

EXPENDITURE ON-CONSTRUCTION CONTRACT REVIEW FORM "NEW CONTRACT"

Contract # 32300049 Vendor # 53476

CONTRACTOR NAME: Jean LaMarr Berkeley Business License # BL-016807

Subject of Contract: Design of Artwork Elements for Ohlone Park

This contract package contains: 2 Original Contracts (Vital Record and Vendor) in folder	Attached	Waiver Attached	Not Required
*The Vital Record contract MUST be in a folder. Vendor copies may be assembled with an Acco-fastener. **DocuSign Agreements only require 1 Original (Vital Record) copy.			
1. CONTRACT BOILERPLATE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Scope of Services (Exhibit A @ boilerplate)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Payment Provisions (Exhibit B @ boilerplate)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. Evidence of Competitive Solicitation OR <u>Waiver by CM</u> or by Council Resolution	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. CERTIFICATIONS			
a. Workforce Composition (businesses with 5 or more employees)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Nuclear Free Berkeley Disclosure	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Oppressive States Disclosure (Exception: Community-based, non-profit organizations)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Sanctuary City Compliance Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Certification of Compliance with Living Wage Ordinance (LWO): use current form on web*	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Certification of Compliance with Equal Benefits Ordinance: use current form on web*	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Community Agency: Certification of Anti-Lobbying	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h. Community Agency: Certification of Drug-Free Workplace	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Insurance Certificate/s AND Endorsement/s OR <u>Insurance Waiver/s</u> (originals, not copies)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Authorizing Council Resolution #	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
8. Consultant Contracts: Form 700, Statement of Economic Interests	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
9. Federally Funded Project Requirement: Debarment status printout (SAM.gov)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Requisition # 12304150 (Hard copy attached) Budget Code 148-21-208-252-0000-000-446-612990 Amt. \$15,000

Contract Amount \$15,000.00 Amt. _____

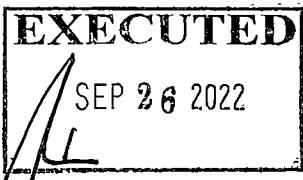
Council Approved Amount \$ _____ Amt. _____

Was there any advance payment? No Yes If Yes, Advanced Amount \$ _____
If Yes, Purchase Order # _____

Routing and signatures:

All elements of the contract package, including information provided above, have been reviewed for completeness and accuracy and evidenced by the following signatures (Project Manager please print name):

1. JEN LOVVORN CIVIL RIGHTS/OED/CMO 981-7533 9-2-2022
Project Manager (PRINT NAME/SIGN) Department Phone No. Date
2. Jehus Ibrahim Department Administrative Officer/Accounting 9/13/22
Department Administrative Officer/Accounting (PRINT NAME/SIGN) Date
3. [Signature] Department Head 9/19/2022
Department Head (PRINT NAME/SIGN) Date
4. JOSH ROSEN Contract Administrator 9/20/2022
Contract Administrator (PRINT NAME/SIGN) Date
5. SHARON FRIEDRICHSEN Budget Manager 9/20/2022
Budget Manager (PRINT NAME/SIGN) Date



Routing continues to the following persons, who sign directly on the contract:

6. City Manager (Will not sign unless all signatures and dates appear above)
7. City Clerk: Destruct _____ Review _____

VC2D 9/20/22

Roben, Josh

From: Friedrichsen, Sharon
Sent: Tuesday, September 20, 2022 11:35 AM
To: Roben, Josh
Cc: Murty, Rama; Dupaya, Maricar C.; Rosete, Michelle
Subject: FW: New Contract: Jean LaMarr

Josh,
Budget Final Approved
Sharon

From: Rosete, Michelle
Sent: Tuesday, September 20, 2022 11:30 AM
To: Friedrichsen, Sharon <SFriedrichsen@cityofberkeley.info>
Cc: Murty, Rama <RMurty@cityofberkeley.info>; Dupaya, Maricar C. <MDupaya@cityofberkeley.info>
Subject: New Contract: Jean LaMarr

Budget initial – APPROVED

Notes:
Authorizing Council Res# - N/A/ for design of artwork elements for Ohlone Park
Contract Amount: \$15,000
Contract Term: 07/18/2022 to 07/18/2024
Req#12304150 - \$15,000 (Encumbered account contract method)
Funding is available in account code 148-21-208-252-0000-000-446-612990-

Michelle M. Rosete
Associate Management Analyst
City Manager's Office
Budget and Fiscal Management Division
Tel. (510) 981-7042
E-mail: mrosete@cityofberkeley.info

Work Schedule:
Remote: Mondays, Wednesdays, & Fridays
In-Office: Tuesdays & Thursdays

ARTWORK DESIGN AGREEMENT

THIS AGREEMENT is made and entered into on JULY 15, 2022, between the CITY OF BERKELEY (“City”), a Charter City organized and existing under the laws of the State of California, and JEAN LAMARR (“ARTIST”) doing business at 479-725 Tako-Nee Street Susanville, CA 96130 who in consideration of the promises, covenants, conditions and performances described in this Agreement, the parties hereto agree as follows:

1. CONTENTS OF AGREEMENT.

This Agreement includes the following Exhibits and attachments, all of which are incorporated herein by this reference:

<u>Exhibit A</u>	Description of Artwork
<u>Exhibit B</u>	Scope of Services
<u>Exhibit C</u>	Payment Schedule
<u>Exhibit D</u>	Collection Record

2. COMPENSATION AND PAYMENT.

The total payment due hereunder includes the following:

a. As total compensation under this Agreement for the work and services described in Exhibit B, the City shall make payments to the ARTIST in an amount not to exceed **\$15,000**, inclusive of any and all federal, state and local taxes including California State sales, use and excise taxes, and as more specifically described in Exhibit C.

b. To be eligible for any payment of compensation under this Agreement, the ARTIST must submit to the City an invoice for payment, in the manner and on the form specified by the City, together with evidence, to the reasonable satisfaction of the City, that the ARTIST has completed the performance that would warrant the payment requested. Upon receipt and approval of such invoice, the City shall arrange for the processing of such documentation and the appropriate payment to the ARTIST.

c. Unless a separate amount of money has been identified herein as expense reimbursement payable to the ARTIST, no expense reimbursement shall be paid, and the compensation paid by the City to the ARTIST shall include any reimbursement of expenses that might otherwise be due. If any amount of money has been identified herein as expense reimbursement, the ARTIST may submit to the City, not more frequently than monthly, an invoice for the reimbursement of such expenses. Such invoice shall be accompanied by the original receipt(s) for such expenses. In no event shall the amount of the reimbursement applied for or paid hereunder exceed the payment schedule authorized in this Agreement in Exhibit C.

d. In the event the City terminates this Agreement for cause, the ARTIST shall refund to the City the amount all (if any) interim payments made to the ARTIST within ten days of the City's written demand.

3. TERM OF AGREEMENT.

a. This Contract shall begin on JULY 18, 2022 and end on JULY 18, 2024. The City Manager of the City may extend the term of this Contract by giving written notice.

b. Either party may terminate this Contract for default upon five (5) days' written notice to the other if the other party has substantially failed to fulfill any of its obligations under this Contract in a timely manner. City may terminate this Contract at its convenience and without cause upon thirty (30) days written notice to ARTIST. Except as provided in this Contract, in no event shall City be liable for costs incurred by or on behalf of ARTIST after the effective date of a notice of termination.

c. A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this Contract and deposits it with the U.S. Postal Service, first class mail, postage prepaid. For purposes of this Contract, all notices to City shall be addressed as follows:

City Manager
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

For purposes of this Contract, all notices to ARTIST shall be addressed as follows:

Jean LaMarr
PO Box 608
Susanville, CA 96130

d. If City terminates this Contract for convenience before ARTIST completes the services in Exhibit B, ARTIST shall then be entitled to recover its costs expended up to that point plus a reasonable profit, but no other loss, cost, damage, expense or liability may be claimed, requested or recovered.

4. INDEMNIFICATION.

The ARTIST for itself and its heirs, successors and assigns, agrees to release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions (1) for personal injury or death or property damage, or (2) for breaches or claimed breaches of any

ARTIST representation, warrant or covenant in this Agreement, arising out of or in any way connected with ARTIST'S operations or with the performance of this Agreement by ARTIST or its officers, employees, partners, directors, subcontractors or agents.

5. INSURANCE.

a. ARTIST shall maintain at all times during the performance of this Contract a commercial general liability insurance policy with a minimum occurrence coverage in the amount of \$2,000,000 (two million dollars); an automobile liability insurance policy in the minimum amount of \$1,000,000 (one million dollars); and, if any licensed professional performs services under this contract, a professional liability insurance policy in the minimum amount of \$N/A to cover any claims arising out of ARTIST'S performance of services under this Contract. All insurance, except professional liability, shall name the City, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.

All insurance policies shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said policies except upon thirty (30) days written notice to the City's Contract Administrator; 2) be evidenced by the original Certificate of Insurance, specifying the required coverage and the insurance carrier's standard additional insured form endorsement; and 3) be approved as to form and sufficiency by the City's Contract Administrator. **The original insurance certificates and all extensions to the insurance certificates should be sent to the address identified below.**

b. If the commercial general liability insurance referred to above is written on a Claims Made Form then, following termination of this Contract, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this Contract.

c. If ARTIST employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the City. The workers' compensation insurance shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said insurance except upon thirty (30) days written notice to the City's Contract Administrator; 2) provide for a waiver of any right of subrogation against City to the extent permitted by law; and 3) shall be approved as to form and sufficiency by the Contract Administrator.

d. ARTIST shall forward all insurance documents to:

Department Name: Civic Arts Program

Department Address:

City of Berkeley

Attn: Civic Arts Program

2180 Milvia Street, 5th Floor

Berkeley, CA 94704

6. CONFORMITY WITH LAW AND SAFETY.

a. ARTIST shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of Artwork services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, and all other applicable federal, state, municipal and local safety regulations. All services performed by ARTIST must be in accordance with these laws, ordinances, codes and regulations. ARTIST shall release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

b. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Agreement, ARTIST shall immediately notify the City's Risk Manager by telephone. If any accident occurs in connection with this Agreement, ARTIST shall promptly submit a written report to City, in such form as the City may require. This report shall include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of ARTIST and subcontractors, if any; 3) name and address of ARTIST'S liability insurance carrier; and 4) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

c. If a release of hazardous materials or hazardous waste that cannot be controlled occurs in connection with the performance of this Agreement, ARTIST shall immediately notify the Berkeley Police Department and the City's Health Protection office.

d. ARTIST shall not store hazardous materials or hazardous waste within the City without a proper permit from the City.

7. MATERIAL SAFETY DATA SHEETS.

a. To comply with the City's Hazard Communication Program, ARTIST agrees to submit Material Safety Data Sheets ("MSDS") for all "hazardous substances" ARTIST intends to use in the performance of work under this Agreement in any City facility. "Hazardous substances" are defined as those substances so designated by the Director of Industrial Relations pursuant to the Hazardous Substances Information and Training Act (Labor Code sec. 6360 *et seq.*). The MSDS for all products must be submitted to the City before commencing work. The MSDS for a particular product must be reviewed and approved by the City's Risk Manager before ARTIST may use that product.

b. City will inform ARTIST about hazardous substances to which it may be exposed while on the job site and protective measures that can be taken to reduce the possibility of exposure.

8. OWNERSHIP OF DOCUMENTS AND RESULTS.

(a) When this Contract is terminated, ARTIST agrees to return to City all documents, drawings, photographs and other written or graphic material, however produced, that it received from City, its contractors or agents, in connection with the performance of its services under this Contract. All materials shall be returned in the same condition as received.

(b) Except in the case of early termination of this Agreement, title to the Artwork shall transfer from ARTIST to City upon the City's written notification of Final Acceptance of the Artwork. Title transfer shall be self-executing upon City's Final Acceptance. ARTIST will cooperate in providing to City any title transfer documents City may request or require during or after the Term of this Agreement. Conceptual Design, Design Development Documents, Construction Documents, Samples, mock-ups and all other documents prepared and submitted by ARTIST to the City pursuant to this Agreement shall belong to the City. ARTIST may retain originals of such documents and items and provide copies to City.

9. NON-DISCRIMINATION.

ARTIST hereby agrees to comply with the provisions of Berkeley Municipal Code ("B.M.C.") Chapter 13.26 as amended from time to time. In the performance of this Agreement, ARTIST agrees as follows:

a. ARTIST shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

b. ARTIST shall permit the City access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the City, are necessary to monitor compliance with this non-discrimination provision. In addition, ARTIST shall fill out, in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

10. INDEPENDENT CONTRACTOR.

a. ARTIST shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which ARTIST performs the work and services required of ARTIST by the terms of this Agreement. ARTIST shall be liable for its acts and omissions, and those of its employees and its agents. Nothing contained

herein shall be construed as creating an employment, agency or partnership relationship between City and ARTIST.

b. Direction from City regarding the subject of this Agreement shall be construed as providing direction as to policy and the result of ARTIST's work and services only and not as to the means or methods by which such a result is obtained.

c. Except as expressly provided in this Agreement, nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement.

d. Payment of any taxes, including California Sales and use Taxes, levied upon this Contract, the transaction, or the services or goods delivered pursuant hereto, shall be the obligation of ARTIST.

11. **CONFLICT OF INTEREST PROHIBITED.**

a. In accordance with Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, neither ARTIST nor any employee, officer, director, partner or member of ARTIST, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of this Agreement.

b. In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 *et seq.*, no person who is a director, officer, partner, trustee, employee or consultant of the ARTIST, or immediate family member of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or ARTIST.

c. Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 *et seq.*, its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64.

12. **NUCLEAR FREE BERKELEY.**

ARTIST agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

13. **OPPRESSIVE STATES CONTRACTING PROHIBITION.**

a. In accordance with Resolution No. 59,853-N.S., the ARTIST certifies that it has no contractual relations with, and agrees during the term of this Agreement to forego contractual relations to provide personal services to, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

b. Appendix A to Resolution No. 59,853-N.S. designates the following as Oppressive States for the purposes of this Agreement:

- (1) Nation of Burma (Union of Myanmar).
- (2) Tibet Autonomous Region and the provinces of Amdo, Kham, and U-Tsang.

c. ARTIST'S failure to comply with this section shall constitute a material default of this Agreement and City may terminate this Agreement for cause as provided herein. In the event that the City terminates ARTIST due to a default under this provision, City may deem ARTIST a non-responsible bidder for five (5) years from the date this Agreement is terminated.

14. SANCTUARY CITY CONTRACTING.

ARTIST hereby agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, ARTIST agrees not to provide the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security with any Data Broker or Extreme Vetting Services as defined herein:

- a. "Data Broker" means either of the following:
 - i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;
 - ii. The aggregation of data that was collected for another purpose

from that for which it is ultimately used.

- b. “Extreme Vetting” means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include:
 - i. The City’s computer-network health and performance tools;
 - ii. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity.

15. **RECYCLED PAPER FOR WRITTEN REPORTS.**

If Contractor is required by this Contract to prepare a written report or study, Contractor shall use recycled paper for said report or study when such paper is available at a cost of not more than ten percent more than the cost of virgin paper, and when such paper is available at the time it is needed. For the purposes of this Contract, recycled paper is paper that contains at least 50% recycled product. If recycled paper is not available, Contractor shall use white paper. Written reports or studies prepared under this Contract shall be printed on both sides of the page whenever practical.

16. **BERKELEY LIVING WAGE ORDINANCE.**

a. The ARTIST hereby agrees to comply with the provisions of the Berkeley Living Wage Ordinance, B.M.C. Chapter 13.27. If ARTIST is currently subject to the Berkeley Living Wage Ordinance, as indicated by the Living Wage Certification form, attached hereto, ARTIST will be required to provide all eligible employees with City mandated minimum compensation during the term of this Agreement, as defined in B.M.C. Chapter 13.27, as well as comply with the terms enumerated herein. ARTIST expressly acknowledges that, even if ARTIST is not currently subject to the Living Wage Ordinance, cumulative contracts with City may subject ARTIST to the requirements under B.M.C. Chapter 13.27 in subsequent contracts.

b. If the ARTIST is currently subject to the Berkeley Living Wage Ordinance, ARTIST shall be required to maintain monthly records of those employees providing service under the Agreement. These records shall include the total number of hours worked, the number of hours spent providing service under this Agreement, the hourly rate paid, and the amount paid by ARTIST for health benefits, if any, for each of its employees providing services under the Agreement. The ARTIST agrees to supply City with any records it deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 26.

c. If the ARTIST is currently subject to the Berkeley Living Wage Ordinance, the ARTIST shall include the requirements thereof, as defined in B.M.C. Chapter 13.27, in any and all subcontracts in which ARTIST engages to execute its responsibilities under this Agreement. All subcontractor employees who spend 25% or more of their compensated time engaged in work directly related to this Agreement shall be entitled to a living wage, as described in B.M.C. Chapter 13.27 and herein.

d. If the ARTIST fails to comply with the requirements of this Section, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

The ARTIST's failure to comply with this Section shall constitute a material breach of the Agreement, upon which City may terminate this Agreement as provided herein. In the event that City terminates this Agreement due to a default under this provision, City may deem the ARTIST a non-responsible bidder for not more than five (5) years from the date this Agreement is terminated.

In addition, at City's sole discretion, ARTIST may be responsible for liquidated damage in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that ARTIST's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damage set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for ARTIST's breach. City may deduct any assessed liquidated damages from any payments otherwise due ARTIST.

17. BERKELEY EQUAL BENEFITS ORDINANCE.

a. The ARTIST hereby agrees to comply with the provisions of the Berkeley Living Wage Ordinance, B.M.C. Chapter 13.27. If the ARTIST is currently subject to the Berkeley Living Wage Ordinance, as indicated by the Living Wage Certification form, attached hereto, ARTIST will be required to provide all eligible employees with City mandated minimum compensation during the term of this Agreement, as defined in B.M.C. Chapter 13.27, as well as comply with the terms enumerated herein. ARTIST expressly acknowledges that, even if ARTIST is not currently subject to the Living Wage Ordinance, cumulative contracts with City may subject ARTIST to the requirements under B.M.C. Chapter 13.27 in subsequent contracts.

b. If the ARTIST is currently subject to the Berkeley Living Wage Ordinance, ARTIST shall be required to maintain monthly records of those employees providing service under the Agreement. These records shall include the total number of hours worked, the number of hours spent providing service under this Agreement, the hourly rate paid, and the amount paid by ARTIST for health benefits, if any, for each of

its employees providing services under the Agreement. These records are expressly subject to the auditing terms described in Section 26.

c. If ARTIST is currently subject to the Berkeley Living Wage Ordinance, ARTIST shall include the requirements thereof, as defined in B.M.C. Chapter 13.27, in any and all subcontracts in which ARTIST engages to execute its responsibilities under this Agreement. All subcontractor employees who spend 25% or more of their compensated time engaged in work directly related to this Agreement shall be entitled to a living wage, as described in B.M.C. Chapter 13.27 and herein.

d. If ARTIST fails to comply with the requirements of this Section, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

ARTIST's failure to comply with this Section shall constitute a material breach of the Agreement, upon which City may terminate this Agreement for cause as provided herein. In the event that City terminates ARTIST due to a default under this provision, City may deem ARTIST a non-responsible bidder for not more than five (5) years from the date this Agreement is terminated.

In addition, at City's sole discretion, ARTIST may be responsible for liquidated damage in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that ARTIST's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damage set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for ARTIST's breach. City may deduct any assessed liquidated damages from any payments otherwise due ARTIST.

18. AUDIT.

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office may conduct an audit of ARTIST'S financial, performance and compliance records maintained in connection with the operations and services performed under this Agreement. In the event of such audit, ARTIST agrees to provide the City Auditor with reasonable access to ARTIST'S employees and make all such financial, performance and compliance records available to the Auditor's Office. City agrees to provide ARTIST an opportunity to discuss and respond to any findings before a final audit report is filed.

19. SETOFF AGAINST DEBTS.

Contractor agrees that City may deduct from any payments due to Contractor under this Contract any monies that contractor owes City under any ordinance, contract or resolution for any unpaid taxes, fees, licenses, unpaid checks or other amounts.

20. **CONFIDENTIALITY.**

ARTIST understands and agrees that, in the performance of the services under this Agreement or in the contemplation thereof, ARTIST may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. ARTIST agrees that all information disclosed by City to ARTIST shall be held in confidence and used only in performance of the Agreement. ARTIST shall exercise the same standard of care to protect such information as a reasonably prudent consultant would use to protect its own proprietary data.

21. **PREVAILING WAGES.**

Certain labor categories under this contract may be subject to prevailing wages as identified in the State of California Labor Code commencing with Sections 1720 et. seq. and 1770 et. seq. These labor categories, when employed for any “work performed during the design and pre-construction phases of construction including, but not limited to, inspection and land surveying work,” constitute a “Public Work” within the definition of Section 1720(a)(1) of the California Labor Code requiring payment of prevailing wages. In performing its obligations under this contract, ARTIST is solely responsible to determine which, if any, of the work is governed by a labor category pursuant to California Labor Code sections 1720 et. seq. and 1770 et. seq. and pay the pertinent prevailing wage. ARTIST shall defend, indemnify and hold harmless City concerning any liability arising out of Labor Code section 1720 et. seq. and 1770 et. seq.

22. **GOVERNING LAW.**

This Contract shall be deemed to have been executed in Alameda County. The formation, interpretation and performance of this Contract shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Contract shall be in Alameda County, California.

23. **AMENDMENTS AND EXTRA WORK.**

The terms and conditions of this Contract shall not be altered or otherwise modified except by a written amendment to this Contract executed by City and ARTIST. The City may desire to have the ARTIST perform work or render services in connection with this

project other than that expressly provided for in the “scope of services” section of this Agreement. This will be considered extra work, supplemental to this Agreement, and shall not proceed unless authorized by an amendment. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Agreement or an amendment.

24. **ENTIRE AGREEMENT.**

This Agreement, including the exhibits and addenda attached hereto and forming a part hereof (if any), are all of the covenants, promises, agreements, and conditions, between the parties. No verbal agreements or conversations between any officer, agents, associate or employee of the City and any officer, agency, employee or associate of the ARTIST prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement. Any such verbal agreements shall be considered unofficial information and in no way binding on either party.

25. **SEVERABILITY.**

If any part of this Contract or the application thereof is declared invalid for any reason, such invalidity shall not affect the other provisions of this Contract which can be given effect without the invalid provision or application, and to this end the provisions of this Contract are declared to be severable.

26. **WAIVER.**

Failure of City to insist on strict performance shall not constitute a waiver of any of the provisions of this Contract or a waiver of any other default of Contractor.

27. **NO ASSIGNMENT OF WORK WITHOUT AUTHORIZATION.**

The work and services required of the ARTIST by this Agreement are personal and shall not be assigned, delegated, subcontracted or otherwise transferred without the express, written approval of the City. (This provision shall not prohibit the ARTIST from employing qualified personnel for work under the ARTIST’S direct supervision regarding the Artwork.)

28. **EFFECT ON SUCCESSORS AND ASSIGNS.**

This Contract shall be binding on and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

29. **CONSULTANTS TO SUBMIT STATEMENTS OF ECONOMIC INTEREST.**

The City’s Conflict of Interest Code, Resolution No. 60,788-N.S., as amended, requires consultants who make a governmental decision or act in a staff capacity as defined in 2

Cal. Code of Regs. §18700, as amended from time to time, to disclose conflicts of interest by filing a Statement of Economic Interest (Form 700). Consultants agree to file such statements with the City Clerk at the beginning of the contract period and upon termination of the ARTIST's service.

30. **SECTION HEADINGS.**

The sections and other headings of this Contract are for convenience of reference only and shall be disregarded in the interpretation of this Contract.

31. **CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER.**

ARTIST has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, ARTIST is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. ARTIST shall pay all state and federal income taxes and any other taxes due. **ARTIST certifies under penalty of perjury that the taxpayer identification number written below is correct.**

Business License Number BL-016807

B.M.C. §

Taxpayer ID Number

32. **WORK IN PROGRESS AND CHANGES.**

a. City Inspections and Reviews. Upon reasonable prior notice to the ARTIST, the City and its officers, employees, and agents shall have the right to make reasonable inspections and reviews of the ARTIST'S progress with respect to the Artwork.

b. Material Changes. The most recent artwork design approved by the Civic Arts Commission is incorporated herein as Appendix A and is binding unless changes are approved by the Civic Arts Commission. The artwork design shall mean the proposed visual, aesthetic, and artistic intent and design of the Artwork. ARTIST may make material changes to the Artwork (such as changes in the material, color, size, relative scale as compared to the previously approved artwork design) only after the ARTIST has given written notice of such desired changes to the City and has received written notification of approval by the Civic Arts Commission for each such change.

33. **RISK OF LOSS.** – This section left blank by agreement of the parties.

34. **INSTRUCTIONS FOR MAINTENANCE; VARIABLE MEDIA GUIDELINES; ANTICIPATED LIFE SPAN OF ARTWORK.**

a. Unless specifically provided in this Agreement, ARTIST shall not be responsible for ongoing maintenance of the Artwork. The Artwork shall be designed to 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. ARTIST shall design the artwork such that all maintenance requirements will be reasonable in terms of time and expense.

b. Variable Media -- Left Blank by Agreement of the Parties.

c. Although City strives to maintain the Civic Art Collection in good repair and condition, City is not required by this Agreement to maintain the Artwork to any particular standard. City may determine to allow the Artwork to deteriorate in accordance with the Artwork's temporary life span, if deemed appropriate by City or if City lacks sufficient funds for required maintenance and/or conservation. If the Artwork suffers deterioration, City shall have sole discretion to determine whether to remove the Artwork from display as a result of deterioration, whether to replace any portion of the Artwork or translate any component into new media, or whether to maintain the Artwork on display despite its deteriorated condition.

d. The anticipated life span of the Artwork is 25 years from the date of final acceptance by the City. After that time, the City in its sole discretion may re-evaluate the Artwork to determine if it retains its identity as a work of art and, if not, whether to take appropriate action, including the possibility of destroying the Artwork. If no life span is specified above or pursuant to a subsequent contract modification, the anticipated life span of the Artwork shall be 25 years. If the Commission determines that, through decay, vandalism or other forces, the Artwork has lost its integrity to the point where it should be destroyed, the Commission shall first offer the Artwork to ARTIST free of charge.

35. ARTIST'S MORAL RIGHTS; CITY'S OWNERSHIP RIGHTS.

a. The City, having expended considerable public funds to commission the Artwork, intends to display the Artwork at the Site as originally created by ARTIST and to maintain the Artwork in good condition. Public artworks commissioned by the City are sometimes integrated into their site, such that they become an integral, permanent and site-specific part of the building's architecture or landscaped environment and removal of the Artwork would result in significant changes to the Artwork and the building's architecture. City, however, shall preserve complete flexibility to operate and manage City property in the public's interest. Therefore, City retains the absolute right to Alter the Artwork in City's sole judgment. For example, City may Alter the Artwork to

eliminate hazard, to comply with the ADA, to otherwise aid City in the management of its property and affairs, or through neglect or accident. If, during or after the term of this Agreement, City finds the Site to be inappropriate, City has the right to install the Artwork at an alternate location that City chooses in its sole discretion. If the Artwork is free-standing such that it can be removed without significant damage to the Artwork or the Site, and if the Civic Arts Commission authorizes the removal of the Artwork, the City shall take reasonable precautions to minimize Alteration of the Artwork during removal.

b. With respect to the Artwork produced under this Agreement, 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 City, its officers, agents, employees, successors and assigns, arising under the federal Visual Artists 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, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. If the Artwork is incorporated into a building such that the Artwork cannot be removed from the building without Alteration of the Artwork, ARTIST waives any and all such claims against any future owners of the Site, and its agents, officers and employees, for Alteration of the Artwork.

c. If City intends to take any action with respect to the Site or the Artwork that would Alter the Artwork, other than routine cleaning and maintenance, the following procedures shall apply:

1) Notice. Where time permits, Commission shall make reasonable good faith efforts to notify ARTIST at least 20 calendar days prior to authorizing any Alteration of the Artwork, at the last phone number or address provided by ARTIST to the City. Where time does not permit prior to Alteration of the Artwork – for example, in cases of public hazard, accident or unauthorized Alteration – City shall notify ARTIST within 30 calendar days after such Alteration. The ARTIST'S failure to keep the City reasonably informed regarding the ARTIST'S current address shall be deemed a waiver of the ARTIST'S right to notification.

2) Consultation. After receiving such notice, ARTIST shall consult with City to determine whether the Artwork can be restored or relocated, and to attempt to come to a mutually agreeable plan for disposition of the Artwork. Such consultation

shall be without charge by ARTIST unless otherwise specifically agreed in writing. If City intends to remove the Artwork, ARTIST shall consult regarding methods to minimize or repair any Alteration to the Artwork caused by such removal and the potential costs of such removal.

3) Restoration. If the Artwork is Altered, with or without prior notice to ARTIST, and City intends to maintain the Artwork on display, City shall make a reasonable good faith effort to engage ARTIST in the restoration of the Artwork and to compensate ARTIST for ARTIST's time and efforts at fair market value, which may be the subject of a future Agreement between ARTIST and City. However, City has no obligation under this Agreement 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 City in good faith with respect to any restoration, City may contract with any other qualified art conservator or artist for such restoration. During ARTIST's lifetime, City shall make best efforts not to display or deaccession only a portion of the Artwork without ARTIST's consent.

4) Removal by ARTIST. Where time permits, if City intends to take action that will destroy or significantly Alter the Artwork, such as destruction of all or part of the Site, and City determines that it will not remove the Artwork itself, City shall allow ARTIST to remove the Artwork at ARTIST's expense within 60 days of notice from the City of the need to remove the Artwork, in which case title shall revert to ARTIST. If ARTIST fails to remove the Artwork within that 60 day period, City may Alter the Artwork in any manner, including destroying it, in City's sole discretion.

5) Remedies. If City breaches any of its obligations under this Section, ARTIST's remedies shall be limited as follows: If City inadvertently fails to provide a required prior notice of Alteration, City will provide notice as soon as it discovers the omission, and before Alteration of the Artwork if that remains possible. If City Alters the Artwork without providing ARTIST a required prior notice of Alteration, ARTIST shall be given the first right of refusal to restore the Artwork at the same location and City shall make reasonable efforts to provide funding for the restoration. If City funds cannot be made available after reasonable efforts are made to secure such funding, ARTIST may, but is not obligated to, restore the Artwork at ARTIST's expense. If ARTIST elects not to restore the Artwork, City may retain another artist or conservator to restore it, or may Alter the Artwork in any manner, at City's sole discretion.

d. If City 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 California Civil Code §987(d) and 17 U.S.C. §106A(a)(2).

e. Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, successors or assigns of City, ARTIST retains ARTIST's moral rights in the Artwork, as established in the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 and 989), or any other local, state, federal or international moral rights laws that protect the integrity of works of art. Accordingly, nothing herein shall prevent ARTIST from pursuing a claim for Alteration of the Artwork against a third party who is not an officer, employee, agent, successor or assign of City. City has no obligation to pursue claims against third parties to remedy or prevent Alteration of the Artwork. However, as owner of the Artwork, City may pursue claims against third parties for damages or to restore the Artwork if the Artwork has been altered without City's authorization.

f. For purposes of this Agreement and with respect to the Artwork, "Alter" or "Alteration" means to alter, repair, modify, remove, relocate, sell, dispose of, distort, destroy, mutilate, or deface.

36. COPYRIGHTS AND CITY'S INTELLECTUAL PROPERTY LICENSES.

a. Copyright. Subject to usage rights and licenses granted to the City hereunder, ARTIST shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement. ARTIST's copyright shall not extend to predominantly utilitarian aspects of the Artwork, such as landscaping elements, furnishings, or other similar objects. If ARTIST is comprised of two or more individuals, the individual persons shall be deemed joint authors of the Artwork.

b. City's Intellectual Property License. ARTIST hereby grants to the City, an unlimited, royalty-free and irrevocable license to do the following with respect to the Artwork, and all documents and deliverables that have been delivered to the City, whether in whole or in part, in all media (including electronic and digital) throughout the universe.

(1) Implementation, Use and Display. The City may make, use and display the Artwork, including photographs and other two-dimensional reproductions (whether made photographically, electronically, digitally, or otherwise, and whether made by the City or third parties authorized by the City), as well as all studies, models and maquettes thereof that have been delivered to and accepted by the City. The City may use such reproductions for any City-related purpose, including without limitation educational, public relations, tourism, arts promotion and other non-commercial purposes, without payment of royalty to ARTIST. On each such two-dimensional

reproduction, ARTIST shall be acknowledged, using designations provided by ARTIST, to be creator of the original subject thereof, provided that reproductions of preliminary studies, models and maquettes shall not be identified as or represented to be the finished Artwork.

(2) Public Records Requests. Any documents provided by ARTIST to the City are public records and the City may authorize third parties to review and reproduce such documents pursuant to public records laws, including the City's Open Government Ordinance and California Public Records Act.

c. Third Party Infringement. The City is not responsible for any third party infringement of ARTIST's copyright and not responsible for protecting any of ARTIST's intellectual property rights.

d. Resale Royalty. If the City 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 aggregate price paid by the City under this Agreement. Thus, the City has no obligation to pay resale royalties pursuant to California Civil Code §986 or any other law requiring the payment of resale royalties. If the City sells the Artwork as an individual piece, separate from or itemized as part of a real property transaction, the City shall pay to ARTIST a resale royalty to the extent required by law, based upon the sale price of the Artwork, and taking into account the costs of sale and the aggregate price paid by the City for the Artwork.

37. ERRORS & OMISSIONS: CORRECTIONS.

The ARTIST shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of the ARTIST under this Agreement. The ARTIST, without additional compensation, shall correct or revise any errors or deficiencies in the designs, drawings, specifications, and/or other ARTIST services promptly following notification by the City. ARTIST's obligations in this Section shall survive any termination or expiration of this Agreement.

38. ARTIST'S WARRANTIES.

a. Warranty of Title. Effective as of the City's Acceptance of the Artwork, the ARTIST represents and warrants that (1) ARTIST is the sole author of the Artwork, (2) ARTIST is the sole owner of any and all copyrights pertaining to the Artwork, (3) the City is acquiring good title to the Artwork, free from any and all claims, liens, and charges by any person or entity, including but not limited to any employee, supplier, or materialman, and (4) there are no outstanding disputes arising by or through ARTIST in connection with property rights, intellectual property rights or any parts of the Artwork.

b. Warranty Against Defects. Left Blank by Agreement of the Parties.

c. Warranty of Acceptable Standard of Display and Operation. ARTIST represents and warrants that:

1) The Artwork will conform with design specifications and, where Artwork involves electronic, digital, video, mechanical, living, variable, moving or other dynamic components, the Artwork will also operate, function or perform in accordance with ARTIST's representations to the City without any costs beyond the final Budget for the Artwork or any additional staff assistance.

2) Occasional or minimal cleaning and repair of the Artwork and any associated working parts and/or equipment 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; and

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, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.

39. CREDIT.

The ARTIST shall credit the City of Berkeley and the Civic Arts Commission on any and all publicity materials generated for this Artwork using language determined by the City, and will also acknowledge the City of Berkeley and the Civic Arts Commission at all public presentations and in all written or electronic publication of the work.

40. KEY PERSONS; ARTIST CONSISTING OF MORE THAN ONE PERSON.

The parties agree that the individuals designated in this Agreement (including without limitation this Section 40 and Exhibit A) are essential to ARTIST's performance of this Agreement. The parties agree that:

a. The ARTIST shall not transfer or reassign such individual or individuals without the express written consent of the City; which consent shall not be unreasonably withheld.

b. Should such individual or individuals be no longer employed by the ARTIST during the term of this Agreement, the ARTIST shall present to the City an individual with greater or equal qualifications as a replacement subject to the City's approval which shall not be unreasonably withheld. The City's approval shall not be construed to release the ARTIST from its obligations under this Agreement.

c. In the event the ARTIST is a corporation, limited liability company or other entity, all references to ARTIST's "life" or "lifetime" shall mean and refer to N/A.

41. TIMELY PROVISION OF SERVICES.

a. **Time is of the essence in this Agreement.** ARTIST agrees to provide all deliverables in accordance with the timelines specified herein unless changes are approved in writing by the City.

b. **Illness, Injury, Death or Incapacity.** Should ARTIST die, become ill, injured or otherwise incapacitated (collectively, "incapacitated") such that ARTIST is unable to work for any period not exceeding 30 days (whether consecutive or non-consecutive), any delay arising out of such incapacity will be allowed by City whenever it is practicable to do so, considering the facts and circumstances of the Artwork, the Project, the Architect, the General Contractor and the Client. City may require ARTIST to provide medical certification of any claimed incapacity. In the event ARTIST is incapacitated such that ARTIST is unable to work for a period exceeding a total of 30 days (whether consecutive or non-consecutive), City may, at its option, undertake to complete and install the Artwork in ARTIST's absence, so long as the final Artwork is substantially similar to that designed by ARTIST. If City undertakes to complete the Artwork, City shall give due consideration to ARTIST's suggestions, and ARTIST may disclaim authorship of the Artwork. If City exercises its option to implement the Artwork in ARTIST's absence, any compensation paid or payable to ARTIST shall be reduced by the costs and expenditures of City in completion and installation of the Artwork. In case of incapacity exceeding 30 days, the following person shall be ARTIST's representative vis-à-vis the City for purposes of this Section: Regina Ellenwood, niece, PO Box 608, Susanville, CA 96130, phone: 530-214-6052 unless otherwise directed in writing by the ARTIST.

c. In case of delay in ARTIST's services through no fault of ARTIST, including construction delay, ARTIST shall store the Artwork at no additional cost to City for up to 6 months. If ARTIST's work is delayed due to construction delays at the Site or other delays caused by City or its contractors, so that ARTIST suffers documented direct cost impacts in the form of increased costs of materials and/or labor, ARTIST may apply

to the City for reimbursement of those expenses, which City may award in its sole discretion.

42. TERMINATION.

a. For Cause. Either party may terminate this Agreement in the event the other fails to perform its material obligations as described in this Agreement, and such failure has not been corrected to the reasonable satisfaction of the other in a timely manner after notice of breach has been provided to such other party.

b. For Reason Beyond Control of Parties. Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control such as but not limited to acts of nature; war or warlike operations; civil commotion; riot; labor dispute including strike, walkout, or lockout; sabotage; or superior governmental regulation or control.

c. For Public Convenience. The City may terminate this Agreement in whole or in part whenever the City determines that such termination is in the best interests of the public or for lack of continuing appropriations. If City terminates this Agreement for convenience before ARTIST completes performance, ARTIST shall then be entitled to recover its costs expended up to that point, plus a reasonable profit, but no other loss, cost, damage, expenses or liability may be claimed, requested or recovered.

d. The Services to be completed by ARTIST are unique and personal to ARTIST, and may not be capable of completion by anyone other than ARTIST. Therefore, if ARTIST fails or refuses to complete the Services required by this Agreement, the City may require that ARTIST return all payments made under this Agreement from the initiation of the Agreement. If the City determines, in its sole and reasonable discretion, that ARTIST's failure or refusal to complete the Services is justifiable and in good faith and for reasons beyond the control of ARTIST, the City may authorize ARTIST to keep payments made under this Agreement for prior completed Services. In such case, the City may, at its option, engage another Artist or contractor to complete the Artwork

d. Notice. Notice of termination pursuant to subsections a. and b. above, hereof shall be given by the party terminating this Agreement to the other not less than ten (10) business days prior to the effective date of termination. Notice of termination pursuant to subsection c. above, shall be given not less than twenty five (25) business days prior to the effective date of termination.

43. RIGHTS AND DUTIES UPON TERMINATION OR EXPIRATION.

a. This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

8. OWNERSHIP OF DOCUMENTS AND RESULTS
34. Instructions for Maintenance; Variable Media Guidelines; Anticipated Life Span of Artwork
35. Artist's Moral Rights; City's Ownership Rights
36. Intellectual Property and Publicity Rights
37. ERRORS & OMISSIONS: CORRECTIONS.
38. ARTIST's Warranties
39. CREDIT
41. TIMELY PROVISION OF SERVICES
42. Termination

b. Subject to the survival of the Sections identified in Section 43.a, above, if this Agreement is terminated prior to expiration of the term specified in Section 42, this Agreement shall be of no further force or effect. ARTIST shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

IN WITNESS WHEREOF, City and Contractor have executed this Contract as of the date first mentioned above.

CITY OF BERKELEY

By: Paul T. Jordan
City Manager

Pre-approved as to form
CITY ATTORNEY
10/2019

Registered on behalf
of the City Auditor by:

[Signature]
Finance Department

Attest by:

[Signature]
ASST City Clerk

CONTRACTOR

Printed Name: Jean LaMarr

By: [Signature]

Title Artist

Tax Identification # _____

Berkeley Business License # BL-016807

Incorporated: Yes No

Certified Woman Business Enterprise: Yes No

Certified Minority Business Enterprise: Yes No

If yes, state ethnicity: _____

Certified Disadvantaged Business Enterprise: Yes No

Exhibit A
Description of Artwork

Description of Artwork: Grinding Rock sculpture and two sculptural benches installed within a garden of indigenous plants surrounding the four-sided Ohlone mural.

Anticipated Display Site: Ohlone Park

1. "Artwork Design" shall mean the proposed visual, aesthetic, and artistic intent and design of the Artwork incorporated in the Contract Documents approved by the Civic Arts Commission. The most recent design approved by the Civic Arts Commission is incorporated herein by reference, and is binding unless or until changes are approved by the Civic Arts Commission.

Below is ARTIST's Design at the time of the Agreement date. ARTIST'S Design shall be automatically superseded by any Contract Documents that are later approved by the Civic Arts Commission.

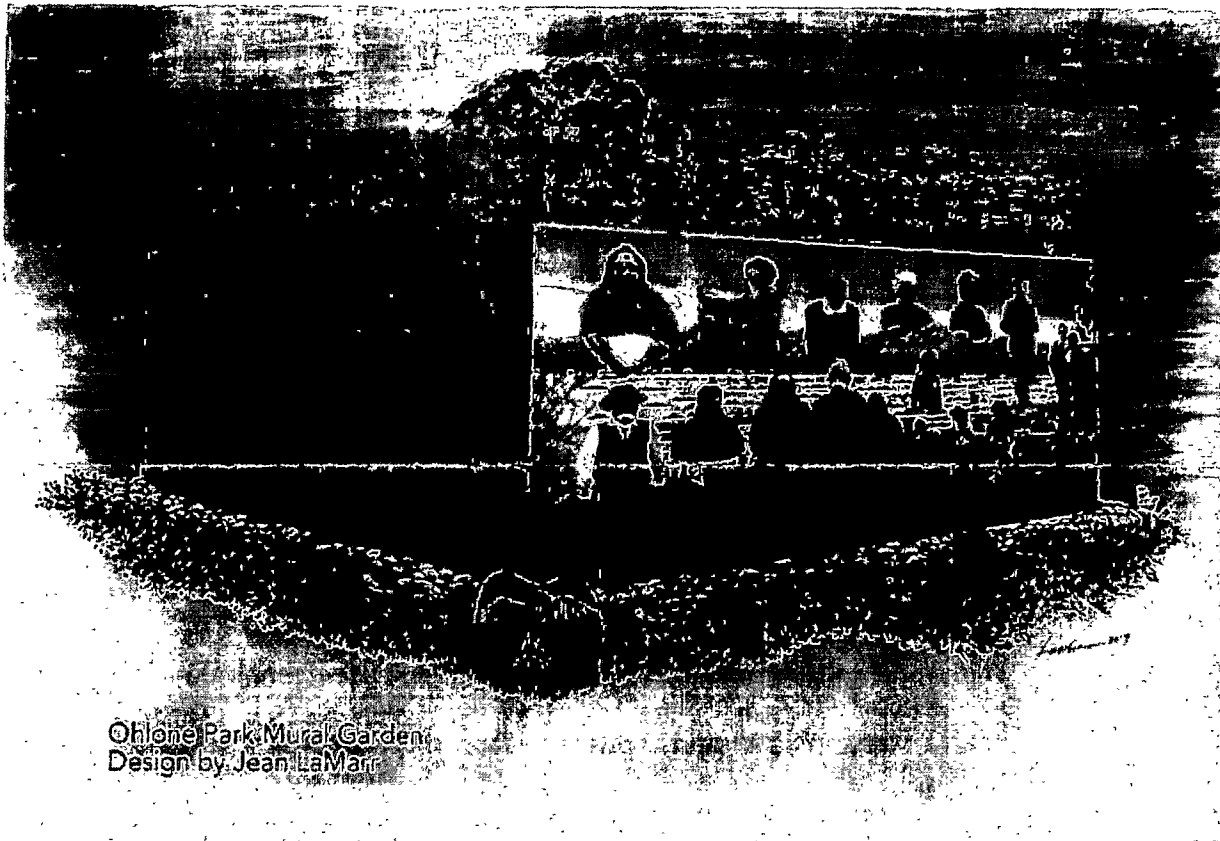


Exhibit B
SCOPE OF SERVICES

1. GENERAL

- a. Artwork will be developed, fabricated and installed in accordance with Exhibit B, Scope of Services. The current artwork design as approved by the Civic Arts Commission is incorporated herein by reference as Exhibit A, and is binding unless or until changes are approved by formal action of the Civic Arts Commission.
- b. The Commission must approve the Artwork Design at each phase of development before the Artist proceeds to the next phase. If the Commission does not accept the Artwork Design at any design phase, the Artist agrees to submit one alternate Artwork Design or design alternative at no additional cost.
- c. The Artwork Design shall reflect the requirements of the Client, Architect and Commission, as further discussed in communications with the Commission, Client and Architect.
- d. Artist shall attend project meetings and make presentations to City staff, Architects, Commissions, and other individuals and organizations, as needed.
- e. Artist agrees to collaborate closely with Architect through in-person meetings and other necessary means of communication to allow Architect to thoroughly integrate the Artwork Design into architectural drawings (if applicable) throughout all phases of design. Artist shall coordinate his/her communications with the Architect through the Civic Arts Program Project Manager.
- f. ARTIST Participation. Without additional compensation, the ARTIST shall participate as required in a minimum of one educational/community event and attend a dedication ceremony, at the request of City staff.

2. DESIGN DEVELOPMENT

- a. The scope of work under this phase includes the development of the Artwork Design.
- b. Design Development Materials and Documents shall incorporate the further development and refinement of the Artwork Design, Budget and Maintenance Report developed under Conceptual Design.
- c. Design Development shall include presentation quality materials, which shall include colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artwork and how it will be installed at the Site, mock-ups, final color and materials samples, proposed fabrication methods, feasibility studies and final cost estimates at design completion. When used in reference to the proposed Artwork, Design Development Documents shall fix and describe the size and character of the Artwork with respect to its relationship to the Site, including architectural, structural, mechanical and electrical systems, materials and other elements as may be appropriate.

- d. Artist shall review all Design Development drawings, materials and documents for consistency and constructability, and report any concerns, or constructability concerns to the City. Modifications to the design necessitated by this review shall be submitted and approved by the City prior to beginning the production of Shop Drawing Documents and incorporated therein.
- e. Artist shall review Site Plans for the construction of the artwork installation site for accuracy of the integration of Artist's Artwork Design within the Site and provide the Civic Arts Program with written comments and/or corrections. If Artist provides no comment or correction to the Site Plans within 30 days of receipt, the Artist shall be held to have approved the location of the artwork as shown on the Site Plans.

3. CONSULTATION DURING ARTWORK FABRICATION

- a. Artist will consult with a fabricator contracted by the City to fabricate the Artwork designed by the Artist, as approved by the Civic Arts Commission.
- b. Artist will consult on the development of Shop Drawings for the construction of the Artwork.
- c. Inspection of Artwork: Artist will inspect Artwork fabrication in progress to ensure that the artwork meets the Artist's aesthetic intent per the approved design drawings and shall inform the City of any deviation from the approved artwork design. Artist shall report in writing to the Civic Arts Program any visible deviation from the approved design in the execution of the artwork. If Artist proceeds without giving notice, the Artist shall be held to have approved the appearance of the artwork.

4. CONSULTATION DURING INSTALLATION OF ARTWORK

- a. Artist will consult with an Artwork Installer contracted by the City to install the Artwork designed by the Artist and fabricated by a fabricator retained by the City.
- b. Approval of Artwork Installation: Installation of the Artwork shall be the responsibility of the General Contractor in accordance with a separate written agreement between City and the General Contractor. Artist will inspect Artwork Installation in progress to ensure that the artwork meets the Artist's aesthetic intent per the approved design drawings and Site Plans and shall inform the City of any deviation from the approved artwork design and Site Plans. Artist shall report in writing to the Civic Arts Program any visible deviation in the installation of the artwork. If Artist proceeds without giving notice, the Artist shall be held to have approved the appearance of the artwork installation.

5. PROJECT CLOSE OUT

- a. Artist Biographical Information and Artwork Intent. Artist shall deliver Artist Biographical Information and Artwork Intent (attached as Appendix D: Collection Record).

Exhibit C
SCHEDULE OF PAYMENTS
Not to exceed \$15,000

Invoices:

Invoices must provide sufficient information for approving payment and audit. Invoices must be accompanied by receipt for services in order for payment to be processed. Invoices shall reference contract number and project title and shall be mailed to the Project Manager at:

City of Berkeley
 Attn: Jennifer Lovvorn
 2180 Milvia Street, 5th Floor
 Berkeley, CA 94704

Budget & Payment Schedule		
Ohlone Park Public Art Project	Artist Fee	Payment Milestone
CONTRACT EXECUTION	\$3,000	1. Upon Contract Execution
DESIGN PHASE	\$3,000	2. Upon Approval of Artwork Design
FABRICATION PHASE	\$5,000	3. Upon Approval of Artwork Fabrication (100%)
INSTALLATION PHASE	\$2,000	4. Upon Approval of Artwork Installation
PROJECT CLOSE OUT	\$2,000	5. Upon Completion of Collection record form & Final Acceptance of Artwork
TOTAL	\$15,000	

Exhibit D
COLLECTION RECORD

ARTIST BIOGRAPHY

Artist Surname:		Given Name:	
Birth Date:	Birth Place:		Gender:
Ethnicity: (optional)			
Contact Information: (current address, phone number and e-mail)			
Attach Artist Resume: (curriculum vitae or resume)			

OBJECT INFORMATION

Title of Artwork:
Object Description: (describe the artwork and the components that comprise the complete installation)
Installation Location:

NON-COMMISSIONED WORKS

Provenance: (history of ownership, including dates work was transferred)

Exhibition History: (list all exhibitions by title, date and museum/gallery name)

ARTIST INTENT

Statement of Intent: (provide any information about the subject of the work, sources of inspiration, ideas expressed in it or historical value relating to the work. You may attach a separate sheet.)

Artist Signature and Date certifies that the information provided is accurate and complete:

REQUEST FOR WAIVER OF COMPETITIVE SOLICITATION

BY CITY MANAGER

DATE: September 2, 2022
TO: City Manager
FROM: Jennifer Lovvorn
DEPT. Civic Arts / OED / CMO

REQUEST FOR WAIVER Jean LaMarr \$15,000
CONTRACT NAME AMOUNT

INSTRUCTIONS:

A written request must be submitted for a waiver consideration. Please complete and forward to City Manager.

We are requesting a waiver on the above contract for one the following reason(s). Explanation must clearly state why this exception meets the required criteria. For details see section on Evidence of Competitive Solicitation online

1. Service is very **SPECIALIZED** because
2. This product or service can only be provided by this contractor (**SOLE SOURCE**) because Jean LaMarr is the original artist of the artwork at Ohlone Park (mural on BART structure near Hearst and Milvia) which was painted in 1995. This contract is for the artist to design companion artworks that extend the original Ohlone-themed artwork. The new artwork elements will include a grinding rock sculpture and two sculptural benches which will be fabricated under a separated contract with an artwork fabricator and installed in conjunction with the renovations to Ohlone Park.
- 3 This service and/or product must be provided **IMMEDIATELY** because
4. **OTHER CATEGORY.** NOTE: **The lack of advanced planning does not constitute an immediate need.** The reason for this request is _____

WAIVER IS RECOMMENDED X
DENIED
Jean LaMarr

[Signature]
← Must be initialed by Gen'l Svcs Mgr. prior to CM approval

9/20/22

[Signature] City Manager

Date

NON-DISCRIMINATION/WORKFORCE COMPOSITION

FOR ALL CONTRACTS: 5 OR MORE EMPLOYEES

To assist the City of Berkeley in implementing its Non-Discrimination policy, you're requested to furnish information regarding your personnel, as indicated below, and return this form to the City Department handling your contract.

ORGANIZATION Jean LaMarr
ADDRESS 479-725 Tako-Nee St., Susanville, CA 96130
BUSINESS LICENSE # BL-016807

You may complete this online & make entries in these cells, they will be automatically totaled at the bottom; or print the form & complete by hand/typewriter.

Occupational Category (see page 2 for definitions)	ALL EMPLOYEES		WHITE		BLACK		ASIAN		HISPANIC		OTHER (specify)**	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Officials/Administrators		1										1
Professionals												
Technicians												
Protective Service Workers												
Para-professionals												
Office/Clerical												
Skilled Craft Workers												
Service/Maintenance												
Other Occupation: Specify*												
Totals		1										1

*Specify other occupation:

**Specify other ethnicity: Native American

Is your business MBE/WBE/DBE certified? No If Yes, by what agency?

If Yes, please specify: or ethnic identification:

Do you have a policy of non-discrimination? Yes

Signature

Jean LaMarr

Date 6/23/2022

Print/Type Name of Signer Jean LaMarr

Verified by _____

Date _____

City of Berkeley Contract Administrator

OCCUPATIONAL CATEGORIES

Officials and Administrators - Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or provide specialized consultation on a regional, district or area basis. Includes: department heads, bureau chiefs, division chiefs, directors, deputy superintendents, unit supervisors and kindred workers.

Professionals - Occupations that require specialized and theoretical knowledge that is usually acquired through college training or through work experience and other training that provides comparable knowledge. Includes: personnel and labor relations workers, social workers, doctors, psychologists, registered nurses, economists, dietitians, lawyers, systems analysts, accountants, engineers, employment and vocational rehabilitation counselors, teachers or instructors, and kindred workers.

Technicians - Occupations that require a combination of basic scientific or technical knowledge and manual skill that can be obtained through specialized post-secondary school education or through equivalent on-the-job training. Includes: computer programmers and operators, technical illustrators, highway technicians, technicians (medical, dental, electronic, physical sciences) and kindred workers.

Protective Service Workers - Occupations in which workers are entrusted with public safety, security and protection from destructive forces. Includes: police officers, fire fighters, guards, sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers, and kindred workers.

Para-Professionals - Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually requires less formal training and/or experience normally required for professional or technical status. Such positions may fall within an identified pattern of a staff development and promotion under a "New Careers" concept. Includes: library assistants, research assistants, medical aides, child support workers, police auxiliary, welfare service aides, recreation assistants, homemaker aides, home health aides, and kindred workers.

Office and Clerical - Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office. Includes: bookkeepers, messengers, office machine operators, clerk-typists, stenographers, court transcribers, hearings reporters, statistical clerks, dispatchers, license distributors, payroll clerks, and kindred workers.

Skilled Craft Workers - Occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs. Includes: mechanics and repairpersons, electricians, heavy equipment operators, stationary engineers, skilled machining occupations, carpenters, compositors and typesetters, and kindred workers.

Service/Maintenance - Occupations in which workers perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilities or grounds of public property. Workers in this group may operate machinery. Includes: chauffeurs, laundry and dry cleaning operatives, truck drivers, bus drivers, garage laborers, custodial personnel, gardeners and groundskeepers, refuse collectors, and construction laborers.

CITY OF BERKELEY
Nuclear Free Zone Disclosure Form

I (we) certify that:

1. I am (we are) fully cognizant of any and all contracts held, products made or otherwise handled by this business entity, and of any such that are anticipated to be entered into, produced or handled for the duration of its contract(s) with the City of Berkeley. (To this end, more than one individual may sign this disclosure form, if a description of which type of contracts each individual is cognizant is attached.)
2. I (we) understand that Section 12.90.070 of the Nuclear Free Berkeley Act (Berkeley Municipal Code Ch. 12.90; Ordinance No. 5784-N.S.) prohibits the City of Berkeley from contracting with any person or business that knowingly engages in work for nuclear weapons.
3. I (we) understand the meaning of the following terms as set forth in Berkeley Municipal Code Section 12.90.130:

"Work for nuclear weapons" is any work the purpose of which is the development, testing, production, maintenance or storage of nuclear weapons or the components of nuclear weapons; or any secret or classified research or evaluation of nuclear weapons; or any operation, management or administration of such work.

"Nuclear weapon" is any device, the intended explosion of which results from the energy released by reactions involving atomic nuclei, either fission or fusion or both. This definition of nuclear weapons includes the means of transporting, guiding, propelling or triggering the weapon if and only if such means is destroyed or rendered useless in the normal propelling, triggering, or detonation of the weapon.

"Component of a nuclear weapon" is any device, radioactive or non-radioactive, the primary intended function of which is to contribute to the operation of a nuclear weapon (or be a part of a nuclear weapon).

4. Neither this business entity nor its parent nor any of its subsidiaries engages in work for nuclear weapons or anticipates entering into such work for the duration of its contract(s) with the City of Berkeley.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: Jean LaMarr Title: Artist

Signature:  Date: 6/23/2022

Business Entity: Jean LaMarr

Contract Description/Specification No. _____

Attachment C

CITY OF BERKELEY
Oppressive States Compliance Statement for Personal Services

The undersigned, an authorized agent of Jean LaMarr (hereafter "Vendor"), has had an opportunity to review the requirements of Berkeley City Council Resolution No. 59,853-N.S. (hereafter "Resolution"). Vendor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with those Business Entities which maintain business relationships with morally repugnant regimes. Vendor understands the meaning of the following terms used in the Resolution:

"Business Entity" means "any individual, firm, partnership, corporation, association or any other commercial organization, including parent-entities and wholly-owned subsidiaries" (to the extent that their operations are related to the purpose of the contract with the City).

"Oppressive State" means: **Tibet Autonomous Region and the Provinces of Amdo, Kham and U-Tsang**

"Personal Services" means "the performance of any work or labor and shall also include acting as an independent contractor or providing any consulting advice or assistance, or otherwise acting as an agent pursuant to a contractual relationship."

Contractor understands that it is not eligible to receive or retain a City contract if at the time the contract is executed, or at any time during the term of the contract it provides Personal Services to:

- a. The governing regime in any Oppressive State.
- b. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- c. Any person for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

Vendor further understands and agrees that Vendor's failure to comply with the Resolution shall constitute a default of the contract and the City Manager may terminate the contract and bar Vendor from bidding on future contracts with the City for five (5) years from the effective date of the contract termination.

The undersigned is familiar with, or has made a reasonable effort to become familiar with, Vendor's business structure and the geographic extent of its operations. By executing the Statement, Vendor certifies that it complies with the requirements of the Resolution and that if any time during the term of the contract it ceases to comply, Vendor will promptly notify the City Manager in writing.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: Jean LaMarr Title: Artist

Signature:  Date: 6/23/2022

Business Entity: Jean LaMarr

I am unable to execute this Statement; however, Vendor is exempt under Section VII of the Resolution. I have attached a separate statement explaining the reason(s) Vendor cannot comply and the basis for any requested exemption.

Signature: _____ Date: _____

Contract description/Specification No.: _____

CITY OF BERKELEY
Sanctuary City Compliance Statement

The undersigned, an authorized agent of Jean LaMarr (hereafter "Contractor"), has had an opportunity to review the requirements of Berkeley Code Chapter 13.105 (hereafter "Sanctuary City Contracting Ordinance" or "SCCO"). Contractor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with any person or entity that provides Data Broker or Extreme Vetting services to the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security ("ICE"). Contractor understands the meaning of the following terms used in the SCCO:

- a. "Data Broker" means either of the following:
 - i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;
 - ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services." Extreme Vetting does not include:
 - i. The City's computer-network health and performance tools;
 - ii. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity.


Contractor understands that it is not eligible to receive or retain a City contract if at the time the Contract is executed, or at any time during the term of the Contract, it provides Data Broker or Extreme Vetting services to ICE.

Contractor further understands and agrees that Contractor's failure to comply with the SCCO shall constitute a material default of the Contract and the City Manager may terminate the Contract and bar Contractor from bidding on future contracts with the City for five (5) years from the effective date of the contract termination.

By executing this Statement, Contractor certifies that it complies with the requirements of the SCCO and that if any time during the term of the Contract it ceases to comply, Contractor will promptly notify the City Manager in writing. Any person or entity who knowingly or willingly supplies false information in violation of the SCCO shall be guilty of a misdemeanor and up to a \$1,000 fine.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 23 day of June, 2022, at Susanville, California.

Printed Name: Jean LaMarr Title: Artist

Signed:  Date: 6/23/2022

Business Entity: Jean LaMarr

CITY OF BERKELEY
Living Wage Certification for Providers of Personal Services

TO BE COMPLETED BY ALL PERSONS OR ENTITIES ENGAGING IN A CONTRACT FOR PERSONAL SERVICES WITH THE CITY OF BERKELEY.

The Berkeley Municipal Code Chapter 13.27, Berkeley's Living Wage Ordinance (LWO), provides that contractors who engage in a specified amount of business with the City (except where specifically exempted) under contracts which furnish services to or for the City in any twelve (12) month period of time shall comply with all provisions of this Ordinance. The LWO requires a City contractor to provide City mandated minimum compensation to all eligible employees, as defined in the Ordinance. In order to determine whether this contract is subject to the terms of the LWO, please respond to the questions below. Please note that the LWO applies to those contracts where the contractor has achieved a cumulative dollar contracting amount with the City. Therefore, even if the LWO is inapplicable to this contract, subsequent contracts may be subject to compliance with the LWO. Furthermore, the contract may become subject to the LWO if the status of the Contractor's employees change (i.e. additional employees are hired) so that Contractor falls within the scope of the Ordinance.

Section I.

1. IF YOU ARE A FOR-PROFIT BUSINESS, PLEASE ANSWER THE FOLLOWING QUESTIONS

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid, or proposal, with the City of Berkeley for a cumulative amount of \$25,000.00 or more?
YES _____ NO X

If no, this contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question 1(b).

b. Do you have six (6) or more employees, including part-time and stipend workers?
YES _____ NO _____

If you have answered, "YES" to questions 1(a) and 1(b) this contract IS subject to the LWO. If you responded "NO" to 1(b) this contract IS NOT subject to the LWO. Please continue to Section II.

2. IF YOU ARE A NON-PROFIT BUSINESS, AS DEFINED BY SECTION 501(C) OF THE INTERNAL REVENUE CODE OF 1954, PLEASE ANSWER THE FOLLOWING QUESTIONS.

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid or proposal, with the City of Berkeley for a cumulative amount of \$100,000.00 or more?
YES _____ NO _____

If no, this Contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question 2(b).

b. Do you have six (6) or more employees, including part-time and stipend workers?
YES _____ NO _____

If you have answered, "YES" to questions 2(a) and 2(b) this contract IS subject to the LWO. If you responded "NO" to 2(b) this contract IS NOT subject to the LWO. Please continue to Section II.

Section II

Please read, complete, and sign the following:

THIS CONTRACT IS SUBJECT TO THE LIVING WAGE ORDINANCE.

THIS CONTRACT IS NOT SUBJECT TO THE LIVING WAGE ORDINANCE.

The undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, hereby certifies that he or she is fully aware of Berkeley's Living Wage Ordinance, and the applicability of the Living Wage Ordinance, and the applicability of the subject contract, as determined herein. The undersigned further agrees to be bound by all of the terms of the Living Wage Ordinance, as mandated in the Berkeley Municipal Code, Chapter 13.27. If, at any time during the term of the contract, the answers to the questions posed herein change so that Contractor would be subject to the LWO, Contractor will promptly notify the City Manager in writing. Contractor further understands and agrees that the failure to comply with the LWO, this certification, or the terms of the Contract as it applies to the LWO, shall constitute a default of the Contract and the City Manager may terminate the contract and bar Contractor from future contracts with the City for five (5) years from the effective date of the Contract termination. If the contractor is a for-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 25% or more of their compensated time engaged in work directly related to the contract with the City. If the contractor is a non-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 50% or more of their compensated time engaged in work directly related to the contract with the City.

These statements are made under penalty of perjury under the laws of the state of California.

Printed Name: Jean LaMarr Title: Artist

Signature:  Date: 6/23/2022

Business Entity: Jean LaMarr

Contract Description/Specification No: _____

Section III

• ** FOR ADMINISTRATIVE USE ONLY -- PLEASE PRINT CLEARLY ***

I have reviewed this Living Wage Certification form, in addition to verifying Contractor's total dollar amount contract commitments with the City in the past twelve (12) months, and determined that this Contract IS / IS NOT (circle one) subject to Berkeley's Living Wage Ordinance.

Department Name

Department Representative

To be completed by Contractor/Vendor

Form EBO-1 CITY OF BERKELEY



CERTIFICATION OF COMPLIANCE WITH EQUAL BENEFITS ORDINANCE

If you are a contractor, return this form to the originating department/project manager. If you are a vendor (supplier of goods), return this form to the Purchasing Division of the Finance Dept.

SECTION 1. CONTRACTOR/VENDOR INFORMATION

Form with fields: Name: Jean LaMarr, Vendor No., Address: 479-725 Tako-Nee St, City: Susanville, State: CA, ZIP: 96130, Contact Person: Jean LaMarr, Telephone: 530-816-2454, E-mail Address: jlamarr2445@gmail.com, Fax No.

SECTION 2. COMPLIANCE QUESTIONS

- A. The EBO is inapplicable to this contract because the contractor/vendor has no employees. [X] Yes [] No
B. Does your company provide (or make available at the employees' expense) any employee benefits? [] Yes [] No
C. Does your company provide (or make available at the employees' expense) any benefits to the spouse of an employee? [] Yes [] No
D. Does your company provide (or make available at the employees' expense) any benefits to the domestic partner of an employee? [] Yes [] No
E. Are the benefits that are available to the spouse of an employee identical to the benefits that are available to the domestic partner of the employee? [] Yes [] No

SECTION 3. PROVISIONAL COMPLIANCE

- A. Contractor/vendor is not in compliance with the EBO now but will comply by the following date: [] By the first effective date after the first open enrollment process... [] At such time that administrative steps can be taken... [] Upon expiration of the contractor's current collective bargaining agreement(s).
B. If you have taken all reasonable measures to comply with the EBO but are unable to do so, do you agree to provide employees with a cash equivalent? [] Yes [] No

* The cash equivalent is the amount of money your company pays for spousal benefits that are unavailable for domestic partners.

SECTION 4. REQUIRED DOCUMENTATION

At time of issuance of purchase order or contract award, you may be required by the City to provide documentation (copy of employee handbook, eligibility statement from your plans, insurance provider statements, etc.) to verify that you do not discriminate in the provision of benefits.

SECTION 5. CERTIFICATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am authorized to bind this entity contractually. By signing this certification, I further agree to comply with all additional obligations of the Equal Benefits Ordinance that are set forth in the Berkeley Municipal Code and in the terms of the contract or purchase order with the City.

Executed this 23 day of June, in the year 2022, at Susanville, CA
(City) (State)

Jean Lamarr
Name (please print)

Jean Lamarr
Signature

Artist
Title

Federal ID or Social Security Number

FOR CITY OF BERKELEY USE ONLY

- Non-Compliant (The City may not do business with this contractor/vendor)
 - One-Person Contractor/Vendor Full Compliance Reasonable Measures
 - Provisional Compliance Category, Full Compliance by Date: _____
- Staff Name (Sign and Print): _____ Date: _____

City of Berkeley, California

2022

BUSINESS LICENSE

This license must be conspicuously posted. Business owner is responsible for renewing this business license by the 28th of February each year.

Business Type VISUAL ARTIST

Location 0 VARIOUS

JEAN LAMARR
LAMARR JEAN
PO BOX 608
SUSANVILLE, CA 96130-0608

License Number

BL-016807

Expires On

12/31/22

Nbr of Tags:

0

This license is issued without verification that the license is subject to an exemption from licensing by the State. It shall not be construed as authorizing the conduct or continuance of any illegal or unlawful business nor does it constitute conformity with Zoning, Toxic Code, Fire, Building Permit and/or Health requirements. - Compliance with BMC 9.04 only

REQUEST FOR WAIVER OF INSURANCE

To Contract Administrator

From/Dept Contact Jennifer Lovvorn Phone 981-7533

Department Civic Arts / OED / CMO

Date September 2, 2022

Contractor Name Jean LaMarr

INSTRUCTIONS

A written request must be submitted for any waiver consideration. Please complete and submit this request to Darryl Sweet, Contract Administrator.

We are requesting one or more waivers of insurance on the above contract. Explanation must clearly state why this request meets the required criteria. See Contracts Online, Section III for details on Insurance Requirements & waivers.

1. Type of service to be performed for the City (explain in detail)

Jean LaMarr will be consulting on the design of artwork elements for integration into the renovation of Ohlone Park..

2. Reason/s for waiver requested (ex: service does not warrant insurance; insurance not available)

Jean LaMarr will only be consulting on the design of the artwork elements. She will not be producing any artwork objects or installing any artwork on City property and she will not be driving as part of this scope of work.

3. Specific insurance waiver/s requested (check all that apply)

auto general liability professional liability workers comp

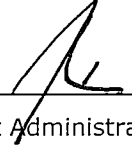
Other or details – please explain

Professional Liability is not required for this scope of work
Jean LaMarr does not have any employees (re. Workers Comp)

4. Other Comments. NOTE: Lack of advanced planning does not constitute conditions for waiver.

WAIVER/S RECOMMENDED Comments _____

WAIVER/S DENIED Comments _____



Contract Administrator

9/19/2022

Date

RECEIVED
SEP 26 2022
CITY OF BERKELEY
CITY CLERK DEPARTMENT