



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jen Baker

SUBJECT: See Below

DATE: April 27, 2026

Approved

Date:

5/8/2026

COUNCIL DISTRICT: 6

SUBJECT: Agreement with The Diane Brandenburg Survivor's Trust UAD September 19, 1993 for the *Seeds of Peace Monument*, an Artwork by Artist Mario Chiodo, Located at Guadalupe River Park Arena Green West

RECOMMENDATION

Adopt a resolution authorizing the City Manager, or her designee, to:

- (a) Negotiate and execute a Monument Donation Agreement by and between the City of San José and The Diane Brandenburg Survivor's Trust UAD September 19, 1993 for a bronze sculpture entitled *Seeds of Peace Monument* by artist Mario Chiodo for installation at the City's Guadalupe River Park in the Arena Green West location and for a \$300,000 donation to the Gift Trust Fund for the City Manager's Office of Economic Development and Cultural Affairs for the special purpose of approximately twenty years of maintenance of the monument; and
- (b) Negotiate and execute the Artist Waiver of Proprietary Rights and Warranties for Artwork, right of entry agreements, and other related documents, all attached in substantial final form to the Monument Donation Agreement; and
- (c) Negotiate and execute any necessary amendments to the Monument Donation Agreement to increase total donation value up to 10% as a contingency, and to related agreements to effectuate the Monument Donation Agreement.

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SUMMARY AND OUTCOME

The outcome of the approval of this donation agreement will result in the most significant donation of public art to the City of San José to date, designed and created by renowned contemporary Bay Area Artist Mario Chiodo. The Diane Brandenburg Survivor's Trust UAD September 19, 1993 (Trust) seeks to donate to the City a large-scale public art sculpture, entitled the *Seeds of Peace Monument*, to be installed at Arena Green West, a City-owned park space located at Santa Clara and Autumn Streets (Attachment A - Sculpture Renderings and Site Map). The total value of the project is estimated at \$3,500,000. The Trust is funding the full cost of the bronze monument, estimated at \$2,000,000, and plans to raise an estimated \$675,000 in additional funds to cover the associated site improvements and establish a maintenance endowment dedicated to the sculpture's ongoing maintenance and preservation.

The Office of Cultural Affairs division of the City Manager's Office of Economic Development and Cultural Affairs prepared a donation agreement in accordance with City Council-approved [Donation](#)¹ and [Monument](#)² Policies. The donation agreement and other related agreements to effectuate the donation are in their substantial final form (Attachment B - Donation Agreement with sub-agreements as exhibits. Staff recommends that City Council authorize the City Manager to negotiate and execute the donation agreement and all other documents or agreements necessary to effectuate the donation agreement per City Council-approved policies and best practices. Once executed, the Trust will deposit \$150,000 with the City to cover initial staff costs, allowing design development and construction document review to begin immediately. At or near 95% of construction review, the City and Trust will re-evaluate the remaining staff costs, and the Trust will deposit sufficient funds to cover any remainder of the City's costs.

Prompt City Council action is necessary to meet the Trust's goal to install the *Seeds of Peace Monument* by December 2026.

BACKGROUND

Ms. Diane Brandenburg, a local philanthropist, commissioned artist Mario Chiodo to design and fabricate a bronze monument to be gifted to the City of San José. The project is fully funded by the Trust and includes the establishment of an endowment to support the sculpture's long-term maintenance and preservation. The project team is comprised of Mario Chiodo, primary artist and fabricator; Chris Kent, landscape architect; and Kimberly Mulcahy, project coordinator. The project is intended to be designed, fabricated, and installed by the end of 2026.

¹ <https://www.sanjoseca.gov/home/showpublisheddocument/12873/636669975473570000>

² <https://www.sanjoseca.gov/home/showpublisheddocument/12719/636669892533370000>

Concept and Design Proposal

Ms. Brandenburg shared in her written statement the inspiration for the *Seeds of Peace Monument*:

Upon waking one Sunday morning in 2024, a seed of thought reached out and asked: "What can I—we—do to stop war?" And when our individual conscience is awakened, what do we do with it?

What kind of world are we bringing our children into? Are we raising our sons and daughters to be ready to fight—and die—for the defense of our country?

A statement I once read by the late, great anthropologist Margaret Mead came to mind: "When are we going to devise a system that creates peace instead of war?" That was the original seed of thought. And it began to grow.

San José has grown from its agricultural beginnings into what it is today known throughout the world as Silicon Valley. Once called "The Valley of Heart's Delight," it has always carried a spirit of abundance and possibility.

So why can't this city, with all it represents, be the one to start a Peace Movement? And how can we bring this thought to life?

That is what the *Seeds of Peace Monument* can stand for. A movement that can grow, expand from our city to others, and then to the world.

The City of San José, California, is standing up and declaring, "We want peace, not war." And now, a monument is being planted at the grassroots level, from where it can grow—seeds of peace.

About the Seeds of Peace Monument

The *Seeds of Peace Monument* features a large-scale female figure standing in the middle of six children and a penguin, all shown lifting the earth together. According to the artist, this monument symbolizes unity, shared responsibility, and global cooperation in the pursuit of world peace. The central figure holds a dove and olive branch, traditional emblems of peace, while a circular shawl extends from her head and wraps around her body, partially enclosing the children and the earth. Inscribed on the shawl are cultural peace symbols from around the world representing global diversity and interconnectedness.

The six children and the penguin represent the seven continents of the world. The penguin symbolizes Antarctica and highlights environmental themes and climate

change. The child representing North America draws inspiration from the Muwekma Ohlone people, incorporating a hummingbird to honor its cultural significance. The hummingbird holds profound importance in Ohlone traditions, where it is regarded as a sacred spiritual being in creation stories. The child representing Asia embodies a blend of features, with an emphasis on Vietnamese heritage, paying tribute to both Vietnamese and indigenous cultures already honored at the site through existing public artworks, such as *Weaver's Gift* and *The Sons of San José Vietnam War Memorial*. The artist's intention is to build upon these existing artworks, honoring those stories and contributing a new artwork that celebrates the diverse cultural fabric of San José's community. The proposed monument will be approximately 15 ft (H) x 15 ft (W) x 14 ft (D), excluding the footprint of the site elements required to accommodate the sculpture. The *Seeds of Peace Monument* has a fully resolved artistic design, with the concept design for the bronze sculpture approved by the City, and sculpting and molding of the statue have already begun.

The artwork is designed by Mario Chiodo, an experienced bronze sculptor with over three decades of practice in the field of public art. Mr. Chiodo's notable works include the *Path of Thorns and Roses*, (Alexandria, VA); the *Harriet Tubman Memorial* (Wilmington, DE); and the *Ohlone Tribute* (Fremont, CA). Landscape architect Chris Kent will design the surrounding area as a site for reflection, dialogue, and education. Mr. Kent is a Principal at PGA Design and has worked on a wide range of projects for over 30 years. The City will contribute approximately 20,638 square feet of parkland for the installation of the artwork and allow the replacement of surrounding site improvements to accommodate the artwork. The estimated potential valuation of the land is \$178,000, not including the existing site improvements.

ANALYSIS

City Council Policy 1-17: Donation, Sponsorship and Fundraising Policy and City Council Policy 9-14: Monument Policy

According to City Council Policy 1-17, the donor shall bear all costs associated with the *Seeds of Peace Monument*, including design, engineering, fabrication, transport, site work (preparation/hardscape/landscape), utilities, permitting, inspection, installation, and related staff costs. The project aligns with City Council-approved Donation and Monument Policies as a fully privately funded cultural asset with no cost to the City.

Bronze sculptures require ongoing care and preservation, including annual cleaning and waxing to preserve their protective patina, prevent corrosion, and ensure long-term structural and visual integrity. Based on quotes obtained by the Trust and City, the cost of maintenance and potential catastrophic or significant damage to the monument for 20 years is estimated to be \$300,000. The Trust, in partnership with the Rotary Club of San

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José, a local civic organization with a long history of community service and support for public projects for over 100 years, is fundraising \$300,000 to establish a maintenance endowment for the monument.

This maintenance endowment is a condition of the City's final acceptance of the *Seeds of Peace Monument* and associated site improvements into the City's Public Art Collection. This endowment will be conveyed to the City together with the donation of the sculpture and all associated site elements, ensuring adequate resources for long-term care, preservation, and conservation.

The project scope includes site preparation to accommodate the monument, including demolition of existing site elements, grading, hardscaping, and foundation construction. The work will also include installation of new light fixtures and electrical systems, and other related improvements necessary for the project. Upon completion of site work, the bronze sculpture will be delivered to the site and anchored to the plinth. Final steps include City inspection and approval of the structural components, installation elements, and overall site improvements.

The Trust will procure and manage its own contractors to complete the work. The City's role will be limited to plan review, construction oversight, and required inspections, in coordination with the Public Works Department, Parks, Recreation, and Neighborhood Services Department, and other outside agencies as required. The Public Art Program, within the Office of Cultural Affairs, will serve as the City's project manager and primary point of contact for all project-related agreements, including coordination of contractor and artist agreements and required waivers. The Public Art Program will also steward the project's maintenance endowment and lead the accessioning of the completed artwork into the City's public art collection, in collaboration with the Public Works Department.

The Trust will reimburse City staff costs, including but not limited to staff time incurred for engineering review, logistical coordination, permitting, and inspection of construction activities and installation of the sculpture and related site improvements.

The *Seeds of Peace Monument* meets all other criteria outlined in the Monument Policy, City Council Policy 9-14:

- The *Seeds of Peace Monument* qualifies as a monument because it is a permanent commemorative tribute to peace and unity.
- Designed by a professional artist, it is also considered "public art" and will be added to the City's Public Art Program inventory.
- The donor's commitment to fund design, fabrication, installation, permits, and, after staff review of maintenance needs and their anticipated costs, a \$300,000 maintenance contribution aligns with donor obligations.

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- The monument meets policy requirements for professional design, community-wide significance, and its material, bronze, meets standards for durability.
- The *Seeds of Peace Monument* artwork concept design was approved by the City's Public Art Committee on June 3, 2025.
- The Arts Commission recommended that the City Council authorize the City Manager, or her designee, to negotiate a donation agreement at its September 15, 2025 regular meeting.
- The City Council authorized the City Manager, or her designee, to negotiate a Donation Agreement of the *Seeds of Peace Monument* at its October 7, 2025, regular meeting.

Acceptance of this donation will be subject to the terms of the City Council policies and in alignment with the City Council-approved Upper Guadalupe River Master Plan and the goal of "integrating high impact public art and design throughout the community" in the City Council-approved Cultural Connection: San José's Cultural Plan.

Once the donor has completed the required funding deposits and deliverables, and the City issues a Final Acceptance Notice, the title to the artwork and site elements shall vest with the City, and the monument shall be subject to the City's full control.

Financial and Operational Considerations

In accordance with City Council Policy 1-17, the donor shall bear all costs associated with the *Seeds of Peace Monument*, including design, engineering, fabrication, transport, site work (preparation/hardscape/landscape), utilities, permitting, inspection, installation, and related staff costs. The City shall not allocate General Fund resources for such purposes, ensuring that the donation project remains cost-neutral to the City.

The Trust will fully fund all costs associated with the monument and may fundraise for these costs. This includes:

- An initial payment of \$150,000 for City staff costs to support design to date and further development, including construction document review, and a second payment estimated at \$70,000 - \$120,000 for a total estimate of staff costs not to exceed \$270,000;
- A \$300,000 maintenance endowment to cover routine maintenance, preservation, and conservation of the monument and its associated site elements, and to cover potential catastrophic events requiring repair or remediation for approximately 20 years; and
- No General Fund resources are required.

The phased funding structure includes provisions for monthly expenditure reporting and reimbursement mechanisms to ensure full cost recovery. The City will provide an

updated cost estimate for the remaining City staff costs at 95% completion of the construction document review. Following this update, and upon the donor's deposit of sufficient funds to cover any remaining City costs, the City will issue a Notice to Proceed with Site Improvements and Installation. Upon approval of the Mayor and City Council, the City Manager, or her designee, shall have authority to enter into mutually agreed upon amendments to increase these costs, paid by the donor, by up to 10% if a new estimate reveals that these funds are insufficient. Any unused staff cost funds will be returned to the donor upon project completion.

In addition, prior to the City's final acceptance of the *Seeds of Peace Monument*, the donor will provide the City \$300,000 to fund approximately 20 years of routine maintenance, potential catastrophic repairs to the monument, or costs associated with significant damage to the related site elements.

Outcomes of City Council Action

Approval of the donation agreement will enable the immediate commencement of design development and construction activities, ensuring the project proceeds on schedule. Delay or denial of approval could jeopardize the donor's funding commitment, risk project completion, and result in the loss of a significant cultural asset.

Racial Equity and Cultural Inclusion

The monument includes design elements inspired by diverse cultural perspectives that are significant to San José, including North American indigenous (Muwekma Ohlone) and Vietnamese heritage, reflected in the depiction of the children in the sculpture. The artwork contributes to representation and furthers the City's goals of cultural inclusion in San José's public art inventory.

Climate Smart San José Impacts

The monument incorporates environmental themes through the penguin representing Antarctica and promotes community engagement with climate awareness, conservation education, and sustainability principles.

EVALUATION AND FOLLOW-UP

Should project implementation reveal material changes to scope, costs, or City infrastructure impacts, staff will provide a supplemental report to City Council.

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FISCAL IMPACTS

The City will designate approximately 20,638 square feet of parkland for the installation of the artwork and surrounding site improvements to accommodate the artwork. The estimated land valuation is \$178,000, excluding existing site improvements.

The Trust, in partnership with the Rotary Club of San José, will be responsible for the collection and transfer of all project funds, including the \$300,000 maintenance endowment. The endowment is intended to support approximately 20 years of maintenance, preservation, and conservation, as well as potential catastrophic repairs or remediation to the monument and its related site elements.

The construction and installation of the *Seeds of Peace Monument* are fully funded by the Trust and will not require the use of the City's General Fund. Upon City Council approval of the donation agreement, the Administration will execute the agreement with the donor. Staff recommends that the City recognize these donations and appropriate the funding in the Gift Trust Fund. The Gift Trust Fund is expected to accrue interest, which will be reinvested into the principal balance. The accrued interest is calculated on a pro rata basis, based on the Fund's cash balance and the City's pooled investment interest rate for the preceding month. It is anticipated that these funds will be used in a manner consistent with the donation agreement to support long-term stewardship of the artwork and associated site elements, and in accordance with the Public Art Master Plan, approved by City Council on March 13, 2007.

The Trust will fund City staff costs associated with design and construction document review for the project. Total City staff costs are estimated not to exceed \$270,000, with an initial payment of \$150,000. Budget actions to recognize and appropriate the Trust's funding for City staff costs, and the donation for the maintenance endowment in the Gift Trust Fund will take place in a future budget process.

COORDINATION

This memorandum was coordinated with staff from the City Attorney's Office, City Manager's Budget Office, Finance Department, Parks, Recreation, and Neighborhood Services Department, and the Public Works Department, all of whom have been engaged in the project development since its inception.

PUBLIC OUTREACH

This memorandum will be posted on the City Council Agenda website for the May 19, 2026 City Council meeting.

BOARD, COMMISSION, COMMITTEE RECOMMENDATION AND INPUT

Meetings held in conjunction with this project include the following:

<u>Date</u>	<u>What</u>	<u>Purpose</u>	<u>Location</u>	<u>Convener</u>
8/28/24	Key stakeholder meeting	Project Overview and Design Development	Online	Office of Mayor Matt Mahan
5/07/25	Public Meeting	Community input on monument project and design	Little Italy Museum	Project Coordinator
5/12/25	Key stakeholder meeting	Donor met with Muwekma Ohlone Tribal Representatives to discuss design	Private	Donor
6/03/25	Public Meeting	Public Art Committee Design Approval	City Hall	City Manager's Office of Economic Development and Cultural Affairs
8/20/25	Public Meeting	Parks and Recreation Commission	SJFD Training Center & EOC	Parks, Recreation, and Neighborhood Services
9/15/25	Public Meeting	Arts Commission	City Hall	City Manager's Office of Economic Development and Cultural Affairs
10/07/25	Public Meeting	City Council	City Hall	City of San José
12/12/25	Public Meeting	Artist Open Studio - Behind the Scenes	Artist's Open Studio	Project Coordinator

CEQA

Categorically Exempt, File No. ER26-047, CEQA Guidelines Section 15301, Existing Facilities.

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PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.



Jen Baker
Director of the City Manager's
Office of Economic Development and
Cultural Affairs

For questions, please contact Kerry Adams Hapner, Director of Cultural Affairs, City Manager's Office of Economic Development and Cultural Affairs, at kerry.adams-hapner@sanjoseca.gov or at (408) 793-4333.

ATTACHMENTS:

Attachment A - Sculpture Renderings and Site Map

Attachment B - Donation Agreement with sub-agreements as exhibits

Attachment A

This rendering represents the most current design iteration available at this time of the proposed Seeds of Peace Monument at Arena Green West. The concept design for the bronze sculpture by artist Mario Chido has been approved by the City's Public Art Committee. The surrounding site improvements will be finalized through plan review in coordination with the Office of Cultural Affairs, Department of Public Works, and Parks, Recreation, and Neighborhood Services.



Front of Proposed *Seeds of Peace Monument*



Back of Proposed Seeds of Peace Monument



This image shows the area to be permanently impacted by the installation of the artwork and associated site improvements at Arena Green West. The area is approximately 20,637.654 square feet.



**MONUMENT DONATION AGREEMENT BY AND BETWEEN CITY OF SAN JOSE
AND DIANE M. BRANDENBURG, TRUSTEE OF THE DIANE BRANDENBURG
SURVIVOR'S TRUST UAD SEPTEMBER 19, 1993**

This Monument Donation Agreement ("Agreement") is by and between the City of San José, a California municipal corporation ("City"), and Diane M. Brandenburg, Trustee of the Diane Brandenburg Survivor's Trust UAD September 19, 1993 ("Donor"), as of the date of full execution by City ("Effective Date").

RECITALS

WHEREAS, Donor desires to donate, as a tribute to honor peace, a bronze sculpture entitled "Seeds of Peace" ("Peace Monument" and "Artwork") to the City of San José, by artist Mario Chiodo, a sole proprietor, ("Artist"), together with an identification plaque or other donor-recognition treatment approved by the City; and

WHEREAS, City desires to accept Donor's contribution of the Peace Monument, associated site improvements, and the City Costs (collectively, the "Donation") pursuant to City's Council Policy 1-17 "Donation, Sponsorship and Fundraising Policy" ("Donation Policy") and City may install the Peace Monument pursuant to City Council Policy 9-14 "Monument Policy" ("Monument Policy"); and

WHEREAS, the Parties desire to install the Peace Monument at City's Guadalupe River Park ("Park") in the Park's Arena Green West location ("Site"), as depicted in **Exhibit A**, and the Park is subject to the 2005 Guadalupe River Park Master Plan ("Master Plan"); and

WHEREAS, Donor proposes to hire and pay for the services of one or more contractors to perform the Donor's Services ("Services"), as defined in **Exhibit B**, and agrees to cover all the costs of improvements necessary to prepare the approved Site to receive the Artwork ("Site Improvements"); and

WHEREAS, Donor may arrange fundraising, receipt of charitable contributions, and certain payment administration functions through a separate fiscal sponsorship arrangement, but Donor shall be responsible to City only for the obligations expressly set forth in this Agreement; and

WHEREAS, Donor agrees to fund, in advance, the City's staff costs set forth in **Exhibit F** (collectively "Staff Costs"); and

WHEREAS, upon completion of the Site Improvements and installation of the Artwork, Donor desires to donate the Artwork to the City's Public Art Collection; and

WHEREAS, Donor further agrees to fund a maintenance endowment in the amount of Three Hundred Thousand Dollars (\$300,000), intended to provide for annual

maintenance, conservation, repair, and catastrophic or significant damage to the Peace Monument and related site improvements for a period of approximately twenty (20) years (“Maintenance Costs”) to be held by City in a Gift Trust Fund and administered by the Office of Economic Development and Cultural Affairs’ Public Art Program; and after that twenty (20) year period City will determine ongoing conservation funding subject to appropriation and City policy; and

WHEREAS, City’s Monument Policy establishes criteria and guidelines for the consideration and installation of Monuments outdoors in parks or plazas deemed by the City to be appropriate to serve as the site for a Monument; and

WHEREAS, on August 20, 2025, City’s Parks & Recreation Commission received an Informational Report on the proposed Monument Donation; and

WHEREAS, on June 3, 2025, City’s Public Art Committee reviewed and approved artist Mario Chiodo's Concept & Design Proposal for the Peace Monument at Arena Green and recommend to the Arts Commission to receive the artwork as a donation; and

WHEREAS, on September 15, 2025, City’s Art Commission reviewed and approved the proposed Peace Monument, an artwork by artist Mario Chiodo, from individual donor Diane Brandenburg to be sited at Arena Green West, with a potential minor change to the animal representing Antarctica, and recommended to City Council that the City Manager negotiate an agreement to receive the artwork as a donation according to the City Council-approved Donation Policy;

WHEREAS, on October 7, 2025, City Council approved the recommendation to Authorize the City Manager, or her designee, to negotiate a donation agreement to receive the Peace Monument, an artwork by artist Mario Chiodo from donor Diane Brandenburg, to be sited at Arena Green West in accordance with the City Council approved Donation and Monument Policies;

NOW, THEREFORE, the parties agree as follows:

AGREEMENT DOCUMENTS. The documents forming the entire Agreement between City and Donor shall consist of this Agreement including:

- EXHIBIT A - Monument Location and Artwork Proposal
- EXHIBIT B - Donor’s Services
- EXHIBIT C - Insurance Requirements
- EXHIBIT D - (Intentionally Omitted)
- EXHIBIT E - Schedule of Performance
- EXHIBIT F - City Staff Costs
- EXHIBIT G - Donor’s Phased Payments

- EXHIBIT H - Artist Waiver of Proprietary Rights and Warranties for Artwork Placed on City Property (For Reference Only)
- EXHIBIT I - (Intentionally Omitted)
- EXHIBIT J - Right of Entry (For Reference Only)

In the event any discrepancies or inconsistencies between the provisions of this Agreement and any of the above-referenced documents arise, the provisions of this Agreement will prevail. The provisions in the Exhibits shall prevail over conflicting terms in any Attachments to the Exhibits. Donor and City hereby acknowledge that they have drafted and negotiated the Agreement jointly and that the Agreement will be construed neither against nor in favor of either, but rather in accordance with its fair meaning.

Exhibits H and J and all attachments thereto are included for reference only. They do not impose obligations on Donor unless and until Donor executes the applicable separate agreement or expressly agrees in writing to be bound by a specific provision. Execution of a separate agreement substantially in the form attached as Exhibit H or such other forms reasonably acceptable to City and the applicable third party, may be conditions to issuance of the applicable notice to proceed; provided, however, that Donor's obligation is limited to using commercially reasonable efforts to cause such agreements to be executed. Failure of Artist to execute the attached form, despite Donor's commercially reasonable efforts, shall not by itself constitute a default by Donor.

This Agreement and the Exhibits set forth above, contain all of the agreements, representations, and understandings of the Parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written. Any other terms or conditions included in any agreements, quotes, invoices, acknowledgments, bills of lading, or other forms utilized or exchanged by the Parties shall not be incorporated in this Agreement or be binding upon the Parties unless the Parties expressly agree in writing or unless otherwise provided for in this Agreement.

SECTION 1. SCOPE OF SERVICES. Donor shall perform those services specified in in the attached **Exhibit B**, entitled "Donor's Services."

SECTION 2. SCHEDULE OF PERFORMANCE. Donor shall use commercially reasonable efforts to perform Donor's Services according to the schedule set out in **Exhibit E**, entitled "Schedule of Performance."

SECTION 3. DONATION VALUE

A. Monument Value. Donor estimates the value of the Peace Monument artwork (bronze sculpture) to be approximately Two Million Dollars (\$2,000,000).

B. City Costs. Donor shall fund City Costs only as expressly set forth in this Agreement, **Exhibit F**, and **Exhibit G**.

- i. **Staff Costs.** Upon the Effective Date, Donor will deposit an initial payment representing the City's Staff Costs. Staff Costs include all City personnel costs associated with the Peace Monument project, as further detailed in **Exhibit F**, which sets forth the full terms regarding payment installments, reporting, drawdown, high-end limits, and work stoppage.
- ii. **Maintenance Costs.** As a condition to Acceptance, Donor agrees to transfer to City a Maintenance Endowment in the amount of three hundred thousand dollars (\$300,000) to cover the costs of long-term care, preservation, and conservation activities ("Maintenance Endowment"). When the Maintenance Endowment is exhausted, City agrees to fund ongoing maintenance of the Peace Monument, subject to appropriation of funds. The Maintenance Endowment shall be held by the City in a Gift Trust Fund and administered by the Department of Economic Development and Cultural Affairs, and shall be subject to the limitations of a Gift Trust Fund as described in San Jose Municipal Code Section 4.80.700. Donor's obligation under this Section is satisfied once the agreed amount has been funded into the agreed vehicle.

C. Total Donation Value. Based on the current approved project budget, the total estimated value of the Donation, including the Peace Monument Artwork, Site Improvements, Staff Costs, and maintenance endowment, is approximately Three Million Five Hundred Thousand Dollars (\$3,500,000), exclusive of the value of City parkland made available for the project.

D. Approved Budget; Fiscal Sponsor Fees. Any fiscal sponsorship administrative fee or other fundraising transaction cost shall be borne out of the approved project budget and shall not increase Donor's payment obligations to City.

E. Satisfaction of Payment Obligations. City acknowledges that Donor may satisfy payment obligations under this Agreement directly or through a fiscal sponsor or affiliated entity designated by Donor, and any payment made to City on Donor's behalf by such entity shall be deemed payment by Donor, solely for purposes of satisfying Donor's payment obligations under this Agreement, to the extent received by City.

SECTION 4. MONUMENT LOCATION. The Peace Monument will be installed at City's Guadalupe River Park ("Park") in the Park's Arena Green West location, as depicted in **Exhibit A** entitled "Monument Location."

SECTION 5. TERM AND TERMINATION

A. Term. This Agreement shall commence on the Effective Date and shall continue through sixty (60) days after City's issuance of the Acceptance Notice and Donor's

satisfaction of the payment obligations expressly required as conditions to Acceptance, unless earlier terminated in accordance with this **Section 5**.

B. Termination.

- i. Termination Without Cause.** Prior to City's issuance of the Notice to Proceed with Site Improvements, and Installation, either Party may terminate this Agreement upon thirty (30) days written notice to the other Party.
- ii. Termination With Cause.** If either Party fails to perform any material obligation expressly imposed on it under this Agreement, the non-breaching Party may terminate this Agreement upon fifteen (15) days' written notice specifying the breach and providing an opportunity to cure. If the specified breach is incapable of cure within fifteen (15) days, the breaching Party shall commence cure within that period and diligently proceed to completion. For avoidance of doubt, Donor's material obligations in this Agreement include, but are not limited to, Donor's funding obligations, contractor risk allocation, donor waivers related to Artist rights, and execution of and compliance with **Exhibits B, E, F, and G**. City's material obligations in this Agreement include, but are not limited to, providing access to the property subject to **Exhibit J**.
- iii. Effect of Termination; Refund of Deposits.** Upon completion or termination of this Agreement, City shall retain only Staff Costs actually incurred for work performed and shall promptly return all unused deposited amounts.
- iv. Restoration.** In the event this Agreement is terminated before Acceptance, Donor shall, at Donor's sole cost and subject to a City-approved restoration plan, restore only those portions of the Site altered by Donor's work as nearly as reasonably practicable to their condition immediately before such work began. Donor shall have no obligation to restore conditions altered by City or third parties, or to perform restoration where no physical site disturbance has occurred.

SECTION 6. CITY'S RESPONSIBILITIES.

A. Site Information. City shall be responsible for providing Donor, at no cost to Donor, copies of existing designs, drawings, reports, and other relevant existing data needed by Donor.

B. Supervision. City is under no obligation to supervise the Donor's performance of services which are described under this Agreement.

SECTION 7. INDEPENDENT CONTRACTOR.

DIANE BRANDENBURG AS INDEPENDENT CONTRACTOR. It is understood and agreed that Donor's relationship with City is strictly and solely that of an independent contractor, and not as an agent or an employee of City. Donor shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Donor hereby expressly waives any claim Donor may have to any such rights. Donor further agrees to acknowledge and accept sole responsibility for determining the method and means by which Donor will fulfill Donor's obligations under this Agreement. Nothing contained in this Agreement shall be construed to place City and Donor in the relationship of partners. Donor acknowledges and agrees that Donor shall not hold her out as an authorized agent of City with power to bind in any manner.

SECTION 8. ASSIGNABILITY.

A. Assignability of Contract. Donor may, without further City consent, direct a fiscal sponsor, affiliated entity, artist, fabricator, installer, or other contractor to receive contributions, disburse funds, or perform administrative, fabrication, installation, or maintenance-related services in furtherance of this Agreement, provided that Donor remains responsible for performance of Donor's obligations expressly set forth in this Agreement. Any assignment of Donor's substantive rights under this Agreement, other than the foregoing payment and administration functions, shall require City's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

B. City's Right to Assign Contract. City may assign this Agreement only to a successor governmental entity or City department with authority over the Site and the Artwork, provided such assignment does not enlarge Donor's obligations under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of City.

SECTION 9. INDEMNIFICATION BY DONOR.

A. Indemnification. Donor shall defend, indemnify, and hold harmless City and its officers, agents, and employees from and against third-party claims, costs, and damages, but only to the extent arising out of the negligent or willful acts or omissions of Donor or Donor's contractors in performing work under this Agreement. Donor shall have no obligation to indemnify City for City's negligence, willful misconduct, or for conditions, operations, maintenance, relocation, disposal, or use of the Artwork after Acceptance except to the extent caused by Donor's breach of an express surviving obligation under this Agreement.

B. Contractor Risk Allocation. Donor shall require each contractor performing on-site work to maintain customary indemnity, insurance, and payment-bond obligations appropriate to that contractor's scope of work, and to name City as an additional insured as required by **Section 11** "Surety Requirements" and **Exhibit J-3**.

SECTION 10. INSURANCE REQUIREMENTS. Donor shall not be required to obtain insurance or bonds in connection with the donation of the Artwork. Any contractors, subcontractors, or other third parties engaged by Donor to perform work on City property shall be required to enter into a separate Right of Entry agreement with the City prior to commencing any work, attached in **Exhibit J-3** for reference only. Donor herself need not procure duplicative construction insurance except to the extent Donor is directly performing work covered by this Agreement. Approval of insurance by City shall not relieve any insured party of liability hereunder.

SECTION 11. SURETY REQUIREMENTS.

A. Admitted Surety. Without limiting the generality of the provisions of this Agreement, the term “Admitted Surety” as used in this Section shall have the same meaning as set forth in the Standard Specifications. Each of the bonds required under this Section shall be issued by an Admitted Surety.

B. Payment Bond. City shall be furnished with a payment bond, and any other bond required by law or reasonably required by City, from the prime contractor responsible for the applicable site improvements or other bonded work. Donor shall not be required to furnish a personal bond separate from the bond furnished by the contractor performing the bonded work. To be approved, any required bond must comply with the following provisions:

- i. The bond shall provide that if Donor or its subcontractors fail to pay any of the persons named in Section 9100 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to the work or labor contracted to be done and performed by any claimant, then the surety or sureties will pay for same, in an amount not exceeding the amount of the bond, and also, in case suit is brought upon the bond, a reasonable attorney’s fee to be fixed by the court.
- ii. The bond must be issued by an Admitted Surety and shall, by its term, inure to the benefit of any of the persons named in Section 9100 of the California Civil Code, to give a right of action to such persons or Donor’s assigns in any suit brought upon the bond, including the right of action to recover on the bond, in any suit brought to foreclose liens provided for in Title 15, Chapter 7 of the California Civil Code or in a separate suit brought on this bond.
- iii. The bond shall otherwise comply with all provisions of Title 15, Chapter 5 of the California Civil Code.

SECTION 12. INTENTIONALLY OMITTED.

SECTION 13. NOTICES. Submittals, requests, notices and reports (collectively “Notices”) required under this Agreement shall be delivered personally or through the

mail, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a party. Notices may also be sent by mail or email to the addresses set forth below.

For the City: City of San José
Office of Cultural Affairs - Public Art Program
Attn: Cynthia Cao
200 E. Santa Clara Street, 12th Floor
San José, CA 95113
cynthia.cao@sanjoseca.gov

For the Donor: Diane M. Brandenburg, Trustee of the Diane Brandenburg
Survivor's Trust UAD September 19, 1993
c/o William B. Baron
MANAGING PARTNER
Brandenburg Properties
1122 Willow Street, Suite 200
San Jose, CA 95125
408-282-4101 Direct
bill@bsm-group.com

Notices will be deemed effective on the date personally delivered, emailed or sent by courier service. Notices which are mailed will be deemed effective three (3) days after deposit in the mail.

Donor agrees to provide City with Donor's current mailing address and email address in the event Donor's address or email address, as specified above, should change. If Donor fails to provide City with timely updates on changes to Donor's contact information, Donor shall be considered to have waived Donor's right to notice under this Agreement.

SECTION 14. DONOR WARRANTIES AND REPRESENTATIONS

The Donor warrants that:

A. Prior to transfer of title of the Peace Monument to City, and to Donor's knowledge and based on written representations obtained from Artist and applicable contractors, the physical Peace Monument and the Artwork Design shall be conveyed free of liens and Donor shall have obtained the rights necessary to donate the physical Artwork to City subject to the licenses and copyrights expressly reserved to Artist in this Agreement.

B. Donor shall cause Artist to grant City the licenses, consents, and waivers required by this Agreement and Exhibit H. Except as expressly provided herein, Donor does not independently represent that Donor owns the copyrights in the Artwork or Artist's Submittals.

C. To Donor's knowledge and based on written representations obtained from Artist, the Peace Monument commissioned by Donor under this Agreement, whether created by Artist alone or in collaboration with others, shall be wholly original and shall not knowingly infringe the rights of third parties.

D. Donor has the full power to enter into and perform this Agreement and Donor's rights and responsibilities under this Agreement shall be binding upon Donor's successor trustees.

E. All services performed hereunder by or through Donor shall be performed in accordance with City's Standard Specifications to the extent applicable to the scope of work being performed.

F. Donor shall cause the Peace Monument and related work to be delivered, upon Acceptance, free and clear of mechanics' liens and similar encumbrances arising from Donor's contractors, subject to any statutory lien-release procedures required by law.

G. These representations and warranties shall survive the termination or other extinction of this Agreement.

H. To Donor's knowledge and based on written representations obtained from Artist, the design of the Peace Monument is an edition of one, and Donor shall not knowingly authorize another work of the same or substantially similar image, design, dimensions, and materials as the Peace Monument.

I. Donor's funding obligations to City are limited to the payments, deposits, and other amounts expressly set forth in this Agreement, Exhibit F, Exhibit G, including obtaining and paying for permits, traffic control plans, insurance, and other approvals required for Donor's work. Donor does not make a personal guaranty of any third party's obligations, and no fundraising shortfall, fiscal sponsor fee, or cost overrun shall increase Donor's obligations to City absent a written amendment executed by Donor, with the exception of any cost overrun explicitly described in this Agreement or any Exhibits.

SECTION 15. INTELLECTUAL PROPERTY RIGHTS AND LICENSE, REPRODUCTION AND PUBLICITY RIGHTS.

A. Display/Disposal. Donor grants City the following exclusive rights:

- i.** City shall have the right to move, remove, relocate or dispose of the Peace Monument as specified below in **Section 20**.

B. Reproduction And Distribution.

- i. Artist retains all copyrights in accordance with **Exhibit H**, and **Exhibit H** shall govern City's Reproduction and Distribution Rights.
- ii. Public Records Requests. Any documents provided by Donor to City are public records and City may authorize third parties to review and reproduce such documents pursuant to public records laws and policies, including the San José Sunshine policies and California Public Records Act.
- iii. City may identify Donor and Ms. Brandenburg factually as the donors of the Artwork in accordance with City policy; however, any use of their names, logo, likenesses, or biographical materials in broader promotional materials shall require Donor's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

SECTION 16. [INTENTIONALLY OMITTED]

SECTION 17. DONOR'S BOOKS AND RECORDS.

A. Maintenance Of Records. Donor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements related to the Peace Monument Donation and charged to City directly by Donor for a minimum period of three (3) years, or for any longer period required by law, from the date of the Completion Notice pursuant to this Agreement. Donor shall maintain all documents and records which demonstrate Donor's performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement. Notwithstanding anything to the contrary in this Agreement, City's audit, inspection, and record-production rights shall be limited to records directly relating to the Peace Monument project and the Donor's performance of obligations expressly undertaken under this Agreement. Donor shall not be required to disclose, produce, or permit inspection of the trust instrument, any amendments thereto, the identity of any beneficiary or contingent beneficiary, any inventory or valuation of trust assets not dedicated to the project, any trust accounting, tax return, distribution information, or any other non-project financial, fiduciary, or administrative records of the trust, except to the limited extent required by applicable law or reasonably necessary to confirm Donor's authority to enter into this Agreement and satisfaction of Donor's express payment obligations hereunder.

B. Audit. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Donor's address indicated for receipt of notices in this Agreement.

C. Custody Of Records. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Donor's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Donor, Donor's representatives, or Donor's successors-in-interest.

SECTION 18. DONOR WAIVERS AND ARTIST'S RIGHTS TO ARTWORK DESIGN

A. Donor shall cause Artist to execute the separate artist waiver attached as **Exhibit H** before City issues the Notice to Proceed with Site Improvements, and Installation. City's rights with respect to Artist's moral rights, copyrights, and publicity rights shall arise from City's separate agreement with Artist and not from any waiver by Donor of rights belonging exclusively to Artist.

B. Donor is not the author of the Artwork. Except for rights Donor may hold solely as owner of the physical Artwork before Acceptance, nothing in this Agreement shall be construed as requiring Donor to waive rights that belong exclusively to Artist under federal or state moral rights laws.

C. Nothing in this Agreement requires Donor to waive claims against City for breach of this Agreement or for unauthorized use of Donor's name, logo, likeness, or confidential information.

SECTION 19. REPUTATION AND CREDIT.

A. Commitment by City. City agrees that, unless Artist or Donor requests otherwise in writing, formal references to the Peace Monument and reproductions of the Peace Monument will credit the Artwork to Artist in accordance with City policy.

B. Donor's Commitment. Donor agrees that formal references to the Peace Monument made or authorized by Donor shall include the credit "Public Art Collection of the City of San José" or other language agreed to by the Parties.

C. Donor Recognition; Third-Party Naming. City agrees to acknowledge Donor's contribution in connection with display of the Artwork and Donation in a manner consistent with City policy and reasonably acceptable to Donor. No third party, including any fiscal sponsor or community partner, shall be granted permanent naming, signage, or recognition rights in connection with the Artwork or Site under this Agreement except as separately approved in writing by City and Donor.

SECTION 20. FUTURE MODIFICATION OR RELOCATION.

A. City has the right to remove the Peace Monument from the Monument Location at any time. In addition, in the event that any element of the Peace Monument constitutes a public safety hazard, City has the right to remove the element posing the public safety hazard.

B. Except to the extent permitted by subsection A above, City agrees to provide Donor and Artist with prior written notice and a reasonable opportunity to consult before any intentional and material modification, relocation, or removal of the Peace Monument, except where immediate action is reasonably required for public safety or to prevent significant damage.

C. City shall have the right to donate, sell or dispose of the Peace Monument at any time, including in the event of deaccession under City's applicable public art policies governing deaccession, including the Public Art Master Plan, as may be amended from time to time. Without limiting these City's rights, before exercising this ability, City, by written notice to Donor at Donor's last known address, agrees to attempt to provide Donor or Artist the opportunity to purchase the Peace Monument for the greater of the Monument Value or the amount of any offer which City has received for the purchase of the Peace Monument, plus all costs associated with the removal of the Peace Monument from the Monument Location, clean-up of the Monument Location and delivery to Donor or Artist. Donor shall have thirty (30) days from the date of City's notice to exercise the option to purchase the Peace Monument. Donor shall not be entitled for any compensation in the event Donor does not receive such notice.

D. Maintenance endowment funds established pursuant to Section 3(B)(ii), whether administered by City or any successor administrator, shall be used solely for maintenance, conservation, repair, preservation, and deaccession purposes for the Peace Monument and associated site improvements.

E. Without limitation of City's rights under this Agreement, City shall use good-faith efforts to consult with Donor and Artist before intentionally moving, relocating, or substantially modifying the Peace Monument. Nothing in this Section limits City's police-power or emergency-safety authority.

F. Except as expressly provided in this Agreement, City's exercise of its rights under this Section shall not give rise to damages claims by Donor or Artist.

G. If City moves the Peace Monument from its originally installed location without Donor's or Artist's oversight, Donor and Artist shall not be held responsible for the structural integrity, safety, or code compliance of the Peace Monument to the extent City's action impaired such integrity, safety, or compliance.

H. Donor's and Artist's consultation rights under this Section cease with Artist's death and do not extend to Artist's heirs, successors, or assigns.

SECTION 21. DEFECTS IN MATERIAL, WORKMANSHIP AND INHERENT VICE.

A. Donor shall cause Artist and applicable contractors to provide warranties for defects in materials, workmanship, and inherent vice for a period of three (3) years from formal Acceptance, which warranties shall be assignable to and enforceable directly by City as provided in Section 21.D. Donor's sole direct obligation under this Section is to obtain, assign, and reasonably cooperate in enforcing such warranties. Donor shall have no independent duty after Acceptance to repair, replace, or expend its own funds except to the extent a defect is attributable to Donor's own uncured breach of this Agreement.

B. No Threat. To Donor's knowledge and based on written representations obtained from Artist and applicable contractors, the Peace Monument shall not constitute a threat to the safety of persons or property when used in the manner for which it is designed. Donor shall reasonably cooperate with City in facilitating adjustments necessary to eliminate hazards that become apparent after Acceptance to the extent such hazards arise from pre-Acceptance design, fabrication, or installation defects.

C. Survival. These representations and warranties shall survive termination or other extinction of this Agreement only to the extent expressly stated herein.

D. Assignability of Contractor Warranties. Donor shall cause all contracts with contractors related to the Donation to require that all warranties, including warranties for site improvements, foundation, anchoring, and installation, are fully assignable to and enforceable by City. Upon acceptance of the work performed by contractors, Donor shall assign such warranties to City, and such warranties shall be directly enforceable by City against the applicable contractor(s).

SECTION 22. CITY'S WARRANTIES. City warrants and agrees that:

A. City has the authority to accept the donation of the Artwork and to enter into this Agreement.

B. City will review Donor submissions and provide required access and coordination in a reasonably timely manner. Upon Acceptance, City shall bear the ordinary risk of loss, maintenance, operation, security, and control of the Artwork and Site Improvements except to the extent of Donor's express surviving obligations under this Agreement. The Parties acknowledge that certain maintenance services may be administered pursuant to separate agreement; however, the failure, expiration, exhaustion, default, or termination of such agreement shall not revive or expand any maintenance obligation of Donor once Donor has satisfied Section 3(B)(ii).

SECTION 23. GENERAL PROVISIONS

A. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state court of the County of Santa Clara or if federal jurisdiction is appropriate, exclusively in a United States District Court for the Northern District of California, San José, California.

B. Entire Agreement. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understandings, oral or written.

C. Amendment. This Agreement may be amended only by a written instrument executed by both Parties.

D. Severability. If any provision of this Agreement is found to be invalid or unenforceable, the remainder shall continue in full force and effect.

E. Execution In Counterparts. This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

F. Use Of Electronic Signatures. Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City.

SECTION 24. NO RELIGIOUS OR POLITICAL ADVOCACY. Donor agrees that no work or services funded by this Agreement shall inhibit or promote religion and furthermore that the work or services funded by this Agreement must not be used to convey a religious message. Any portion of the compensation used in contradiction to the provisions of this Section shall be deemed a disallowed cost.

SECTION 25. TAX IDENTIFICATION NUMBER. No later than the date of Donor's execution of this Agreement, Donor shall provide City with Donor's Tax Identification Number and any proof of Donor's Tax Identification Number as requested by City.

SECTION 26. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY.

A. Donor agrees that, in the performance of this Agreement, Donor shall perform its

obligations under the Agreement in conformance with City Council Policy 4-6, Environmentally Preferable Procurement Policy. A description for environmentally preferable procurement and the Policy can be found on the City's website at the following link:

<https://www.sanjoseca.gov/your-government/departments-offices/environmental-services/business-school-resources/environmentally-preferable-procurement>.

B. Environmental procurement policies and activities related to the completion of work will include wherever practicable, but are not limited to:

- Use of recycled and/or recyclable products in daily operations (i.e. 30, 50, 100% PCW paper, chlorine process free; triclosan free hand cleaner, etc.)
- Use of Energy Star Compliant equipment.
- Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.)
- Internal waste reduction and reuse protocol(s).
- Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

SECTION 27. GIFTS. Donor is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code. Donor agrees not to offer any City officer or designated employee any gift prohibited by said Chapter. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Agreement by Donor. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for such breach as provided in **Section 5** of this Agreement.

SECTION 28. ARTIST WAIVERS. Donor shall cause Artist to execute the separate artist waiver attached as **Exhibit H** before City issues the Notice to Proceed with Site Improvements, and Installation. **Exhibit H**, and not this Section, shall govern the substance of Artist's waivers and warranties.

SECTION 29. TRANSFER OF OWNERSHIP. Title to the physical Artwork and Site Improvements shall transfer to City only upon City's issuance of the Acceptance Notice and Donor's satisfaction of the deposits and funding obligations expressly required as conditions to Acceptance. .

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

“CITY”

Emily Lam

{{__signer3}}

Director of Administration, Policy &
Intergovernmental Relations

“DONOR”

Diane M. Brandenburg, Trustee of the
Diane Brandenburg Survivor’s Trust
UAD September 19, 1993

By: _____

Name: Diane M. Brandenburg

Title: Trustee

Approval as to Form (City Attorney):

Form Approved by the Office of the
City Attorney.

(Maximum Total Compensation, as
amended, is \$100,000 or less, and the
provisions of the form are not altered.)

Approved as to Form:

Annette Brennan
Deputy City Attorney

{{__signer2}}

EXHIBIT A

Monument Location and Artwork Proposal



Proposed Area, approximately 20,638 sq ft, to be Permanently Impacted by the Artwork Installation at Arena Green West

Land valuation: \$178,600

Rendering of Proposed Peace Monument at Arena Green West



This rendering represents the most current design iteration available at this time of the proposed Seeds of Peace Monument at Arena Green West. The concept design for the bronze sculpture by artist Mario Chido has been approved by the City's Public Art Committee. The surrounding site improvements will be finalized through plan review in coordination with the City's Office of Cultural Affairs, Department of Public Works, and Parks, Recreation, and Neighborhood Services.

**Front of Proposed *Seeds of Peace Monument*
Concept Design Drawing by Mario Chiodo**



**Back of Proposed *Seeds of Peace Monument*
Concept Design Drawing by Mario Chiodo**



EXHIBIT B DONOR'S SERVICES

Donor shall be solely responsible for retaining and managing all consultants, contractors, fabricators, and suppliers required for the fabrication and installation of the Peace Monument and associated site improvements. City's review and approval at various stages shall be limited to verifying compliance with City standards and policies. City's approval or inspection shall not be deemed acceptance of any responsibility or liability for the acts or omissions of Donor, Artist, or their contractors.". Educational, cultural, community-programming, and broader activation activities are outside the scope of this Agreement.

City's role is limited to reviews for compliance with City standards, inspections, and approvals as set forth in this Exhibit. City's approvals, inspections, or acceptance of documents shall not constitute assumption of liability, management responsibility, or contracting authority for Donor's Contractors. Title and ownership of the Peace Monument shall transfer to City only upon City's issuance of the Acceptance Notice under Part 13.

Compliance may be reviewed by various City boards, Commissions, or Departments responsible for review and approval of a particular aspect of the Project including the Public Art Committee, Parks Recreation and Neighborhood Services, the Department of Public Works, or another City departments or programs with jurisdiction over the relevant portion of the Project ("Reviewing Body").

Part 1. [SECTION INTENTIONALLY OMITTED]

Part 2. Concept Design. The Parties acknowledge that the Concept Design has been approved by the Public Art Committee prior to execution of this Agreement. Accordingly, the Design Review stages described below shall be limited to necessary technical clarifications and any material changes require City approval as set forth herein. "Concept Design" means the conceptual artistic proposal for the Peace Monument, as presented to and approved by the City's reviewing bodies prior to execution of this Agreement, including the overall artistic composition, subject matter, theme, approximate scale and massing, general configuration, and principal visual elements reflected in the concept-level renderings, presentation materials, and narrative description submitted in connection with such approvals. Concept Design is limited to the approved concept-level design intent of the Peace Monument and does not include detailed engineering, structural calculations, fabrication methods, material grades, site-improvement details, installation means and methods, maintenance specifications, Construction Documents, or the Design Development Proposal, all of which are to be developed and reviewed separately under this Agreement.

Part 3. Concept Design Review.

CONCEPT DESIGN: STATUS — APPROVED. The references below to presentation and Reviewing Body review shall apply only to (a) any material changes proposed to the approved Concept Design, and (b) any residual procedural steps required by City, as determined by the Program Officer.

Part 4. [SECTION INTENTIONALLY OMITTED]

Part 5. [SECTION INTENTIONALLY OMITTED]

Part 6. Design Development Proposal.

A. Upon execution of the Agreement, Donor shall prepare a design development proposal for the Peace Monument (“Design Development Proposal”) documenting the already-approved and fully resolved artistic design of the Peace Monument and setting forth the remaining technical, engineering, fabrication-completion, delivery, installation, and site-improvement details required for City review and project delivery. The Design Development Proposal shall show the details of the Peace Monument and all site improvements associated with the Monument. For clarity, the Design Development Proposal is not intended to reopen or materially revise the Concept Design, except to the extent a material change is required by public safety, code compliance, engineering necessity, site conditions, or other applicable law or City requirement. The Design Development Proposal will include indication of final form, scale, and materials, together with information on structural considerations, surface integrity, permanence, and protection against theft and vandalism (collectively, the “Artwork Design Specifications”).

B. Donor shall prepare a detailed budget (the “Artwork Budget”) summarizing all costs related to completion of fabrication, transportation, delivery, installation, and site improvements for the Artwork, including, without limitation: itemized costs for materials including applicable sales tax; remaining off-site fabrication, casting, assembly, and finishing costs; Artist’s time for coordination, supervision, and installation; itemized general contractor and subcontractor costs; permits and other fees; insurance; consultants’ fees; communications; Artist travel; transportation of the Artwork to the Site; and itemized installation costs and site-improvement costs associated with demolition, landscape and hardscape improvements, electrical, lighting, drainage, and related work.

C. The Design Development Proposal shall include a detailed written description of the remaining fabrication-completion process, transportation, delivery, and installation method for the Peace Monument, together with the method for constructing and completing the site improvements (the “Installation Specifications”).

D. The Design Development Proposal shall include a detailed schedule for completion of remaining fabrication, casting, assembly, finishing, engineering, site work, permitting, delivery, and installation of the Peace Monument and associated site improvements (the “Installation Schedule”).

E. The Design Development Proposal shall include a description of the operational, maintenance, and conservation requirements for the Peace Monument and associated site improvements (the "Maintenance Specifications").

Part 7. Design Development Proposal Review.

A. Donor shall provide presentation-quality visual and technical materials for review of the Design Development Proposal by the Program Officer and any City staff, commission, or reviewing body whose further review is required under City policy or as a condition of prior approvals. The specific materials required shall be reasonably requested by the Program Officer and shall be limited to materials reasonably necessary to evaluate technical compliance, site compatibility, installation logistics, and any proposed material deviation from the approved Concept Design.

B. The Design Development Proposal, consisting of the elements described in Part 6, including the site improvements, shall be submitted to the Program Officer for review and circulation to any City department or reviewing body whose review is required. The Program Officer shall review the Design Development Proposal for consistency with the approved Concept Design and prior City approvals, and may request reasonable modifications to the Design Development Proposal before circulating it further, but such requests shall be limited to matters of engineering, code compliance, public safety, structural integrity, site conditions, maintenance, permitting, constructability, and consistency with the approved Concept Design and prior City approvals.

C. At City's option, Donor shall be available to present the Design Development Proposal, in the form approved by the Program Officer, to the Program Officer, City staff, or any Reviewing Body. Donor shall use commercially reasonable efforts to make Artist available upon request.

D. Any City comments on the Design Development Proposal shall be limited to work outside of the scope of the approved Concept Design.

E. If the Program Officer determines that revisions are required, the Program Officer shall identify them in writing with reasonable specificity, and Donor shall respond in writing and submit a revised Design Development Proposal addressing those identified items. Any further review of a revised Design Development Proposal shall be limited to the revised items and any directly resulting technical or code-related issues.

F. If the Program Officer determines that the Design Development Proposal satisfies the applicable requirements of this Agreement, the Program Officer shall route it to the Reviewing Body for approval.

Part 8. Notice of Design Development Acceptance. If all required Design Development approvals are secured, City shall act reasonably and in good faith in determining whether the project may proceed to the next stage. In light of the prior

approvals already obtained for the Peace Monument and the advanced status of fabrication, City shall not withhold further progress based solely on reconsideration of the approved artistic concept. If City determines that the project may proceed, City shall issue a Notice of Design Development Acceptance confirming approval of the Design Development Proposal for purposes of proceeding with Construction Documents, final engineering, site work, delivery, and installation milestones. If City determines that the project may not proceed due to identified legal, engineering, public safety, permitting, site, or other material compliance issues, City shall provide Donor with written notice specifying those issues with reasonable detail, and the Parties shall confer in good faith regarding cure, revision, schedule adjustment, or, if applicable, the consequences of non-proceeding under Section 5. Upon issuance of the Notice of Design Development Acceptance, Donor may proceed with Construction Documents and may continue completion of remaining off-site fabrication work consistent with this Agreement.

Part 9. Construction Documents.

A. Donor, at City's option, shall be responsible for the preparation of any drawings depicting both the fabrication and installation of the Peace Monument, and site improvements associated with the Monument including but not limited to the plinth and hardscaping, as proposed by the Design Development Proposal (the "Construction Documents"). Donor shall be responsible for obtaining any and all information necessary for preparation of the Construction Documents, including without limitation, any field measurements of the proposed site.

B. Any and all drawings must be certified by a qualified engineer, licensed by the State of California and must conform to all applicable federal, state and local laws and regulations. The Construction Documents for the Artwork and Site Improvements are subject to approval by City's Department of Public Works at 35%, 65%, and 95% of development. The Construction Documents for the Artwork must be designed in accordance with the current California Building codes and City Ordinances and City's standard specifications as described below in subpart E ("City's Standard Specifications"). The Construction Documents and City's Standard Specifications shall collectively be referred to as the "Plans." Once the Construction Documents are approved, City's Program Officer will notify Donor in writing.

C. When seeking approval of the Construction Documents, Donor shall submit the following for City's Department of Public Works:

1. the plans in PDF format measuring 24 inches by 36 inches; and
2. all engineering calculations associated with the submitted Construction Documents in PDF format, preferably 8.5 inches by 11 inches; and
3. the specifications for the Peace Monument in PDF format, including a final budget estimate of the Artwork and Site Improvements; and

4. Site improvements plans, with demolition plans, landscape and hardscape improvements, electrical, lighting, and storm drainage per approved plans.

D. City's approval of the Plans shall not release Donor of the responsibility for the correction of mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved.

E. City's Standard Specifications and Standard Details, dated July 1992, are on file with the City's Department of Public Works, City Facilities Architectural Services Division. Donor shall comply with City's Standard Details to the extent such details are applicable to the Artwork. Sections, 1, 7 and the Technical Provisions of the City's Standard Specifications (Section 10 through and including Section 1501) shall be applicable to this Agreement. References in the Standard Specifications to "Contractor" shall be deemed to mean Donor, including without limitation, Donor's subcontractors. To the extent that the City's Standard Specifications conflict with the provisions set forth in this Agreement, this Agreement shall control.

F. Donor is responsible for all applicable Underwriters Laboratory (UL) approvals as they may apply.

G. Prior to City's issuance of a Notice to Proceed with Site Improvements, and Installation, the Artist shall execute the third-party artist waiver agreement, attached as **EXHIBIT H** for reference. The City shall circulate the waiver for signature, and the Donor shall ensure that the Artist is aware of the agreement and agrees to execute it. No installation shall occur until the City has received the fully executed waiver.

H. Prior to City's issuance of a Notice to Proceed with Site Improvements and Installation, Donor shall transfer to City the Maintenance Endowment described in **Section 3(B)(ii)** of the Monument Donation Agreement by and Between City of San José and Diane M. Brandenburg, Trustee of the Diane Brandenburg Survivor's Trust UAD September 19, 1993.

Part 10. Notice to Proceed with Site Improvements, and Installation.

The Parties acknowledge that off-site sculpting, molding, casting, assembly, and other fabrication-completion work for the Peace Monument may already be underway before issuance of the Notice to Proceed described in this Part 10. Accordingly, the Notice to Proceed under this Part 10 is intended primarily to authorize delivery of the Artwork to the Site, commencement of on-site site improvements, and on-site installation activities, and not to require Donor or Artist to restart or suspend off-site fabrication work that is consistent with the approved Concept Design and this Agreement.

If all approvals required for Construction Documents, site work, delivery, and installation are secured, and Donor is not in material default, City shall not unreasonably withhold, condition, or delay issuance of the Notice to Proceed with Site Improvements, and Installation. The Artist Waiver in **Exhibit H** subject to minor, nonmaterial changes, must be executed, and the Maintenance Endowment funds deposited into City's Gift Trust

Fund, before City shall issue the Notice to Proceed described in this Section 10. If City elects not to proceed after Donor has complied with the applicable requirements of this Agreement, City shall promptly notify Donor in writing, specify the basis for that decision with reasonable detail, and the Parties shall address the consequences of that election under Section 5. If City issues the Notice to Proceed and the Parties anticipate a delay in the mutually agreed schedule through no fault of Donor, the Parties shall identify the revised Schedule of Performance in writing.

Part 11. Site Improvements, and Installation.

A. General.

1. The Parties agree that the Approved Final Proposal shall be filed in the City's Office of Cultural Affairs promptly following approval of the Construction Documents and before commencement of on-site installation work, or at such other time as the Program Officer reasonably directs in writing. "Approved Final Proposal" means the City-approved Construction Documents together with the City-approved Design Development Proposal. In the event of any conflict between the Approved Final Proposal and this Agreement, this Agreement shall control. The location of the Peace Monument is described in **Exhibit A**.

2. Donor shall cause completion of the remaining fabrication, molding, casting, assembly, finishing, storage, transportation, delivery, site improvements, and installation of the Peace Monument consistent with the Approved Final Proposal. The Parties acknowledge that the artistic design of the Peace Monument is already fully resolved and that the remaining work is directed primarily to completion of fabrication, engineering, delivery, site improvements, and installation rather than further artistic development of the Peace Monument. Donor shall be responsible for the storage, transportation, and delivery of the Peace Monument to the Monument Location and for the site improvements and installation of the Peace Monument at the Monument Location consistent with the Approved Final Proposal and the Construction Documents approved by City.

3. Donor shall cause identification for the completed Peace Monument to be installed, which may include Artist's name, year of completion, title of the Artwork, donor recognition, and such other information as determined by City and Donor. No third-party text plaque, naming treatment, or acknowledgment shall be incorporated into the Artwork design or Site without the express written consent of City and Donor.

4. Installation includes all site improvements associated with the monument, including demolition of existing site features, landscape and hardscape improvements, electrical, lighting, and drainage improvements, together with placement of the sculpture, plinth, plaque, and related components, all in accordance with the Approved Final Proposal and approved plans.

B. Deviations from Proposal.

1. The goal of the Parties is a completed Peace Monument that faithfully reflects the approved artistic concept and satisfies the specifications set forth in the Approved Final Proposal. The Parties acknowledge that, because the Peace Monument is in advanced stages of fabrication, remaining changes are expected to arise primarily from fabrication completion, foundry practice, engineering, transportation, installation, code compliance, or site integration. To the extent any specification for the Peace Monument is not expressly identified in the Approved Final Proposal, Donor shall seek City's prior written approval only if the unspecified matter would materially affect the approved artistic concept, structural integrity, public safety, code compliance, site conditions, delivery, installation, or long-term maintenance.

2. Artist may make minor, non-material adjustments arising from the shift to full-scale casting, assembly, finishing, and installation, as Donor deems aesthetically or practically necessary, provided those adjustments do not materially alter the approved Concept Design, the Approved Final Proposal, or the approved Construction Documents. Any change that would require modification of the Construction Documents or would otherwise constitute a Material Deviation under Part 11.C shall require City's prior written approval.

C. Material Deviations. Any Material Deviation from the Approved Final Proposal must be approved by City in writing before Donor proceeds with that deviation. For purposes of this Agreement, a "Material Deviation" means a change that:

- (1) materially alters the approved artistic concept, overall composition, principal visual elements, scale, or appearance of the Peace Monument;
- (2) materially affects structural integrity, public safety, code compliance, engineering assumptions, utility requirements, support requirements, or site footprint;
- (3) materially affects approved site improvements, delivery logistics, or installation methodology;
- (4) materially affects the schedule for delivery or installation; or
- (5) materially affects maintenance, conservation, or operations.

A Material Deviation does not include minor foundry, fabrication, finishing, assembly, or engineering adjustments that do not materially alter the matters listed above

D. Personnel. Donor may secure at Donor's expense, all personnel required to perform Donor's Services. All persons retained by Donor shall possess the requisite licenses and permits necessary.

E. City-Hired Third Party Contractors.

1. City may hire third-party contractors to engage in services related to this Donation. Donor shall not unreasonably impede, hinder or delay any City-hired third-party

contractor in the performance of that contractor's work. Donor shall communicate with any third-party contractor who will be performing work which may depend upon, or connect with the Artwork, and Donor agrees to work in good faith with City to address third-party operations. Except as provided in Subsection 2, below, Donor is not responsible for the services of third party contractors. In the event of conflict between Donor and third-party contractors, City and Donor shall work in good faith to resolve the conflict.

2. If any part of Donor or Donor's subcontractor's work depends upon the work of City-hired third-party contractor, Donor shall, prior to proceeding with such work, promptly report to City in writing any discrepancies or defects in City-hired third-party contractor's 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 Donor's acceptance of such work as suitable.

F. Review of Progress and Reports.

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

2. Meetings with DPW During Construction Phase. During the construction and installation of the Artwork and Site Improvements, the Donor shall participate in weekly coordination meetings with the Department of Public Works (DPW) or its designee(s), either in person or virtually, at times mutually agreed upon. These meetings are intended to review project progress, address site or fabrication issues, and coordinate City inspections and approvals. Donor shall ensure that its authorized representatives, as well as the Artist or Artist's agents when required, attend these meetings.

G. Risk of Loss. Until the Artwork and any associated site improvements are formally accepted by City, any damage to, theft or vandalism to, or acts of God or nature affecting the Artwork or Site shall be the responsibility of Donor, including, but not limited to, any loss occurring during the construction, fabrication, storage, transportation, delivery or installation of the Artwork or associated site improvements

H. Inspection and Transportation of Artwork

1. Inspection Notice. The Parties acknowledge that various elements of the Peace Monument are already being fabricated, cast, assembled, or finished at locations away from the Site, including the Artist's studio and one or more off-site foundries (collectively, the "Off-Site Elements"). The Off-Site Elements shall be identified in the Approved Final Proposal or otherwise reasonably designated by Donor in writing. Donor

shall provide City with reasonable advance written notice when any major Off-Site Element is ready for inspection before transport to the Site (“Inspection Notice”). City shall have the right to inspect major Off-Site Elements for conformity with the Approved Final Proposal, but City’s inspection rights under this Part are for quality-control and conformity purposes only and shall not be used to reopen the previously approved artistic concept.

2. Notice to Proceed. Within fifteen (15) working days after receipt of an Inspection Notice for a major Off-Site Element, City’s Program Officer shall inform Donor in writing either:

(a) that the Off-Site Element has been completed in substantial conformity with this Agreement and may be transported to the Site (“Transportation Notice to Proceed”); or

(b) that the Off-Site Element has identifiable defects, damage, or material nonconformities preventing transport, in which case the notice shall describe those items with reasonable specificity (“Off-Site Defects Notice”).

If an Off-Site Element is fabricated outside the San Francisco Bay Area, City may elect to defer inspection until delivery to the Site. If City fails to issue either a Transportation Notice to Proceed or an Off-Site Defects Notice within the fifteen (15) working-day period, the Transportation Notice to Proceed shall be deemed issued at the conclusion of that period. In the event City issues an Off-Site Defects Notice, Donor shall promptly address the identified defects or nonconformities in a commercially reasonable manner.

3. Delivery. Upon issuance, or deemed issuance, of the Transportation Notice to Proceed, Donor shall deliver the applicable Off-Site Element to the Site. Donor shall coordinate with the Program Officer regarding the time, place, and manner of delivery and installation. City may inspect the Off-Site Element at the time it arrives at the Site to determine whether it was materially damaged in transit or materially deviates from the Off-Site Element previously approved or, if City deferred inspection, whether it materially conforms to this Agreement. Donor shall promptly address any material transit damage or material nonconformity identified by City.

I. Work at the Site.

1. Plans.

i. Donor shall cause all labor and material incorporated in the Artwork and Site Improvements to be furnished in accordance with the requirements and specifications set forth in the Construction Documents approved for the Peace Monument by City and the City’s Standard Specifications (collectively, the “Plans”).

ii. City’s approval of the Plans shall not release Donor 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 and Site Improvements, 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 Donor to address the public safety issues and to present Donor'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 Chief Development Officer.

2. Installation. Donor shall be responsible for installation of Artwork at the Site and all Site Improvements including without limitation, supervising the work of any subcontractors and coordinating the inspection of the installation of the Artwork and Site Improvements with the DPW Director. The parties recognize and agree that the Peace Monument will not be formally accepted by City, unless the DPW Director approves the installation of the Artwork and landscape improvements at the Site.

3. Appearance of Site. Donor shall maintain a neat appearance to the work at the Site. Donor shall be responsible for any clean-up of the Site made necessary by the installation of the Artwork and Site Improvements, 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 and Site Improvements caused by the negligence or willful acts or omissions of Donor or Donor's subcontractors.

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

5. Representatives.

Donor shall designate in writing before starting work, an authorized representative who shall have the authority to represent and act for Donor. 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. Donor's authorized representative shall be present at the site of the work at such times as designated by either the DPW or Chief Development Officer. 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 Donor or Donor's authorized representative are not present on any particular part of the work where it becomes necessary to give direction for safety reasons, the 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 DPW Director will on request of the Donor be given or confirmed by the DPW Director in writing.

Prior to commencement of work on the Artwork and Site Improvements, Donor shall provide to the Program Officer the names and telephone numbers of at least one person in charge of or responsible for the work who can be reached personally in case of emergency 24 hours a day, 7 days a week.

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

Part 12. Notices of Installation and Completion.

A. Notices. Donor shall notify City's Program Officer that the Artwork and Site Improvements have been installed at the Site ("Completion Notice"). Within seven (7) days of City's receipt of the Notice from the Donor, City shall notify Donor in writing that the Artwork and Site Improvements as completed and installed meet the requirements of this Agreement ("Acceptance Notice"), or if the Artwork or Site Improvements do not meet this Agreement's requirements, City shall notify Donor of the defects ("Defects Notice").

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

C. Project Closeout Requirements and Maintenance Instructions. As a condition of City's acceptance of the Peace Monument and Site Improvements, Donor shall supply City with written maintenance instructions for the Artwork prepared by Artist. These instructions shall include information in sufficient detail regarding the care, repair and maintenance of the Artwork. Donor, through its contractors, shall provide complete installation and turnover documentation for site improvements associated with the Artwork, including as-built drawings, manufacturer specifications, warranties, and any available operation or commissioning manuals.

D. Final Documentation. As a condition of City's acceptance of the Artwork, Donor 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 15** of this Agreement.

Part 13. Maintenance.

A. Repairs And Restoration. City shall have the right to determine, after consultation with a professional conservator, when and if repairs and restorations to the Peace Monument are necessary. It is the policy of City to consult with Artist regarding repairs and restoration which are undertaken during Artist's lifetime when that is practicable. In the event that City or third-party responsible for maintenance makes repairs or restoration not approved by Artist, Artist shall have the right, at Artist's sole option, to have Artist's association with Peace Monument severed.

B. Standards Of Repair And Restoration. All repairs and restorations, whether performed by Donor, Artist, City, or by third parties responsible to Donor or City, shall be made in accordance with professionally recognized principles of conservation of artworks, in accordance with the maintenance instructions provided to City by Donor pursuant to **Exhibit B**, and City shall maintain the Artwork in a manner consistent with its public art policies and procedures.

C. Maintenance Costs. As a condition of City's Acceptance of the Peace Monument and Site Improvements, Donor shall cause the maintenance endowment in the amount of Three Hundred Thousand Dollars (\$300,000) to be funded pursuant to Section 3(B)(ii) and the separate maintenance or endowment administration agreement approved by City and Donor. Neither this Part 13 nor any reference exhibit shall obligate Donor to fund maintenance beyond the amounts expressly stated in **Section 3(B)(ii)**.

SAW:AEB
4/23/2026

EXHIBIT C
INTENTIONALLY OMITTED

EXHIBIT D
[INTENTIONALLY OMITTED]

EXHIBIT E SCHEDULE OF PERFORMANCE

1. Commencement of Work. Upon full execution of this Agreement, Donor shall proceed with the remaining work required for completion and delivery of the Peace Monument project in accordance with this Agreement. The Parties acknowledge that the Concept Design approvals identified below have already been completed and that off-site fabrication of the Peace Monument is already substantially advanced. Notwithstanding the foregoing, all engineering, structural, and construction-related documents for the Peace Monument, including but not limited to the bronze sculpture and associated Site Improvements such as the plinth and foundations, shall be subject to review and approval by City prior to fabrication of final structural elements, permitting, and installation described in **Exhibit B**. The remaining work consists primarily of completion of molding, ongoing bronze casting and assembly, engineering, design-development documentation, construction documents, permitting, site work, transportation, delivery, and installation.

Concept Design

Complete all tasks in Parts 1-3 of Exhibit B and submit Concept Design Proposal to Staff for required reviews	COMPLETED PRIOR TO EXECUTION
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Complete all required reviews of Concept Design Proposal including Public Art Committee review (Part 4 of Exhibit B)	6/3/25 PAC approved 9/15/25 Arts Commission approved 10/7/25 City Council approved
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Schematic Design

Complete all tasks in Part 5 of Exhibit B and submit Schematic Design Proposal to staff for required reviews	N/A
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Complete all required reviews of Schematic Design Proposal including Public Art Committee Review (Part 6 of Exhibit B)	N/A
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Design Development

Week of May 25, 2026

Complete all tasks in Part 7 of Exhibit B and submit Design Development Proposal to staff for required reviews	
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Complete all review of Design Development Proposal including Public Art Committee Review (Part 8 of Exhibit B)	Week of May 25, 2026
Construction Documents	
Complete 35% Construction Documents, Calculations, Final Budget, and Fabrication Off-site Elements (Parts 10 - 11 of Exhibit B)	Week of June 8, 2026
Complete 65% Construction Documents, Calculations, Final Budget, and Fabrication Off-site Elements (Parts 10 - 11 of Exhibit B)	Week of July 6, 2026
Complete 95% Construction Documents, Calculations, Final Budget, and Fabrication Off-site Elements (Parts 10 - 11 of Exhibit B)	Week of August 3, 2026
Site Improvements, and Installation	TBD, pursuant to EXHIBIT B
Notice of Installation Completion (Part 12-13 of Exhibit B)	December 2026, exact dates TBD

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 Project Manager 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.

3. Reasonable Extensions All milestone dates and review periods shall be reasonably extended for Force Majeure, City-caused delay, delayed City review or access, permit delay, permit review by third parties including but not necessarily limited to Army Corps of Engineers or local water agencies, or other events outside Donor's reasonable control. If either Donor or City is delayed in the performance of any act required under this Agreement by such circumstances, performance of such act shall be excused for the duration of the delay.

**NOTICE OF AMENDED SCHEDULE OF PERFORMANCE AND TERM
[FOR REFERENCE ONLY]**

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

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

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

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

Concept Design

Complete all tasks in Parts 1-3 of Exhibit B and submit
Concept Design Proposal to Staff for required reviews

Complete all required reviews of Concept Design Proposal
including Public Art Committee review (Part 4 of Exhibit B)

Schematic Design

Complete all tasks in Part 5 of Exhibit B and submit
Schematic Design Proposal to staff for required reviews

Complete all required reviews of Schematic Design
Proposal including Public Art Committee Review (Part 6 of
Exhibit B)

Design Development

Complete all tasks in Part 7 of Exhibit B and submit Design Development Proposal to staff for required reviews

Complete all review of Design Development Proposal including Public Art Committee Review (Part 8 of Exhibit B)

Construction Documents

Complete Construction Documents, Calculations & Final Budget (Parts 10 of Exhibit B)

Site Improvements and Installation (Part 11 of Exhibit B)

Notice of Completion (Part 12 of Exhibit B)

Maintenance Costs. Fully fund a Maintenance Endowment (“Maintenance Endowment”) in the amount of Three Hundred Thousand Dollars (\$300,000) to provide for approximately twenty (20) years of care, which endowment shall be donated to City to be held in a Gift Trust Fund and managed by the Office of Economic Development and Cultural Affairs;

CITY OF SAN JOSE a municipal corporation By _____ Name: Title:
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EXHIBIT F CITY STAFF COSTS

This Exhibit sets forth the City's Staff Costs for the Peace Monument project that applies specifically to City departments funded through cost recovery (e.g., Department of Public Works and Office of Cultural Affairs Public Art) and establishes the framework for payment installments, monthly reporting, cost forecasts, drawdown thresholds, and high-end limits.

Upon the Effective Date, Donor will deposit and record with City's Finance Department an initial payment of One Hundred Fifty Thousand Dollars (\$150,000), representing the initial City Staff Costs. Staff Costs include all costs associated with the design review, fabrication review, and installation of the Peace Monument at the Park, including City staff time managing engineering review, project logistics, permitting, procurement, installation oversight, and inspection. Staff Costs exclude donor-side fundraising costs, fiscal sponsor fees, and the donor's direct design, fabrication, transportation, and installation costs

The total estimated Staff Costs are Two Hundred Twenty Thousand Dollars (\$220,000), with a not-to-exceed amount of Two Hundred Seventy Thousand Dollars (\$270,000) described in **Exhibit G**. City will provide monthly expenditure reports to Donor detailing the use of Staff Costs, together with reasonable forecasts as described below.

Upon submittal of the 95% Construction Documents for review, or when the remaining balance of deposited staff-cost funds reaches \$25,000, whichever occurs first, City will provide Donor with a forecast of remaining Staff Costs required to complete the project. Based on that forecast, Donor shall replenish only the additional Staff Costs reasonably necessary to complete the work, subject to the not-to-exceed amount above unless otherwise approved by Donor in a written amendment. Any remaining funds from the initial payment shall be applied toward the Staff Costs necessary to complete the Project.

To the extent Staff Costs are projected to exceed \$270,000, City and Donor shall confer in good faith regarding scope reductions, schedule adjustments, or other alternatives. Donor shall have no obligation to fund Staff Costs above \$270,000 absent a written amendment signed by Donor. Work incurring additional Staff Costs beyond the approved amount shall not proceed until the Parties execute such an amendment. Good faith conference and negotiations related to Staff Costs shall warrant a Reasonable Extension as described in **Exhibit E**.

Upon completion of the work or termination of this agreement by the City, any portion of Staff Costs deposited by the Donor that exceeds the costs actually incurred for work performed shall be returned to the Donor. Staff Costs for work already performed prior to termination shall be retained by the City.

EXHIBIT G DONOR'S PHASED PAYMENTS

The phased payments set forth in this Exhibit are based on the soft cost estimates provided by the City's Office of Cultural Affairs (Public Art) and the Department of Public Works (DPW) for the Peace Monument project. These payments are intended to reimburse the City for Staff Costs in alignment with the project's Schedule of Performance (**Exhibit E**) and ensure that sufficient funds are available to support City staff work throughout all phases of the project.

Description of Services

Cost

Upon execution of the Agreement, Donor deposits the initial City-cost amount, inclusive of initial staff costs and completes all tasks in Part 1-9 of **Exhibit B**, including City review of design phases through Construction Document review. \$150,000

Upon submittal of the 95% Construction Documents for review, or when the remaining balance of deposited staff-cost funds reaches \$25,000, whichever occurs first, Donor deposits additional staff-cost funds based on the City forecast for installation oversight before on-site work begins, subject to the not-to-exceed amount in **Exhibit F**. Estimated
\$70,000 -
\$120,000

Prior to City's issuance of the Notice to Proceed with Site Improvements, and Installation, Donor shall cause the agreed twenty (20) year maintenance endowment to be funded pursuant to Section 3(B)(ii) of the Primary Agreement. Estimated
\$300,000

Department of Public Works - Soft Cost Estimate (updated: 03/06/26)

Phase 1: Project Feasibility	12	weeks			
Staffing Category	Hours	Hours/week	Rate	Scope	Total Cost
Associate Engineer		LS		- Preliminary Project Development	\$ 10,000

Phase 3: Design	12	weeks			
Staffing Category	Hours	Hours/week	Rate	Scope	Total Cost
Senior Engineer	40	3	\$240	- Project Management - Supervisory Oversight	\$ 9,600

Associate Engineer	180	15	\$205	- Project Management - Design Coordination	\$ 36,900
Engineering Technician I/II	90	7	\$115	- Project Management - Design Coordination	\$ 10,350
CEQA	LS			-CEQA pathway review -Memo preparation	\$ 3,980
SJFD	LS			-Fire Plan Review	\$ 2,000
SECI Staff	84	7	\$200	- Structural Plan Review - Electrical Plan Review - Project Intake	\$ 16,800
MTL Staff	8	2	\$160	-Plan Review	\$ 1,280
SUBTOTAL					\$ 81,000

Phase 5: Construction	12 weeks				
Staffing Category	Hours	Hours/week	Rate	Scope	Total Cost
Senior Engineer	24	2	\$240	Project Management	\$ 5,760
Associate Engineer	155	13	\$205	-Project Management -Labor Compliance Observations	\$ 31,775
SECI Staff	90	8	\$200	-Code Inspections, Plan Review	\$ 18,000
CMS Principal Const Inspector	24	2	\$160	- Construction Inspections	\$ 3,840
CMS Senior Const Inspector	240	20	\$160	- Construction Inspections	\$ 38,400
MTL Staff	50	4	\$160	-Material Testing	\$ 8,000
SUBTOTAL					\$ 106,000

Phase 6: Close out	4 weeks				
Staffing Category	Hours	Hours/week	Rate	Scope	Total Cost
Senior Engineer	10	3	\$240	Project Management	\$ 2,400
Associate Engineer	40	10	\$205	Project Management	\$ 8,200
SECI Staff	10	3	\$200	Code Inspections	\$ 2,000

	SUBTOTAL	\$ 13,000
	Soft Cost Subtotal	\$ 210,000
	5% Level of Accuracy	\$ 10,000
	Grand Total (Not-to-Exceed Amount for Soft Costs)	\$ 220,000

Office of Cultural Affairs – Public Art Program Cost Estimate (Dated: 2/11/26)

Public Art staff costs are estimated at **\$50,000** based on comparable donation projects, including the Thank You America monument. This estimate covers Office of Cultural Affairs staff time for project coordination and management across all phases:

- Donation agreement development and City Council presentation
- Coordination with City Attorney, Risk Management, and departmental stakeholders
- Design review and Arts Commission staff support
- Construction phase oversight and donor coordination
- Project documentation and closeout

Estimated staffing:

- Public Art Program Director: 40-50 hours @ \$150-175/hour
- Public Art Project Manager: 120-150 hours @ \$125-150/hour
- Administrative support: 30-40 hours @ \$75-100/hour

Total estimated OCA staff time: 190-240 hours

Actual costs will depend on project complexity, review cycles, and coordination needs that emerge during the process. The Budget Office will establish a dedicated account to receive and track these funds. OCA will charge time as incurred, and any unused funds will be returned to the donor upon project completion.

EXHIBIT H
ARTIST WAIVER OF PROPRIETARY RIGHTS AND WARRANTIES
FOR ARTWORK PLACED ON CITY PROPERTY
(FOR REFERENCE ONLY)

This Agreement (“Waiver”) is entered into by and between the City of San José, a California municipal corporation (“City”), and Mario Chiodo, an individual (“Artist”), in connection with the donation of the Peace Monument to the City pursuant to the Peace Monument Donation Agreement dated [insert date] between the City and Diane M. Brandenburg, Trustee of the Diane Brandenburg Survivor’s Trust UAD September 19, 1993 (“Donor”), (“Primary Agreement”).

This Agreement is a sub-agreement to the Primary Agreement and is executed to define the Artist’s warranties and waiver of rights with respect to the Peace Monument (the “Artwork”). The Primary Agreement governs the donation, installation, and acceptance of the Peace Monument, and this Waiver implements certain obligations of Artist related to the Artwork, including waivers under federal and state moral rights laws. Artist’s fabrication, installation, and compensation are governed by Artist’s agreement with Donor, and nothing in this Waiver creates a services contract between Artist and City. This Waiver is effective as of the date the Artist executes this Waiver (“Effective Date”).

RECITALS

WHEREAS, Donor desires to donate a bronze sculpture entitled “Seeds of Peace” (“Peace Monument” or “Artwork”), along with associated site improvements, to the City pursuant to the Primary Agreement, and has commissioned Artist to design and fabricate the Artwork to be placed on City property as part of this donation; and

WHEREAS, Artist acknowledges that the Peace Monument is commissioned and funded by Donor, and that Artist will receive no compensation from City for the Artwork; and

WHEREAS, City desires to accept the donation of the Peace Monument and associated site improvements, subject to certain Artist waivers and warranties regarding copyright, originality, and moral rights; and

WHEREAS, Artist is the creator of the Peace Monument and has agreed to provide waivers and warranties described herein in connection with the donation; and

WHEREAS, City requires execution of these waivers and warranties by Artist to allow fabrication, installation, and acceptance of the Peace Monument under the terms of the Primary Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

SECTION 1. ARTWORK DESCRIPTION.

1.0. The Artwork covered by this Agreement is the Peace Monument, created by Artist, to be installed at the Site (**EXHIBIT A**), described in the Primary Agreement.

ARTIST: Mario Chiodo

TITLE: *Seeds of Peace*

DATE: 2026

MEDIUM/MATERIALS: Bronze sculpture

DIMENSIONS: 18 feet tall x 15 feet wide x 14 feet depth

LOCATION: Guadalupe River Park, Arena Green West, San José, CA

SECTION 2. WAIVER OF PROPRIETARY RIGHTS.

2.0. Artist has designed a work of visual art to be placed on City property. For clarity, the Artist's waiver of rights under applies solely to the Artwork (the Peace Monument sculpture) and does not extend to any associated site improvements, including but not limited to landscape, hardscape, lighting, or other elements not considered a work of visual art.

A. In consideration of the City's approval of the donation under the Primary Agreement and acceptance of the Artist's design, Artist agrees to waive and does hereby waive voluntarily all rights to attribution and integrity with respect to the Artwork and any and all claims as may arise under the Visual Artists Rights Act of 1990, 17 U.S.C. §§106A and 113(d) ("VARA"), the California Art Preservation Act (Cal. Civ. Code §§987 and 989) ("CAPA"), or any other local, state, foreign or international law, as currently drafted or as may be hereafter amended, that conveys the same or similar rights ("Moral Rights Laws"), with respect to the Artwork, its display, removal from display, exhibition, installation, conservation, storage, study, alteration and any other activities conducted by the City, its officers, employees, agents, contractors, licensees, successors or assigns.

If the Artwork is incorporated into a building such that the Artwork cannot be removed from the building without physical defacement, mutilation, alteration, distortion, destruction, or other modification (collectively, "Modification") of the Artwork, Artist waives any and all such claims under any Moral Rights Laws arising out of or against any current or future owners of the site, and its agents, officers and employees, for Modification of the Artwork.

B. The City has the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the Artwork, in whole or in part, in City's sole discretion.

- C. The City has no obligation to pursue claims against third parties for modifications or damage to the Artwork done without the City's authorization. However, the City may pursue claims against third parties for modifications or damage or to restore the Artwork if the work has been modified without the City's authorization. In the event that the City pursues such a claim, it shall notify the Artist, and Artist shall cooperate with the City's efforts to prosecute such claims.
- D. If the City modifies the Artwork without the Artist's consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of the Artwork in accordance with 17 U.S.C. § 106A (a) (2).

SECTION 3. **ARTIST'S WARRANTY.**

3.0. Artist represents and warrants that:

- A. Artist is the sole and absolute owner of the Artwork and the Artwork Design, and the copyrights pertaining to the Artwork, and all the rights associated or relating to it.
- B. Artist has not previously sold, assigned, licensed, granted, encumbered, or utilized the Artwork Design or any element thereof, in any manner which may affect or impair the rights granted pursuant to this Agreement including and not limited to, inhibiting the City's ability to show the work, and/or reproduce the Artwork as defined in Section 4.
- C. All Artwork created or performed by Artist under this Agreement, whether created by Artist alone or in collaboration with others, shall be wholly original with Artist and shall not infringe upon or violate the rights of any third party.

Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.

- D. Artist warrants that the Artwork is the result of the artistic efforts of Artist and that it will be delivered full and clear of any liens, claims and encumbrances of any type.
- E. These representations and warranties shall survive the termination or other extinction of this Agreement.

3.1. In the case where Artist is comprised of two or more individual persons or a group of people, the measuring life shall be the life of the last surviving individual person comprising Artist team. Recognizing that City has no adequate remedy at law for Artist's violation of this warranty, Artist agrees that, in the event Artist breaches this warranty, City shall be entitled to enjoin Artist's breach.

SECTION 4. INTELLECTUAL PROPERTY RIGHTS AND LICENSE, REPRODUCTION AND PUBLICITY RIGHTS.

4.0. COPYRIGHT.

A. Except as provided in this Agreement, Artist shall retain all copyrights in the Artwork. Artist's copyright shall not extend to predominantly functional aspects of the building or Site that may be incorporated into Artwork or which are in the area of the Artwork, such as the flooring, walls and other fixtures and features of the Site, furnishings, or other similar objects located at the Site. If Artist is comprised of two or more individual persons, the individual persons shall be deemed joint authors of the Artwork.

B. Artist may, at Artist's option, place a copyright notice on the Artwork in the form and manner required to protect copyrights in the Artwork under United States copyright law. If the copyright is registered with the U.S. Copyright Office, Artist shall provide City with a copy of the application for registration, the registration number and the effective date of registration.

4.1. DISPLAY/DISPOSAL.

Artist grants City the following exclusive rights:

A. City shall have the right to display the Artwork and to loan the Artwork to others for the purpose of public display.

B. City shall have the right to move, remove, relocate, or dispose of the Artwork as specified below in Section 6.

4.2. REPRODUCTION AND DISTRIBUTION.

A. Artist retains all copyrights in any and all documents, studies, drawings and the like which were developed by Artist in the course of development of the Artwork Design ("Artist's Submittals"). Artist agrees that City may use Artist's Submittals for the purposes related to the development and consideration of the Artwork Design, including without limitation, obtaining any and all approvals of the Artwork Design and the Artwork. Artist authorizes City to make, and to authorize the making of, photographs and other two-dimensional reproductions of the Artwork for educational, public relations, arts promotional and other noncommercial purposes.

B. For purposes of this Agreement, the following are deemed to be reproductions for noncommercial purposes: reproduction of the site, where the Artwork is incidental; in catalogues, books, slides, photographs, postcards, posters and calendars; in news sections of newspapers; in general books and magazines not primarily devoted to art but of an educational, architectural, historical or critical nature; slides and film strips not intended for a mass audience; and television from stations operated for educational purposes or on programs for educational purposes from all stations; and in electronic newspapers, websites, blogs and other electronic formats for news, review or commentary. Artist shall also allow City to publish reproductions to provide information to the public on the City's public art or to otherwise promote the City's public art program, even if the publication occurs within art publications, on commercial television stations, in other commercial publications or on the internet.

C. On any and all such reproductions, City shall place a copyright notice (if the Artist has the work copyrighted) in the form and manner required to protect the copyrights in the works under the United States copyright law.

D. Public Records Requests. Any documents provided by Artist to City are public records and City may authorize third parties to review and reproduce such documents pursuant to public records laws and policies, including the San José Sunshine policies and California Public Records Act.

4.3. THIRD PARTY INFRINGEMENT. City is not responsible for any third party infringement of Artist's copyright and not responsible for protecting the intellectual property rights of Artist.

4.4. THIRD PARTY WARRANTIES AND LICENSES. Artist shall procure, on City's behalf, all licenses and maintenance agreements from third party software developers or providers used in the Artwork and referred to as "Third Party Software" and required to operate or display the Artwork, in a form transferable to City and acceptable to City.

Artist shall obtain from all suppliers of the equipment and the Third Party Software used to design, fabricate and install the Artwork, all standard guarantees and warranties normally provided on all machinery, equipment, services, materials, supplies and other items used in connection with the Artwork, including all such machinery, equipment, materials and other items which are incorporated into the Artwork.

Artist shall obtain from each such supplier guarantees and warranties which assignable to City and shall, upon request of City, obtain an option for City to purchase a guarantee or warranty from such suppliers covering a longer period than a one year warranty period if commercially available at City's expense.

Artist shall enforce all guarantees and warranties until such time as such guarantees or warranties expire or are, if applicable, transferred to City as contemplated by this Section . Such guarantees and warranties shall, to the extent they have been made assignable, be transferred to City upon acceptance of the Artwork.

Artist shall deliver to City copies of all such guarantees and warranties and relevant extracts from all related technical specifications. Nothing in this Section shall reduce the obligation of Artist to provide the City with the guarantees and warranties described in this Agreement, and to comply with the provisions of this Agreement.

SECTION 5. ARTIST'S WAIVERS.

A. Without limitation of any other provision hereof, Artist expressly agrees to waive any and all rights Artist may have pursuant to Title 17 U.S.C. Section 106A, (commonly known as the "Visual Artists Rights Act of 1990") as Artist's rights under the Act apply, if at all, to the Artwork. In addition:

(i). City shall have the right to reproduce Artwork as provided in this Agreement.

(ii). City shall have the right to move, relocate or remove Artwork from the intended location and to store or dispose of Artwork as City deems appropriate.

(iii). City shall have the right to loan the Artwork as City deems appropriate as further provided in Section 16.1 above, and in Section 20.2 below.

B. Without limitation of any other provision hereof, Artist expressly agrees to waive any and all rights Artist may have, including, without limitation, any moral or other rights pursuant to the California Art Preservation Act, California Civil Code Section 987, and California Civil Code Section 989, to the extent that such provisions have any force or effect with respect to Artist's rights to the Artwork.

SECTION 6. REPUTATION AND CREDIT.

6.0. COMMITMENT BY CITY. City agrees that unless Artist requests to the contrary in writing, all references to the Artwork and all reproductions of the Artwork will credit the Artwork to Artist.

6.1. ARTIST'S COMMITMENT. Artist agrees that all formal references to the Artwork made or authorized to be made by Artist shall include the following credit: "Public Art Collection of the City of San José" or other language agreed to by all parties.

6.2. FUTURE MODIFICATION OR RELOCATION.

A. City has the right to remove the Artwork from the Site at any time. In addition, in the event that any element of the Artwork constitutes a public safety hazard, City has the right to remove the element posing the public safety hazard.

B. Except to the extent permitted by subsection A above, City agrees not to intentionally modify the Artwork without first attempting to obtain Artist's written consent.

C. City shall have the right to donate, sell or dispose of the Artwork at any time. Without limiting these City's rights, before exercising this ability, City, by written notice to Artist at Artist's last known address, agrees to attempt to provide Artist the opportunity to purchase the Artwork for the greater of the Total Price or the amount of any offer which City has received for the purchase of the Artwork, plus all costs associated with the removal of the Artwork from the Site, clean-up of the Site and delivery to Artist. Artist shall have thirty (30) days from the date of City's notice to exercise the option to purchase the Artwork. Artist shall not be entitled for any compensation in the event Artist does not receive such notice.

D. Without limitation of City's rights under this Agreement, it is City's practice to notify and consult with the Artist before intentionally moving, relocating or removing artwork. If, after the initial discussion, Artist and City do not reach a mutually agreeable decision regarding relocation or modification of an Artwork, or do not agree upon compensation to Artist for providing Artist's input on proposed relocation or modification, City may take such actions as City deems necessary in management of its Artwork, and no further agreement or compensation is due to Artist.

Notwithstanding the foregoing, whether or not City notified or consulted with Artist, if City removes, relocates, or modifies the Artwork without Artist's prior written consent, City shall not be liable to Artist for damages. Under such circumstances, if Artist objects to the modification or new location, then (i) City may restore the Artwork or replace the Artwork to its original location, or (ii) if the City does not restore the Artwork or to relocate the Artwork to the original location, Artist may request that Artist's association with Artwork be severed. In either event, City shall have no further obligation or liability to Artist.

E. If City moves the Artwork from its originally installed location without Artist's oversight, Artist shall not be held responsible for the structural integrity or safety

makes repairs or restoration not approved by Artist, Artist shall have the right, at Artist's sole option, to have Artist's association with Artwork severed.

8.1. **STANDARDS OF REPAIR AND RESTORATION.** All repairs and restorations, whether performed by Artist, City, or by third parties responsible to Artist or City, shall be made in accordance with professionally recognized principles of conservation of artworks and in accordance with the maintenance instructions provided to City by Artist.

SECTION 9. **CONFLICT OF INTEREST.**

9.0. Artist shall avoid all conflict of interest or appearance of conflict of interest in performance of this Agreement.

SECTION 10. **GIFTS.**

10.0. Artist is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code. Artist agrees not to offer any City officer or designated employee any gift prohibited by said Chapter. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Agreement by Artist. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for such breach as provided in Section 12 of this Agreement.

SECTION 11. **WAIVER.**

11.0. Artist agrees that waiver by City of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by City of the performance of any work or services by Artist shall not be deemed to be a waiver of any term or condition of this Agreement.

SECTION 12. **NOTICES.**

12.0. Submittals, requests, notices and reports (collectively "Notices") required under this Agreement shall be delivered personally or through the mail, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a party. Notices may also be sent by mail or email to the addresses set forth below.

For the City: Office of Cultural Affairs - Public Art Program
Attn: Cynthia Cao, Arts Program Coordinator
200 E. Santa Clara Street, 12th Floor
San José, CA 95113
(408) 793-4341
Email: cynthia.cao@sanjoseca.gov

For the Artist: Mario Chiodo
ADDRESS
E-mail ADDRESS

Notices will be deemed effective on the date personally delivered, emailed or sent by courier service. Notices which are mailed will be deemed effective three (3) days after deposit in the mail.

12.1. Artist agrees for the duration of Artist's life to provide City with Artist's current mailing address and e-mail address in the event Artist's address or e-mail address, as specified above, should change. If Artist fails to provide City with timely updates on changes to Artist's contact information, Artist shall be considered to have waived Artist's right to notice under this Agreement.

SECTION 13. VENUE/GOVERNING LAW.

13.0. VENUE. In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state court of the County of Santa Clara or if federal jurisdiction is appropriate, exclusively in a United States District Court for the Northern District of California, San José, California.

13.1. GOVERNING LAW. The laws of the State of California shall govern this Agreement. Except to the extent that federal law is applicable, this Agreement must be construed - and its performance enforced - under California law.

SECTION 14. INDEMNIFICATION BY ARTIST.

14.0. INDEMNIFICATION. Artist agrees to protect, defend, indemnify and hold harmless City and its officers, agents and employees, from and against all claims, costs and damages (collectively, "Liabilities") arising out of negligent or willful acts or omissions in the performance of this Agreement by Artist, or the Artist's agents or Artist's subcontractors. Artist's obligations to indemnify and hold City harmless under this subsection exclude only those Liabilities, which are due to sole negligence or willful misconduct of City, its officers, agents and employees.

14.1. **INFRINGEMENT.** Artist also agrees to protect, defend, indemnify and hold City, its officers, agents and employees harmless from any action, claim, suit or liability based on a claim that work performed under this Agreement by Artist, or Artist's agents or Artist's subcontractors constitutes an infringement of any patent, copyright, trademark, trade name or other proprietary right of any party. This section shall survive expiration or sooner termination under this Agreement.

SECTION 15. INSURANCE REQUIREMENTS.

15.0. Artist shall be required to execute a Right of Entry Agreement described in **Exhibit J** of the Primary Agreement, including any necessary insurance, prior to engaging in on-site activities including but not limited to installation, supervision, inspection, or consultation. A Right of Entry Agreement and subsequent insurance is not required to go on-site for the sole purpose of observation.

SECTION 16. ACKNOWLEDGMENT OF NO COMPENSATION

16.0. Artist acknowledges that City will not compensate Artist for the Peace Monument; the work is a commission funded entirely by Donor pursuant to the Primary Agreement.

SECTION 17. USE OF ELECTRONIC SIGNATURES.

17.0. Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City.

SECTION 18. RELATION TO PRIMARY AGREEMENT

18.0. This Agreement is a sub-agreement to the Primary Agreement. Artist acknowledges that all fabrication, installation, and other work performed by Artist is governed by the terms of the Primary Agreement between Donor and the City. This Agreement does not create additional obligations regarding schedule of performance, scope of services, or compensation beyond those in the Primary Agreement. Artist may be present during installation to observe installation. Artist shall not be responsible for construction means, methods, or safety during installation.

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

"CITY"

Emily Lam

{{__signer2}}

Director, Office of the City Manager

"ARTIST"

Mario Chiodo

{{__signer1}}

Approval as to Form (City Attorney):

Form Approved by the Office of the City Attorney.

(Maximum Total Compensation, as amended, is \$100,000 or less, and the provisions of the form are not altered.)

Approved as to Form:

{{AttorneyDepartment}}

{{AttorneyName}}

{{AttorneyTitle}}

{{AttorneyEmail}}

{{__signer2}}

EXHIBIT H-1 Monument Location and Artwork Proposal



Proposed Area, approximately 20,638 sq ft, to be Permanently Impacted by the Installation of the Peace Monument at Arena Green West

Land valuation: \$178,600

Rendering of proposed Peace Monument at Arena Green West



SAW:AEB
4/23/2026

EXHIBIT I
[INTENTIONALLY OMITTED]

SAW:AEB
4/23/2026

EXHIBIT J
RIGHT OF ENTRY
(FOR REFERENCE ONLY)

This Right of Entry Agreement (“AGREEMENT”) is entered into by and between the City of San José, a California municipal corporation (“City”), and NAME, [an individual/ a corporation/ a _____ limited liability company/ a partnership] authorized to do business in the State of California **Delete if entity was formed in California** (“ENTRANT”).

This Agreement is effective as of the date of full execution by City (“Effective Date”).

RECITALS

WHEREAS, CITY is the owner of the Property in the following location: **[insert address]** (“Site”); and

WHEREAS, ENTRANT desires temporary access to the Site for the purpose of **[insert activities i.e. predevelopment activities, maintenance, engineering, environmental review etc.]** only at the specific location(s) shown on **Exhibit J-1** attached hereto and incorporated herein; and

WHEREAS, CITY is willing to permit LICENSEE to access the Property for the purposes described herein; and

WHEREAS, ENTRANT’s requested access to the Site has been coordinated with the DEPARTMENT [specify City Department];

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. **Right of Entry**. CITY hereby grants to ENTRANT, its officers,

employees, agents, consultants and contractors a temporary Right of Entry for the purpose of and upon the terms and conditions hereinafter described, subject to all licenses, easements, leases, encumbrances and claims of title affecting the Property.

2. Purpose. Subject to the limits herein stated, the Right of Entry granted herein is a right to enter onto the Access Area for the sole purpose of **[insert activities]**. Access to the Access Area is restricted to ENTRANT's administrative and operations personnel. ENTRANT shall not allow members of the general public or other individuals or equipment to enter the Access Area. ENTRANT shall be solely responsible for securing the Access Area, and accepts any and all risks as provided in Section 4.3 below.

3. Term. Subject to the termination provision set forth in Section 5 below, the term of the Right of Entry shall begin upon execution of this AGREEMENT by CITY hereto, as set forth above, and shall terminate at 11:59 PM on [INSERT DATE HERE].

3.1 Extension of Term. ENTRANT may extend the term for an additional three (3) months upon mutual agreement of ENTRANT and CITY with written notice to the CITY delivered per requirements under Section 11 of this Agreement. Any such extension may be made subject to the terms and conditions hereunder and to any other terms and conditions as CITY may determine to be necessary or advisable.

4. Terms and Conditions. The Right of Entry is given subject to the following terms and conditions.

4.1 Compensation. ENTRANT shall pay CITY no fee in return for the rights granted under this Agreement.

4.2 Compliance with Laws. ENTRANT shall obtain and maintain all necessary permits, licenses and approvals, from the relevant agencies having jurisdiction and comply with all current laws, ordinances, orders, rules, regulations and

permits with respect to its use of the Access Area pursuant to this Agreement. No entry shall be made until CITY has received and approved a schedule for the proposed work including details of the work to be performed and a list of the names of all contractors of ENTRANT authorized by ENTRANT to enter the Access Area. In no event shall ENTRANT's use of the Access Area involve any alteration thereto, all of which shall be undertaken by ENTRANT at its sole cost. No stand-by backup electrical power generation facility is allowed to be installed or constructed on the Access Area. At all times during the Term, ENTRANT shall maintain the Access Area in a safe, clean and orderly condition.

4.3 Surety Requirements.

A. **Admitted Surety.** Without limiting the generality of the provisions of this Agreement, the term "Admitted Surety" as used in this Section shall have the same meaning as set forth in the Standard Specifications. Each of the bonds required under this Section shall be issued by an Admitted Surety. Bonding Requirement

B. **Bonding Requirement.** The provisions of this Section and Sections C and D shall apply if work occurring at the Site for the Artwork exceeds \$20,000. In the event that the work at the Site exceeds \$20,000, ENTRANT provide the bonds specified in Sections 4.3 (C) and 4.3(D). ENTRANT shall refrain from installation of any portion of Work until ENTRANT furnishes to City or causes ENTRANT's contractor to furnish to City, the required bonds. Each of the bonds required in this Section must be furnished to City as condition for City's issuance of the Notice to Proceed. The form of each of the bonds required under this Section is subject to the approval of the City Attorney.

C. **Performance Bond.** City must be furnished with a performance bond in the amount not less than the sum of One Hundred Percent (100%) of the cost estimate of the Work as approved by the DPW Director, conditioned upon the faithful performance of the installation of the Work within the time fixed by this Agreement, or such extension thereof as may be allowed. In the event that ENTRANT fails to complete the Project within the time specified in this Agreement or such extension period as

determined by City, City may terminate this Agreement as specified in Section 5 and the ENTRANT or ENTRANT'S Contractor's surety shall be liable to City for all loss or damage which City may suffer by reason of ENTRANT's failure to complete the Project on time.

D. Payment Bond. City shall be furnished with a payment bond, and any other bond required by law or reasonably required by City, from the ENTRANT responsible for the applicable site improvements or other bonded work. Donor shall not be required to furnish a personal bond separate from the bond furnished by the contractor performing the bonded work. To be approved, any bond required must comply with the following provisions:

i. The bond shall provide that if ENTRANT or its subcontractors fail to pay any of the persons named in Section 9100 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to the work or labor contracted to be done and performed by any claimant, then the surety or sureties will pay for same, in an amount not exceeding the amount of the bond, and also, in case suit is brought upon the bond, a reasonable attorney's fee to be fixed by the court.

ii. The bond must be issued by an Admitted Surety and shall, by its term, inure to the benefit of any of the persons named in Section 9100 of the California Civil Code, to give a right of action to such persons or ENTRANT's assigns in any suit brought upon the bond, including the right of action to recover on the bond, in any suit brought to foreclose liens provided for in Title 15, Chapter 7 of the California Civil Code or in a separate suit brought on this bond.

iii. The bond shall otherwise comply with all provisions of Title 15, Chapter 5 of the California Civil Code.

4.4 As-Is Condition and Assumption of Risk. ENTRANT accepts the condition of the Property as-is and with all faults and acknowledges that: i) CITY is under no obligation to provide any additional preparations, improvements, utilities or equipment to the Property or Access Area prior to use by ENTRANT, and ii) ENTRANT's use of the Access Area is entirely at its own risk. Without limiting the generality of the foregoing, ENTRANT acknowledges that it shall be solely responsible for instituting and carrying out security measures on the Access Area to prevent vandalism or theft (which measures, if any, shall be subject to the prior written approval of CITY), and that CITY shall not be responsible for providing any security at the Access Area or Property and shall not be liable for any vandalism or theft that may occur on the Access Area. For avoidance of doubt, ENTRANT acknowledges that its use of the Property shall be at its own risk and that ENTRANT shall be responsible for all costs, risk or liability that occurs or arises during or as a result of its use or occupancy of the Access Area.

4.5 Release and Waiver. To the maximum extent permitted by law, ENTRANT on behalf of itself and its employees, owners, members, officers, agents, contractors and invitees (collectively, the "Licensee Parties" and each a "Licensee Party"), waives and releases CITY and its officers, employees and agents from any and all liability that occurs on the Access Area that is suffered by ENTRANT or any Licensee Party for any injury suit, action, claim, demand, loss, damage, liability, or liability for damages of any kind or nature, whether for loss of or damage to property, or injury to or death of persons, and whether or not known or suspected (collectively "Claims"), which may arise out of use of the Access Area by ENTRANT or any Licensee Party except such loss or damage as is caused by the sole active negligence or willful misconduct of CITY, its officers, employees or agents acting in their official capacities and acting within the scope of their official duties. The foregoing shall include any loss, damage, claim, or liability for damages or injury caused by or resulting from ENTRANT's or any Licensee Party's introduction or generation of Hazardous Materials, as defined in Exhibit B, on the Property, or the creation of

increased hazard to the public from existing materials arising from the use of the Access Area by ENTRANT or any Licensee Party. However, ENTRANT shall not be responsible for any cleanup of Hazardous Materials not caused, generated or disturbed by ENTRANT or any Licensee Party.

4.6 Indemnification. To the maximum extent permitted by law, ENTRANT shall indemnify, defend, and hold harmless CITY and its officers, employees and agents against any and all Claims, resulting from or arising out of ENTRANT's or any Licensee Party's use of the Access Area, including, but not limited to, entries of ENTRANT or any Licensee Party, except such loss or damage as is caused by or the sole active negligence or willful misconduct of CITY, its officers, employees or agents acting in their official capacities and acting within the scope of their official duties. The foregoing shall include, but not be limited to, any Claims resulting from ENTRANT's or any Licensee Party's introduction or generation of Hazardous Materials, as defined in **Exhibit J-2**, on the Property, or the creation of increased hazard to the public from existing materials arising from the entries of ENTRANT or any Licensee Party. However, ENTRANT shall not be responsible for any cleanup of Hazardous Materials not caused, generated or disturbed by ENTRANT or any Licensee Party.

4.7 Survival. The provisions of subsections 4.3, 4.4, 4.5 and 4.10 shall survive expiration or termination of the Right of Entry as to liabilities and other Claims arising out of events that occur prior to the later of: (i) expiration or termination of the Right of Entry or (ii) the date ENTRANT vacates the Property and restores it to its original condition and free of hazards.

4.8 Insurance. During the term of this Right of Entry, ENTRANT shall have and maintain the minimum insurance requirements as set forth in the attached **Exhibit J-3**.

4.9 No Grant; Limited to Access Area. The Right of Entry constitutes a revocable license; nothing herein shall be construed as a grant of title or any interest in the Property. ENTRANT's use of the Property shall only include the

Access Area.

4.10 No Admission of Liability. Nothing herein shall be construed as an admission of liability by CITY of its responsibility as to any Hazardous Materials that may be found on the Property or Access Area, nor, except as expressly provided herein, as an admission of liability by ENTRANT as to any Hazardous Materials which may be found on the Property or Access Area.

4.11 Restoration of Property. ENTRANT shall fully restore the Access Area to its pre-existing condition or better upon expiration of the Right of Entry or upon vacating the Access Area prior to termination or expiration of the rights granted by this Agreement. If the restoration is not so performed by ENTRANT upon expiration or termination of this Agreement or upon ENTRANT's vacation of the Access Area prior to termination or expiration, CITY shall have the right, but not the obligation, to perform the necessary restoration after providing no less than thirty (30) days prior written notice to ENTRANT that it will do so. Upon receipt of the notice of restoration costs from CITY, ENTRANT agrees to reimburse CITY for such costs incurred, plus an additional amount equal to twenty percent (20%) thereof for administrative overhead within thirty (30) days. The demand for payment by CITY shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by CITY on behalf of ENTRANT. This provision shall survive expiration or termination of the Right of Entry or this Agreement.

4.12 Graffiti Abatement. ENTRANT shall be responsible for the prompt abatement of any and all graffiti that occurs in the Access Area during the term of this Agreement. If ENTRANT fails to abate any graffiti in a prompt manner, CITY may immediately undertake such repairs and submit an invoice for the reasonable costs thereof to ENTRANT for reimbursement, and ENTRANT shall reimburse CITY within fifteen (15) days after its receipt of an invoice therefor and reasonable supporting documentation of the work completed.

4.13 City Access to Property. CITY shall continue to have the right to use and access the Access Area and Property in its entirety and grant such use and access rights to third parties. ENTRANT shall provide CITY with access codes to any gated entrances to the Access Area for use by Parks, Recreation, and Neighborhood

Services, and, including but not limited to Police and Fire or third parties.

5. Termination of Right of Entry. CITY shall have the right to terminate this Right of Entry, without cause, by giving not less than seven (7) days written notice of termination. Notwithstanding anything to the contrary in this Agreement, ENTRANT shall vacate the Access Area and restore it as provided in Section 4.10 by 11:59 p.m. on the date of termination.

6. No Liens or Encumbrances. ENTRANT shall not permit or suffer any liens or encumbrances to be imposed upon the Property and Access Area or any building or structure thereon, as a result of ENTRANT's activities without promptly discharging the liens or encumbrances.

7. Assignment. ENTRANT may not assign this Agreement or its rights and obligations hereunder without obtaining CITY's prior written consent. Any assignment without such written consent shall be void. Any assignment by ENTRANT shall not relieve ENTRANT of its indemnification obligations set forth in this Agreement.

8. Entire Agreement; Amendment. This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements made prior to the date hereof. This Agreement may not be amended or revised except by a writing executed by both parties hereto.

9. Execution in Counterparts. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Unless otherwise prohibited by law or policy of a Party, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City. Each Party (i) has agreed to permit the use, from time to time and when allowed by law, of electronic signatures in order to expedite the transaction contemplated by this Agreement, (ii) intends to be bound by electronic signature, (iii) is aware that the other will rely on the

electronic signature, and (iv) acknowledges such reliance and waives any defenses (other than fraud) to the enforcement of any document based on the fact that a signature was sent by telecopy. As used herein, the term “electronically signed contract” shall include any signature sent via facsimile or via email in portable document format (“.pdf”).

10. Authority. Each person signing below warrants and guarantees that s/he is legally authorized to execute this Agreement on behalf of the respective party and that such execution shall bind said party to the terms of this Agreement.

11. Notices. All notices or other communications given in conjunction with this AGREEMENT shall be written, and must be made via e-mail or United States mail. A notice or other communication that is e-mailed is effective when sent. A notice or other communication that is mailed shall be effective three (3) business days after deposit in the U.S. Mail, first class postage prepaid to the applicable address stated below, or to such other address as the party may designate by written notice:

To CITY: San José City Hall – Office of Cultural Affairs
 200 East Santa Clara Street, 12th Floor
 San José, CA 95113
 E-mail:

To ENTRANT: NAME
 Attn.: Contact Name, Title
 Street
 City, State,
 Zip E-mail:

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13. Venue. In the event that suit shall be brought by either party hereunder, the parties hereto agree that venue shall be exclusively vested in the state

SAW:AEB
4/23/2026

courts of California in the County of Santa Clara or if federal jurisdiction is appropriate, exclusively in the United States District Court in the Northern District of California, San José, California.

[remainder of page intentionally left blank]

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IN WITNESS WHEREOF, the parties have executed this instrument the day and year first above written.

FORM OF RIGHT OF ENTRY
AGREEMENT APPROVED BY THE
OFFICE OF THE CITY ATTORNEY

“CITY”

CITY OF SAN JOSE, a chartered
municipal corporation of the State of
California

EMILY LAM

Director of Administration, Policy &
Intergovernmental Relations

“ENTRANT”

[NAME], a [TYPE OF BUSINESS ENTITY
– e.g. a [state of formation]
corporation, a [state of formation]
limited liability company, an
individual] authorized to do business
in the State of California

By___

Name:

Title:

EXHIBIT J-1
CITY PROPERTY MAP

[insert image here]

EXHIBIT J-2

HAZARDOUS MATERIALS

“Hazardous Materials” shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

“Environmental Laws” shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.

**EXHIBIT J-3
INSURANCE REQUIREMENTS**

**[EXACT SPECIFICATIONS TO BE PROVIDED BY CITY'S RISK MANAGEMENT
DEPARTMENT]**

ENTRANT, at ENTRANT's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, any activities at the Site hereunder by ENTRANT, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") form CG 0001, including ongoing operations and products and completed operations; and
2. The coverage provided by Insurance Services Office Form number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned, and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Property insurance covering ENTRANT's personal property on the PREMISES; and
5. Pollution Liability coverage for bodily injury, property damage, defense, cleanup, and related defense costs as a result of pollution conditions.

B. Minimum Limits of Insurance

ENTRANT shall maintain limits no less than:

1. Commercial General Liability: \$XXX per occurrence for bodily injury, personal injury and Property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location, or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$XXX combined single limit per accident for bodily injury and Property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Property: Replacement cost.
5. Pollution Liability: \$XXX each occurrence/aggregate limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, employees, agents and contractors; or ENTRANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of ENTRANT; products and completed operations of ENTRANT; premises owned, leased or used by ENTRANT; and automobiles owned, leased, hired or borrowed by ENTRANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its

officers, employees, agents and contractors.

b. ENTRANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of ENTRANT's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by ENTRANT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

d. Coverage shall state that ENTRANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. Verification of Coverage

ENTRANT shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be emailed in pdf format to: Riskmgmt@sanjoseca.gov: