

**FIRST AMENDMENT TO  
AGREEMENT BETWEEN THE CITY OF SAN JOSE  
AND  
GORDON HUETHER + PARTNERS, INC.  
FOR FABRICATION AND INSTALLTION OF A POLICE MEMORIAL WORK OF ART  
AT THE CITY OF SAN JOSE POLICE ADMINISTRATION BUILDING**

This FIRST AMENDMENT TO AGREEMENT is made and entered into this 24th day of November, 2021, by and between the CITY OF SAN JOSE, a municipal corporation ("City"), and GORDON HUETHER + PARTNERS, INC., a California corporation ("Artist").

**RECITALS**

WHEREAS, on November 2, 2020, City and Artist entered into an agreement entitled "AGREEMENT BETWEEN THE CITY OF SAN JOSE AND GORDON HUETHER + PARTNERS, INC. FOR FABRICATION AND INSTALLTION OF A POLICE MEMORIAL WORK OF ART AT THE CITY OF SAN JOSE POLICE ADMINISTRATION BUILDING" ("Agreement"); and

WHEREAS, City and Artist desire to amend the Agreement to revise the Artist's Services, Schedule of Performance, and Compensation;

**NOW, THEREFORE**, the parties agree to amend the Agreement as follows:

**SECTION 1.** SECTION 5.0, "COMPLIANCE WITH BUDGET CONSTRAINTS," is amended to read as follows:

5.0. COMPLIANCE WITH BUDGET CONSTRAINTS. Artist shall be responsible for providing services described in REVISED EXHIBIT A including, but not limited to, the quality and timely completion of the services without exceeding the total budget for the Artwork as set forth in REVISED EXHIBIT A. Artist shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in Artist's work.

Artist shall be responsible for fabricating and installing the Artwork without exceeding the total fabrication, and installation budget of Two Hundred Forty-Two Thousand Seven Hundred Dollars (\$242,700). City shall additionally hold a contingency fund of Twenty-Nine Thousand Six Hundred Thirty Dollars (\$29,630) which shall only be paid to Artist where unforeseeable and unavoidable circumstances cause an increase in the costs incurred by Artist in the Fabrication and Installation of the Artwork. City shall have no

obligation to approve payment from the Contingency fund to make corrections for which the Artist or Artist's subcontractors are responsible, nor to pay for any costs that Artist could have reasonably avoided. Artist shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in Artist's work.

**SECTION 2.** EXHIBIT A, "ARTIST'S SERVICES," is amended to read as shown in REVISED EXHIBIT A, attached and incorporated into this First Amendment.

**SECTION 3.** EXHIBIT B, "SCHEDULE OF PERFORMANCE," is amended to read as shown in REVISED EXHIBIT B, attached and incorporated into this First Amendment.

**SECTION 4.** EXHIBIT C, "COMPENSATION," is amended to read as shown in REVISED EXHIBIT C, attached and incorporated into this First Amendment.

**SECTION 5.** All of the terms and conditions of the original Agreement not modified by this First Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first written above.



**Approved as to Form:**

Attorney  
Arlene Silva  
Deputy City Attorney IV U  
arlene.silva@sanjoseca.gov  
*Arlene Silva*  
Arlene Silva (11/23/2021)  
Email: arlene.silva@sanjoseca.gov

“City”

CITY OF SAN JOSE, a municipal corporation

*Sarah Zarate*  
Sarah Zarate (11/24/2021)  
Email: sarah.zarate@sanjoseca.gov

SARAH ZARATE  
Director, Office of the City Manager

“Artist”

GORDON HUETHER + PARTNERS, INC., a  
California corporation

*gordon huether*  
gh@gordonhuether.com (11/23/2021)  
Email: gh@gordonhuether.com

GORDON HUETHER  
President and Chief Executive Officer

*Darcy Tunt*  
dt@gordonhuether.com (11/23/2021)  
Email: dt@gordonhuether.com

DARCY TUNT  
Secretary

## **REVISED EXHIBIT A**

### **ARTIST'S SERVICES**

Artist shall fabricate and install the artwork element for City's End of Watch Police Memorial per the approved Design Development plan which includes design image, budget (Revised Attachment A) and the construction documents which have been approved by City's Public Works Department and are on file in the City's Office of Cultural Affairs.

The artwork consists of the Police Badge sculpture element constructed of etched dichroic glass framed in stainless steel, and Artist shall also fabricate and provide to City a second set of the dichroic glass part of the badge element that shall be used to replace the original in the event of damage. The second set of the dichroic glass element shall be as close to identical to the first set as reasonably possible including use of the same glass color and design treatment.

Artist shall perform the following services to the satisfaction of City and within the schedule set forth in REVISED EXHIBIT B.

#### **Part 1. NOTICE TO PROCEED WITH FABRICATION AND INSTALLATION.**

City, in City's sole discretion, may decide to proceed or not to proceed with the Artwork. If City decides to proceed and all approvals are secured, City's Public Art Program Officer will issue separate written Notices to Proceed with Fabrication of the Project Artist shall not commence fabrication and installation of Artwork until City's Public Art Program Officer has issued such Notice.

If Notice to Proceed with Fabrication and Installation is issued such that City and Artist agree that there is reason to anticipate a delay in the mutually agreed schedule of performance, and, through no fault of Artist, there is a delay, then City and Artist shall identify the revised Schedule of Performance in writing on either of the Notices to Proceed with Fabrication and Installation or on a mutually executed amendment to the Schedule of Performance.

#### **Part 2. FABRICATION AND INSTALLATION.**

##### **A. General.**

1. The parties agree that the Final Proposal, consisting of City-approved construction drawings and the City approved Design Development Proposal including final budget for the project is on file in the City's Office of Cultural Affairs. The revised final budget for the project is an attachment to Revised Exhibit A of this Agreement. In the event of conflict between the Final Proposal and this Agreement, this Agreement will control.

The final location of the Artwork is described in the first Recital on Page 1 of this Agreement.

2. Artist shall fabricate the Artwork consistent with the Final Proposal, including without limitation, supervising all aspects of the fabrication of the Artwork to ensure proper fabrication of the Artwork. As more particularly provided below, Artist shall be responsible for the transportation and delivery of the Artwork to

the Site. Artist shall be responsible for the installation of the Artwork at the Site consistent with the Construction Documents for the Artwork which were developed and approved by City's DPW Director.

3. Artist agrees that installation includes adequate training and explanation to City staff, to occur in San José unless otherwise agreed by the Program Officer, concerning the repair and maintenance of Artwork. Training includes those instructions which are required to operate, maintain and perform basic repairs on the Artwork. Training is due no later than ten (10) business days after completion of the Artwork installation and is a pre-requisite for Acceptance.

B. Deviations from Proposal.

1. The goal of the parties for the Artwork is a product that represents the creative talents of Artist and satisfies the specifications set forth in the Final Proposal for the Artwork. The parties recognize that they must consult closely during all stages of development of the Artwork, including without limitation, during fabrication and installation of the Artwork in order to accomplish these goals, and that changes from the Final Proposal may become desirable as the Artwork is fabricated. Additionally, the parties recognize and agree that certain specifications regarding the Artwork, such as, but not limited to, the size, color, material (including grade of the material) of some of the elements of the Artwork are not identified in the Final Proposal. To the extent that any specification for the Artwork is not identified in the Final Proposal, Artist shall seek City's prior written authorization of these specifications before commencing with fabrication of the Artwork.
2. The parties also recognize that the shift in scale from preliminary drawings, maquettes and mock-ups to a full-scale work may require artistic adjustments. Artist reserves the right to make minor adjustments to the Artwork, as Artist deems aesthetically necessary. In no event, however, may the change in design increase the Artwork budget without prior written approval by City's Program Officer. Additionally, Artist shall make no change in the design that requires a modification of the Construction Documents without the prior written approval of City's DPW Director.

C. Material Deviations.

Any material deviation from the Final Proposal in the scope, design, color, size, material, utility and support requirements, texture or location of the Artwork must be approved in writing and in advance by City before Artist proceeds with completion of the Artwork. Without limiting the generality of the foregoing, material deviation also includes any change from the Final Proposal which affects the fabrication, schedule of delivery or

installation of the Artwork, preparation of the Site or maintenance of the Artwork.

D. Personnel.

Artist has, or will secure at Artist's expense, all personnel required to perform Artist's Services. All persons retained by Artist shall possess the requisite licenses and permits necessary.

E. Third Party Contractors.

1. Artist shall not unreasonably impede, hinder or delay any third partythird-party contractor in the performance of the contractor's work. Artist shall communicate with any third party contractor who will be performing work which may depend upon, or connect with the Artwork, and Artist agrees to attempt to resolve any disputes or coordination problems with any such third party contractors or others. Except as provided in Subsection 2, below, Artist is not responsible for the services of third party contractors. In the event of conflict between Artist and third party contractors, City will resolve the conflict.
2. If cost impacts result from Artist's work delaying or impacting any third party contractor resulting in additional charges from that contractor, Artist will be liable for the costs solely attributable to Artist's (or Artist's Agents') delay or impact upon third parties.
3. If any part of Artist's work depends upon the work of any other person for proper execution or results, Artist shall, prior to proceeding with such work, promptly report to City in writing any discrepancies or defects in such other work which can be identified upon reasonable inspection that would render it unsuitable for proper execution and results. Failure to so notify City shall constitute the Artist's acceptance of such work as suitable.

F. Review of Progress and Reports.

At reasonable times and with advance notice to Artist, City has the right to review the work in progress and to require and receive progress reports from Artist. City shall have the right to visit Artist's studio at all reasonable times to inspect and review the progress of the Artwork. Artist shall be responsible for arranging with Artist's subcontractors for reasonable access for review and inspection of the Artwork at any subcontractors' place of business.

G. Risk of Loss.

Until the Artwork is formally accepted by City, any damage to, theft or vandalism to, or acts of God or nature affecting the Artwork are the responsibility of Artist, including, but not limited to, any loss occurring

during the fabrication, storage, transportation, delivery or installation of the Artwork.

#### H. Inspection and Transportation of Artwork

##### 1. Inspection Notice.

City and Artist agree that various elements of the Artwork may be fabricated at locations away from the Site (collectively, "Off-Site Elements"). The Off-Site Elements, are to be defined per the Final Proposal. Artist shall notify City in writing when each element of the Artwork is ready for inspection, prior to transporting the Off-Site Element to the Site ("Inspection Notice"). The parties acknowledge and agree that City has the right to inspect each of the Off-Site Elements and that City's inspection rights are not limited to the Off-Site Elements.

##### 2. Notice to Proceed.

Within fifteen business days (15) days of receipt of the Inspection Notice for each Off-Site Element, City's Program Officer will inform Artist in writing either (1) the Off-Site Element has been completed in accordance with the terms of this Agreement and the Off-Site Element is formally accepted for purposes of transporting the Off-Site Element to the Site ("Transportation Notice to Proceed") or (2) there are defects or deficiencies in the Off-Site Element which prevent formal acceptance, in which case the defects or deficiencies will be described ("Off-Site Defects Notice"). In the event that an Off-Site Element is fabricated at a place not located in the San Francisco Bay Area, City may, at its sole discretion, determine to delay inspection until the Off-Site Element is delivered to the Site. If City fails to issue the Transport Notice to Proceed or the Off-Site Defects Notice within the 15 business day inspection period, the Transport Notice to Proceed will be deemed to have been issued at the conclusion of the 15 business day inspection period. In the event that City issues an Off-Site Defects Notice, Artist will promptly remedy any defects to the satisfaction of City's Program Officer.

##### 3. Delivery.

Upon issuance of the Transport Notice to Proceed, Artist shall deliver the Off-Site Elements to the Site. Artist shall coordinate with City's Program Officer regarding the time, place and manner of delivery and installation of the Artwork. City's Program Officer shall have the right to inspect the Off-Site Elements at the time each Off-Site Element arrives at the Site in order to determine whether it has been damaged in transit or whether it deviates in any way from the Off-Site Element approved by City's Program Officer prior to City's issuance of the Transport Notice to Proceed, if the City elected to inspect off-site, or whether it meets the terms of this Agreement in the event City elected to delay its inspection

of the Off-Site Element until it arrived at the Site. Artist promptly shall remedy any defect or damage to the Off-Site Element or any deviations from the Off-Site Elements as approved by City in the Transport Notice to Proceed to the satisfaction of City's Program Officer.

I. Work at the Site.

1. Plans.

- i. Artist shall cause all labor and material incorporated in the Artwork to be furnished in accordance with the requirements and specifications set forth in the Artwork Construction Documents approved by City and the City's Standard Specifications (collectively, the "Plans").
- ii. City's approval of the Plans shall not release Artist of the responsibility for the correction of mistakes, errors or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved. If, during the course of installation of the Artwork, City determines in City's sole discretion that the public safety requires modification of, or the departure from, the Plans, City shall have the authority to require Artist to address the public safety issues and to present Artist's proposed modifications to the DPW Director for the Director's review and approval of the engineering soundness of the proposed modifications. The parties acknowledge that the Plans, once approved by City, shall be final and that, except as expressly provided in this subsection, no revisions to the Plans shall be permitted except with the prior written approval of City's DPW and the City's Director of Economic Development.

2. Installation.

Artist shall be responsible for installation of Artwork at the Site, including without limitation, supervising the work of any subcontractors and coordinating the inspection of the installation of the Artwork with the DPW Director. The parties recognize and agree that the Artwork will not be formally accepted by City, unless the DPW Director approves the installation of the Artwork at the Site.

3. Appearance of Site.

Artist shall maintain a neat appearance to the work at the Site. Artist shall be responsible for any clean-up of the Site made necessary by the installation of the Artwork, including without limitation, removal of equipment, materials and the repair of any portion of the Site or surrounding area damaged by the installation



of the Artwork caused by the negligence or willful acts or omissions of Artist or Artist's subcontractors.

4. City's Access to Site.

City's designated representatives shall at all times during the progress of work on the Artwork at the Site have free access to the Artwork for inspection purposes. If either the DPW Director or the City's Director of Economic Development determines that all or any portion of the work done on the Artwork is not in compliance with the Plans, City shall notify Artist of the same and Artist shall promptly cure such defect to the satisfaction of the DPW and the City's Director of Economic Development.

5. Representatives.

Artist shall designate in writing before starting work, an authorized representative who shall have the authority to represent and act for Artist. When work is not in progress and during periods when work is suspended, arrangements acceptable to the DPW Director shall be made for any emergency work which may be required.

City shall also designate one or more authorized representative(s) who shall have the authority to represent City. Artist's authorized representative shall be present at the site of the work at such times as designated by either the City's DPW or the City's Director of Economic Development. Prior to commencement of the work, the parties shall mutually agree to an inspection schedule, which schedule may be adjusted from time to time by mutual agreement.

Whenever the Artist or Artist's authorized representative are not present on any particular part of the work where it becomes necessary to give direction for safety reasons, the City's DPW Director shall have the right to give orders which shall be received and obeyed by the superintendent or foreman who may have charge of the particular work in reference to which the orders are given. Any order given by the City's DPW Director will, on request of the Artist, be given or confirmed by the DPW Director in writing.

Prior to commencement of work on the Artwork, Artist shall provide to the Program Officer the names and telephone numbers of at least one (1) person in charge of or responsible for the work who can be reached personally in case of emergency twenty-four (24) hours a day, seven (7) days a week.

City's rights under this Agreement shall not make the Artist an agent of the City, and the liability of the Artist for all damages to persons or to public or private property arising from Artist's execution of the work shall not be lessened because of the exercise by City of its rights.

**Part 3. NOTICES OF INSTALLATION AND COMPLETION.**

**A. Notices.**

Artist shall notify City's Program Officer that the Artwork has been installed at the Site ("Completion Notice"). Within Seven (7) days of City's receipt of the Notice from the Artist City shall notify Artist in writing that the Artwork as completed and installed meets the requirements of this Agreement ("Acceptance Notice"), or if the Artwork does not meet this Agreement's requirements, City shall notify Artist of the defects ("Defects Notice").

**B. Remedy of Defects.**

Artist shall promptly remedy at Artist's own cost any defects noted in City's Defects Notice to the satisfaction of City's Program Officer.

**C. Maintenance Instructions.**

As a condition of City's acceptance of the Artwork, Artist shall supply City with written maintenance instructions for the Artwork. These instructions shall include information in sufficient detail regarding the care, repair and maintenance of the Artwork.

**D. Final Documentation.**

As a condition of City's acceptance of the Artwork, Artist shall supply City with at least three (3) professional images of the installed Artwork in digital format (in a format to be agreed upon with the City). Use of these images will be in accordance with Section 16 of this Agreement.

(REVISED) ATTACHMENT A

End of Watch Memorial  
Sculpture Fabrication and Installation

To be located at: San Jose Police Department 201 W. Mission St., San Jose, CA 95110

**End of Watch Sculpture Budget Line Items\***

art matters

\*Includes the *additional* glass star element of the sculpture in the event of damage.

**Studio Costs**

Digital Design \$3,275  
Shop Labor, studio mockup, fitment, finishing \$7,985  
Project Management \$7,800  
Artist Fee \$15,000

**Fabrication**

Stainless steel, glass clamps, hardware \$35,200  
Fabrication services/ labor \$86,500

**Dichroic Glass**

Custom cut dichroic glass, including labor and materials \$13,450  
Glass safety lamination \$11,000  
Vinyl resist/ etching by artist \$9,850  
\*Additional Glass Star... \$27,700

**Installation**

Transportation of Sculpture to Site \$1,800  
Labor \$10,970  
Equipment Rental \$6,600  
Additional Materials (anchors, epoxy, drill bits) \$2,370  
Artist Travel \$3,200

**Sculpture Budget Total \$242,700**

**Notes:**

*Contingency, insurance, studio space, and other misc. administrative costs are built into the overhead of the business, which are considered as a part of developing the above rates while job costing.*

*Due to the fluctuation of costs, the budget provided is only valid for 90 days. After such time, if a contract is not yet executed the design will need to be assessed for potential cost adjustments.*

**REVISED EXHIBIT B**  
**SCHEDULE OF PERFORMANCE**

1. Commencement of Work. Artist shall commence work upon full execution of this Agreement. The following are milestone dates that must be met in accordance with this Agreement.

City and Artist acknowledge that Project is part of a related construction project at Site. Schedule and dates for installation at site are dependent on the final schedule for the construction project and are not within the control of the City's Public Art Program or the Artist. Dates for activities dependent on the site construction project will be mutually agreed upon between City and Artist when the site construction schedule has been confirmed by City's Department of Public Works.

**Fabrication & Installation of Sculpture element**

Notice to Proceed to Fabrication	November 15, 2020 or upon Execution of Agreement
Task 1: 50% Completion of Fabrication	July 15, 2021
Task 2: Notice to Proceed to Installation upon Completion of Fabrication	To be determined
Task 3: Notice of Completion of Installation	To be determined
Notice of Final Acceptance of Phase 2 (Exhibit A, Part 3)	January 31, 2023

2. Modification of Schedule. The parties agree that the Schedule set forth above, and the term of the Agreement, through the Notice of Completion, may, upon mutual agreement, be modified upon prior written authorization of the City's Director of Economic Development, Public Art Director, or Program Officer without need of a formal amendment to this Agreement, through a Notice of Amended Schedule of Performance and Term in the form of this Exhibit.

The parties recognize that, for reasons beyond the Artist's control related to the base project site work, there may be delays in the schedule. Schedule changes that result in delays of longer than 90 days may result in changes to the project costs and this may require adjustments to the affected project budget.

**NOTICE OF AMENDED SCHEDULE OF PERFORMANCE AND TERM**

<b>AGREEMENT TITLE and DATE:</b>	AGREEMENT BETWEEN THE CITY OF SAN JOSE AND [ ] TO DESIGN, FABRICATE AND INSTALL A WORK OF ART AT [ ], dated [ ]
<b>ARTIST Name and Address:</b>	
<b>DATE OF OPTION:</b>	

Pursuant to Section 2 and Exhibit “B” of the Agreement referenced above, the City hereby exercises its option to amend the Schedule of Performance and extend the term as follows:

**EXHIBIT B-AMENDMENT NUMBER (e.g. 1, 2, etc)**

**AMENDMENT NUMBER (e.g. FIRST, SECOND, ETC.) AMENDED SCHEDULE OF PERFORMANCE**

**Fabrication & Installation of Sculpture element**

Notice to Proceed to Fabrication	Upon Execution of Agreement or TBD, 2020
Task 1: 50% Completion of Fabrication	TBD, 2021
Task 2: Notice to Proceed to Installation upon Completion of Fabrication	TBD, 202_
Task 3: Notice of Completion of Installation	TBD, 202_
Notice of Final Acceptance of Phase 2 (Exhibit A, Part 3)	TBD, 2023

CITY OF SAN JOSE, a municipal corporation	Accepted and Agreed: GORDON HUETHER + PARTNERS, INC., a California corporation
By _____ Name: Title:	By _____ Name: Title:

**REVISED EXHIBIT C**  
**COMPENSATION**

1. **Fee.** Artist's fee for completion of Artwork Fabrication and Installation, including all expenses relating thereto, shall not exceed the sum of Two Hundred forty-Two Thousand Seven Hundred Dollars (\$242,700); of which Two Hundred Fifteen Thousand Dollars (\$215,000) is allocated for fabrication and installation of the memorial badge sculpture element, and Twenty-Seven Thousand Seven Hundred Dollars (\$27,700) is allocated for fabrication and delivery of a 2<sup>nd</sup>. replacement set of the etched dichroic glass that is used in the Memorial artwork. This fee includes but is not limited to the following costs: labor of assistants; materials, programming, communication, and other indirect costs; and travel expenses of the Artist for site visits and research. While the City will hold an emergency contingency fund in the amount of Twenty-Nine Thousand Six Hundred Thirty Dollars (\$29,630), Artist has no rights or interest in this sum.

The total value of the contract for fabrication and installation, of the memorial artwork, fabrication and delivery of the replacement etched dichroic glass element and the contingency fund is Two Hundred Seventy-Two Thousand Three Hundred Thirty Dollars (\$272,330).

2. **Interim Payments.** City agrees to pay Artist in installments as set forth in the schedule below and in accordance with the terms of Section 3 of this Agreement.

3. **Payment Schedule.**

a. Upon execution of this Agreement. Payment in advance is contingent upon satisfactory completion of tasks identified in Part 1 through Part 2 of EXHIBIT A.	\$85,000 (PAID)
b. Upon City's approval of 50% completion of the fabrication of Badge element: includes all materials including metal and glass have been ordered, cut, formed, and shaped to size.	\$44,500 (PAID)
c. Upon completion of fabrication of badge element: all necessary fabrication has been completed: all welding, fastening, and assembly of critical components has been completed, and all glass has been laminated.	\$44,500 (PAID)
d. Upon City's written approval of completion of fabrication of replacement etched, dichroic glass for the Badge element.	\$25,000
e. Upon completion of installation of badge element: artwork has been installed to the specification of the Construction Documents set, and the Artwork has received its final cleaning and, upon delivery of replacement glass element to City. All site debris have been removed and equipment demobilized.	\$27,700
f. Notice of Final Acceptance by City of badge element.	\$16,000
CONTINGENCY	\$29,630

4. Fabrication and Installation, Payment Schedule for Artwork. City shall pay Artist for the costs and expenses identified in the Artwork Budget as developed per REVISED EXHIBIT A, Revised Attachment A. Artist shall submit invoices for the costs and expenses outlined in the Budget and shall also submit any documentation required under the City's Standard Specifications regarding payment of prevailing wages ("Documentation Provision"). Artist's failure to pay or ensure payment of prevailing wages or to comply with the Documentation Provision is subject to the provisions of EXHIBIT D, the remedies for Breach of Prevailing Wage Provision. The City may make incremental payments of budget line items to facilitate fabrication and installation, at the discretion of the City's Art Program Officer. The form of the invoice shall be subject to the approval of the City's Art Program Officer. Artist may adjust the line items within the Fabrication and Installation budget with the prior written approval of City's Art Program Officer, which approval will not be unreasonably withheld. Approved invoices shall be processed for payment within 30 days of receipt of invoice by City.

5. Contingency. Included in the Agreement compensation is an amount of Twenty-Nine Thousand Six Hundred Thirty Dollars (\$29,630), which shall be retained by the City and shall not be paid to the Artist except where unforeseeable and unavoidable circumstances cause an increase in the costs incurred by Artist in the Fabrication and Installation of either of the two phases of the Artwork.

In the event Artist wishes to receive funds from the Contingency, Artist shall submit a written request ("Contingency Funds Request") specifying the reason for the request, the total amount of the request and supporting documentation for the need. Contingency funds shall be disbursed at the sole discretion of City and shall not be paid without the written approval of City's Public Art Director and City's Program Officer, which will not be unreasonably withheld.

Without limitation of the foregoing, City shall have no obligation to approve a Contingency Fund request to make corrections for which the Artist or Artist's subcontractors are responsible nor to pay for any costs that Artist or Artist's subcontractors could have reasonably avoided.

Any contingency funds remaining upon City's acceptance of the Artwork as satisfactory, shall be retained by the City.

6. Reimbursables: City will not make any additional payment for Artist's expenses, except as provided in Section 1 of this Revised Exhibit C.

7. Right to Withhold Payment: In the event that the City determines that work for which it has received a request for payment does not meet specifications required under this Agreement, City in its sole discretion shall have the right to withhold such payment until such deficiency has been corrected. In such event, City shall provide detailed written notice to Artist within ten (10) days of receipt of such request for payment, specifying the failure of performance for which City intends to withhold payment. Artist shall work to cure such failure of performance in order to meet the Agreement standards to the satisfaction of City.

8. Notice of Acceptance: Notwithstanding the foregoing, Artist expressly acknowledges that approval of work to permit an interim payment is solely for the benefit of Artist. Unless and until the City issues a Notice of Acceptance for the Artwork, no interim approval shall constitute acceptance or approval of the Artwork by City nor shall it be construed as a waiver of City's right to require that the Artwork conform strictly to the Final Proposal and to the Plans.

9. Sales Tax: Pursuant to California Revenue and Taxation Code Section 6365, the City's payment for the Artwork is exempt from sales taxes imposed under the California Revenue and Taxation Code.
  
10. Modification: The parties agree that the Schedule for Payment set forth above may be modified only upon prior written authorization of the City's Director of Economic Development or Program Officer.