse Artist for airfare and hotel, if required. Artists working in all media are encouraged to apply.

B. Estimated Budget: \$300,000.

C. Minimum Eligibility Requirements: SOQ's from Airport Art Advisory Committee Members, Authority Board members, and Authority employees shall not be accepted. Artists that have demonstrated achievement of the following requirements are eligible to participate in this opportunity. Artist shall:

1. Have demonstrated the ability to create permanent site-responsive integrated projects;
2. Have successfully completed at least one (1) large-scale permanent public art commission project with a budget of at least \$50,000;
3. Have experience working with a project design team outside of their own studio; and
4. Have adequate professional experience to meet the demands of the project including a combination of the following: education and training as an artist, an exhibition record in museums, galleries and/or non-profit art spaces, previous public or private commissions, participation in artist residency programs, or other related activities indicative of a professional art practice.
5. Be legally qualified to work in the United States.

D. Insurance Requirements: Within fourteen (14) days of the Authority's award of the agreement to the successful Artist, said Artist shall secure the types and amounts of Insurance set forth in "Exhibit C" of the draft artist agreement. If the successful Artist is unable to secure the required insurance, the Authority reserves the right to revoke the award and award the agreement to the next highest ranked Artist, to negotiate with any Artist regarding the services that are the subject of this RFQ, or to take any other action that is in the best interest of the Authority. Artist is not required to submit proof of insurance in its SOQ.

E. Authority's Standard Artist Agreement: The successful Artist must execute the Authority's artist agreement. A draft version of the artist agreement is attached as Part 12, below. The artist agreement contains language which is standard to all Authority agreements and generally is not negotiable. If a potential Artist cannot accept the artist agreement language, then it is recommended that the Artist not participate in this RFQ process.

F. Prevailing Wage. State prevailing wage rates may apply to work performed under this Agreement. State prevailing wage rates apply to all public works contracts as set forth in California Labor Code, including but not limited to, §§ 1720, 1720.2, 1720.3, 1720.4 and 1771. Contractor is solely responsible to pay state prevailing wage rates and pay such rates in accordance with all laws, ordinances, rules, and regulations.

1. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial

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Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

2. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
3. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
4. The prime contractor must post job site notices prescribed by regulation. (See 8 Calif. Code Reg. §16451(d) for the notice that previously was required for projects monitored by the CMU.)
5. All contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement). The phase-in timetable for this requirement and other information related to SB 854 is available at: <http://www.dir.ca.gov/public-works/SB854.html>.

QUALIFICATION SUBMISSION CONTENTS

Artists are required to submit their SOQ through Submittable, an online application system for calls of entry, available at www.san.submittable.com. There is no charge to Artists for using Submittable. Please be sure to allow adequate time to submit your application as technical difficulties can occur. Applications that are mailed, emailed, faxed or hand-delivered will not be considered. Applications will be not accepted after the deadline. **SOQ not submitted in the manner described herein shall be considered non-responsive and shall not be considered.** Application materials include:

- A. **Letter of Interest:** Limited to 500 words. Provide a short narrative explaining your:
 1. Level of interest and general philosophy or artistic approach;
 2. Ability to manage projects of similar scale and complexity; and
 3. Experience working as part of a design-build team. Include your name, address, email and contact phone number.
- B. **Ten Images of Previous Work:** Only submit images of work that you have successfully completed. **Images of proposed work, work in process and or illustrations including computer-generated imagery of work shall be determined to be non-responsive and shall not be considered.**
 1. When you upload your images, Submittable will prompt you to fill out image description. Please include the title, medium, dimensions, year, and budget for each work. You may also include a brief description (2 sentences maximum) detailing location, and artist's level of participation.
 2. Artist is required to provide at least one (1) image of a successfully completed art project with a project budget of \$50,000 or greater.
 3. Power point presentations, movies, and web-sites are not acceptable as part of this review process and shall not be considered.
- C. **References:** Artist shall provide three (3) references. Include the following: name, title, address, phone number, and email. It is the Artist's responsibility to validate the contact

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information for references. The selection panel may request information from Artist's clients, government agencies, or any other available sources.

- D. **Professional resume:** Limited to two (2) pages. Artist shall provide a professional history of experience as a professional Artist. If submitting as an Arts team, no more than two (2) pages for each Artist team member.

EVALUATION CRITERIA

- A. SOQ Evaluation. Artists SOQ shall be evaluated on the following criteria:
- Originality, creativity, and consistency of past work
 - Professional qualifications and experience
 - Quality and technical competence of past work
 - Projects of similar scale and complexity
 - Policy 5.12 small business preference
- B. Interview Evaluation. Artists selected to interview shall be evaluated on the following criteria:
- Quality, creativity and strength of past work
 - Ability to communicate effectively
 - Interest in and comprehension of project
 - Quality and technical competence (Materials, lighting, installation, maintenance)
 - Flexibility in approach
 - Policy 5.12 Small Business preference

SOQ SUBMISSION INSTRUCTIONS

SOQ not submitted in the manner described herein may be considered non-responsive and be subject to rejection. SOQ submitted to the Authority after the specified due date and time in the RFQ shall be rejected as late. No late SOQ will be accepted.

INQUIRIES

A. RFQ/Addenda Questions

If discrepancies or omissions are found by any Artist or there is doubt as to the true meaning of any part of the RFQ, a written request for clarification or interpretation shall be submitted before the deadline set forth below in this RFQ. Questions submitted after this time will not be considered. Any clarification or interpretation or change to the RFQ will be by written addendum signed by an authorized representative of the Authority. The Authority is not responsible for any explanation, clarification, interpretation, or approval made or given in any manner except by written addendum. A copy of each addendum will be posted on the Authority's website and on Submittable. Any addenda so issued are to be considered a part of the RFQ document.

THE AUTHORITY, ITS OFFICERS, AGENTS, AND EMPLOYEES WILL NOT BE RESPONSIBLE FOR ANY ORAL INSTRUCTION, MODIFICATION, OR CLARIFICATION RELATED TO THIS RFQ. ARTISTS SHALL NOT RELY UPON ORAL COMMUNICATIONS.

All questions and RFQ related correspondence shall be e-mailed to Lauren Lockhart at: arts@san.org.

- B. **Other Communications:** Artist(s) who conduct or arrange for any communication not provided for in this RFQ with the President/CEO, a Board member, any Authority employee or member of the Panel regarding this RFQ may be disqualified. See Authority Code 2.12.

SCHEDULE

A. Deadline to Submit Questions

Questions must be submitted via e-mail no later than 2:00 P.M., on May 6, 2019.

B. SOQ Due Date and Time

SOQ's must be received by 2:00 P.M., on May 22, 2019. Late SOQ will be rejected.

Part 1. GENERAL INFORMATION

A. Authority's Reservation of Rights

There is no guarantee that an Artist will be interviewed and no guarantee that those interviewed will be awarded an agreement. Authority reserves the right to award an agreement contingent upon the Artist's satisfactory completion of all conditions. This RFQ constitutes only an invitation to prepare and submit a SOQ and is not a request for a competitive bid or proposal for services.

The President/CEO reserves the right to reject any and all SOQ; to waive any informalities or irregularities in any SOQ received; to waive any requirement of the RFQ documents as to the submitting procedure; to revise the RFQ prior to the time for final submission of written SOQs or to revise the RFQ documents at any time; to withdraw this RFQ at any time; to extend the time for submittal of SOQ; to conduct or not conduct interviews; to reschedule interviews scheduled; to recommend to the Board none, one or more than one Artist for an award.

The Authority reserves the right to award one or more agreements on the basis of SOQ submitted or to negotiate with the Artist(s) found to offer the best SOQ, at the Authority's option. By submission of its SOQ, each Artist agrees to be legally bound thereby if its SOQ is accepted by the Authority. The Authority shall not be obligated to respond to any SOQ submitted nor shall it be legally bound in any manner whatsoever by the receipt of any SOQ.

"Exhibit A" – "Scope of Work" to the draft agreement attached to this RFQ is a proposed scope of work for the agreement that the Authority intends to execute pursuant to this RFQ process. Artists should note that the Authority reserves the right to modify "Exhibit A" during agreement negotiations with the selected Artist.

Any and all agreements arising out of a SOQ submitted hereunder (including any negotiations that follow) shall not be binding on the Authority, its Board, officers, employees, or agents unless duly approved and executed by the Authority, or as applicable by the Board, in accordance with the Authority's Policies and applicable laws.

B. Artists' Representation of Due Diligence

The submission of a SOQ shall be deemed a representation and certification by the Artist that it has investigated all relevant conditions, facts, circumstances, procedural requirements and aspects associated with this RFQ, and that it has read, understands, and accepts the RFQ as written.

C. Award of SOQ

The award of an agreement may be made to the Artist (s) who demonstrates, in the Authority's sole judgment, that it is best capable of and will meet or exceed the Authority's goals and objectives.

D. Acknowledgement

By submitting its SOQ, Artist acknowledges that the Authority has the right to make any inquiry or investigation that it deems appropriate to substantiate or supplement information, and authorizes the release to the Authority of any and all information sought in such inquiry or investigation.

E. Withdrawal

No SOQ may be withdrawn after it has been submitted to the Authority unless the Artist so requests by letter or facsimile and such request is received by the Authority before the time set for receiving SOQ. No SOQ may be withdrawn after the scheduled due date for a period of 180 calendar days.

F. Protest Procedures

All parties wishing to file a protest shall comply with the procedures set forth herein.

A protest relative to the solicitation process must be submitted in writing to the President/Chief Executive Officer of the Authority and be received by the Authority on or before 5:00 p.m. of the 10th business day following notification to the Artist of a recommendation to award the agreement to one or more other firms. The protest shall contain a full and complete statement specifying in detail the grounds of the protest and the facts in support thereof. All protests must be addressed to: Authority Procurement Department (Protest), 3225 North Harbor Drive, San Diego, CA 92101, with a copy mailed to the Office of General Counsel - SDCRAA, P.O. Box 82776, San Diego, CA 92138. Protests shall be hand delivered or sent via certified mail.

