

**AGREEMENT  
FOR  
PUBLIC ART WORK**

**Agreement **XXXXXX** OS between  
San Diego County Regional Airport Authority  
And  
**ARTIST**  
For**

**Two-dimensional Artwork Design Project for Admiral Boland Way**

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# SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

## Agreement for Design of Public Art Work

This Agreement is made by and between the SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, and **ARTIST**, a California corporation (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 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: **ARTIST**, a California corporation 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.

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: Admiral Boland Way.

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 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 **TBD** and ends **TBD** (the "Term") 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 (2%) 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 and 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 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. §106 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(1)(c)) 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 final acceptance of the Artwork by Authority. Artist shall take such measures as are necessary to protect the Artwork from loss or damage until final acceptance. However, the Authority shall bear risk of loss or damage prior to final acceptance when the partially or wholly completed Artwork is in the sole custody, control, or supervision of the Authority.
15. **INDEPENDENT CONTRACTOR (ARTIST):** 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. **INDEMNIFICATION:**
- A. **Non-Design Professionals:** In addition to the provisions of the section 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. 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.
17. **CONFORMANCE WITH RULES AND REGULATIONS:** Artist agrees to abide by any and all:
- 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](http://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.
18. **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.

- A. Artist and its subcontractor(s) are required to be registered with the Department of Industrial Relations pursuant to California Labor Code §1725.5.
  - B. This Agreement is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Labor Code §1771.4 (a)(1)
  - C. Artist is required to post job site notices, as prescribed by regulation. Labor Code §1771.4 (a)(2).
19. **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.
20. **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.
21. **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.
22. **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.
23. **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.
24. **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.
25. **NOTICES**:
- 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

If to Artist: **ARTIST**

- 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.

26. **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.
27. **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.
28. **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.
29. **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.
30. **AUTHORITY'S RIGHT TO CONTRACT WITH OTHERS:** The rights granted Artist under 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.

31. **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.
32. **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.
33. **FEDERAL AVIATION ADMINISTRATION REGULATIONS:** During the performance of this Agreement, the Contractor, 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 disability 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 for 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);
  - 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. § 471, Section 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, as amended, 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.** 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.** All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 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 retains 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. **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.
- G. **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).

34. **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 Artist.
- 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><b>APPROVED AS TO FORM</b></p> <p>_____</p> <p style="text-align: center;">General Counsel</p> <p>Date: _____</p>	<p><b>SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY</b></p> <p>_____</p> <p style="text-align: center;">Signature</p> <p>Name: Kimberly J. Becker Title: President/CEO</p> <p>Date: _____</p>
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**ARTIST:** \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: Artist/Owner \_\_\_\_\_

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 into this Agreement to commission Artwork to be included in the Authority’s capital improvement project entitled “Two-dimensional Artwork Design Project for Admiral Boland Way”.

**A-2. Procedures for Execution of Work:**

- A. The Parties intend that Artist will complete the design of the Artwork for the Admiral Boland Way site. The work under this Agreement shall be completed in separately defined, successive stages (“Phases”). The decision to go forward with each Phase shall be at the sole discretion of the Authority. In addition to the Phases described herein at the time this Agreement is entered into, the Parties, by written agreement, 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.
- B. Authority’s acceptance or non-acceptance of Services associated with each Phase shall be by written notice to the Artist. Any written notice of non-acceptance shall describe deficiencies and specify the desired corrective action.

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

**A. Specified Services:**

- 1. General Requirements.
  - a. At Artist’s sole expense, Artist shall perform all Services, and furnish all labor, supervision, supplies, materials and associated components, equipment, and transportation as necessary for the design, completion, and delivery of the Artwork.
  - b. Artist shall provide Artwork that is consistent with the formal detailed proposal Artist made to Authority’s representatives on **DATE, as shown in Exhibit --**, attached to and incorporated in this Agreement.
  - c. Artist acknowledges that an essential element of Artist’s Services is coordination with Authority staff and other persons who may be involved with the 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 Services. During all Phases of the Artwork, Artist shall consult and work closely with Authority personnel, as designated by the Authority, including but not limited to, architects and project supervisors, construction agents and contractors hired by Authority to create an artwork design for the Site.
  - d. As directed by the Authority, Artist shall, at its sole expense, conduct Site-visits at the Airport in order to conduct necessary research and effect

coordination with Authority and any other personnel as determined by Authority.

**B. Project Phases:**

1. **Phase 1 – Final Artwork Design:** Tasks to be completed in Phase 1 shall include, but not be limited, to the following:
  - a. Artist shall finalize the design of the Artwork by making any necessary changes or modifications to the design based on input received from the Authority.
  - b. Artist shall arrange a studio visit for the Authority, at its discretion, to review and approve the finished Artwork.
  - c. In the Authority's sole discretion, Artist shall furnish high resolution images of the Artwork to the Authority for Authority review and approval of the Artwork design.
  - d. Artist shall submit the design of the Artwork in a format designated by the Authority.
  - e. As requested by Authority, Artist shall meet and confer with the Authority and other personnel as designated by the Authority, at a date, place, and time to be determined by the Authority.
  - f. Artist shall not proceed with Phase 2 – File Preparation and Delivery of Artwork Design until the Authority issues a notice-to-proceed to the Artist. The notice-to-proceed will identify the approved Final Artwork Design.
2. **Phase 2 – File Preparation and Delivery of Artwork Design:** Tasks to be completed in Phase 2 shall include, but not be limited to, the following:
  - a. Artist shall create and provide a digital capture or scan of his or her original Artwork at a resolution of no less than 300 DPI and in 1/10th scale of the final mural size (approximately 144' wide by 6' tall).
  - b. Artist shall submit the digital capture or scan of Final Artwork Design as described herein to the Authority.
  - c. Providing Authority with recommendations regarding the format and content of the Artist attribution that is to accompany the 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 the specific tasks to be completed and providing 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 Authority for any work not specifically authorized in the Authority's notice-to-proceed.

**A-2. Schedule for Delivery of Artist-Provided Services and Deliverables:** Artist shall provide Services in accordance with the schedule as set forth below, as may be amended in the sole

discretion of the Authority. In the event Artist becomes aware that conformance with the following schedule may not be possible, Artist shall immediately advise the Authority in writing of the anticipated delay, the reason(s) for the anticipated delay and a proposed revision to the schedule. If the Parties cannot agree upon a revised schedule, the schedule as set forth herein shall be the binding schedule.

- A. Phase 1 – Final Artwork Design:** Phase 1 shall commence with the execution of this Agreement 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** after execution of this Agreement.
  
- B. Phase 2 – File Preparation and Delivery of Artwork Design:** Phase 2 shall commence upon the Authority's written approval of the final design of the Artwork. Artist shall complete all Phase 2 tasks, to the complete satisfaction of Authority, no later than **TBD** after completion of Phase 1.

## **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 the amount not to exceed Two Thousand Seven-Hundred Fifty Dollars (\$2,750).
  - B. **Phase 2:** Upon Artist's completion, to the Authority's satisfaction, of Phase 2, Artist shall be compensated in the amount not to exceed Two Thousand Seven-Hundred Fifty Dollars (\$2,750).
- B-2. For Additional Services:** Artist's compensation for Additional Services shall be as mutually agreed to in writing by the Parties prior to Artist providing Additional Services.
- B-3. Reimbursable Expenses:** None.
- B-4. Total Amount Payable:** The total amount payable under this Agreement shall not exceed Five Thousand Five-Hundred Dollars (\$5,500).