Call for Artists
City Plaza Revitalization

Proposals Due: June 12, 2023 by 5PM
Parks & Community Services Department
City of Watsonville
City Plaza Revitalization Project
Call for Artists

https://www.cityofwatsonville.org/1854/Public-Art

The City of Watsonville (City) would like to invite artists to apply for a permanent art component for the heart of downtown Watsonville, the City Plaza. An artist will be selected to create one or more elements for the public art component for the City Plaza Revitalization Project at the City Plaza in Downtown Watsonville where work will be viewed by residents and guests of all ages.

BACKGROUND
In 2019, the City of Watsonville Parks and Community Services Department worked with Verde Design to lead a community input process to develop the Department's Strategic Plan and park master plans for the City Plaza. A comprehensive community input process was used to create the Master Plan for the City Plaza and in 2021 the City received a $3.4 million Prop 68 Grant through the State of California’s Department of Parks and Recreation to help fund this project. As part of the City Plaza Revitalization Project, the City of Watsonville has included an art component to be added to the layout of what will be the newly renovated Plaza

PROJECT INFORMATION
Artists are encouraged to visit the City Plaza to familiarize themselves with the current elements and ambiance as well as review the proposed site plan with the new changes that will be made to the Plaza. Plans can be found here. The proposed site-specific artwork should enhance the experience of those who utilize the City Plaza and should express relevance to Watsonville’s rich history and culture. Proposed art should be free-standing piece(s) to be installed in one or more of the areas in the Plaza and the artwork must satisfy reasonable standards of permanence and safety, meet all relevant codes required for public places, and offer reasonable proof of soundness against theft, vandalism or excessive maintenance and repair. It is desired to procure an art
piece(s) that is/are interactive and add to the placemaking nature of the Plaza and surrounding downtown.

ELIGIBILITY The project is open to all experienced professional artists. The selected artist must provide proof of a City Business License and general liability insurance coverage; see Attachment A: Sample Artist Agreement.

SELECTION CRITERIA The City of Watsonville will convene a small group consisting of one or two of each of the following: City Staff, local artists (not submitting a proposal) and Parks and Recreation Commissioners, to evaluate the proposals based on the following criteria (total of 100 points):

- Relevance and congruency of the image(s) to the project site, (25 points max value)
- Creativity and innovation of design, (20 points max value)
- Design theme, (15 points max value)
- Maintenance Requirements relative to the site and project, (5 points max value)
- Artist’s demonstrated ability to produce the proposed artwork within the defined timeline and budget, (15 points max value)
- Artist’s experience in visual art production and working for public or private entities, (15 points max value)
- Budget/Cost of project. (5 points max value)

BUDGET - $300,000
The budget includes all costs associated with, but not limited to: design; materials; travel; insurance; fabrication; installation, and documentation of the artwork.

PROPOSAL
Each submittal must include:
• Artist must submit a bio

• A narrative and design illustrating the concept, including a digital format of all components

• Artwork samples of murals, sculptures, other artwork or projects, shall be no more than ten (10) in listed in chronological order with the most recent as the first sample.

• A description of the approach to the project such as methods of surface preparation and installation.

• Anticipated maintenance requirements relative to the site and project after installation. All artwork materials must have a minimum lifespan of ten (10) years, and artists or artist teams must be prepared, if selected, to provide a maintenance plan for the work as part of the final submission.

• Proof of insurance. The selected artist(s) will be required to carry insurance, including a minimum of $1,000,000 combined single incident general liability insurance, $1,000,000 combined single limit per accident automobile liability, and Workers’ Compensation and Employer’s Liability Insurance (if applicable) in the amount of $1,000,000 per occurrence. The cost of required insurance may be included as part of the proposed budget.

• Timeline for completion.

• A proposed itemized budget delineating artist fees, supply costs, and other associated costs. Additional expenses will not be allowed unless specified in the proposal. Costs must be unbundled and listed separately. Provide a total “not to exceed” amount for the project.

• A minimum of three related business references for earlier projects including names, addresses, and phone numbers, plus a description of the type of work performed.

• A statement indicating ability to comply with all terms and conditions listed in Attachment A “Sample Artist Agreement”
• Selected artist will be required to waive their rights of integrity to commissioned artwork as pertains to its removal or repair as set forth in the California Art Preservation Act and the Visual Artists Rights Act.

The cost for preparing a proposal in response to the RFP is the responsibility of the artist.

**PROJECT SUBMITTAL:** Two (2) copies of the proposal are due by 5:00 pm Monday, June 12, 2023 BY 5PM.
An electronic copy is also requested and should be emailed to adriana.flores@watsonville.gov
Late submittals will not be considered and will be returned unopened.
The proposals can be delivered or mailed to:
City of Watsonville
Attn: Adriana Flores, Senior Administrative Analyst
231 Union Street
Watsonville, CA 95076
Email: adriana.flores@watsonville.gov

**ACCEPTANCE/REJECTION AND NEGOTIATION OF PROPOSAL:** The City of Watsonville reserves the right to accept or reject any or all proposals or select more than one artist to complete this work. After selection by the City, the contents of the submitted proposal will become a contractual obligation. Failure to agree to include the proposal as part of the contractual agreement will result in cancellation of the award.

The City of Watsonville reserves the right to negotiate a modification to or accept any part of the proposal, and will not be obligated in any way to accept those parts that do not meet the approval of the City. Terms and conditions of the contract will be subject to the approval of the City Attorney. The proposal, draft report, and final report shall become the property of the City of Watsonville.

**ESTIMATED PROJECT TIMELINE**
Every effort will be made to follow the timeline but the schedule is subject to change.
City will work with selected Artists for scheduling work.
• May 8, 2023 Project Workshop held at 6:00PM at 231 Union Street to answer any questions/concerns about the project.
• June 12, 2023 Proposals must be received by 5pm. Proposals received after the deadline will not be accepted.
• June 2023 - Public Art Selection Panel (Panel) meets to review proposals, select finalists.
• July 2023 - Panel interviews finalists and selects artist to continue in the process.
• July 2023 – Parks & Recreation Commission considers panel’s recommendation of public artist.
• August 2023 City Council considers artist proposal and agreement.
• Spring 2024 – Installation

ADDITIONAL INFORMATION

1) All proposals will become the property of the City of Watsonville and will not be returned to artists. Artists are advised that all documents submitted with their proposals are public records open to inspection without redaction and are directed to California Government Code Section 6250 (Public Records Act), which is available on the State Internet site (www.ca.gov).

2) The City of Watsonville reserves the right to reject any and all proposals, whether or not minimum qualifications are met. The City also reserves the right to modify, postpone, or cancel this Request for Proposal, in whole or in part, or decide to award a contract to perform only some of the services outlined in this Request for Proposal, without liability, obligation, or commitment to any party, artist, or organization.

3) In addition, the City reserves the right to request and obtain additional information from any candidate submitting a proposal, and to negotiate the final scope of services with the selected Artist. The City is not liable for any costs incurred by artist prior to issuance of an agreement, contract or purchase order. Costs of developing the proposals, oral presentations or any other such expenses incurred by the artist in responding to the RFP are entirely the responsibility of the artist and shall not be reimbursed in any manner by the City of Watsonville. No materials or labor will be furnished by the City.
4) The City reserves the right to waive or permit cure of minor informalities and/or insignificant mistakes such as matters of form rather than substance and to conduct discussions and negotiations with any qualified respondent in any manner deemed necessary by the City to serve its best interests. The City also reserves the right, based on its sole judgment and discretion, to award a contract based upon the written proposals it receives without conducting discussions, interviews or negotiations.

5) If, in the opinion of the City, a proposal contains false or misleading statements or references, it may be rejected.

6) The City reserves the right to obtain written clarification of any point in an Artist's proposal or to obtain additional information necessary to properly evaluate a particular proposal. Failure of an Artist to respond to such a request for additional information or clarification may result in rejection of the artist’s proposal.

7) Failure to comply with these instructions, and the other specific provisions of the RFP, may result in the artist’s proposal not being reviewed.

8) City of Watsonville reserves the right, without qualification, to select an artist for further discussions based solely on the content of the RFPs and relevant information obtained from others concerning the respondent’s respective records of past performance.

9) The artist’s proposal shall not be made contingent upon uncertain events, which shall not have occurred until after the RFP is completed.

10) In the event that it becomes necessary to revise any part of this RFP due to inquiries raised, an email notifying an addendum, supplement or amendment to this RFP will be provided to artists who received an original invitation to bid via email OR responded to us with their contact information as described in this RFP. Changes to the RFP shall be accomplished by an amended page or pages.

FOR MORE INFORMATION
Please contact Adriana Flores at the Parks & Community Services Department:
Adriana.Flores@watsonville.gov

*PLEASE NOTE: Subsequent addendums and all attachments are available online at the City of Watsonville’s website at www.cityofwatsonville.org.
ATTACHMENTS
ATTACHMENT A – SAMPLE ARTIST AGREEMENT
ATTACHMENT B – CITY PLAZA MASTER PLAN DESIGN
AGREEMENT Between the CITY OF WATSONVILLE
And [ARTIST NAME] For COMMISSIONED ARTWORK/WORK MADE FOR HIRE

This is an Agreement, made and entered into by and between the CITY OF WATSONVILLE, a municipal corporation of the State of California, hereinafter referred to as the “CITY”, and [ARTIST NAME] hereinafter called the “ARTIST”.

NOW, IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, CITY and ARTIST agree as follows:

ARTICLE 1. DEFINITIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

1.3 CONTRACT ADMINISTRATOR: The Contract Administrator shall be a staff member of the CITY’s Parks & Community Services Department. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.

1.4 CITY OF WATSONVILLE PUBLIC ART PROGRAM: The CITY program whose purpose is to promote, support, fund and increase the creation of public art displays within the City to provide an opportunity for personal and community reflection, promote the City’s attributes and enhance its image for the enjoyment and benefit of the residents, businesses, employees and visitors.

1.5 SITE: The SITE is [_________]

1.6 WORK: [Design, fabrication, and installation of…] The WORK is described in the sketch and accompanying information attached hereto as Exhibit A.

1.7 NOTICE TO PROCEED: A written directive to begin with the WORK issued by the Contract Administrator.

ARTICLE 2. SCOPE OF WORK

2.1 ARTIST agrees to perform the WORK pursuant to this Agreement.

2.2 For services rendered herein, CITY shall pay ARTIST a sum not to exceed [$$] for the WORK during the period beginning and to be completed by [Term of Agreement]. Terms and Conditions for Payment are attached in Exhibit B of this Agreement.

2.3 The CITY shall provide the ARTIST, without cost to Artist, copies of designs, drawings, reports, and other relevant data needed by the ARTIST in order to design and execute the WORK.
2.4 The ARTIST shall provide monthly progress reports and/or deliverables to CONTRACT ADMINISTRATOR in a manner acceptable to the CONTRACT ADMINISTRATOR.

ARTICLE 3. CHANGES IN SCOPE AND ADDITIONAL WORK

3.1 If the ARTIST determines any changes to the WORK to be necessary after this Agreement is signed by City and Artist, the ARTIST shall present to the CITY in writing, drawing or other appropriate media for review any significant changes in the scope, design, color, size, material, utility and support requirements, texture, or location of the SITE or of the WORK. A significant change is any change which affects the installation, scheduling, SITE preparation or maintenance of the WORK, or the concept of the WORK as represented in the original approved design herein.

3.2 If the CITY does not agree to changes requested by ARTIST, the CITY shall be entitled to terminate the Agreement for cause pursuant to this Agreement.

3.3 The ARTIST shall perform the services called for in Exhibit A. The ARTIST and the CITY agree that the ARTIST shall retain artistic control of the WORK, subject only to the limitations imposed in Exhibit A.

3.4 Notwithstanding the provision of Section 3.3 immediately above, the CITY may, at any time, request the ARTIST in writing to: revise portions of the WORK previously completed in a satisfactory manner; delete portions of the WORK which has yet to be performed; perform additional WORK beyond that provided in Exhibit A; or make other changes to the tasks to be performed under this Agreement. In the event of such a written request, the ARTIST may, but shall not be obligated to, agree to any such request.

a. If the request for change is agreed to by the ARTIST, this Agreement shall be amended, in writing, specifying the agreed changes, including, but not limited to, a description of services, additional budget, payment schedule and timetable.

b. The WORK to be completed by the ARTIST is unique and personal to the ARTIST, and may not be capable of completion by anyone other than the ARTIST. Therefore, if the ARTIST does not agree to a CITY request to modify the WORK called for by this Agreement, the CITY shall be entitled to terminate the Agreement for cause. However, if the CITY determines, in its sole and reasonable discretion, that the ARTIST’S failure or refusal to modify the WORK is justifiable, in good faith, and for reasons beyond the control of the ARTIST, the CITY may authorize the ARTIST to keep payments made under this Agreement for tasks already completed. In such case, the CITY may, at its option, engage another artist to complete the WORK.

3.5 No additional compensation is due the ARTIST without the prior written authorization by the CITY.

ARTICLE 4 RESPONSIBILITIES OF THE ARTIST
ATTACHMENT A: SAMPLE ARTIST AGREEMENT

4.1 The ARTIST agrees that an essential element of this Agreement is the skill and creativity of the ARTIST. The ARTIST shall not assign the creative or artistic portions of the WORK to another party for the production of the WORK without the prior written consent of the CITY. Failure to conform to this provision may be cause for termination of this Agreement, at the sole option of the CITY.

4.2 The ARTIST shall be responsible for providing the WORK including, but not limited to, the quality and timely completion of the WORK. The ARTIST shall be responsible for designing the WORK so that it can be constructed without exceeding the approved overall budget for the WORK. The ARTIST shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his/her WORK.

4.3 If the services of the ARTIST are integrated into, combined, or otherwise coordinated with services by third parties not within the control of the ARTIST, the ARTIST shall not be responsible for such third-party services. If any part of the ARTIST’S WORK depends on proper execution or results of tasks performed by the CITY, or a third-party responsible to the CITY, the ARTIST shall, prior to proceeding with the WORK, promptly report to the CITY any apparent discrepancies or other defects in such other work which renders it unsuitable for proper execution and results by the ARTIST. The ARTIST shall not be responsible for any liability or failure to the WORK because of such discrepancies or defects. Failure of the ARTIST to report a discrepancy or defect shall constitute an acceptance of the CITY’S or third party’s performance as fit and proper. Any costs caused by defective performance or ill-timed tasks shall be borne by the party responsible therefore. Nothing in this section shall limit the responsibility of the ARTIST to take all reasonable steps to coordinate the WORK with the tasks and/or performance of the CITY or of a third party regarding the WORK.

4.4 If ARTIST, during the course of performing work under this Agreement, requires the service of any subcontractors, other professional associates or volunteers in connection with the WORK, ARTIST must secure the prior written approval of the CITY. ARTIST agrees to have such volunteer, subcontractor or other third party execute a waiver, as shown in Exhibit D.

4.5 If the ARTIST is involved in the execution, fabrication, transportation, inspection and/or installation of any part of the WORK, the following provisions shall apply:

   a. The ARTIST shall, if and when working on CITY property, supervise such clean-up as may be reasonably requested by the CITY. After completing the WORK, the ARTIST shall promptly remove their equipment, excess materials, etc., clean the Site, and as requested by the CITY.

   b. The CITY and any third-party contractor shall notify the ARTIST of their operation, construction and maintenance schedules in and around the area where the WORK is to be performed. The ARTIST shall work in a manner and time so as not to cause interference with any of the operations, construction, or maintenance of the CITY or third-party contractor. In the event of a conflict between the schedules of the third-party contractor and/or the CITY and the ARTIST, the conflict will be resolved by the CITY. If the resolution of the conflict results in a delay of the WORK, the ARTIST shall have the right to renegotiate this Agreement to compensate for any additional costs or expenses caused by the delay.
ATTACHMENT A: SAMPLE ARTIST AGREEMENT

c. The ARTIST shall complete the WORK in substantial conformity with the attached Exhibit A.

d. If, in the prosecution of the WORK, it is necessary to conduct field operations, security and safety of the SITE will be the ARTIST’S responsibility excluding, nevertheless, the security and safety of any CITY facility within the SITE, which is not under the ARTIST’S control.

e. ARTIST shall meet with the CONTRACT ADMINISTRATOR or other CITY personnel, or third parties as necessary, on all matters connected with carrying out of ARTIST’S services described herein. Such meeting shall be held at the request of either party hereto. CITY review and written approval of completed tasks shall be obtained monthly, during the course of the WORK.

4.6 The ARTIST shall supply the CITY with (a) their current professional resume, (b) detailed information concerning the materials used in the creation of the WORK, and (c) a detailed maintenance program and schedule for the WORK.

ARTICLE 5 RESPONSIBILITIES OF CITY

5.1 CITY shall assist ARTIST by placing at ARTIST’S disposal all public information it has available pertaining to the WORK.

5.2 CITY shall perform in a timely way each and every activity as set forth in this Agreement and Exhibit A. If delays occur when deliverables of ARTIST are dependent upon the CITY’S timeliness, the ARTIST’S schedule of performance shall be adjusted accordingly.

5.3 CITY shall:

a. Arrange for access to the site so that ARTIST may enter upon public property as required for ARTIST to complete the WORK.

b. Give prompt written notice to ARTIST whenever the CITY observes or otherwise becomes aware of any development that affects the scope or timing of completion of the WORK.

c. Arrange appointments, meetings, consultations as needed for the ARTIST to complete the WORK.

d. Review materials as set forth in Exhibit A in a timely manner.

ARTICLE 6 WARRANTIES/STANDARDS

6.1 The ARTIST warrants that (a) the WORK being commissioned is original; and (b) that the ARTIST shall not sell or reproduce the WORK, separate from portfolio reproductions, or allow others to do so without the prior written consent of the CITY.

6.2 The ARTIST shall guarantee the WORK to be free from faults of material and workmanship for a period of one (1) year after installation and final acceptance by the CITY. The ARTIST shall deliver the WORK to the CITY free and clear of any liens from any source whatever. These guarantees
shall apply only to those aspects of the WORK which are entirely that of the ARTIST or persons responsible to the ARTIST, as installed, and shall not apply to materials or workmanship of projects in which the ARTIST’s work is integrated or combined, or to materials purchased, acquired, or installed by a person or entity not responsible to the ARTIST.

6.3 The ARTIST shall faithfully complete the WORK in accordance with standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform work of a similar nature to the WORK.

ARTICLE 7 COMPENSATION AND TIME OF PERFORMANCE

7.1 The ARTIST shall be paid for services satisfactorily rendered pursuant to this Agreement in accordance with the terms herein, Exhibits A and B, and subsequent adjustments, changes or additions as specifically provided for in this Agreement. Such payment shall be full compensation for the WORK, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals including transportation of the WORK to the designated SITE.

7.2 The amount and schedule of payments to the ARTIST are contained in Exhibit B, Compensation and Schedule of Payments, provided that such payments shall not exceed a maximum amount of [$$], subject only to adjustments, changes or additions as specifically provided for in this Agreement (“Total Price”).

7.3 If the ARTIST incurs costs in excess of the Total Price, the ARTIST shall pay such excess from his/her own funds, and the CITY shall not be required to pay any part of such excess, and the ARTIST shall have no claim against the CITY on account thereof.

7.4 The ARTIST shall submit invoices to the CITY according to the schedule provided for in Exhibit B, such invoices are to be in the form requested by the CITY.

7.5 If the CITY determines that services for which it has been invoiced do not meet the contract specifications and that it intends to withhold payment, the CITY shall provide written notice to the ARTIST within fifteen (15) days of receipt of the invoice, specifying the failure of performance for which the CITY intends to withhold payment. The ARTIST shall thereafter meet contract standards to the satisfaction of the CITY or advise the CITY that they dispute the CITY’S determination that the specifications have not been met.

7.6 The CITY shall pay all invoices that meet contract specifications within thirty (30) days of receipt of invoice.

7.7 No payment to the ARTIST for any WORK performed or services rendered shall constitute a waiver or release by the CITY of any claims, rights or remedies it may have against the ARTIST under this Agreement or by law, nor shall such payment constitute a waiver, remission, or discharge by the CITY of any failure or fault of the ARTIST, to satisfactorily perform the WORK and services as required under this Agreement.

7.8 The WORK shall be completed in accordance with the schedule for completion of the WORK as proposed by the ARTIST and approved by the CITY, provided that such time limits may be extended or otherwise modified by written agreement between the ARTIST and the CITY. Upon
ATTACHMENT A: SAMPLE ARTIST AGREEMENT

payment and completion of services, ARTIST agrees to meet with CONTRACT ADMINISTRATOR to discuss success of WORK.

7.9 If, when the ARTIST completes fabrication or procurement of the WORK in accordance with the approved schedule and notifies the CITY that the WORK is ready for installation, the ARTIST is delayed from installing the WORK within the time specified in the schedule as a result of the construction on the SITE not being sufficiently or reasonably complete to permit installation of the WORK therein, or the CITY otherwise does not make the SITE available to the ARTIST in accordance with the approved schedule, the CITY shall promptly reimburse the ARTIST for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the SITE is made available to the ARTIST for installation of the WORK.

7.10 The ARTIST shall bear any transportation and storage costs resulting from the completion of the WORK prior to the time provided in the schedule for installation of the WORK.

7.11 The CITY shall grant a reasonable extension of time to the ARTIST if there is a delay in performing its obligations under this Agreement or in completing the underlying capital project, or if conditions beyond the ARTIST’S control or Acts of God render timely performance of the ARTIST’S services impossible or unduly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party’s reasonable control will not be considered a breach of contract; provided that such obligations shall be suspended only for the duration of such conditions.

7.12 For delays in the installation of the WORK beyond the schedule provided for under this Agreement caused by factors reasonably under the ARTIST’S control, ARTIST agrees to pay or credit and CITY agrees to accept one hundred dollars ($100.00) per day as liquidated damages for such delay.

ARTICLE 8. WAIVER OF ARTIST’S RIGHTS

8.1 As a material part of the consideration provided by ARTIST under the terms of this Agreement, ARTIST waives any and all rights ARTIST may have with respect to the WORK and any and all works of art produced under the terms of this Agreement pursuant to the federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code § 987 et seq.), and any other local, state, federal or international laws that convey rights of similar nature as those conveyed under 17 U.S.C. section 106A, Cal. Civil Code section 987 et seq., or any other type of right protecting the integrity of works of art. ARTIST expressly agrees that the WORK performed hereunder is “Work Made for Hire” under the provisions of 17 U.S.C. section 101. The provisions of this paragraph shall apply to modify ARTIST’s rights of attribution and integrity as set out in the Visual Artists Rights Act; 17 U.S.C §§ 106A and 113(d) (“VARA”), the California Art Preservation Act, Cal. Civil Code §§ 987 and 989 (“CAPA”), and any rights arising under United States federal or state law or under the laws of another country that convey rights of the same nature as those conveyed under VARA and CAPA, as against the CITY, its officers, officials, employees and agents. The CITY has the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the WORK without compensation or liability to ARTIST.
ATTACHMENT A: SAMPLE ARTIST AGREEMENT

ARTICLE 9 COPYRIGHT

9.1 The ARTIST agrees that the WORK and services performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. The ARTIST further agrees that the WORK will not utilize any protected patent, trademark or copyright in performance of WORK under this Agreement unless the ARTIST has obtained proper permission and all releases and other necessary documents. If the ARTIST specifies any material, equipment, process or procedure which is protected, the ARTIST shall disclose such patents, trademarks and copyrights in the construction drawings and technical specifications.

9.2 The ARTIST agrees to indemnify, defend, and hold harmless the CITY, its officers, officials, volunteers, agents, and employees from and against any and all claims, damages, suits, costs (including, but not limited to reasonable attorneys’ fees), expenses, liabilities, injuries, losses, actions or proceedings of any kind resulting from the performance of the WORK or services under this Agreement which infringes upon any patent, trademark or copyright protected by law.

ARTICLE 10 TIME FOR PERFORMANCE

10.1 This Agreement and the compensation for ARTIST'S services provided for in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the WORK.

10.2 Under no circumstances shall the WORK commence before ARTIST waives any and all rights the ARTIST may have with respect to the WORK and any and all works of art produced under the terms of this Agreement pursuant to the federal Visual Artists Rights Act of 1990 (17 U.S.C. sections 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code sections 987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. § 106A, Cal. Civil Code § 987 et seq., or any other type of moral right protecting the integrity of works of art, including, without limitation, the rights of authorship, attribution, integrity, and reproduction. The parties to this Agreement acknowledge and agree that the ARTIST shall waive such rights by providing a signed waiver, as approved as to form by the City Attorney, to the City for its records.

10.3 Prior to beginning the performance of the WORK under this Agreement, ARTIST must receive a NOTICE TO PROCEED from the CONTRACT ADMINISTRATOR.

10.4 If ARTIST is unable to complete the WORK because of delays resulting from untimely issuance of a NOTICE TO PROCEED or from untimely review and approval by CITY, and such delays are not the fault of ARTIST, CITY shall grant a reasonable extension of time for completion.

ARTICLE 11 TERMINATION

11.1 Either party may terminate this Agreement with or without cause by providing thirty (30) days’ notice, in writing, to the other party. Upon the expiration date of said notice, this Agreement shall become of no further force or effect whatsoever and each of the parties shall be relieved and discharged here from.
ATTACHMENT A: SAMPLE ARTIST AGREEMENT

11.2 If this Agreement is terminated by the CITY without cause, the CITY shall pay the ARTIST for all WORK performed and services rendered up to the effective date of the termination.

11.3 If this Agreement is terminated by the ARTIST without cause, the ARTIST shall promptly reimburse the CITY for all payments made under this Agreement prior to the termination by the ARTIST.

11.4 In the event that the CITY determines that the ARTIST has substantially failed to fulfill their obligations as provided under this Agreement, the CITY shall provide the ARTIST with written notice describing the specific obligations which the CITY claims the ARTIST has failed to fulfill and notifying the ARTIST that they are deemed to be in breach of the Agreement. If the breach is not cured or if the CITY and the ARTIST cannot agree on a schedule for curing the breach, the Agreement will be deemed terminated on a date specified by the CITY which will be no sooner than ten (10) days from the date of issuance of the notice. If the Agreement is so terminated by the CITY, the ARTIST shall promptly reimburse the CITY for all payments made under this Agreement prior to the termination by the CITY.

11.5 If, because of the death, or serious illness or accident, it becomes impossible for the ARTIST to render services or perform work under this Agreement, the Agreement shall be deemed terminated.

ARTICLE 12 INSURANCE

12.1 ARTIST shall at all times during the term of this Agreement with the CITY maintain in force those insurance policies and bonds as designated in the attached Exhibit C and will comply with all those requirements as stated herein.

ARTICLE 13 CIVIL RIGHTS COMPLIANCE / EQUAL OPPORTUNITY ASSURANCE

13.1 Every supplier of materials and services and all artists doing business with the CITY shall be in compliance with the applicable provisions of the Americans with Disabilities Act of 1990, and shall be an equal opportunity employer as defined by Title VII of the Civil Rights Act of 1964 and including the California Fair Employment and Housing Act of 1980. As such, ARTIST shall not discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, age or sex with respect to hiring, application for employment, tenure or terms and conditions of employment. In addition, the CITY, as defined in Resolution NS-20, 137 and Ordinance 92-11, further prohibits discrimination on the basis of sexual orientation, height, weight and physical characteristics. ARTIST agrees to abide by all of the foregoing statutes, regulations, ordinances and resolutions.

ARTICLE 14 PUBLICITY/MEDIA

14.1 ACKNOWLEDGMENT OF CITY
Whenever interviewed or otherwise contacted by the media with reference to WORK, ARTIST agrees to reference the CITY’s Art Program and the fact that the improvements were partially underwritten with City funds granted in connection with that Program.

14.2 CITY PUBLICITY
In order to assist the CITY in publicizing its Art Program, upon reasonable advance notice provided by CITY, ARTIST shall allow CITY to access the WORK in order to photograph or otherwise record the WORK before, during and following implementation and construction so as to document the WORK itself as well as the visual impact of the WORK on the SITE. ARTIST expressly permits CITY to use any such visual images for its promotion of the Art Program, for the promotion of the CITY in general and for the cross-promotion of the ARTIST. All such visual images of the SITE and the WORK obtained by the CITY shall be, and remain, the property of the CITY. All such visual images shall be subject to disclosure pursuant to the California Public Records Act.

14.3 REPRESENTATIVE INTERVIEW
Upon reasonable notice by CITY, ARTIST shall be available to CITY to record an interview arranged by the CITY’s Economic Development Department in which the Artist or representative will be asked to comment upon the CITY’s Art Program and the ARTIST’s experience as a beneficiary of that Program. All such recordings may be used by the CITY for those promotional purposes referenced in Section 14.2, shall be, and remain, the property of the CITY and may be subject to disclosure pursuant to the California Public Records Act.

ARTICLE 15 MISCELLANEOUS

15.1 RECORDS
ARTIST shall maintain accurate accounting records and other written documentation pertaining to the costs incurred for the WORK. Such records and documentation shall be kept available at ARTIST’s office during the period of this Agreement, and after the term of this Agreement for a period of three years from the date of the final CITY payment for ARTIST’s services.

15.2 INDEPENDENT CONTRACTOR
In the performance of the WORK, it is expressly agreed that ARTIST, including ARTIST’s agents, servants, employees, volunteers and subcontractors, are an independent contractor solely responsible for its acts and omissions, and ARTIST shall not be considered an employee of the CITY for any purpose.

15.3 SUBCONTRACTORS
If ARTIST, during the course of the WORK under this Agreement, requires the service of any subcontractors or other professional associates in connection with services or activities covered by this Agreement, ARTIST shall secure the prior written approval of the CITY.

15.4 ASSIGNMENT
The City is relying on and contracting for the personal services of ARTIST. This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by ARTIST, without the prior written consent of CITY.

15.5 CONFORMITY WITH LAW AND SAFETY
ARTIST shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable Federal, State, municipal and local safety
regulations. All services performed by ARTIST must be in accordance with these laws, ordinances, codes and regulations. ARTIST shall indemnify, defend, and hold CITY harmless from any and all liability, fines, penalties and consequences from any noncompliance or violations of such laws, ordinances, codes and regulations.

Accidents: If death, serious personal injury, or substantial property damage occurs in connection with the performance of this Agreement, ARTIST shall immediately notify the CITY CLERK. ARTIST shall promptly submit to CITY a written report, in such form as may be required by CITY of all accidents which occur in connection with this Agreement. This report must include: (1) name and address of the injured or deceased person(s); (2) name and address of ARTIST’S subcontractors, if any; (3) name and address of ARTIST’S liability insurance carrier; and (4) a detailed description of accident and whether any of CITY’S equipment, tools, material or staff were involved.

15.6 CONFLICT OF INTEREST
No officer, member, or employee of CITY and no member of their governing boards, councils or commissions shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. Any violation of this provision shall be considered a material breach of this Agreement. ARTIST shall file FPPC Form 700 or similar forms.

15.7 USE OF CITY PROPERTY
ARTIST shall not use CITY premises, property (including equipment, instruments and supplies) or personnel for any purpose other than the performance of his/her obligations under this Agreement.

15.8 ENTIRE AGREEMENT
The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded.

15.9 TIME
Both parties to this Agreement recognize that time if of the essence in the performance of the provisions of this Agreement.

15.10 SERVICE OF PROCESS
ARTIST agrees to appoint [_______] as its sole agent on whom all process may be served in any action or proceeding for any claim or action arising out of this Agreement.

15.11 INDEMNIFICATION
ARTIST agrees to indemnify, defend, and hold harmless the CITY, its officers, officials, agents, volunteers and employees to the fullest extent permitted by law, from and against any and all claims, demands, actions, damages, losses, liabilities, and/or judgments, including reasonable attorneys’ fees, associated costs of investigation and defense, related to or arising out of in any manner from the acts or omissions by ARTIST, and/or ARTIST’s employees, agents, subcontractors or volunteers, under this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the CITY.

ARTIST’S obligation to indemnify, defend and hold CITY harmless hereunder shall include, but shall not
be limited to, any claims she may have with respect to the WORK under the federal Visual Artists Rights Act of 1990 (17 U.S.C. sections 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code sections 987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. § 106A, Cal. Civil Code § 987 et seq., or any other type of moral right protecting the integrity of works of art, including, without limitation, the rights of authorship, attribution, integrity, and reproduction.

15.12 AMENDMENTS
This Agreement may not be amended in any respect except by way of a written instrument which expressly references and identifies this particular Agreement, which expressly states that its purpose is to amend this particular Agreement, and which is duly executed by the CITY and ARTIST. ARTIST acknowledges that no such amendment shall be effective until approved and authorized by the CITY COUNCIL.

15.13 LEGAL ACTION/ATTORNEYS' FEES
If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which he or she may be entitled. The Santa Cruz County Superior Court shall have jurisdiction over any such action and that Court shall be authorized to determine which party is the prevailing party and what amount constitutes reasonable attorneys' fees to be awarded to the prevailing party.

15.14 SEVERABILITY
If any of the provisions, or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.

15.15 COUNTERPARTS
This Agreement may be executed on one or more copies and each counterpart will be considered an original and binding to the party executing it. A scanned, electronic, facsimile or other copy of a party's signature shall be treated the same as an original.

15.16 CONSTRUCTION OF AGREEMENT
Each of the parties acknowledge that they reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

15.17 NOTICES
All notices shall be personally served or mailed, postage prepaid, to the following addresses, or to such other address as may be designated by written notice by the parties:

CITY

   City Clerk
   275 Main Street, Suite 400
   Watsonville, CA 95076
   (831) 768-3040

ARTIST

   [ADDRESS]
ATTACHMENT A: SAMPLE ARTIST AGREEMENT

CITY

CITY OF WATSONVILLE

BY______________________
   Rene Mendez, City Manager

BY______________________
   [Name, Artist]

ATTEST:

BY______________________
   Irwin Ortiz, City Clerk

APPROVED AS TO FORM:

BY______________________
   Samtha Zutler, City Attorney
EXHIBIT A
Description of Work
Compensation and Payment Schedule

Total payment: [_____

First payment:

Second payment:

Last payment:
ARTIST shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by ARTIST, ARTIST’S respective employees, subcontractor(s), agents, representatives, or volunteers.

Minimum Scope and limit of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** ISO Form Number CA 00 01 covering Code 1 (any auto), or if Artist has no owned autos, Code 8 (hired) and Code 9 (non-owned autos), with limits no less than $1,000,000 per accident for bodily injury and property damage.

3. **Workers’ Compensation insurance** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.

The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Watsonville for all work performed by Contractor, and Contractor’s respective employees.

If ARTIST has no employees, ARTIST shall complete and sign a **Workers’ Compensation Exemption Declaration and Release of Liability**.

If ARTIST will use volunteers for the commissioned artwork/work made for hire, ARTIST will ensure that all volunteers complete and sign an agreement to release, indemnify and hold harmless the City of Watsonville, as provided in Exhibit D.

If ARTIST maintains broader coverage and/or higher limits than the minimums shown above, the CITY requires and shall be entitled to the broader coverage and/or higher limits maintained by ARTIST. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Watsonville.
Other Insurance Provisions

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

**Additional Insured Status**
The City of Watsonville, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor, including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement by Contractor (at least as broad as ISO Form CG 20 10 11 85 or, if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later editions are used).

**Primary Coverage**
For any claims related to this contract, insurance coverage of Contractor shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City of Watsonville, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City of Watsonville, its officers, officials, employees, agents, or volunteers shall be excess of insurance of Contractor and shall not contribute with it.

**Notice of Cancellation**
Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City of Watsonville.

**Waiver of Subrogation**
Contractor shall grant to the City of Watsonville a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City of Watsonville by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City of Watsonville has received a waiver of subrogation endorsement from the insurer. The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Watsonville for all work performed by Contractor, and Contractor’s respective employees.

**Self-Insured Retentions**
Self-insured retentions must be declared to and approved by the City of Watsonville. The City of Watsonville may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the City.

**Acceptability of Insurers**
Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A: VII,
unless otherwise acceptable to the City.

**Verification of Coverage**

ARTIST shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Artist’s obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including declarations and endorsements required by these specifications, at any time.

The City’s standard Certificate of Insurance requirements include the following:

1. The Certificate(s) will show current policy number(s) and effective dates;
2. Coverage and policy limits will meet, or exceed, the requirements above;
3. The Certificate Holder will be City Clerk, City of Watsonville, 275 Main Street, Suite 400, Watsonville, CA 95076
4. The Certificate will be signed by an authorized representative.

**Subcontractors**

ARTIST shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Artist shall ensure that City of Watsonville, its officers, officials, employees, agents, and volunteers are additional insureds on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

**Special Risks or Circumstances**

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
EXHIBIT D
WAIVER OF LIABILITY BY VOLUNTEERS AND AGENTS

WAIVER OF LIABILITY, RELEASE, ASSUMPTION OF RISK AND INDEMNITY AGREEMENT

Name of Participant: _____________________________________________________

Address: _______________________________________________________________

Phone Number: ________________ Emergency Contact Phone: ___________________

Emergency Contact Name: ________________________________________________

I acknowledge and understand that participating in the design, fabrication, installation, and/or maintenance of art projects at [ADDRESS], may expose me and/or my child to risk. Potential hazards to health and safety within these areas include, but are not limited to, injury due to lifting or handling heavy objects, repetitive stress injuries, falling from stools or ladders, uneven or slippery surfaces, lacerations from paper or sharp or metal objects, vegetation, gopher holes or other rough terrain, litter, debris and contaminants, drug paraphernalia, environmental pollution, and loss or damage to personal property. I further understand that I alone shall be responsible for evaluating my own physical limitations and participating in any activities accordingly.

I understand that any of these risks and perils, both anticipated and unanticipated, may cause injury or death. I, therefore acknowledge that I and/or my child am/are voluntarily participating in this hazardous activity with knowledge of the potential dangers and hazards involved. I hereby agree on behalf of myself and/or my child to accept and assume any and all risk, including the risk of injury, property damage, or death. I, on behalf of myself and/or my child further agree not to assert any claim, institute any suit or other legal process against the City of Watsonville, its officers, officials, employees, agents or volunteers for injury, death or damage resulting from or in any way related to my and/or my child’s participation in the above-referenced design, fabrication, and installation of an art project.

In consideration of being permitted to participate in the design, fabrication, and installation of a mural, I, on behalf of myself and/or my child, hereby release, discharge, hold harmless and indemnify the City of Watsonville, its officers, officials, employees, agents or volunteers from and against all actions, claims or demands that I and/or my child, our heirs, guardians, legal representatives, or assigns now have or may hereafter have for injury, death or damage resulting from or in any way related to my and/or my child’s participation in the above-referenced design, fabrication, and installation of an art project.

I HEREBY CERTIFY THAT I HAVE CAREFULLY READ THIS AGREEMENT AND FULLY UNDERSTAND ITS CONTENTS. I FURTHER CERTIFY MY UNDERSTANDING THAT THIS AGREEMENT CONSTITUTES A RELEASE OF ALL CLAIMS AGAINST THE CITY OF WATSONVILLE AND AGAINST ALL OTHERS MENTIONED IN THE
ATTACHMENT A: SAMPLE ARTIST AGREEMENT

AGREEMENT. I FURTHER UNDERSTAND AND CERTIFY THAT BY EXECUTION OF THIS AGREEMENT I AM VOLUNTARILY ASSUMING ALL RISK INHERENT IN MY AND/OR MY CHILD’S PARTICIPATION IN THE ABOVE-REFERENCED DESIGN, FABRICATION, AND INSTALLATION OF AN ART PROJECT. FINALLY, I ACKNOWLEDGE THAT I AM VOLUNTARILY SIGNING MY NAME TO THIS AGREEMENT AND BY DOING SO AM ACCEPTING ITS TERMS AS BINDING UPON MYSELF, MY CHILD, MY HEIRS, AGENTS, LEGAL REPRESENTATIVES, AND ASSIGNS.

WAIVER OF LIABILITY, RELEASE, ASSUMPTION OF RISK AND INDEMNITY AGREEMENT

I, the undersigned, acknowledge that I have read the foregoing Waiver of Liability, Release, Assumption of Risk and Indemnity Agreement, have been advised of the potential dangers incidental to engaging in the design, fabrication, and installation of an art project, and I am fully aware of the legal consequences of signing this instrument.

I hereby give the City of Watsonville the right to use photographs or videos taken of me and/or of my child while participating in the above activity for reproduction in any medium for purposes of advertising, trade, display, exhibition, or editorial use.

Participant Signature: _________________________________________ Date: _____________

FOR PARENTS/GUARDIANS OF PARTICIPANTS OF MINORITY AGE:
(UNDER AGE 18 AT TIME OF PARTICIPATION)

I hereby certify under penalty of perjury that I am the parent and/or legal guardian of ____________________________, identified herein as my “child,” and I have the authority to execute this agreement. As parent/guardian with legal responsibility for this child, I do voluntarily consent and agree to accept the terms of this agreement for myself, my child, heirs, agents, legal representatives and assigns.

X __________________________ Date: __________________
PARENT/GUARDIAN'S SIGNATURE

Child’s Name: __________________________ Age of Child: _________
LEGEND

1. Rebuilt Gazebo with permeable paver plaza
2. Refurbished Fountain with brick plaza, park benches, and interpretive signage
3. 18" high permanent stage with guardrails
4. Ramp with handrails to stage
5. Primary entrance specialty paving
6. Game table area
7. Group picnic area
8. Historic/Art Element Pedestal
9. Existing historic drinking fountain
10. Existing flag pole
11. Cannon area
12. Pathway paving with brick accent
13. Park benches
14. Circular bench around existing tree
15. Secondary entry accent planting
16. Open turf areas
17. Restroom building with brick permeable paver plaza
18. Low hedge planting
19. Raised crosswalk with removable bollards
20. Removable stage portion with paver pattern, guardrail and permeable pavers below
21. Resurfaced Peck Street and Union Street as shown with permeable pavers
22. Drinking fountain
23. Interpretive signage
24. ADA accessible spectator area with permeable pavers
25. Planting area
26. Existing trees to be protected
27. Proposed accent trees
28. Proposed street trees
29. Proposed palm trees