- 1) The protest document must contain a complete statement of the factual and legal basis for the protest.
- 2) The protest document must refer to the specific portion of the solicitation, or other applicable document that forms the basis for the protest.
- 3) The protest must include the name, address, and telephone number of the person representing the protesting party.
- 4) The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all others with a direct financial interest who might be adversely affected by the outcome of the protest. Such parties shall include all other Artists who appear to have a reasonable prospect of receiving an award depending on the outcome of the protest.
- 5) An Authority Procurement Manager or his/her designee overseeing the RFQ will issue a written decision on the protest within five (5) working days following receipt of the written protest.
- 6) If the protest is rejected, the party filing the protest has five (5) working days from the date of the Procurement Manager's written decision to file an appeal to the Director of Procurement. The Director will issue a ruling with fifteen (15) working days following receipt of the written appeal. If the Director determines that the protest is frivolous, the party originating the protest may be determined to be irresponsible and that party may be determined to be ineligible for the award of future agreements.
- 7) The procedure and time limits set forth in this paragraph are mandatory and are the Artist's sole and exclusive remedy in the event of protest. Failure by a party originating a protest to comply with these procedures shall constitute a waiver of any right to

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further pursue the protest, including filing a government claim or legal proceeding.

G. Confidentiality of SOQ

All documents submitted in connection with this RFQ are subject to disclosure in accordance with the California Public Records Act (Cal. Gov. Code §6250, *et seq.*) SOQ will remain confidential until the Authority has concluded negotiations with the successful Artist but may be released before final approval by the awarding authority (see *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065). SOQ will become the property of the Authority upon receipt. The Artist must identify, in writing, all copyrighted material, trade secrets or other proprietary information that the Artist claims are exempt from disclosure pursuant to the California Public Records Act. The Artist claiming such an exemption must also state in its SOQ that, “*The Artist agrees to indemnify and hold harmless the Authority and its Board, officers, officials, directors, employees, agents, and volunteers, from any claims, liability or damages, including reasonable attorney’s fees and court costs, against the Authority and to defend any actions brought against the Authority for its refusal to disclose such material, trade secrets or other proprietary information to any party.*”

H. Indemnity and Cost

The Artist agrees to defend, indemnify, and hold harmless the Authority and its Board, officers, officials, directors, employees, agents, and volunteers for any claims of copyright, patent or trademark infringement arising out of, caused directly or indirectly by the acts or omissions of the Artist in relation to this RFQ and the SOQ.

Each party responding to this RFQ shall bear all of its own costs and expenses, direct and indirect, associated with or related to any action taken in response to this RFQ, and the Authority shall not be responsible in any manner for such costs and expenses. SOQ, including all drawings, plans, photos, and narrative material, shall become the property of the Authority upon receipt. The Authority shall have the right to copy, reproduce, publicize, or otherwise dispose of each SOQ in any way that the Authority selects. The Authority shall be free to use as its own, without payment of any kind or liability therefore, any idea, scheme, technique, suggestions, layout, or plan received during its SOQ process.

Part 2. EQUAL OPPORTUNITY STATEMENTS

A. Equal Opportunity Contracting Statement

All businesses, including those that meet the definition of socially and economically disadvantaged, as defined in 49 Code of Federal Regulations (“CFR”) Part 23 and 26, will be provided equal access to participate in the performance of all Authority and in DOT-assisted contracting and leasing opportunities. In the procurement of service and consulting agreements and the purchase of supplies, materials and equipment, the Authority's President/CEO or his or her designee shall be responsible for following all procedures required by (1) the Authority, (2) the San Diego County Regional Airport Authority Act, as amended from time to time, and (3) other applicable federal, state and local laws.

B. Equal Opportunity Requirements

All companies interested in conducting business with the Authority shall not discriminate against any employee or applicant for employment, because of race, color, religion, gender, national origin, ancestry, physical or mental disability, veteran status, medical condition, marital status, age (40 years and older), sexual orientation, pregnancy or other non-job related criteria. Interested companies shall also take action to assure that applicants and employees are treated without regard to the same criteria listed above.

C. Small Business Development

The Authority encourages small businesses to contact all potential prime contractors on the RFQ mailing list if they are interested in participating in this process. The Authority discourages prime contractors from imposing limitations on small businesses on the number of other SOQ they wish to participate in as subcontractors.

D. Disadvantaged Business Enterprise Program

The San Diego County Regional Airport Authority is a recipient of federal funds issued by the Federal Aviation Administration. Code of Federal Regulations (“CFR”) 49, Part 23 and 26, requires the Authority to establish an overall disadvantaged business enterprise (“DBE”) goal for each federal fiscal year. A federal fiscal year is a twelve-month period commencing on October 1. The Authority has an existing Race-Neutral Disadvantaged Business Enterprise Program and requests that the Artist support this Program.

Questions regarding the Equal Opportunity Program Requirements – Call 619-400-2568.

Part 3. DRAFT – ARTIST AGREEMENT

**AGREEMENT
FOR
PUBLIC ART WORK**

**Agreement (XXXXXXXX) between the
San Diego County Regional Airport Authority
And
(ARTIST NAME TBD)
For
Airline Support Building Public Art Project**

DRAFT

SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

Agreement for Design, Fabrication, Transportation and Delivery, and Consultation During Installation of Public Art Work

This Agreement is made by and between the SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, and **NAME**, a **BUSINESS TYPE** (hereinafter "Artist"). The Parties agree:

1. **DEFINITIONS:** As used within this Agreement, the following terms shall have the meanings as set forth below:

Accounting Records: any and all documents relating to invoices, costs, payment, settlement, or supporting documentation of Artist relating to this Agreement.

Agreement: this Agreement for design, fabrication, transportation and delivery, and consultation during installation of Public Art Work including all exhibits and attachments.

Airport: the San Diego International Airport.

Alter or Alteration: with respect to the Artwork, to alter, repair, modify, remove, relocate, sell, dispose of, distort, destroy, mutilate, or deface.

Artist: **NAME, BUSINESS TYPE**, and any employees, agents, or subcontractors of Artist. Where there is more than one Artist, all Artists shall be referred to collectively as "Artist." If Artist is comprised of two or more individual persons or entities, each individual person or entity shall be jointly and severally responsible for satisfying Artist's obligations under this Agreement, and each individual person or entity shall be liable for the acts and omissions of every other individual person or entity comprising Artist.

Artwork: the work of art designed by Artist for the Site under the terms of this Agreement, as described and defined in the Concept Design Proposal (See Exhibit A).

Audit Period: the period of time from commencement of the term of the Agreement to the third anniversary of the Authority's final payment under the terms of this Agreement.

Authority: the San Diego County Regional Airport Authority, a local governmental entity of regional government, acting through its President/CEO for purposes of this Agreement.

Compensation: all monetary consideration provided Artist pursuant to this Agreement including fees and Reimbursable Expenses.

Design Professional: any of the following professions:

- *Architects* licensed pursuant to Chapter 3 of Division 3 of the Business and Professions Code, and a business entity offering architectural services in accordance with that chapter;
- *Landscape Architects* licensed pursuant to Chapter 3.5 of Division 3 of the Business and Professions Code, and a business entity offering landscape architect services in accordance with that chapter;
- *Professional Engineers* registered pursuant to Chapter 7 of Division 3 of the Business and Professions Code, and a business entity offering professional engineering services in accordance with that chapter; and
- *Professional Land Surveyors* licensed pursuant to Chapter 15 of Division 3 of the Business and Professions Code, and a business entity offering professional land surveying services in accordance with that chapter.

Expenses: expenditures made by Artist in the necessary and reasonable performance of this Agreement. Expenses include costs for travel, facilities, equipment, personnel, tools, and other materials. See "Reimbursable Expenses" below.

Installation Contractor: the contractor, hired in the sole discretion of Authority, with responsibility for installation of the Artwork at the Airport.

Non-design Professional: all professions other than Design Professionals as defined above.

Parties: the Authority and Artist collectively.

President/CEO: the President/CEO of San Diego County Regional Airport Authority or his/her designee.

Project: the Authority-funded, capital improvement project with which the Artwork is to be associated.

Proposal: the document prepared by Artist and approved by Authority that describes the Artist's proposed visual, aesthetic, and artistic intent and design of the Artwork.

Proprietary Information: all confidential, personal, proprietary and trade secret information and materials of the Authority, or of its Board, officers, employees, or of its suppliers, vendors or customers. Proprietary Information includes, without limitation, any: (a) information, ideas or materials of a technical or creative nature, such as designs and specifications, computer source and object code, and other materials and concepts relating to the Authority's intellectual property rights; (b) information, ideas or materials of a business nature, such as non-public financial information; information regarding profits, costs, marketing, purchasing, sales, customers, suppliers, contract terms, employees and salaries; development plans; business and financial plans and forecasts; (c) all personal property, including, without limitation, all books, manuals, records, reports, notes, contracts, lists, blueprints and other documents or materials, or copies thereof, received by Artist in the course of Artist's rendering of the Services to the Authority, including, without limitation, records and any other materials pertaining to the Work Product; and (d) information, ideas and opinions of a personal nature, such as the thoughts, impressions, personal histories and goals of Authority employees; and (e) the terms and conditions of this Agreement.

Reimbursable Expenses: those Expenses which are identified in Exhibit B to this Agreement as reimbursable by the Authority.

Services: all actions, assistance, and deliverables described in Exhibit A to this Agreement.

Site: Airline Support Building.

TSA: the Transportation Security Administration.

Work: the work of Artist pertaining to providing the Authority with the Services as required under this Agreement. Unless otherwise specified, Work shall include the design, execution, fabrication, transportation, delivery, and consultation during installation of the Artwork.

Work Product: all documents, data, reports, drawings, specifications, and other works, including copies prepared by Artist pursuant to this Agreement, whether complete or incomplete and whether in oral, written, graphic, or electronic form.

2. **TERM**: The term of this Agreement commences **DATE** and ends **DATE** unless sooner terminated pursuant to the terms of this Agreement.

3. **SCOPE OF WORK**:

A. **Services**: Subject to the terms and conditions set forth in this Agreement, Artist shall provide the Authority with the Services as set forth in Exhibit A entitled "Scope of Work", which is attached to and incorporated in this Agreement.

B. **Other Services:** During the term of this Agreement, Artist shall provide such additional services to which the Parties mutually may agree in writing. Additional services will be subject to limitations specified in Authority policies.

4. **COMPENSATION:**

A. **General:** Authority shall pay Artist for Services provided in accordance with the terms set forth in Exhibit B entitled "Compensation", which is attached to and incorporated in this Agreement. Authority shall make good faith efforts to pay Artist all undisputed amounts within thirty days of Authority's approval of Artist's invoice submitted in accordance with Section 5 of this Agreement. The payments specified in Exhibit B shall be the only compensation to which Artist shall be entitled under this Agreement.

B. **Expenses:** Unless expressly provided otherwise in Exhibit B, Artist shall bear all expenses required to perform Services pursuant to this Agreement.

5. **INVOICES:** Artist shall submit monthly invoices, or as otherwise directed by Authority, describing the Services and Reimbursable Expenses for which payment is sought in accordance with Sections 3 and 4 of this Agreement. Invoices shall be in a form acceptable to the Authority and include the following:

A. **Documentation of Reimbursable Expenses:**

- 1) Reimbursable Expenses, if any, for which Artist may seek reimbursement are set forth specifically in Exhibit B.
- 2) Reimbursable Expenses under \$25.00: Artist shall attempt in good faith to attach to each invoice all necessary documentation and receipts to support expenses under \$25.00
- 3) Reimbursable Expenses over \$25.00: Artist shall attach to each invoice detailed, itemized receipts to support expenses over \$25.00. In no event will the Authority reimburse Artist for expenses over \$25.00 that are not supported by necessary documentation and detailed, itemized receipts.

B. **Declaration To Accompany Each Invoice:** Invoices submitted shall contain the following signed certification at the end of the billing statement:

"I hereby certify under penalty of perjury that the above bill is just and correct according to the terms of the Agreement between Artist and SDCRAA and that payment has not been received.

By: _____"

C. **Invoice Address:** Unless otherwise agreed by the Parties, all invoices shall be sent to the Authority at the address specified below:

San Diego County Regional Airport Authority
Accounts Payable
P.O. Box 82776
San Diego CA 92138-2776

6. **ACCOUNTING RECORDS:** During the Audit Period, the Authority or any other authorized government entity may audit Artist's Accounting Records. Such audit(s) shall be conducted at reasonable times. Artist shall maintain all Accounting Records for the entire length of the Audit Period, and shall fully cooperate with any such audit(s). Artist shall maintain all records at Artist's place of business. If Artist fails to maintain all records within the County of San Diego, Artist agrees to reimburse Authority for reasonable expenses involved in traveling to the records storage site. Except as provided in this section, the cost of an audit shall be borne by the Authority. However, if the audit reveals a discrepancy of more than two percent between the

Compensation requested by Artist in accordance with this Agreement and the compensation determined by the audit. Artist shall pay the cost of the audit as reasonably determined by the Authority.

7. **TIME IS OF THE ESSENCE:** Time is of the essence in this Agreement. If Artist fails to competently perform Services within the time periods specified in Exhibit A, or, if no time periods are specified, within a reasonable time period, Authority may terminate this Agreement pursuant to the terms of this Agreement.
8. **ASSIGNMENT OR TRANSFER PROHIBITED:** This Agreement is a personal services agreement between the Parties. Artist may not in any manner, by operation of law or otherwise, assign, hypothecate, encumber or transfer this Agreement or any of the rights, duties or obligations under this Agreement, in whole or in part, without the express, prior written consent of the Authority. Any attempted or purported assignment of any right or obligation pursuant to this Agreement, without such consent, shall be voidable at the sole discretion of Authority and grounds for termination pursuant to terms of this Agreement.
9. **TERMINATION:**
 - A. If the President/CEO, in his/her sole discretion, becomes dissatisfied with Artist's performance under this Agreement, the Authority may terminate this Agreement by giving written notice to Artist. Such termination shall be effective immediately on delivery of such notice to Artist.
 - B. In addition to any other rights and remedies allowed by law and this Agreement, either party may terminate this Agreement with or without cause by giving thirty (30) days prior written notice. Such termination shall be effective on the date specified in the written notice.
 - C. Artist shall cease performing Services on the effective date of termination and Artist shall have no further rights under this Agreement except as expressly provided herein. The Parties shall have all rights and remedies provided by law.
 - D. Upon termination of this Agreement, Artist may be compensated in accordance with Exhibit B only for Services actually performed and materials received by Artist for use on the Work described herein. Upon termination, Authority shall be entitled to all materials, deliverables, Work Product and Artwork, whether finished or unfinished, provided to and paid for by Authority under this provision. . In addition, Authority shall have all rights set forth herein to the deliverables, Work Product and Artwork, whether finished or unfinished, including but not limited to the rights set forth in paragraphs 10, 11, 12 and 13. Artist shall not be entitled to any compensation for contractual damages, including, but not limited to expected lost profits, office overhead, loss of productivity, lost opportunity to work on other projects or any other consequential or incidental damages arising from the termination of this Agreement.
 - E. Unless otherwise provided in this Agreement, upon termination of this Agreement, Artist shall deliver immediately to the Authority all property belonging to the Authority and all deliverables paid for, whether given to Artist by the Authority or prepared by Artist in the course of rendering the Services, including, but not limited to, all Work Product then in progress and all material in Artist's possession that contains Proprietary Information and any copies thereof, whether prepared by Artist or others. Following termination, Artist shall not retain any written or other tangible (including machine-readable) material containing any Proprietary Information.
10. **PROPRIETARY INFORMATION OF AUTHORITY:**
 - A. **General:** Artist's Services may involve access to and creation of Proprietary Information.
 - B. **Restrictions on Use and Disclosure:** During the term of this Agreement and thereafter, Artist shall: (a) hold and use Proprietary Information in strict confidence and solely for the benefit of Authority and not for the benefit of Artist or any third party; (b) not copy or use any

Proprietary Information, except as necessary to perform Services; and (c) not disclose or otherwise make available any Proprietary Information to any third party unless first authorized in writing by the Authority.

- C. **Restrictions On References To Authority:** Except as provided in this Agreement, Artist shall not represent in any way that Authority endorses or supports Artist or Artist's activities without the prior written consent of Authority. Artist is prohibited from making any representations regarding the relationship between Artist and Authority without the prior written consent of Authority. Artist shall not make any representations about Authority or use the Authority's name or the name of any of its Board Members, employees, or agents in documents or material generated by Artist without the Authority's prior written consent.

11. **AUTHORITY'S OWNERSHIP RIGHTS REGARDING THE ARTWORK:**

- A. **Title to Artwork:** Artist shall take all actions necessary to pass title to the Artwork to the Authority after Authority's final acceptance of the Artwork. Unless otherwise agreed by the Parties in writing, all studies, drawings, designs, and models prepared and submitted under this Agreement shall be returned to Artist and shall belong to Artist. Notwithstanding the preceding sentence, Authority may select and Artist shall convey one set of the original drawings submitted by Artist.

With respect to the Artwork and in consideration of the procedures and remedies specified in this Agreement, Artist waives any and all claims, arising at any time and under any circumstances, against Authority, its officers, agents, employees, successors, and assigns arising under the federal Visual artist Rights Act (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 and 113(d), Cal. Civil Code §§ 987 *et seq.* or any other type of moral right protecting the integrity of works of art.

- 1) Artist agrees that Authority, its successors and assigns, has complete flexibility to operate and manage Authority property in the public interest and retains the absolute right to Alter the Artwork where, in the Authority's sole discretion, such Alteration is in the public interest. Such actions in the public interest include, but are not limited to:
 - a) Alteration to comply with federal, state, or local statutes or regulations, including the Americans with Disabilities Act and Title 24 of the California Building Code.
 - b) Alteration to eliminate hazard.
 - c) Relocation of the Artwork to a different location which may be selected at the sole discretion of the Authority.
- 2) Where time permits, Authority shall make reasonable good faith efforts to notify Artist at least twenty (20) calendar days prior to authorizing any Alteration of the Artwork. Where time does not permit prior notice of Alteration of the Artwork, - for example, in cases of public hazard, accident or unauthorized Alteration – Authority shall make reasonable efforts to notify Artist within thirty (30) calendar days after such Alteration. Such notice to be made at the last phone number or address provided Authority by Artist.
- 3) If Authority Alters the Artwork without Artist's consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of the Artwork in accordance with 17 U.S.C § 106A(a)(2) and Cal. Civil Code §987(d).
- 4) After receiving notice of pending Alteration, Artist shall consult with Authority to attempt to come to a mutually agreeable plan for the Alteration. Said consultation shall be without charge to Authority unless otherwise agreed to in writing.

- 5) If the Artwork is Altered and Authority intends to maintain the Artwork on display, Authority will make a reasonable effort to engage Artist in the restoration of the Artwork and to reasonably compensate Artist subject to a future agreement between Artist and Authority. However, Authority has no obligation to restore the Artwork to its original condition, to compensate Artist for any restoration work, or to maintain the Artwork on display. If Artist fails or refuses to negotiate with Authority in good faith with respect to any restoration, Authority may contract with any other qualified art conservator or artist for such restoration.
- 6) Where time permits, if Authority intends to take action that will destroy or significantly Alter the Artwork and Authority determines that it will not remove the Artwork itself, Authority may allow Artist to remove the Artwork at Artist's expense. Artist must effect such removal within sixty days of the date of the Authority's notice of intent to Alter, unless the Parties agree to an additional time period. On completion of the removal of the Artwork, title to the Artwork shall pass to the Artist. If Artist fails to complete the removal of the Artwork within the sixty day period or any extension of time, Authority, in its sole discretion, may Alter the Artwork in any manner.
- 7) If Authority sells the Artwork as a fixture to real property, and if the resale value of the Artwork is not itemized separately from the value of the real property, the Parties agree that the resale price of the Artwork shall be presumed to be less than the purchase price paid by Authority under this Agreement. As a result of this presumption, Authority shall have no obligation to pay resale royalties pursuant to Cal. Civil Code §986 or any other law requiring the payment of resale royalties. If Authority sells the Artwork as an individual piece, separate from or itemized as part of a real property transaction, Authority shall pay Artist a resale royalty to the extent required by law, based upon the actual sales price of the Artwork.

B. Indemnification of Authority Regarding Violation of Artistic Rights: Without in any way limiting the generality of indemnification and/or hold harmless provisions contained in other sections of this Agreement, the Artist represents and warrants that any material or deliverables, including but not limited, to the Artwork Project Design and the Artwork provided under this Agreement are either original, and not encumbered and do not infringe upon the copyright, trademark, patent, or other intellectual property rights of any third party, or are in the public domain. If deliverables, materials, or artworks provided hereunder become the subject of a claim, suit, or allegation of copyright, trademark, or patent infringement, the Authority shall have the right, in its sole discretion, to require Artist to produce, at Artist's own expense, new non-infringing materials, deliverables, or artworks as a means of remedying any claim of infringement in addition to any other remedy available to Authority under law or equity. Artist further agrees to indemnify and hold harmless Authority, its directors, officers, employees, agents, or representatives from and against any an all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverable, supplies, equipment, services, or Artworks provide under this Agreement infringe the copyright, trademark, patent, or other intellectual property or propriety rights of any third party ("Third Party Claims of Infringement"). If a Third Party Claim of Infringement is threatened or made before Artist receives payment under this contract, the Authority shall be entitled, upon written notice to Artist, to withhold some or all of such payment.

C. Attribution: Authority shall, at its expense, prepare and install at the Site, a plaque or other signage identifying the Artist, the title of the Artwork, and the date of completion or dedication of the Artwork

12. INTELLECTUAL PROPERTY RIGHTS AND PUBLICITY RIGHTS:

A. Copyright: Subject to usage rights and licenses granted to Authority hereunder, Artist shall retain all 17 U.S.C. § 101 et seq., copyrights in all original Artwork produced under this

Agreement. Artist's copyright shall not extend to predominantly utilitarian aspects of the artworks, such as landscaping elements, furnishing, or other similar objects. If Artist is comprised of two or more individual persons, the individual persons shall be deemed joint authors of the Artwork, unless the individual persons or entities agree otherwise in a writing acceptable to Authority.

B. Authority's Intellectual Property License: Artist grants to Authority, and to Authority's agents, authorized contractors, successors, and assigns an unlimited and irrevocable license (as described in Authority Policy 8.50(2)(a)) to do the following with respect to the artwork produced under this Agreement, whether in whole or in part, in all media, including electronic and digital, throughout the universe:

- 1) Implementation, Use and Display: Authority may use and display the artwork and any models or reproductions of the artwork.
- 2) Reproduction and Distribution: Authority may make and distribute, and authorize the making, display and distribution of, photographs and other 2-dimensional reproductions of the Artwork. Authority may use such reproductions for any Authority-related purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, photograph, print, broadcast, film, electronic and multimedia publicity, and gifts for the Authority benefactors, documentation of Authority's Public Art Collection, and catalogues or similar publications. Authority shall ensure such reproductions are made in a professional and tasteful manner, in the sole and reasonable judgment of Authority. The license granted hereunder does not include the right to create reproductions on commercial merchandise such as tote-bags, T-shirts, coffee mugs and similar items. Such reproductions may only be created pursuant to separate license agreements with Artist.
- 3) Public Records Requests: All documents provided by Artist to Authority are public records. Authority may authorize third parties to review and reproduce such documents pursuant to public records laws, including the California Public Records Act.
- 4) Third Party Infringement: Authority is not responsible for any third party infringement of Artist's copyright and not responsible for protecting the intellectual property of Artist
- 5) Credit: Artist agrees that all formal references to Artwork produced under this Agreement and any reproductions of the Artwork in any form shall include the following credit: "Collection of the San Diego International Airport." Authority shall credit Artist for the Artwork and of any published 2-dimensional reproduction of the Artwork generated by Authority in the following manner [artist][title][year].
- 6) Publicity: Authority shall have the right to use Artist's name, likeness, and biographical information, in connection with the display or reproduction and distribution of the Artwork including all advertising and promotional materials regarding the Airport.
- 7) Trademark: In the event that Authority's use of the Artwork creates trademark, service mark, or trade dress rights in connection with the artwork, Authority shall have exclusive and irrevocable rights in such trademark, service mark, or trade dress.
- 8) Unique: Artist warrants that the Artwork produced under this Agreement is a singular edition, and that neither Artist nor Artist's agents will execute or authorize another work of the same or substantially similar image, design, dimensions and materials as the Artwork. Artist may create works that utilize or incorporate various individual art element that comprise the Artworks, so long as the work utilizing or incorporating such individual elements (a) does not consist predominantly and primarily of such elements; (b) is not the same or substantially similar in image, design, dimensions and materials as the Artwork, and is not displayed in an environment that is the same or substantially similar to the

environment in which the artworks are to be displayed at the Airport. Recognizing that Authority has no adequate remedy at law for Artist's violation of this warranty, Artist agrees that Authority shall be entitled to enjoin Artist in the event of a breach of this warranty.

13. ARTIST'S WARRANTIES:

- A. **Warranty of Title:** Artist represents and warrants that Artist is the sole author of the Artwork and that Artist is the sole owner of any and all copyrights pertaining to the Artwork. Artist further represents that the Artwork is free and clear of any liens and that there is no outstanding disputes in connection to property rights, intellectual property rights or any other rights in the Artwork or any parts of the Artwork.
- B. **Warranty of Workmanship:** Artist represents and warrants that, for a period of one (1) year after final acceptance, the Artwork will be free of defects in workmanship or materials, including inherent defects, and that the Artwork will be executed in permanent, non-fugitive materials that will not tend to degrade or fade over long-term installation at the Site. Inherent defects refer to qualities within the material or materials, which comprise the Artwork, which either alone or in combination, causes or accelerates the deterioration of the Artwork. Artist shall, at Artist's sole cost and expense, remedy any defects in workmanship or materials that appear within a period of one (1) year from the date of final acceptance of the Artwork by the Authority.
- C. **Warranty of Public Safety:** Artist represents and warrants that the Artwork will not pose a danger to public health or safety in view of the possibility of misuse, if such misuse is in a manner that was reasonably foreseeable at any time during the term of this Agreement.
- D. **Warranty of Acceptable Standard of Display and Operation:** Artist represents and warrants that:
 - 1) The Artwork shall conform to design specifications and, where Artwork involves electronic, digital, video, mechanical, living, variable, moving or other dynamic components, the Artwork will also operate, function, and perform in accordance with Artist's representations to Authority without any costs beyond the final Budget for the Artwork or any additional assistance by Authority staff; it being recognized, however, that Authority technical personnel will be required for routine operation, maintenance and troubleshooting.
 - 2) Occasional or minimal cleaning and repair of the Artwork and any associated working parts or equipment in accordance with Artist-provided instructions for maintaining and preserving the Artwork will maintain the Artwork within an acceptable standard of public display.
 - 3) Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display.
 - 4) With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience irreparable conditions that do not fall within an acceptable standard of public display.
- E. **Manufacturer's Warranties:** To the extent the Artwork incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties to Authority prior to Authority's final acceptance of the Artwork.

14. **RISK OF LOSS:** The risk of loss or damage to the Artwork shall be borne by the Artist until transportation and delivery of the Artwork is complete, and Artwork is received and accepted in writing by Authority and transferred to the Installation Contractor. Artist shall take such measures

as are necessary to protect the Artwork from loss or damage until Authority acknowledges receipt of the Artwork in writing.

15. **INDEPENDENT CONTRACTOR:** Artist shall act in an independent capacity and not as an officer or employee of the Authority. Artist shall have no authority to act as an agent on behalf of the Authority unless specifically authorized to do so in writing. Authority shall have no liability for Artist's actions and performance and assumes no responsibility for taxes, bonds, payments, or other commitments, implied or express, that may be made by or for Artist. Artist shall purchase all bonds and pay all taxes required for the performance of Services. Nothing contained in this Agreement shall be construed as creating a partnership or joint venture between Artist and Authority or between Artist and any other entity or party or cause Authority to be responsible in any way for the debts or obligations of Artist or any other party or entity.
16. **INSURANCE REQUIREMENTS:**
 - A. Artist shall procure, at its expense, and keep in effect at all times during the term of this Agreement, the types and amounts of insurance specified in Exhibit C entitled "Insurance Requirements for Contractor", which is attached hereto and incorporated by reference herein. The specified insurance shall include and insure Authority, its Board and all its officers, employees, and agents, their successors and assigns, as additional insureds, against the areas of risk associated with the Services as described in "Exhibit A" with respect to Artist's acts or omissions in the performance of this Agreement, its operations, use, and occupancy of the Airport, and other related functions performed by or on behalf of Artist in, on or about Airport.
 - B. Each specified insurance policy (other than Worker's Compensation and Employers' Liability and fire and extended coverages) shall contain a Severability of Interest (Cross Liability) clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom a claim is made or suit is brought except with respect to the limits of the company's liability," and a Contractual Endorsement which shall state, "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under insured's Agreement with the Authority."
 - C. All such insurance shall be primary and noncontributing with any other insurance held by Authority where liability arises out of or results from the acts or omissions of Artist, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Artist. Such policies may provide for reasonable deductibles and/or retentions acceptable to the President/CEO based upon the nature of Artist's operations and the type of insurance involved.
 - D. Authority shall have no liability for any premiums charged for such coverage(s). The inclusion of Authority, its Board and all its officers, employees, and agents, their successors and assigns, as insureds is not intended to, and shall not, make them, or any of them, a partner or joint venturer with Artist in Artist's operations at Airport or in the performance of this Agreement. In the event Artist fails to furnish Authority with evidence of insurance and maintain the insurance as required, Authority upon ten (10) days prior written notice to comply, may, but shall not be required to, procure such insurance at the cost and expense of Artist, and Artist agrees to promptly reimburse Authority for the cost thereof plus fifteen (15) percent for administrative overhead. Payment shall be made within thirty (30) days of invoice date.
 - E. At least ten (10) days prior to the expiration date of the above policies, documentation showing that the insurance coverage has been renewed or extended shall be filed with Authority. If such coverage is canceled or reduced, Artist shall, within fifteen (15) days of such cancellation or reduction of coverage, file with Authority evidence that the required insurance has been reinstated or provided through another insurance company or companies.

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- F. Artist shall provide proof of all required insurance and related requirements to Authority either by production of the actual insurance policy(ies), by use of Authority's own endorsement form(s), by broker's letter acceptable to the President/CEO in both form and content in the case of foreign insurance syndicates, or by other written evidence of insurance acceptable to the President/CEO. The documents evidencing all required coverages shall be filed with Authority prior to Artist performing Services or occupying the Airport. The documents shall contain the applicable policy number, the inclusive dates of policy coverages, and the insurance carrier's name, address and telephone number, shall bear an original signature of an authorized representative of said carrier, and shall provide that such insurance shall not be subject to cancellation, reduction in coverage, or nonrenewal except after written notice by certified mail, return receipt requested, to the Authority at least thirty (30) days prior to the effective date thereof. Authority reserves the right to have submitted to it, upon request, all pertinent information about the agent, broker and carrier providing such insurance.
- G. Authority and Artist agree that the insurance policy limits specified herein shall be reviewed for adequacy annually throughout the term of this Agreement by the President/CEO who may, thereafter, require Artist, on thirty (30) days prior written notice, to adjust the amounts of insurance coverage to whatever reasonable amount said President/CEO deems to be adequate.
- H. All insurance policies required herein shall have a minimum best financial rating of A minus 7.
- I. Submission of insurance from a non-California admitted carrier is subject to the provisions of California Insurance Code Sections 1760 through 1780, and any other regulations and/or directives from the State Department of Insurance or other regulatory board or agency. Artist agrees, except where exempted, to provide Authority proof of said insurance by and through a surplus line broker licensed by the State of California at the address specified below:

San Diego County Regional Airport Authority
Risk Management Department
P.O. Box 82776
San Diego, CA 92138-2776

17. **INDEMNIFICATION:**

- A. **Non-Design Professionals:** In addition to the provisions of the section 16 entitled "Insurance Requirements", Artist shall indemnify, hold harmless and defend the Authority, its Board, officers, directors, employees, agents and volunteers from and against all claims, damages, losses and expenses, including reasonable attorneys' fees and court costs, arising out of the performance of the Services described herein, caused by any act or omission of Artist and/or any of its subcontractors, employees, agents, officers and directors, except where caused by the sole negligence or willful misconduct of the Authority.
- B. **Design Professionals:** Notwithstanding the provisions of the above, the following provision shall apply to Artists that are Design Professionals when providing professional design services to Authority. In addition to the provisions of the section 16 entitled "Insurance Requirements", Artist shall indemnify, hold harmless and defend the Authority, its Board, officers, directors, employees, agents and volunteers from and against all claims, damages, losses and expenses, including reasonable attorneys' fees and court costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Artist and/or any of its subcontractors, employees, agents, officers and directors.

18. **CONFORMANCE WITH RULES AND REGULATIONS:** Artist agrees to abide by any and all:

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- A. Applicable rules, regulations, resolutions, policies, codes, orders and restrictions which are now in force or which may be hereafter adopted by the Authority with respect to operation of the Airport;
 - B. Orders, directives, or conditions issued, given or imposed by the President/CEO with respect to the use and operation of the Airport;
 - C. Applicable laws, ordinances, statutes, rules, regulations, or orders of any federal, state, county, municipal or other governmental entity, exercising jurisdiction over the Airport;
 - D. Artist acknowledges that it has reviewed and accepts the Security Instructions posted on the Authority's website at www.san.org. If TSA imposes a fine or penalty on the Authority for Artist's non-compliance with federal laws and or TSA rules and regulations, then Artist shall reimburse and indemnify the Authority for the entire amount of the fine or penalty.
19. **PREVAILING WAGE**: State prevailing wage rates may apply to work performed under this Agreement. State prevailing wage rates apply to all public works contracts as set forth in California Labor Code, including but not limited to, §§1720, 1720.2, 1720.3, 1720.4 and 1771. Artist is solely responsible to determine if state prevailing wage rates apply and, if applicable, pay such rates in accordance with all laws, ordinances, rules, and regulations.
20. **BANKRUPTCY**: In the event Artist commences a proceeding under the Federal Bankruptcy Act or is adjudicated bankrupt or insolvent, or a judicial sale is made of Artist's interest under this Agreement, this Agreement shall at the option of the Authority immediately terminate and all rights of Artist hereunder shall immediately cease and terminate.
21. **LICENSES AND PERMITS**: Artist shall possess all licenses, permits, qualifications, and approvals of whatever nature that are legally required for Artist to perform the Services under this Agreement. Artist represents and warrants that it, at its sole cost and expense, shall keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are required for Artist to practice its profession and/or perform the Services.
22. **CONFLICT OF INTEREST**: Artist is not now a party to, and during the term of this Agreement shall not enter into, any contract or agreement that will create a conflict of interest with its duties to the Authority under this Agreement.
23. **ENTIRE UNDERSTANDING**: This Agreement contains the entire agreement of the Parties and supersedes all prior negotiations, discussions, obligations, and rights of the Parties regarding this Agreement. Artist acknowledges that there is no other written or oral understanding between the Parties. No modification, amendment, or alteration of this Agreement shall be valid unless it is in writing and signed by all Parties.
24. **NON-DISCRIMINATION**: Artist agrees at all times to fully comply with all laws prohibiting discrimination against any person or class of persons by reason of race, color, gender, religious creed, sex (including pregnancy or child birth), age, national origin, ancestry, sexual orientation, physical or mental disability, medical condition including genetic characteristics, veteran status, marital status, family care status, or any other considerations made unlawful by federal, state or local law in performance of this Agreement. If the use provided for in this Agreement allows Artist to offer accommodations or services to the public, such accommodations, or services shall be offered on fair and reasonable terms.
25. **PARTIAL INVALIDITY**: If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder shall remain in full force and effect, and shall in no way be affected, impaired or invalidated.
26. **NOTICES**:

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- A. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery on the date that personal delivery is accomplished; (b) by overnight courier upon the date of signature verification of receipt; or (c) by certified or registered mail, return receipt requested, upon signature verification of receipt. Notice shall be sent to the addresses set forth below, or such other address as either party may specify in writing:

If to the Authority, to: President/CEO
San Diego County Regional Airport Authority
P. O. Box 82776
San Diego, California 92138-2776

If to Artist: **ARTIST NAME**
 ADDRESS

- B. Artist agrees that Notice from the President/CEO shall be effective as to the Artist as if it were executed by the Board or by Resolution of the Board.

27. **INTERPRETATION:**

- A. **Section Headings:** Section headings in this Agreement are for convenience in reference and do not define or limit the scope of any provision.
- B. **Fair Meaning:** The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either Party.
- C. **Two Constructions:** If any provision in this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.
- D. **Governing Law:** This Agreement and all of its terms and conditions shall be construed, interpreted and applied in accordance with, governed by, and enforced under the laws of the State of California.
- E. **Venue:** Notwithstanding applicable provision of 28 U.S.C. Section 1391 or of California Code of Civil Procedure Section 394, the Parties agree that the venue in all matters arising out of this Agreement shall be the Superior Court of California, County of San Diego.
- F. **Gender:** The use of any gender shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.
- G. **Integrated Agreement:** No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties.
- H. **Other Agreements Not Affected:** Except as specifically stated herein, this Agreement and its terms, conditions, provisions and covenants shall not in any way change, amend, modify, alter, enlarge, impair or prejudice any of the rights, privileges, duties or obligations of either of the Parties under or by reason of any other agreement between the Parties.
28. **JOINT AND SEVERAL LIABILITY:** If Artist is a limited liability company, partnership, or joint venture or is an entity comprised of more than one party or entity, the obligation imposed on Artist under this Agreement shall be joint and several, and each member, general partner, joint venturer, party or entity of Artist shall be jointly and severally liable for all obligations.
29. **WAIVER:** Waiver by either party of any breach by the other party of any one or more of the terms or conditions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or any other term or condition of this Agreement. Failure on the part of either party to require full and complete compliance by the other party with any of the

terms or conditions of this Agreement shall not be construed as changing the terms or conditions or preventing full enforcement of other provisions to this Agreement.

30. **ATTORNEY FEES**: If any party to this Agreement brings an action or claim for breach of any provision of this Agreement, the prevailing party shall be entitled to reimbursement for all reasonably incurred litigation costs including, but not limited to, attorney fees.
31. **AUTHORITY'S RIGHT TO CONTRACT WITH OTHERS**: The rights granted Artist by this Agreement are not exclusive, and Authority reserves the right to enter into other agreements covering the same or similar services that are described in the Agreement.
32. **EFFECT OF DEBARMENT OF ARTIST ON EXISTING CONTRACTS**: For the entire term of this Agreement, Authority reserves the right to immediately terminate this contract in the event that Artist or any subcontractor is debarred by Authority or by the federal government or by any California governmental entity.
33. **PROHIBITION OF BENEFITS**: Artist is familiar with the Authority's prohibition against receipt of benefits by Authority personnel as set forth in Authority Code section 2.10. Artist agrees not to offer any Authority personnel any benefit prohibited by said Code. The offer or giving of any benefit prohibited by the Authority Code shall constitute a material breach of this Agreement by Artist. In addition to any other remedies the Authority may have in law or equity, Authority may terminate this Agreement for breach as provided herein.
34. **FEDERAL AVIATION ADMINISTRATION REGULATIONS**: During the performance of this Agreement, the Artist, for itself, its assignees, successors in interest and subcontractors (hereinafter referred to as the "Contractor") agrees as follows:

A. CIVIL RIGHTS – GENERAL (49 U.S.C. § 47123).

- 1) Contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.
- 2) This provision binds the Contractor and any subcontractor from the bid solicitation period through the completion of the contract. This provision is in addition to that required of the Title VI of the Civil Rights Act of 1964.

B. CIVIL RIGHTS – TITLE VI.

- 1) **Title VI Solicitation Notice**. The Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
- 2) **Title VI Clauses for Compliance with Nondiscrimination Requirements**. During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:
 - a) **Compliance with Regulations**: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

- b) Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
 - c) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
 - d) Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Authority or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
 - e) Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - (1) Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - (2) Cancelling, terminating, or suspending a contract, in whole or in part.
 - f) Incorporation of Provisions: The Contractor will include the provisions of paragraphs a) through f) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- 3) Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:
- a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);

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- b) 49 CFR Part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
 - c) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - d) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*, as amended) (prohibits discrimination on the basis of disability and 49 CFR Part 27);
 - e) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
 - f) Airport and Airway Improvement Act of 1982 (49 U.S.C. Chapter 471 § 47123, as amended) (prohibits discrimination based on race, creed, color, national origin, or sex);
 - g) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and § 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
 - h) Titles II and III of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§12131-12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
 - i) The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - j) Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - k) Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (“LEP”). [To ensure compliance with Title VI, Contractor must take reasonable steps to ensure that LEP persons have meaningful access to your programs.] (70 Fed. Reg. at 74087 to 74100); and
 - l) Title IX of the Education Amendments of 1972, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. §1681, *et seq.*).
- C. **FEDERAL FAIR LABOR STANDARDS ACT** (Federal Minimum Wage, 29 U.S.C. § 201 *et seq.*). All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (“FLSA”), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

- D. **OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970** (29 CFR Part 1910). All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of Occupational Safety and Health Act of 1970 (29 CFR Part 1910) with the same force and effect as if given in full text. The Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor has full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety Health Act of 1970 (29 CFR Part 1910). The Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor-Occupational Safety and Health Administration.
- E. **SUBORDINATION:** This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the Authority and the United States, relative to the development, operation, or maintenance of the Airport.
- F. **OBSTRUCTIONS:** Contractor, by accepting this Agreement, expressly agrees for itself, its successors, and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on Authority land above the mean sea level elevation of fifty (50) feet. In the event the aforesaid covenants are breached, the Authority reserves the right to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Contractor.
- G. **NO INTERFERENCE:** Contractor agrees for itself, its successors and assigns that it will not make use of Authority premises in any manner which might interfere with the landing and taking off of aircraft or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Authority reserves the right to cause the abatement of such interference at the expense of Contractor.
- H. **EXCLUSIVE RIGHTS:** It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of § 308a of the Federal Aviation Act of 1958 (49 U.S.C. § 40103; P.L. 103-272; 108 STAT. 1102, and as it may be amended in the future).

35. **SIGNATURES:**

- A. **Signature of Parties:** It is an express condition of this Agreement that it shall not be complete or effective until signed by Authority and by Contractor.
- B. **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

<p>APPROVED AS TO FORM</p> <hr/> <p>General Counsel</p>	<p>SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY</p> <hr/> <p>Signature</p> <p>Name: Kimberly J. Becker</p> <p>Title: President/CEO</p>
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SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

Date: _____	Date: _____
-------------	-------------

ARTIST: _____

SIGNATURE: _____

NAME: _____

TITLE: _____

By my signature above, I, hereby certify under penalty of perjury under the laws of the State of California, that I am an officer or employee of the organization with authority to bind and obligate the organization.

If your corporation has a seal, please affix below:

EXHIBIT A – SCOPE OF WORK

A-1. Purpose: In accordance with the Authority’s Public Art Program, the Authority is entering this Agreement to commission Artwork for the Authority’s capital improvement project entitled “NAME”.

A-2. Procedures for Execution of Work:

- A. The Parties intend that Artist will complete the design, fabrication, transportation and delivery, and consultation during the installation of the Artwork for the site, provided that Authority determines in its sole discretion, to go forward with the completion of the Artwork. The decision to go forward with separately defined, successive stages of work (“Phases”) is at the sole discretion of the Authority. All work under this Agreement shall be completed in separately defined Phases. In addition to the Phases described herein at the time this Agreement is entered into, the Parties, by written amendment, may modify this Agreement to include subsequent Phases.
- B. By authorizing any particular Phase, the Authority is not obligated to authorize any subsequent Phase.
- C. Artist shall not commence any Phase nor incur any expense in anticipation of commencing any Phase unless and until the Authority has given written authorization to proceed with the specific Phase.

A-3. Scope of Artist’s Responsibilities, Artist- Provided Services, and Artist-Provided Deliverables:

A. General:

- 1. Artist shall perform all Services and furnish all supplies, material, and equipment as necessary for the design, execution, fabrication, transportation and delivery, and consultation during installation of the Artwork at the Site at a cost not to exceed the budget. Artist shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in Artist’s work.
- 2. Artwork consistent with the formal detailed proposal Artist made to Authority’s representatives on TBD.
- 3. Artist has or will secure, at Artist’s expense, all personnel required to perform Artist’s Services and complete the Artwork.
- 4. As directed by the Authority, Artist shall regularly consult with the Authority, and architects and contractors that are associated with the Site. The Parties intend that the Authority and Artist will establish a close and cooperative consultation throughout the execution of this Agreement, and Authority shall make its employees and contractors reasonably available to Artist for consultation.
- 5. Artist acknowledges that an essential element of Artist’s Services is coordination with the Authority staff and other persons who may be involved with Artwork design, as designated by the Authority. Artist agrees to accept responsibility for coordination with persons designated by the Authority to be necessary to complete Artist’s duties both as to design issues and budget or cost-related issues and Authority shall make its employees and contractors reasonably available to Artist for coordination.

B. Project Phases:

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1. Phase 1- Final Artwork Proposal: Phase 1 shall commence with the Notice to Proceed and shall end with the Authority's written approval of the final design of the Artwork. Artist shall complete all Phase 1 tasks, to the complete satisfaction of the Authority, no later than TBD weeks after Artist's receipt of written Notice to Proceed from the Authority. Tasks to be completed in Phase 1 shall include but not be limited to the following for the purposes of finalizing the Artwork Design.
 - a. Finalize the proposal for the Artwork by making any necessary changes or modifications to the design based on input received from Authority after Authority's initial review.
 - b. As necessary, and/or as requested by Authority, travel to the Airport for purposes of project coordination with Authority and contractors.
 - c. Submit Final Artwork Proposal to Authority for review. Submittal will include the following:
 - 1) A written narrative that describes the general intent of the Artwork, the proposed form, indication of location, scale and proposed materials;
 - 2) Detailed scale renderings of the proposed Artwork;
 - 3) Proposed fabrication and installation methods;
 - 4) Itemized budget for the Artwork to include associated engineering costs; and
 - 5) Timeline for the design, fabrication, and transportation and delivery of the Artwork.
 - d. The Final Artwork Proposal shall be submitted to the Authority. Artist acknowledges that one or more reviewing bodies (collectively "Reviewing Body") may be assembled to review and make recommendations on the Final Artwork Proposal.
 - e. Artist shall provide presentation quality visual material for presentation of the Final Artwork Proposal to the Reviewing Body, and for release to the press.
 - f. The specific type of presentation materials shall be as required by the Authority.
 - 6) The Final Artwork Proposal may be reviewed by Authority staff before submission to the Reviewing Body. Artist recognizes and agrees that the Final Artwork Proposal shall respond to the review and comments given by Authority staff. Artist acknowledges that Authority may require Artist to make modifications to the Final Artwork Proposal before permitting the Final Artwork Proposal to be submitted to the Reviewing Body.
 - g. Artist shall be available to present the Final Artwork Proposal to the Reviewing Body for approval.
 - h. The Reviewing Body may recommend approval, approval with minor modifications or disapproval. In the event that the Reviewing Body recommends disapproval, or approval with minor modifications to the Final Artwork Proposal, Artist, upon written notification by the Authority, shall respond to the Reviewing Body's comments and submit the revised Final Artwork Proposal to the Authority for review. Artist recognizes and agrees that the Reviewing Body may review the Final Artwork Proposal as revised and make additional recommendations regarding the revised Final Artwork Proposal. All recommendations shall be presented to the Artist in writing.

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- i. In submitting the Final Artwork Proposal, Artist represents and warrants that all artwork associated with the Final Artwork Proposal:
 - 1) Is solely the result of artistic effort by the Artist;
 - 2) Except as otherwise disclosed in writing to the Authority, is unique, original and does not infringe on any copyright;
 - 3) Has not been accepted for sale elsewhere; and
 - 4) Is free and clear of any and all liens.
 - j. In the event all approvals are secured, the Authority will issue a notice of acceptance of the Final Artwork Proposal.
 - k. Artist shall not proceed with development of subsequent Phases of Work until receiving a notice to proceed from Authority.
2. Phase 2 – Schematic Design Proposal:
- a. Following approval by the Authority of Final Artwork Proposal, Artist shall prepare one or more designs showing Artist's Schematic Design Proposal for the Artwork (the "Schematic Design Proposal"). The Schematic Design Proposal will include form, indication of the scale, and proposed materials (samples to be provided upon request by Authority). The Schematic Design Proposal shall also include information on structural considerations, surface integrity, permanence, and protection against theft and vandalism.
 - b. Artist shall investigate costs and prepare preliminary cost estimates related to fabrication and installation of the Artwork based upon the Schematic Design Proposal. The estimates shall indicate the feasibility of producing the proposed Artwork with the fabrication and transportation and delivery budget (the "Preliminary Cost Estimate").
 - c. The Schematic Design Proposal shall include an outline of the proposed installation method and a schedule for the Artwork fabrication and transportation and delivery (collectively "Proposed Installation Method").
3. Phase 3 - Schematic Design Proposal Review:
- a. The Schematic Design Proposal, including Proposed Installation Method and Preliminary Cost Estimate, shall be submitted to the Reviewing Body. Artist shall provide presentation quality visual material for presentation of the Schematic Design Proposal to the Reviewing Body and for release to the press. The specific types of presentation materials shall be determined by the Authority.
 - b. The Schematic Design Proposal may be reviewed by Authority staff before submission to the Reviewing Body. Artist recognizes and agrees that the Schematic Design Proposal shall respond to the review and comments given by Authority staff. Artist also acknowledges and agrees that that the Authority may require Artist to make reasonable modifications to the Schematic Design Proposal before permitting the Schematic Design Proposal to be submitted to the Reviewing Body.
 - c. Artist shall be available to present the Schematic Design Proposal to the Reviewing Body for approval.
 - d. The Reviewing Body may recommend approval, approval with minor changes or disapproval. In the event that the Reviewing Body recommends disapproval, or approval with minor modifications to the Schematic Design Proposal, Artist, upon

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written notification by the Authority, shall respond to the Reviewing Body's comments and submit the revised Schematic Design Proposal to the Authority for review. Artist recognizes and agrees that the Reviewing Body may review the Schematic Design Proposal as revised and make additional reasonable recommendations regarding the revised Schematic Design Proposal.

- e. In the event all approvals are secured, the Authority will issue a notice of acceptance of the Schematic Design Proposal to Artist.
 - f. Artist shall not proceed with the proposal for the Artwork Design Development until the Authority issues a notice to proceed to the Artist. The notice to proceed will identify the approved Schematic Design for the Artwork.
4. Phase 4 - Design Development Proposal:
- a. Upon receipt of Authority's notice to proceed, Artist shall develop a final proposal for the Artwork ("Artwork Design Development Proposal") showing the details of the Artwork. The Artwork Design Development Proposal will include indication of form, scale, and proposed materials (samples shall be provided upon request by Authority). The Artwork Design Development Proposal shall also include information on structural consideration, surface integrity, permanence, protection against theft and vandalism (collectively "Artwork Design Specifications").
 - b. Artist shall develop a detailed budget (the "Artwork Budget"), not to exceed the total amount payable in Exhibit B, which shall cover all costs related to the fabrication and installation of the Artwork, including but not limited to: itemized costs for materials, including applicable sales tax; offsite fabrication costs; costs for labor of assistants; Artist's time for coordination, fabrication, supervision and installation; itemized General Contractor and subcontractor costs; permits or other fees; insurance; studio and operation expense; consultant's fees; communications; Artist's travel; transportation of the Artwork to the site; and itemized costs.
 - c. The Artwork Design Development Proposal shall include a mockup or prototype of an agreed upon section of the artwork.
 - d. The Artwork Design Development Proposal shall include a detailed written description of the fabrication and installation method (the "Installation Specifications").
 - e. The Artwork Design Development Proposal shall include a detailed fabrication and installation schedule (the "Installation Schedule").
 - f. The Artwork Design Development Proposal shall include the description of any operational, maintenance and conservation requirements for the Artwork (the "Maintenance Specifications").
5. Phase 5 – Design Development Proposal Review:
- a. Artist shall provide presentation quality visual material of Artwork Design Development Proposal in conjunction with the review of the Artwork Design Development Proposal by Authority staff and the Reviewing Body, and for release to the press. The specific types of materials shall be as required by the Authority.
 - b. The Artwork Design Development Proposal consisting of the elements described in Phase 5, shall be submitted to the Authority for the Authority's review and submittal to the Reviewing Body. Artist acknowledges that the Authority may require the Artist to make reasonable modifications to the Artwork Design Development Proposal

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prior to submitting the Artwork Design Development Proposal to the Reviewing Body.

- c. Artist, at Authority's option, shall be available to present the Artwork Design Development Proposal, in the form approved by the Authority, at one or more meetings of the Reviewing Body.
 - d. The Reviewing Body may recommend approval, approval with minor changes or disapproval. In the event the Reviewing Body reasonably recommends disapproval or approval with minor changes to the Artwork Design Development Proposal, Artist, upon written notification from the Authority, shall respond to the recommended changes in writing and submit a revised Artwork Design Development Proposal to the Program Manager for review. Artist recognizes and agrees that the Reviewing Body may review the Artwork Design Development Proposal as revised and make additional reasonable recommendations regarding the revised Artwork Design Development Proposal.
 - e. In the event the Authority accepts the Artwork Design Development Proposal, the Authority will issue a notice of acceptance of the Artwork Design Development Proposal.
 - f. Artist shall not proceed with the Construction Documents until the Authority issues a notice to proceed to the Artist.
 - g. Artist shall provide Authority with a General Maintenance Plan for the Artwork, with a detailed description of future anticipated maintenance requirements; a recommended maintenance schedule; anticipated and required care and/or replacement/upgrade of any part of the Artwork and associated moving parts or equipment including any staff time involved in displaying or operating Artwork and the frequency of such staff involvement; and written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the Artwork. Artist shall also provide Authority with a description of all equipment and or machinery needed to operate the Artwork and any anticipated or required staffing, supervision or operational needs. The Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment, and may also be subject to graffiti and vandalism. Artist shall ensure that all maintenance requirements will be reasonable in terms of time and expense. The Artist shall be responsible for making any updates or clarifications to this Maintenance Plan if the maintenance requirements and estimates change over the course of the Project.
6. Phase 6 – Construction Documents:
- a. Artist shall be responsible for the preparation of any drawings depicting both the fabrication and installation of the Artwork as proposed by the Design Development Proposal (the "Construction Documents"). Through consultation with the Authority, Artist must determine whether the final Artwork design requires that the Construction Documents be certified by a qualified engineer, licensed in the State of California. If such certification is required, the following provisions must be adhered to:
 - b. Artist shall be responsible for obtaining any and all information necessary for preparation of the Construction Documents, including, without limitation, any field measurements of the proposed Site.

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- c. Any and all drawings must be certified by a qualified engineer, licensed in the State of California and must conform to all applicable federal, state and local laws and regulations. The Construction Documents are subject to approval by the Authority.
 - d. The Construction Documents must be produced in a detailed format on archival bond paper or digital CAD format or other acceptable format and include, at minimum the following:
 - 1) Interface points of work related to mechanical, electrical, plumbing, structural or any other special integration required to support the Artwork; and
 - 2) Relevant Floor plans and site plans.
 - e. The Artist shall submit the Construction Documents to the Authority for review and approval. Construction Documents shall contain the following but not limited to information:
 - 1) The plans on reproducible sheets measuring twenty-four (24) inches by thirty-six (36) inches;
 - 2) All engineering calculations associated with Construction Documents; and
 - 3) The specifications for the Artwork including final budget and estimate listing the quantities and unit prices for the fabrication and installation of the Artwork.
 - f. The Construction Documents along with any plans, elevations, details, and calculations such as structural and/or electrical, and anything else deemed necessary to construct the Artwork shall collectively be referred to as the "Plans".
 - g. Once the Plans are approved, the Authority will notify the Artist in writing of such approval.
 - h. Authority's approval of the Plans shall not release Artist of the responsibility for the correction of mistakes, errors, or omissions.
7. Phase 7 – Fabrication:
- a. Fabrication of Artwork, including off-site construction, forming, assembly machining or manufacturing of Artwork or parts or components of Artwork is subject to review and approval by Authority at any time, upon reasonable notice.
 - b. Artist shall regularly update Authority staff on the status of the fabrication of the Artwork through the exchange of appropriate documentation, as determined by the Authority and communicated to Artist, including high resolution images.
 - c. As necessary, and/or as reasonably requested by Authority, travel to the Airport for purposes of conducting project research and coordination with Authority staff and construction contractors.
 - d. Upon fifty percent (50%) completion of fabrication, Artist shall arrange a Site-visit for the Authority, at its discretion, to Artists' studio or fabrication facility to validate fabrication method. If Authority elects not to view and approve fabrication by conducting a Site visit, Authority shall review high resolution images in order to approve fabrication. Authority shall acknowledge its approval at fifty percent (50%) review.
 - e. Artist shall deliver a written Transportation Plan including a list of the company (ies), vehicles, and equipment that will be involved in the transportation and delivery of

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the Artwork to the Site. Authority shall approve transportation plan at time of submittal and notify Artist of any required amendments to the plan up to the time of transportation of the Artwork to Authority.

8. Phase 8 – Transportation, Delivery and Consulting Services for Installation of Artwork:
 - a. Artist shall notify Authority in writing when fabrication of the Artwork is completed and ready for transportation and delivery to the Site.
 - b. Within (TBD) days of notification by the Artist of completion of fabrication of the Artwork, the Authority will inspect the fabrication of the Artwork. Within (TBD) days of the Authority’s fabrication inspection, Authority will inform Artist in writing whether: (a) fabrication has been completed in accordance with the terms of this Agreement and is accepted for purposes of transporting the Artwork to the Site (“Transportation Notice to Proceed”); or (b) the fabrication is not accepted, in which case, the Authority shall describe in writing the reason the fabrication is unacceptable in accordance with the terms of this Agreement (“Disapproval Notice”). In the event the Authority issues a Disapproval Notice, Artist shall promptly take all necessary steps to attain approval.
 - c. As directed by Authority and in consultation and collaboration with the Project architect and contractor and Installation Contractor, Artist shall deliver and consult on installation of the Artwork at the Site. Delivery is not authorized by Authority until issuance of the Transportation Notice to Proceed. Artist shall coordinate with Authority regarding the time, place and manner of delivery and installation of the Artwork. Artist shall consult with Authority to identify, in advance of delivery, a route to be used for delivery and from the point of initial delivery to the place of installation. Artist shall comply with reasonable requirements for restriction of deliveries or work to specified locations or only within defined time frames.
 - d. Authority, or a designated representative, shall receive, unload, and inspect the Artwork upon delivery. Upon inspection and written acceptance of the Artwork, possession of the Artwork passes to the Installation Contractor and/or Authority.
 - e. The preparation of the Site for installation of the Artwork shall be the responsibility of the Installation Contractor in accordance with a separate written agreement between the Installation Contractor and Authority.
 - f. Artist shall consult with Authority and the Installation Contractor prior to and during the installation of the Artwork. If necessary, Artist shall be on-site during the installation to provide consulting services for the correct handling and placement of the Artwork.
 - g. Unless provided otherwise in the Schematic Design Proposal, Authority shall be responsible for all expenses for preparing the Site for timely installation of the Artwork, including landscaping, footings, utilities, public access, public security, and area and spot lighting of the Artwork.
 - h. In the event Artist fails, due to his negligent acts or omissions, to transport and deliver the Artwork in accordance with the schedule approved in the Proposed Installation Method, and the delay has not been caused by the Authority or its contractors, the Artist will be assessed liquidated damages in the amount of two hundred dollars (\$200) per day. Unless requested by Authority in writing, the Artwork shall not be delivered before the agreed date and if so delivered shall be

stored at Artist's own expense until delivered by Artist upon the agreed delivery date. If agreed delivery date is delayed by Authority due solely to the Authority's acts or omissions, the Authority shall store the Artwork at its expense from the time of delivery until installation begins.

9. Phase 9 – Final Acceptance and Documentation of Artwork:

- a. Artist shall notify the Authority in writing when all Services have been completed in substantial conformity with the Design Development Proposal.
 - b. Within (TBD) days of receipt of Artist's notification that all Services have been completed, Authority shall notify Artist of Authority's final acceptance of the Artwork in writing, or of the specific Services that have not been completed.
 - c. If the Authority notifies Artist that Services have not been completed in accordance with the terms of this Agreement, Artist shall in a timely manner take all appropriate action to remedy the shortfalls.
 - d. Within (TBD) days of Final Acceptance of Artwork, Artist shall provide the Authority with all manufacturers' specifications related to the Artwork. Artist shall provide one training session and an operations manual to allow Authority personnel to conduct routine maintenance, operation and troubleshooting.
 - e. Artist shall warrant the Artwork for one year after Final Acceptance of the Artwork.
- a. Within (TBD) days after installation of the Artwork, Artist shall provide Authority with photographic documentation suitable for archival purposes.
 - b. Artist shall be available at such time or times as may be agreed between the Parties to attend any inauguration or presentation ceremonies associated with the Artwork.
 - c. Authority and Artist shall cooperate in arranging for appropriate publicity for the installed Artwork.

C. Additional Services: If and when Authority requests Artist to provide services in addition to those specified above, Artist shall develop a work plan detailing specific tasks to be completed and provide a detailed not-to-exceed budget for performing such tasks. Artist shall not perform any Additional Services until Authority has issued a written notice to proceed with the execution of the work plan. Artist will not be authorized to perform or invoice the Authority for any work not specifically authorized in the Authority's notice to proceed.

A-4. Schedule for Delivery of Artist-Provided Services and Deliverables: In the event Artist becomes aware that conformance with this scheduled time frame for completion of deliverables may not be possible, Artist shall immediately advise the Authority in writing of the anticipated delay and consult with the Authority regarding a revised time frame within which to complete the deliverables. If the Authority and Artist cannot agree upon a revised time frame, the date for completion of the deliverables shall be as set by the Authority in its sole discretion.

- A.** Phase 1 deliverables, submit Final Artwork Proposal, to include visual material for presentation of the Final Artwork Proposal, to the Authority Staff and Reviewing Body, shall be completed no later than (TBD) after execution of the Agreement by the Authority and Artist.
- B.** Phase 2 deliverables, including Schematic Design Proposal, Preliminary Cost Estimate, and Proposed Installation Method, shall be completed no later than (TBD) after completion of Phase 1.

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- C. Phase 3 deliverables, including services related to presenting, delivering and approval of the Schematic Design Proposal, Preliminary Cost Estimate and Proposed Installation Method shall be completed no later than (TBD) from the date of Artist's presentation to Authority of the Schematic Design Proposal.
- D. Phase 4 deliverables, including Design Development Proposal, Artwork Budget, Artwork Plans, Installation Specifications, , and Maintenance Specifications, shall be completed no later than (TBD) after completion of Phase 3.
- E. Phase 5 deliverables, including services related to presenting, delivering and approval of Design Development Proposal, Artwork Budget, Artwork Plans, Installation Specifications, , and Maintenance Specifications shall be completed no later than (TBD) from the date of the Artist's presentation to Authority of the Design Development Proposal.
- F. Phase 6 deliverables, including Construction Documents and Plans shall be completed no later than (TBD) after completion of Phase 5.
- G. Phase 7 deliverables, including purchase of material required to produce Artwork, coordination with Authority architect, Installation Contractor, and staff regarding structural integration, including foundation, wiring and other installation requirements, completion of fabrication of the Artwork and all related components and parts, conduct site visits as appropriate and as requested by the Authority shall be completed within a time-frame mutually agreed upon by both parties once the Final Design Proposal have been approved, but in no event more than (TBD) after completion of Phase 5.
- H. Phase 8 deliverables, including procure necessary crating and shipping material to safely and securely ship the finished Artwork to the Airport, ship completed Artwork and associated parts and components to the Airport shall be completed within a time-frame mutually agreed upon by both parties once the architectural design consultants have completed site-preparation for Artwork, but in no event more than (TBD) after completion of Phase 6.
- I. Phase 9 deliverables, within (TBD) of Final Acceptance of Artwork Artist shall provide Authority with all manufacturers' specifications related to the Artwork, a training session, general operation and maintenance manual and photographic documentation suitable for archival purposes of the Artwork. While it is not mandatory for Artist to attend the celebratory dedication of the Artwork, the Artist presence will be requested on a date to be determined.

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EXHIBIT B – COMPENSATION & PAYMENT SCHEDULE

- B-1. Compensation for Services:** The Authority shall pay Artist in accordance with the payment schedule set forth below which shall constitute full compensation for all Services performed and materials furnished by the Artist under this Agreement. The fee shall be paid, upon completion to the Authority's complete satisfaction of each Phase along with submission of Artist's invoice in accordance with the terms in this Agreement in the below-specified amounts. Each payment represents full and final payment for all Services and materials provided prior to the due date thereof.
- A. **Phase 1:** Upon Artist's completion, to the Authority's satisfaction, of Phase 1, Artist shall be compensated in an amount not to exceed **(TBD)**.
 - B. **Phase 2:** Upon Artist's completion, to the Authority's satisfaction, of Phase 2, Artist shall be compensated in an amount not to exceed **(TBD)**.
 - C. **Phase 3:** Upon Artist's completion, to the Authority's satisfaction, of Phase 3, Artist shall be compensated in an amount not to exceed **(TBD)**.
 - D. **Phase 4:** Upon Artist's completion, to the Authority's satisfaction, of Phase 4, Artist shall be compensated in an amount not to exceed **(TBD)**.
 - E. **Phase 5:** Upon Artist's completion, to the Authority's satisfaction, of Phase 5, Artist shall be compensated in an amount not to exceed **(TBD)**.
 - F. **Phase 6:** Upon Artist's completion, to the Authority's satisfaction, of Phase 6, Artist shall be compensated in an amount not to exceed **(TBD)**.
 - G. **Phase 7:** Upon Artist's completion, to the Authority's satisfaction, of **(TBD)**% of Phase 7 Artist shall be compensated in an amount not to exceed **(TBD)**. Artist's completion, to the Authority's satisfaction, of **(TBD)**% of Phase 8 Artist shall be compensated in an amount not to exceed **(TBD)**. Artist's completion, to the Authority's satisfaction, of 100% of Phase 8 Artist shall be compensated in an amount not to exceed **(TBD)**.
 - H. **Phase 8:** Upon Artist's completion, to the Authority's satisfaction of Phase 8, Artist shall be compensated in an amount not to exceed **(TBD)**.
 - I. **Phase 9:** Upon Artist's completion, to the Authority's satisfaction, of Phase 9, Artist shall be compensated in an amount not to exceed **(TBD)**.
- B-2. For Additional Services.** Artist's compensation shall be as mutually agreed to in writing by the Parties prior to the Artist providing Additional Services.
- B-3. Reimbursable Expenses:** None.
- B-4. Total Amount Payable:** The total amount payable under this Agreement shall not exceed **VALUE** Dollars (**\$DOLLARS**).

EXHIBIT C – INSURANCE REQUIREMENTS FOR CONTRACTOR

Artist understands and agrees that the insurance requirements set forth in this Exhibit C are subject to change. The Authority reserves the right to review for adequacy and modify the insurance requirements at the commencement of each Phase described in Exhibit A. If the Insurance requirements are amended or modified, the Authority shall provide notice in writing to the Artist of the amended insurance requirements. Artist, on thirty (30) days prior written notice, shall adjust the amounts of insurance coverage to a reasonable amount the Authority deems to be adequate.

At the commencement and at all times during the term of this Agreement, Artist shall maintain, at its own cost and expense, the following minimum levels and types of insurance:

- C-1. Commercial Automobile Liability:** If Contractor drives on the secured airfield side of the Airport, then Contractor's coverage shall be written on an "occurrence," not "claims made" basis in the amount of ten million dollars (\$10,000,000) combined single limit for bodily injury and property damage.

- C-2. Workers' Compensation and Employer's Liability:** In the amounts required by California State law for Workers' Compensation and, but not less than one million dollars (\$1,000,000) for Employer's Liability. Such coverage shall include a Waiver of Subrogation endorsement in favor of the Authority. Or, submit the attached Waiver Request Form if exempt.

Request for Waiver
Workers' Compensation Insurance Requirement

Business:

Legal Name: **(TBD)** _____

Address: **(TBD)** _____

Legal Form:

____ Sole Proprietor ____ Limited Partnership ____ General Partnership ____ Corporation
____ Business Trust ____ Limited Liability Company ____ Other: _____

Contact Person (Name and Telephone): _____

Authority Reference:

Authority Department: _____

Contact Name/Telephone: _____

Document Reference: _____

Any work performed on Authority Premises? ____ Yes ____ No (bid, contract, job no., location, etc.)

Nature of work to be performed for Authority: _____

Declaration:

With respect to the above-mentioned business, I hereby warrant that the business has no employees other than the owners, officers, directors, partners or other principals who have elected to be exempt from Workers' Compensation coverage in accordance with California law. I further warrant that I understand the requirements of Section 3700 et seq. of the California Labor Code with respect to providing Workers' Compensation coverage for any employees of the above mentioned business. I agree to comply with the code requirements and all other applicable laws and regulations regarding workers' compensation, payroll taxes, FICA and tax withholding and similar employment issues. I further agree to hold the San Diego County Regional Airport Authority harmless from loss or liability which may arise from the failure of the above-mentioned business to comply with any such laws or regulations. I therefore request that the Authority waive its requirements for evidence of Workers' Compensation insurance in connection with the above-referenced work.

Signature

(TBD) _____

Owner, Officer, Director, Partnership or other Principal:

(TBD) _____

Title:

Date: