

**COMMUNITY PARTNERSHIP AGREEMENT BETWEEN THE CITY OF SAN LUIS OBISPO AND THE
SAN LUIS OBISPO MUSEUM OF ART FOR PUBLIC ART PROFESSIONAL SERVICES**

This community partnership agreement ("Agreement") is made and entered into in the City of San Luis Obispo on July 21, 2023 by and between the City of San Luis Obispo, a municipal corporation and charter city, hereinafter referred to as "City", and San Luis Obispo Museum of Art, a non-profit public benefit corporation (501-C3), hereinafter referred to as "SLOMA".

WITNESSETH:

WHEREAS, the City is the legal owner of the property located at 1010 Broad Street in the City of San Luis Obispo as shown on Exhibit A; and

WHEREAS, SLOMA currently leases certain premises from the City located at 1010 Broad Street, which constitutes a portion of certain real property owned by the City within City limits, collectively known as Mission Plaza and identified as San Luis Obispo County Assessor Parcel No. 002-423-006. In furtherance of CITY and SLOMA's common goals and objectives for public art and education, as described herein, CITY also desires to allow for shared use by SLOMA of the "lawn area" located immediately to the northeast of SLOMA's existing leased Premises as shown on Exhibit A attached to this Agreement; and

WHEREAS, the City desires to maintain a mutually beneficial relationship with SLOMA as a way to continue to enhance the sense of community through public art for the residents of San Luis Obispo; and

WHEREAS, consistent with adopted City planning documents, including the Downtown Concept Plan, current Major City Goals that focus on economic vitality and tourism serving objectives, the City desires to create a cultural arts district adjacent to the Mission Plaza and anchored by the Museum of Art (as well as by the History Center, Children's Museum, and forthcoming SLOREP); and

WHEREAS, the City Council established and funded a public art program in 1990 (Resolution No. 6811 (1990 Series)); and

WHEREAS, SLOMA is uniquely qualified to provide the public art services contemplated under this Agreement due to its intimate knowledge of art, unique connection to the arts community, and its long experience producing and providing cultural art exhibits for the benefit of the community; and

WHEREAS, SLOMA is situated to provide technical expertise, artists relationships, project management, communications, and engagement leadership through the acquisition of public art pieces and/or the activation of public spaces through the integration of public art and/or the acquisition of signature art pieces to compliment gateways into the City. SLOMA desires to continue to activate the Mission Plaza lawn and outdoor space through installations, art activities, and educational opportunities; enhancing the City's cultural arts district; and

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WHEREAS, the City Council recognizes that public art is fundamentally different from most other types of public works in that when selecting public art, the CITY is looking for an individual expression or unique idea, which makes sole source selection and acquisition of completed pieces appropriate means of acquiring public art; and

WHEREAS, to ensure an efficient acquisition process, the City Council has delegated to the City Manager the authority to approve acquisition of public art pieces by SLOMA under this Agreement as set forth in criterion established under this agreement; and

WHEREAS, the CITY and SLOMA desire to continue to encourage public art that respects the community's past and embraces the future in a collaborative, diverse, and equitable fashion; and

WHEREAS, the CITY desires to maintain a mutually beneficial relationship between the CITY and SLOMA as a way to continue to enhance the sense of place and community for residents through the proliferation of public art and education thereof; and

WHEREAS, City staff will continue to focus directly on the other equally valuable components of the City's Public Art program, including support of the local art community, activation of space through art programming and installation, infrastructure or public art maintenance, communications and outreach, policy development and guidance, and support of private development art installation; and

WHEREAS, the CITY has determined that partnerships with community organizations to provide shared services to the community are of great benefit and SLOMA has provided a proposal to the City expressing a desire to support public art installations to mutually benefit both agencies.

NOW THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. **TERM OF AGREEMENT** The term of this Agreement shall be for approximately two (2) years commencing on July 21, 2023, and terminating on June 30, 2025.
2. **FINANCIAL MANAGEMENT.** The CITY and SLOMA agree to a series of terms as outlined below.
 - 2.1. The CITY shall compensate SLOMA \$100,000 annually, for a total of \$200,000, during the term of this Agreement for the general services it provides under the terms of this agreement.
 - 2.1.a. SLOMA shall invoice the CITY on a biannual basis (for \$50,000 each half-year) for this service by no later than July 1 and January 1 each year of this Agreement.
 - 2.1.b. The CITY shall remit payment to SLOMA within thirty (30) days from the date of receipt by CITY of its biannual invoice for general community art services from SLOMA.

2.2. SLOMA shall make a minimum of three different art acquisitions per year on behalf of the CITY, as defined below. CITY shall pay for purchase or lease of public art pieces facilitated by SLOMA on the City’s behalf under the terms of this agreement. For the length of this agreement said costs shall not to exceed \$400,000 annually which has been budgeted for the purpose of SLOMA’s facilitated acquisition of three different types of art as follows:

Acquisitions and Installation of Art on Behalf of the City by SLOMA for each year	MAXIMUM ANNUAL CITY FUNDED BUDGET
(1) Roundabout Art – one or more per year	Up to \$250,000 annually
(1) Rotating installation on the Mission Plaza Lawn (Include updates to the platform), installation and deinstallation – one or more per year	Up to \$75,000 annually
(1) Additional place making installation on agreed upon location within the City – one or more per year	Up to \$75,000 annually

Table 1.0: Installation Funded Amounts

2.2.a. PURCHASE OR LEASE OF ART: The CITY will purchase or lease the art directly from the artist. SLOMA will coordinate payment and contract signing between CITY and artist, as outlined in EXHIBIT B: *AGREEMENT FOR COMMISSION OF PUBLIC ARTWORK*. The City will pay a 40% deposit at time of contract execution and the remaining due at time of completion.

2.2.b. INSTALLATION COSTS: As part of this Community Agreement, SLOMA is responsible for the installation of the art and managing costs associated with the installation. SLOMA will provide a separate estimate to the CITY for each of the different installation costs. The City will pay SLOMA a 40% towards the costs of installation at time of contract execution and the remaining due at time of completion. The CITY will reimburse SLOMA for installation costs up to the approved estimated amount once an invoice is provided. For reimbursement, qualifying expenses shall be recorded in addition to the invoice SLOMA provides the CITY.

2.2.b.1. Qualifying expenses are defined as costs directly associated with the installation of the art. Qualifying expenses do not include upgrades to shared space, marketing or private photography costs, travel expenses without prior approval, personal gifts, meals, or gratuities.

- 2.2.b.2. Expenses will be reimbursed up to the amount predetermined by City Council and budget direction and confirmed by Recreation Manager prior to purchase. Costs that exceed this cost must be preapproved by City staff.
 - 2.2.b.3. Costs for purchase and or lease of art plus the installation shall not exceed the original quote and shall remain under the amount outlined in Table 1.0.
 - 2.2.c. For each project, *CITY OF SAN LUIS OBISPO AGREEMENT FOR COMMISSION OF PUBLIC ARTWORK* (Exhibit B) will be completed between the CITY and artist directly. SLOMA will act as liaison to ensure signatures are collected prior to payment or services.
 - 2.2.d. Upon payment, the art becomes a part of the City’s collection (permanent or temporary) and all rights belong to the CITY as outlined in agreement.
 - 2.2.e. SLOMA may use public art for promotion and is expected to recognize the City as funder and program manager.
- 3. CITY ROLES AND RESPONSIBILITIES.** The City of San Luis Obispo Parks and Recreation Director may authorize periodic modifications, within the scope of financial and/or operational authority, to the Roles and Responsibilities as may deem necessary or appropriate to the partnership between the CITY and SLOMA. Any amendment or modifications to the Roles and Responsibilities shall be in writing and may only be made with the mutual written consent of both parties.

4. SCOPE OF SERVICES

Both parties agree to collaborate on the public art program projects as outlined in the obligations below.

A. CITY OBLIGATIONS

- i. The CITY will provide access and guidance to SLOMA relative to the CITY’s Public Art Policies and Procedures Manual.
- ii. The CITY will continue to manage the Utility Box Art Program.
- iii. The CITY will continue to address maintenance needs of the public art program for the current collection of artwork, including artwork installed though the SLOMA/City partnership.
- iv. The CITY will continue to manage the private development public art program.
- v. The CITY will set monthly reoccurring meetings with SLOMA Staff during the two (2) year term.

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- vi. In accordance with paragraph 2 of this Agreement, the CITY shall remit quarterly payments to SLOMA during the two (2) year term of this Agreement.
- vii. The CITY will work with SLOMA regarding payment process to selected Artists as outlined in this Agreement under “Financial Management.”
- viii. The City will continue to hold and manage the Public Art Fund in its sole discretion.
- ix. The City will continue to communicate purchasing limits, which include installation and purchase or lease of art, prior to onset of each project to SLOMA.
- x. Contracts for purchase or lease of art will be signed directly between the City and the artist.
- xi. The City will provide direction regarding priority locations for art installations
- xii. City Public Works staff will continue to work with SLOMA regarding installation of art in public spaces, as appropriate and necessary for the nature of each project and in accordance with the CITY’S Public Art policy and the terms of this Agreement.
- xiii. City Community Development staff will continue to work with SLOMA to support permitting necessary for installations.
- xiv. City Communications staff will continue to promote art installations, joint projects, and the public art program, highlighting SLOMA as valued partners.
- xv. City Tourism staff will continue to promote Public Art through social media marketing and tourism outreach.
- xvi. City staff will continue to notify SLOMA of Mission Plaza and street closures that may impact the Museum prior to non-emergency planned closures. City staff will continue to activate and draw visitors to the Mission Plaza through beautification, outreach, special event permitting and space activation.
- xvii. City staff will continue to maintain the Mission Plaza Park, restrooms, lighting, and all spaces where Public Art is installed under the terms of this agreement.

B. SLOMA OBLIGATIONS

- i. SLOMA will provide coordination of public art for the CITY during the two-year term of this Agreement. Projects shall include the following and are subject to City approval and available funds:

1. Roundabout Public Art Installations:
 - a. A minimum of one Roundabout per year. Public art may be installed at additional roundabouts with prior approval from Recreation Manager based on available City resources. This project is to initiate planning for installation of public art within current or planned City roundabouts.
 2. Annual rotating art installation on the Mission Plaza lawn – a minimum of one.
 3. A minimum of one additional “ephemeral” project.
- ii. SLOMA will work with City staff to define a proposed and maximum budget to be spent on each of these projects. Should the costs for installation exceed the budgeted costs, SLOMA will be responsible for communicating these differences to the CITY prior to exceeding the balance or committing a difference of compensation to vendors. If funds are not available nor approved, SLOMA will have the option to supplement the costs and will be responsible for paying the difference.
 - a. City fees will only be used to pay for acquisition and/or installation of art
 - b. Reimbursement for art acquisition and/or installation requires SLOMA to submit a receipt of art and/or installation as outlined under the Agreement “Financial Management” section.
 - c. For each installation, SLOMA will provide an invoice to define terms of what expenses will be necessitated prior to, during and after the installation.
 - d. Costs of travel for staff or artists is not reimbursable without prior approval as outlined in proposal.
 - e. In the event travel expenses will be reimbursed, City will pay hotel rates as recommended in the US General Services Administration and a per diem as outlined by City policy.
 - f. City fees may not be used pay for: alcohol, meals, personal gifts, travel costs in excess of what was guaranteed in proposal.
 - iii. SLOMA will Acquire or facilitate temporary acquisition of art on behalf of the City by the following process:

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- a. City staff (Recreation Manager) and SLOMA will discuss priority areas and ideas for acquisition and installation of public art.
 - b. SLOMA will contact Public Works City staff to discuss challenges, obstacles, opportunities or necessities of installation in the public space.
 - c. SLOMA will pursue acquisition of art pursuant to the guidance set forth in subsection (iv) below.
 - d. SLOMA will present potential art piece and location to an ad hoc group that has been preapproved by City staff (to include a variety of input including neighbors to the installation location, any adjacent businesses, local artists, DEI representative, and City staff)
 - e. SLOMA will assist City Staff in the preparation of a sole-source justification memo to be provided to the City Manager with a City Manager Report. The City Manager Report shall explain why the selected art conforms with the guidance set forth in subsection (iv) below.
 - f. SLOMA will serve as liaison to ensure artist signs and completes an *Agreement for Commission of Public Art Work*, Exhibit B, with the City and provide all documents to the CITY.
 - g. SLOMA will recognize the City as owner/lessor of the art in all communications regarding the art.
 - h. The agreement in place will be made directly between the City and the artist. Any agreement that SLOMA makes directly with the artist shall not interfere with the completion of the City's contract.
 - i. The City will retain permanent physical ownership of a piece or temporary ownership of a piece and all decisions regarding these pieces shall be made directly with the Recreation Manager.
 - j. SLOMA will provide the City with signed Statement of Authenticity from the artist or a receipt from the artist.
- iv. The following criteria and considerations shall guide SLOMA's process for selecting art on behalf of the City:
- a. In recognition of the fact that there are costs incurred by an artist associated with submitting a proposal package, with no guarantee that their efforts will be compensated if their piece is not selected,

SLOMA shall pursue art pieces that are obtained via negotiated agreement with the artist.

- b. SLOMA shall, in their expert discretion, pursue negotiations with artists who are nationally or internationally renowned.
- c. SLOMA shall pursue art pieces that:
 - i. Are durable, can withstand the elements and exposure to public spaces, and are resistant to vandalism.
 - ii. Can reasonably be maintained by the City after conveyance to the City
 - iii. Enhance the sense of place in the City
 - iv. Encourage observers to understand each other and the world around them.
- v. In managing the installation of selected public art, SLOMA shall:
 - 1. Provide a timeline for completing the steps above and communicate changes to the Recreation Manager
 - 2. Serve as Public Art project liaison between selected Artists and CITY.
 - 3. Secure planning/building permits, as may be required, and works with artist to fabricate artwork.
 - 4. Communicate with City Public Works for all work on the Mission Plaza lawn.
 - 5. Repair any damage to City property during installation.
 - 6. Coordinate with CITY payment schedule to selected Artist.
 - 7. Coordinate and oversee the installation of the approved artwork.
- vi. All marketing involving artwork paid for by the City will be tagged to the City and City will be given full credit of ownership.
- vii. Ribbon Cuttings will be coordinated by SLOMA after working with City staff to coordinate available dates. The City will be invited to present at each ribbon cutting.

- viii. Promotions shall be approved by City staff, including Communications Coordinator or staff delegated thereby, prior to posting.
- ix. A sign for all art installations will be included in the cost of installation, shall follow City Communications guidelines and shall be approved prior to printing.
- x. Continue to provide a monthly written update to the Recreation Manager in advance of monthly meetings.

4.1. The CITY Recreation Manager, or staff delegated by Recreation Manager, and SLOMA Staff will meet monthly during the two (2) year term of this Agreement to review the specific public art projects.

5. SHARED USE OF ADJACENT CITY PREMISES. In furtherance of CITY and SLOMA's common goals and objectives for public art and education, as described above, CITY also desires to allow SLOMA shared use of the lawn area located immediately to the northeast of SLOMA's existing leased Premises as shown on Exhibit A which is attached hereto and is incorporated herein by reference (the "Shared Use Area"). During the term of this Agreement, SLOMA shall be permitted to install public art exhibits such as sculpture or other art mediums appropriate for an outdoor environment, as well as conduct outdoor educational activities on the Shared Use Area at such times and on such conditions as approved by the CITY. Installation of any such outdoor public art exhibits shall be subject to the Public Art Policies and Procedures Manual, ensuring all planning and building permits are in place as may be required. Any educational activities or events shall be subject to the standard terms and conditions that would otherwise be applicable with a temporary special events permit issued by City's Parks and Recreation Department. CITY shall be responsible for normal and customary maintenance and upkeep of the Shared Use Area (e.g., mowing, irrigation, etc.). SLOMA shall be responsible for maintenance, security, special insurance provisions, and any and all costs whatsoever associated with activities and events that occur under the direction of SLOMA within the Shared Use Area, and with the installation of outdoor art exhibits or sculpture that SLOMA may place within the Shared Use Area. In the event that shared space is damaged during installation or an event in shared space because of actions, or inactions, taken by SLOMA or their contractors, SLOMA will be responsible for costs of repair in compliance with City standards and staff approval.

6. LICENSES AND PERMITS. At all times during the term of this Agreement, SLOMA shall have in full force and effect, all licenses required of it by law for the performance of the Services described in this Agreement. SLOMA shall procure all permits and licenses, pay all charges and fees, and give all notices necessary under this Agreement.

7. COMPLIANCE WITH LAW. SLOMA shall keep itself informed of and shall observe and comply with all applicable State and Federal laws and regulations, and county and City of San Luis Obispo ordinances, regulations and adopted codes, which in any manner affect those employed by SLOMA or in any way affect the performance of the Services pursuant to this Agreement. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the

SLOMA to comply with this Section. Failure to comply with local ordinances may result in monetary fines and cancellation of this Agreement.

8. COMPLIANCE WITH INDUSTRY STANDARD. SLOMA shall provide services acceptable to City in strict conformance with the Agreement. SLOMA shall also provide in accordance with the standards customarily called for under this Agreement using the degree of care and skill ordinarily exercised by reputable providers of such services. Where approval by the City, the City Manager, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve SLOMA of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

9. INDEPENDENT COMMUNITY PARTNER.

9.1. SLOMA is and shall at all times remain as to the City a wholly independent community partner. The personnel performing the Services under this Agreement on behalf of SLOMA shall at all times be under SLOMA's exclusive direction and control, except as set forth in this Agreement upon mutual acceptance of the parties. Neither City nor any of its officers, employees, or agents shall have control over the conduct of SLOMA or any of SLOMA's officers, employees, or agents, except as set forth in this Agreement. SLOMA shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. SLOMA shall not incur or have the power to incur any debt, obligation, or liability whatsoever against City, or bind City in any manner.

9.2. No employee benefits shall be available to SLOMA in connection with the performance of this Agreement. Except for the fees paid to SLOMA as provided in the Agreement, City shall not pay salaries, wages, or other compensation to SLOMA for performing the Services hereunder for City. City shall not be liable for compensation or indemnification to SLOMA for injury or sickness arising out of performing services hereunder.

10. PRESERVATION OF CITY PROPERTY. SLOMA shall provide and install suitable safeguards, approved by the City, to protect City property from injury or damage. If City property is injured or damaged resulting from SLOMA's operations, it shall be replaced or restored at SLOMA's expense. The City's facilities shall be replaced or restored to a condition as good as when the SLOMA began the work.

11. IMMIGRATION ACT OF 1986. SLOMA warrants on behalf of itself and all subconsultants engaged for the performance of the Services that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the Services hereunder.

12. NON-DISCRIMINATION. In the performance of the Services, SLOMA agrees that it will not engage in, nor permit such subconsultants as it may employ, to engage in discrimination in employment of persons because of age, race, color, sex, national origin or ancestry, sexual orientation, or religion of such persons.

13. INSPECTION. City shall at all times have the right to inspect the work being done under this Agreement and SLOMA shall furnish City with every reasonable opportunity and assistance required for City to ascertain that the Services of the SLOMA are being performed in accordance with the requirements and intentions of this Agreement. All work done, and all materials furnished, if any, shall be subject to the City's inspection and approval. The inspection of such work shall not relieve SLOMA of any of its obligations under the Agreement.

14. RELEASE OF INFORMATION. All information gained by SLOMA in performance of this Agreement shall be considered confidential and shall not be released by SLOMA without City's prior written authorization. SLOMA, its officers, employees, agents, or subconsultants, shall not, without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided SLOMA gives City notice of such court order or subpoena.

SLOMA shall promptly notify City should SLOMA, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement, unless the City is a party to any lawsuit, arbitration, or administrative proceeding connected to such Discovery, or unless SLOMA is prohibited by law from informing the City of such Discovery. City retains the right, but has no obligation, to represent SLOMA and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is averse to SLOMA in such proceeding, SLOMA agrees to cooperate fully with City and to provide the opportunity to review any response to Discovery requests provided by SLOMA. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

15. OWNERSHIP OF DOCUMENTS. SLOMA shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of the Services under this Agreement. SLOMA shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. SLOMA shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the Services under this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of SLOMA. With respect to computer files, SLOMA shall make available to the City, at the SLOMA's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. SLOMA hereby grants to City all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by SLOMA in the course of providing the Services under this Agreement.

16. COMPLETE AGREEMENT. This written Agreement, including all writings specifically incorporated herein by reference, shall constitute the complete agreement between the parties hereto. No oral agreement, understanding or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral agreement, understanding or representation be binding upon the parties hereto.

17. INDEMNIFICATION AND DEFENSE. To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8), SLOMA shall indemnify, defend, and hold harmless the City, and its elected officials, officers, employees, volunteers, and agents ("City Indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of SLOMA's performance or SLOMA's failure to perform its obligations under this Agreement or out of the operations conducted by SLOMA, including the City's passive negligence, except for such loss or damage arising from the sole or active negligence or willful misconduct of the City. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from SLOMA's performance of this Agreement, SLOMA shall provide a defense to the City Indemnitees or at the City's option, reimburse the City Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims. The City shall execute an agreement with each subcontractor (ARTIST) which will include an Indemnification and Defense clause for the ARTIST's performance or failure to perform its obligations under the agreement.

18. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE.

18.1. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon SLOMA at least thirty (30) days prior written notice. Upon receipt of said notice, SLOMA shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

18.2. In the event this Agreement is terminated pursuant to this Section, the City shall pay to SLOMA the actual value of the work performed up to the time of termination, provided that the work

performed is of value to the City. Upon termination of the Agreement pursuant to this Section, SLOMA will submit an invoice to the City

19. TERMINATION FOR CAUSE. If, during the term of the Agreement, the City determines SLOMA is not faithfully abiding by any term or condition contained herein, the City may notify SLOMA in writing of such defect or failure to perform. This notice must give SLOMA a ten (10) calendar day notice of time thereafter in which to perform said work or cure the deficiency.

19.1. If SLOMA has not performed the work or cured the deficiency within the ten (10) days specified in the notice, such shall constitute a breach of the Agreement and the City may terminate the Agreement immediately by written notice to SLOMA to said effect (“Notice of Termination”). Thereafter, neither party shall have any further duties, obligations, responsibilities, or rights under the Agreement except to comply with the obligations upon termination.

19.2. In said event, SLOMA shall be entitled to the reasonable value of its services performed from the beginning date in which the breach occurs up to the day it received the City’s Notice of Termination, minus any offset from such payment representing the City’s damages from such breach. “Reasonable value” includes fees or charges for goods or services as of the last milestone or task satisfactorily delivered or completed by SLOMA as may be set forth in the Agreement payment schedule; compensation for any other work or services performed or provided by SLOMA shall be based solely on the City’s assessment of the value of the work-in-progress in completing the overall scope.

19.3. The City reserves the right to delay such payment until completion or confirmed abandonment of the project, as may be determined in the City’s sole discretion, so as to permit a full and complete accounting of costs. In no event, however, shall SLOMA be entitled to receive in excess of the not to exceed amount shown in this Agreement.

20. INSURANCE SLOMA shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached to and made part of this Agreement.

21. SAFETY PROVISIONS. SLOMA shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial Safety.

22. PUBLIC AND EMPLOYEE SAFETY. Whenever SLOMA operations create a condition hazardous to the public or City employees, it shall, at its expense and without cost to the City, furnish, erect and maintain such fences, temporary railings, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public and employees.

23. UNDUE INFLUENCE. SLOMA declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial

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arrangement, or financial inducement. No officer or employee of the City has or will receive compensation, directly or indirectly, from SLOMA, or from any officer, employee or agent of SLOMA, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

24.1 ASSIGNMENT. SLOMA shall not assign, transfer, convey or otherwise dispose of the contract, or its right, title or interest, or its power to execute such a contract to any individual or business entity of any kind without the previous written consent of the City. As required above, before retaining or contracting with any subconsultant for any services under this Agreement, City must consent to such assignment of performance in writing. For City to evaluate such proposed assignment, SLOMA shall provide City with the identity of the proposed subconsultant, a copy of the proposed written contract between SLOMA and such subconsultant, which shall include an indemnity provision similar to the one provided herein and identifying City as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from City for such insurance.

24. AMENDMENT. Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by the appropriate review authority according to the City's Financial Management Manual. SLOMA shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized by the City in advance and in writing.

25. NOTICE. All notices to the Parties hereto under this Agreement shall be in writing and shall be sent either by (i) personal service, (ii) delivery by a reputable document delivery service, such as, but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) United States Mail, certified, postage prepaid, return receipt requested. All such notices shall be delivered to the addressee or addressed as set forth below:

To City: Parks and Recreation Department
 City of San Luis Obispo
 1341 Nipomo St.
 San Luis Obispo, CA 93401

To SLOMA: San Luis Obispo Museum of Art
 1010 Broad Street
 San Luis Obispo, CA 93401

26. GOVERNING LAW. Any action arising out of this Agreement shall be brought in the Superior Court of San Luis Obispo County, California, regardless of where else venue may lie. The validity, interpretation, construction and performance of this Agreement, and all acts and transactions pursuant hereto and the rights and obligations of the Parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

27. AUTHORITY TO EXECUTE AGREEMENT. Both City and SLOMA do covenant that each individual executing this Agreement on behalf of each party is a person duly authorized and empowered to execute Agreements for such party.

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

CITY OF SAN LUIS OBISPO
a municipal corporation and charter city

SAN LUIS OBISPO MUSEUM OF ART

Derek Johnson, City Manager

By: Leann Standish
Its: Executive Director

APPROVED AS TO FORM:

SAN LUIS OBISPO MUSEUM OF ART

J. Christine Dietrick, City Attorney

By: Barbara Bell
Its: SLOMA Board President

EXHIBIT A: Proposal from SLO Museum of Art Received on May 3, 2023, page 1 of 2



Public Art Partnership

The San Luis Obispo Museum of Art proposes to work as a contractor to help fulfill the City of San Luis Obispo's Public Art Goals. Specifically, the Museum will provide expertise, connections, logistical management, communications, and engagement leadership.

As the Museum works to connect with artists and their representatives throughout the region and the world, the leadership team will also identify projects appropriate for fulfillment of the City's public art program. San Luis Obispo encourages Public Art that respects our past and embraces the future; supporting all members and facets of the community and the pursuit of sustainability, diversity, and inclusivity. The City of San Luis Obispo strives to incorporate these values into public spaces through the proliferation of public art.

The Museum's leadership will facilitate this process for at least 3 annual projects including:

- 1) Identifying and prioritizing projects and artists for consideration
- 2) Work within budget determined by City for each project.
- 3) Work with City staff to review potential installation sites.
- 4) Meetings with artists to discover considerations such as materials, shipping, installation, scheduling etc.
- 5) Working with multiple agencies to determine viability of project including structural engineers, traffic safety, lighting, disruptions and more.
- 6) Provide maintenance plan for each project.
- 7) Developing project overview for presentation to City Manager and City Council
- 8) Processing the project expenses and permits
- 9) Monitor and report all code requirements and permit fulfillment.
- 10) Identifying and invite key stakeholders to engage is committee process
- 11) Work with artist for presentation to key stakeholders committee
- 12) Develop communications role out program following feedback from stakeholders committee.
- 13) Identifying and engaging appropriate community partners
- 14) Work with City representatives to ensure maximum community engagement and media coverage.
- 15) Arrange for all on site signage and all exhibitions copy for City communications
- 16) Whenever possible the Museum will host an exhibition that compliments the public art installation and additional programs that further the community connection/ownership.

Additionally, SLOMA will present monthly written status updates regarding budget, process updates, and projects in research phase.

The Museum's expertise negates the need for RFQ's and streamlines the process. SLOMA leadership is committed to maintaining a consistent balance of regional, national, and international artists as a part of a robust public art program. See exhibit A for selection criteria.

The San Luis Obispo Museum of Art requests an annual fee of \$100,000 for this service.

Barbara Bell
President

Ermina Karim
Vice President

Charles Crotser
Secretary

Trudie Safreno
Treasurer

Charles Feltman
Past President

Cheryl Cuming
Board Member

John Dunn
Board Member

Derek Johnson
Board Member

Jennifer Petty
Board Member

David Richards
Board Member

Sandi Sigurdson
Board Member

Philip Williams
Board Member

Leann Standish
Executive Director

1010 BROAD STREET *at Mission Plaza*
POST OFFICE BOX 813
SAN LUIS OBISPO, CA 93406
PH: 805-543-8562
INFO@SLOMA.ORG

EXHIBIT A: Proposal from SLO Museum of Art Received on May 3, 2023, page 2 of 2



Exhibit A.

The San Luis Obispo Museum of Art leadership team has decades of experience in arts management and community engagement. SLOMA's Chief Curator and Director of Education holds two hold a master's degree in educational leadership from Cal Poly and one curating from the University of Denmark.

SLOMA undergoes an extensive vetting process for each piece of artwork to determine its overall value to the SLO community. Elements taken into consideration include level of artistic excellence, interactivity, innovative qualities, originality and durability. Additionally, SLOMA considers the City of SLO's DEI objective that envisions a San Luis Obispo that is welcoming, inclusive and safe when considering both the artists, artwork and community.

SLOMA prioritizes working with artists who demonstrate prior experience with public art projects, including familiarity with site-specific design and materials suitable for public outdoor settings.

SLOMA's ongoing programming allows for an additional platform for the community to engage with each project artist and the depth of their work.

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Vice President

Charles Crotser
Secretary

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Treasurer

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Board Member

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Exhibit B: Agreement for Commission of Public Art Work, (12 pages)

**CITY OF SAN LUIS OBISPO
AGREEMENT FOR COMMISSION OF PUBLIC ART WORK**

This agreement (Agreement) is made and entered into in the City of San Luis Obispo on _____ [date], by and between the City of San Luis Obispo, a municipal corporation and charter city (CITY) and [Artist] (ARTIST) (collectively referred to as the "PARTIES").

DESCRIPTION OF WORK

1. The ARTIST is a recognized professional artist, and the CITY acknowledges sufficient familiarity with the style and quality of the ARTIST'S work, and; the CITY desires the ARTIST to create an original work of art entitled _____ ("the WORK") as more fully described in Exhibit A.

SCOPE OF WORK

2. For services rendered herein, the CITY shall pay the ARTIST a sum not to exceed \$_____ for all work performed during the period beginning _____ through _____. The ARTIST shall furnish services as described in Exhibit B of this Agreement.
3. Terms and Conditions for Payment are attached in Exhibit C of this Agreement
4. The services to be required of the ARTIST under this Agreement shall be completed in accordance with the Schedule for Completion of the Work as proposed by the ARTIST and approved by the CITY, as described in Exhibit D, provided that such time limits may be extended or otherwise modified by written agreement between the ARTIST and the CITY.

CHANGES IN SCOPE AND ADDITIONAL WORK

5. All changes to the WORK determined to be necessary by the ARTIST or requested by the CITY shall be in writing. For all changes agreed upon by the Parties, this Agreement shall be amended in writing, specifying the agreed upon changes, including but not limited to a description of services, additional budget, payment schedule and timetable.
6. Change requests by the ARTIST shall be submitted to the CITY for further review and approval. No services for which additional compensation will be charged shall be provided by the ARTIST without the prior written authorization by the CITY.
7. The ARTIST may, but shall not be obligated to, agree to a change requested by the City. If the ARTIST does not agree to a City change request, the CITY shall be entitled to terminate the Agreement in accordance with this Agreement and engage another artist to complete the WORK.

RESPONSIBILITIES OF THE ARTIST

8. The ARTIST shall be obligated to perform the services, complete the design, fabrication, and installation of the WORK in substantial conformity with the services described in Exhibit B and shall complete such services in accordance with the schedule set forth in Exhibit C.
9. The ARTIST and the CITY agree that the ARTIST shall retain artistic control of the ARTIST'S services performed under this Agreement, subject only to the limitations imposed in Exhibit B.

AGREEMENT BETWEEN THE CITY OF SAN LUIS OBISPO AND THE SAN LUIS OBISPO MUSEUM OF ART FOR USE OF CITY PROPERTY

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 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.

10. The ARTIST shall supply the CITY with (a) a 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.
11. The ARTIST shall be responsible for designing the WORK so that it can be constructed without exceeding the approved overall budget for the project.
12. The ARTIST shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in the ARTIST'S WORK.
13. The ARTIST shall provide monthly progress reports and/or deliverables to the CONTRACT ADMINISTRATOR (defined in paragraph 17).
14. 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 his or her 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. 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.
15. If the ARTIST is involved in the execution, fabrication, transportation, inspection and/or installation of an artwork, the following provisions shall apply:
 - a. The ARTIST shall clean-up CITY property and promptly remove any ARTIST equipment, excess materials etc. from City property as requested by the CITY.
 - b. 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 in Exhibit B. Such meeting shall be held at the request of either party hereto.

RESPONSIBILITIES OF THE CITY

16. The CITY shall designate staff as the CONTRACT ADMINISTRATOR on whose instructions or determinations all Parties may rely on in administration of this Agreement.
17. CITY shall assist ARTIST by placing at ARTIST'S disposal all public information it has available pertaining to the Project.
18. CITY shall arrange for access so that ARTIST may enter upon public and private property as required for ARTIST to perform the services under this Agreement.
19. CITY shall give prompt written notice to ARTIST whenever the CITY observes or otherwise becomes aware of any development that affects the scope or timing of ARTIST'S services.

WARRANTIES/STANDARDS

20. The ARTIST represents and warrants that (a) the design or WORK being commissioned is original; (b) that the ARTIST shall not sell or reproduce the WORK, separate from portfolio reproductions allowed under paragraph 25 of this Agreement, or allow others to do so without the prior written consent of the CITY; (c) at the time of transfer of the WORK to the [CITY], the ARTIST is the sole owner of the WORK and of all rights therein, including copyright trademark and other proprietary rights therein; (d) the ARTIST is and will be the sole creator of the WORK; (e) the ARTIST has and will have full and sufficient right to assign all rights granted herein and to waive all rights relinquished herein; (f) the

AGREEMENT BETWEEN THE CITY OF SAN LUIS OBISPO AND THE SAN LUIS OBISPO MUSEUM OF ART FOR USE OF CITY PROPERTY

ARTIST is not under any obligation to transfer or sell any of the WORK to a third party; (g) the WORK has not been and will not be published under circumstances which have or will cause a loss of any copyright, trademark or other proprietary rights therein; (h) the WORK does and will not infringe on any patent, copyright, trademark or other proprietary rights, privacy rights or other rights of any third party, nor has any claim (whether or not embodied in a legal action or not) of such infringement been threatened or asserted, nor is such a claim pending, against the ARTIST (or, insofar as the ARTIST is aware, against any entity from which ARTIST has obtained any rights).

21. The ARTIST shall guarantee the WORK to be free from faults of material and workmanship for a period of five (5) years 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 is 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.
22. The ARTIST shall faithfully perform the services required under this Agreement 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 described in this Agreement.

WAIVER OF MORAL RIGHTS

23. As a material part of the consideration provided by the ARTIST under the terms of this Agreement, the ARTIST waives, releases and disclaims any and all rights, demands or claims as may arise at any time and under any circumstances against the CITY, its agents, officers, employees, agents, successors and assigns that the ARTIST may have with respect to the WORK and any and all works of art produced under the terms of this Agreement arising under 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 the same nature as those conveyed under 17 U.S.C. section 106A, Cal. Civil Code section 987 et seq., or any other type of moral right protecting the integrity of works of art. The 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 the 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 of SAN LUIS OBISPO and its agents, officers, employees, agents, successors and assigns. The CITY has the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the WORK, however, the CITY shall provide notice to the ARTIST prior to any modification, change, or destruction of the WORK.

COPYRIGHT AND EXCLUSIVE OWNERSHIP RIGHTS

24. The ARTIST shall not retain ownership of or any right, title or interest in any of the WORK including, but not limited to, in any related trademarks, copyrights, or other proprietary rights or rights of reproduction.
 - a. [ARTIST hereby irrevocably assigns exclusively to the CITY, and its successors and assigns, all right title and interest in or to the WORK and in the copyright of the WORK, and all extension and renewals thereof in the United States and all foreign countries. The ARTIST hereby waives all moral rights related to each such WORK including, but not limited to, any and all rights of

- identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications. The PARTIES agree that the WORK and all such rights, title and interest in or to the WORK belong to and are being sold and assigned in their entirety to the CITY for whatever uses it desires without any restrictions or obligations or payments to the ARTIST, and that the CITY does and shall at all times own, solely and exclusively, complete and unencumbered, all right and title in and to all of the WORK worldwide, and any modifications thereto and any derivative works based thereon (including, but not limited to, all patent, copyright, trademark, service mark and trade secret rights). The Artist hereby transfers all rights of reproduction, as that term is defined in California Civil Code Section 982, in the Work and the right to reproduce the Work in any manner whatsoever for commercial and non-commercial purposes. Nothing contained herein shall be deemed to constitute a mere license or franchise in the CITY.]
- b.] [The CITY hereby authorizes the ARTIST to make, and to authorize the making of photograph reproductions of the WORK for self-promotional, non-commercial, purposes, including use in the ARTIST'S own personal portfolio or website or use in self-promotional mailers provided such mailers are provided at no cost. All such self-promotional materials shall place a copyright notice in a form acceptable to the CITY and include a credit line, unless otherwise requested by the CITY in writing, as follows: "[NAME of WORK], Owned and Commissioned by City of San Luis Obispo." The CITY has sole discretion to determine whether a use is self-promotional. The CITY shall provide written notice to the ARTIST if the CITY determines a use does not meet the terms of this section. Upon receipt of such notice, the ARTIST shall immediately cease and desist the use of the reproduction.]
25. 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.

TERMINATION

26. The City shall have the right to terminate this Agreement, with or without cause. The CITY shall give written notice to the ARTIST ten (10) calendar days prior to effective date of the termination. If terminated the ARTIST agrees to cease all work under this Agreement on or before the effective date of such notice. All completed and uncompleted WORK up to the date of receipt of the written notice of termination shall become property of the CITY.
27. If the Agreement is terminated for cause, the notice shall identify the defect for which the Agreement is being terminated and provide the ARTIST an opportunity to cure. If the ARTIST cures the identified defect to the CITY'S satisfaction prior to the effective date of the termination (within ten (10) calendar days of receipt of the notice of termination), the notice of termination shall not go into effect.
28. In the event this Agreement is terminated, due to no fault or failure of performance by the ARTIST, the CITY shall pay the ARTIST based on the percentage of services satisfactorily performed and/or WORK satisfactorily produced at the time of termination. But in no event shall the ARTIST be entitled to receive more than the amount that would be paid to the ARTIST for full performance of the services required by this Agreement. The CITY reserves the right to delay such payment until completion or confirmed abandonment of the project, as may be determined in the CITY'S sole discretion, to permit a full and complete accounting of costs.

AGREEMENT BETWEEN THE CITY OF SAN LUIS OBISPO AND THE SAN LUIS OBISPO MUSEUM OF ART FOR USE OF CITY PROPERTY

29. If, because of the death, or any other occurrence, it becomes impossible for the ARTIST to render services or perform work under this Agreement, the Agreement shall be deemed terminated.

INSURANCE

30. Artist shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit E attached to and made part of this Agreement.

INDEMNIFICATION AND DEFENSE

31. To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8), the ARTIST shall indemnify, defend, and hold harmless the CITY, and its elected officials, officers, employees, volunteers, and agents ("CITY Indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of (i) the ARTIST'S performance or ARTIST'S failure to perform its obligations under this Agreement, (ii) out of the operations conducted by ARTIST, including the CITY'S passive negligence, except for such loss or damage arising from the sole or active negligence or willful misconduct of the CITY, (iii) from any noncompliance or violations of applicable laws, ordinances, codes and regulations, and/or (iv) from the performance of the WORK or services under this Agreement which infringes upon any patent, trademark or copyright protected by law. In the event the CITY Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from ARTIST'S performance of this Agreement, the ARTIST shall provide a defense to the CITY Indemnitees or at the CITY'S option, reimburse the CITY Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims.

CIVIL RIGHTS COMPLIANCE / EQUAL OPPORTUNITY ASSURANCE

32. 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, the 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. The ARTIST agrees to abide by all of the foregoing statutes and regulations, and any similar requirements in any ordinances and resolutions of the City of San Luis Obispo.

MISCELLANEOUS

33. INDEPENDENT CONTRACTOR. Artist is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of the ARTIST shall at all times be under the ARTIST'S exclusive direction and control. Neither CITY nor any of its officers, employees, or agents shall have control over the conduct of the ARTIST or any of the ARTIST'S officers, employees, or agents, except as set forth in this Agreement. The ARTIST shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the CITY. The ARTIST shall not incur or have the power to incur any debt, obligation, or liability whatsoever against CITY, or bind CITY in any manner. No employee benefits shall be available to the ARTIST in connection with the performance of this Agreement. Except for the fees paid to the ARTIST as provided in the Agreement, the CITY shall not pay salaries, wages, or other

AGREEMENT BETWEEN THE CITY OF SAN LUIS OBISPO AND THE SAN LUIS OBISPO MUSEUM OF ART FOR USE OF CITY PROPERTY

compensation to the ARTIST for performing the services hereunder for the CITY. The CITY shall not be liable for compensation or indemnification to Artist for injury or sickness arising out of performing services hereunder.

34. RECORDS. The ARTIST shall maintain accurate accounting records and other written documentation pertaining to the costs incurred for this project. Such records and documentation shall be made available to the CITY upon request during the period of this Agreement, and after the term of this Agreement for a period of three (3) years from the date of the final CITY payment for the ARTIST'S services.
35. SUBCONTRACTORS. The ARTIST must secure the prior written approval of the CITY before hiring any subcontractors or other professional associates to perform services or activities covered by this Agreement.
36. ASSIGNMENT. The Artist shall not assign, transfer, convey or otherwise dispose of the contract, or its right, title or interest, or its power to execute such a contract to any individual or business entity of any kind without the previous written consent of the City.
37. AMENDMENTS. Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by the appropriate review authority according to the CITY'S Public Art Policy.
38. SAFETY. The 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 in performance of all services under this Agreement. If death, serious personal injury, or substantial property damage occurs in connection with the performance of this Agreement, the ARTIST shall immediately notify the Contract Administrator by telephone. The ARTIST shall promptly submit to the CITY a written report, in such form as may be required by the CITY of all accidents which occur in connection with this contract. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of the ARTIST'S subcontractors, if any; (3) name and address of the ARTIST'S liability insurance carrier; and (4) a detailed description of accident and whether any of the CITY'S equipment, tools, material or staff were involved.
39. PRESERVATION OF CITY PROPERTY. The ARTIST shall provide and install suitable safeguards, approved by the CITY, to protect City property from injury or damage. If City property is injured or damaged resulting from ARTIST'S operations, it shall be replaced or restored at ARTIST'S expense. The CITY'S facilities shall be replaced or restored to a condition as good as when the ARTIST began the work.
40. USE OF CITY PROPERTY. The ARTIST shall not use the CITY premises, property (including equipment, instruments and supplies) or personnel for any purpose other than the performance of the ARTIST'S obligations under this Agreement.
41. COMPLETE AGREEMENT. This written Agreement, including all writings specifically incorporated herein by reference, shall constitute the complete Agreement between the Parties hereto. No oral agreement, understanding, or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral Agreement, understanding, or representation be binding upon the PARTIES hereto. Each PARTY is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.
42. IMMIGRATION ACT OF 1986. The ARTIST warrants on behalf of itself and all subcontractors engaged for the performance of the services that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the services hereunder.
43. NOTICE. All notices to the PARTIES hereto under this Agreement shall be in writing and shall be sent either by (i) personal service, (ii) delivery by a reputable document delivery service which provides a delivery receipt. All such notices shall be delivered to the addressee or addressed as set forth below:

AGREEMENT BETWEEN THE CITY OF SAN LUIS OBISPO AND THE SAN LUIS OBISPO MUSEUM OF ART FOR USE OF CITY PROPERTY

To City: City of San Luis Obispo
 990 Palm Street
 San Luis Obispo, CA 93041
 Attention: [insert contract administrator]

To Artist: [NAME]
 [ADDRESS]
 [ADDRESS]

44. GOVERNING LAW. Any action arising out of this Agreement shall be brought in the Superior Court of San Luis Obispo County, California, regardless of where else venue may lie. The validity, interpretation, construction and performance of this Agreement, and all acts and transactions pursuant hereto and the rights and obligations of the PARTIES hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.
45. AUTHORITY TO EXECUTE AGREEMENT. Both the CITY and the ARTIST do covenant that each individual executing this Agreement on behalf of each PARTY is a person duly authorized and empowered to execute Agreements for such PARTY.

IN WITNESS WHEREOF, the PARTIES hereto have caused this instrument to be executed the day and year first above written.

CITY	ARTIST
<p>_____</p> <p>By: [Name] Its: [Title of City Manager or Department Head]</p>	<p>_____</p> <p>By: [Name] Its: [Title]</p>
APPROVED AS TO FORM:	
<p>_____</p> <p>By: J. Christine Dietrick, City Attorney</p>	

EXHIBIT A – Description of Work

[Placeholder for Description of the Art piece]

EXHIBIT B – Description of Services

[Placeholder for Description of Services]

EXHIBIT C – Terms and Conditions for Payment

1. The CITY shall pay the ARTIST \$_____ for the WORK pursuant to the terms and conditions of this Agreement. \$_____ shall be compensation for the ARTIST’S commission for the WORK. \$_____ shall be compensation to cover travel costs. No additional compensation shall be provided for the commission or travel expenses, whether or not actual travel costs are higher. Travel costs include amounts paid for lodging, transportation, gas if traveling by car, and per diem expenses.
2. The CITY shall pay the ARTIST a deposit of \$_____ upon execution of this Agreement. Within 30 calendar days of the ARTIST notifying the CITY that installation of the WORK is complete and the CITY providing written acceptance of the WORK, the CITY shall pay the remaining balance of \$_____.
3. The ARTIST shall be paid for services satisfactorily rendered pursuant to this Agreement in accordance with the terms herein and subsequent adjustments, changes or additions as specifically provided for in this Agreement. Such payment shall be full compensation for work performed and services rendered, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals including transportation of the WORK to the place of installation.
4. The City shall not withhold applicable federal or state payroll or any other required taxes, or other authorized deductions from each payment may to the Artist.
5. 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.

EXHIBIT D – Schedule for Completion of Work

1. The ARTIST shall perform work according to the following schedule:
 - a. [insert schedule]
2. The CITY shall grant a reasonable extension of time to the ARTIST if there is a delay on the part of the CITY in performing its obligations under this Agreement, 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.
3. 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, the CITY agrees to accept one hundred dollars (\$100.00) per day as liquidated damages for such delay, which is a reasonable estimate of potential future damages under the circumstances.

EXHIBIT E – Insurance Requirements

1. The ARTIST and any subcontractors performing services in connection with this Agreement, shall carry, maintain, and keep in full force and effect during the term of the provision of services under this Agreement, the following insurance coverage which meets the following minimum requirements:
 - a. Comprehensive General liability insurance with a \$1,000,000 limit for each occurrence, and combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by the ARTIST'S subcontractors, including an endorsement adding the City, its agents, officers, and employees as additional insured.
 - b. Personal Property Insurance Coverage under which the WORK is added, or other insurance coverage that insures the WORK against all risks of physical loss, damage or theft during transit and delivery of the WORK to the CITY and at all times before CITY'S acceptance of the WORK.
 - c. If the ARTIST is using a vehicle for delivery and installation, Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 per occurrence combined single limit, covering any vehicle utilized by the ARTIST or ARTIST'S subcontractors in performing the services required by this Agreement.
 - d. If the ARTIST has additional workers directly employed, Workers Compensation Insurance as required by the State of California at the statutory limits.
2. The policy or policies required herein, shall be primary to any coverage available to the CITY and shall include provisions for waiver of subrogation. The ARTIST hereby waives its right of subrogation. Any deductibles must be declared to and approved by the CITY prior to commencement of WORK under this Agreement.
3. At all times during the period when such insurance must be maintained, the ARTIST shall maintain on file with the City Clerk a certificate or certificates of insurance on a form approved by the City Attorney showing that the aforesaid policies are in effect in the required amounts. The ARTIST shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to the CITY, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

Exhibit C: City's Insurance Requirements

Without limiting SLOMA's indemnification of City, and prior to commencement of Lease, SLOMA shall obtain, provide, and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to the City.

General liability insurance. SLOMA shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Workers' compensation insurance. SLOMA shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). SLOMA shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

Property insurance. The Museum of Art located at 1010 Broad St, San Luis Obispo, CA is included on the City's property insurance schedule. However, upon commencement of construction of SLOMA improvements and betterments, or installation of equipment, with approval of City, SLOMA shall obtain and maintain insurance on SLOMA's improvements and betterments. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy.

Proof of insurance. SLOMA shall provide certificates of insurance and required endorsements to City as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City for the contract period and any additional length of time required thereafter. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. SLOMA shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by SLOMA, their agents, representatives, employees, or subconsultants.

Primary/noncontributing. Coverage provided by SLOMA shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by City will be promptly reimbursed

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by SLOMA or City will withhold amounts sufficient to pay premium from SLOMA payments. In the alternative, City may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow SLOMA or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. SLOMA hereby waives its own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subconsultants. Enforcement of contract provisions (non estoppel). SLOMA acknowledges and agrees that any actual or alleged failure on the part of the City to inform SLOMA of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the SLOMA maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the SLOMA. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. SLOMA agrees to oblige its insurance agent or broker and insurers to provide the City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the SLOMA's insurers are unwilling to provide such notice, then SLOMA shall have the responsibility of notifying the City immediately in the event of SLOMA's failure to renew any of the required insurance coverages or insurer's cancellation or non-renewal.

Additional insured status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that SLOMA's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

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Pass-through clause. SLOMA agrees to ensure that its subconsultants, subcontractors, and any other party who is brought onto or involved in the project/service by SLOMA (hereinafter collectively “subcontractor”), provide the same minimum insurance coverage and endorsements required of SLOMA. SLOMA agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event SLOMA’s subcontractor cannot comply with this requirement, which proof must be submitted to the City, SLOMA shall be required to ensure that its subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with subcontractor’s scope of work and services, with limits less than required of the SLOMA, but in all other terms consistent with the SLOMA’s requirements under this agreement. This provision does not relieve the SLOMA of its contractual obligations under the agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide SLOMA with the ability to utilize a subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the SLOMA under this agreement given the limited scope of work or services provided by the subcontractor. SLOMA agrees that upon request, all agreements with subcontractors, and others engaged in the project, will be submitted to City for review.

City’s right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the SLOMA ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the SLOMA, the City and SLOMA may renegotiate SLOMA’s compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

Timely notice of claims. SLOMA shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from SLOMA’s performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. SLOMA shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection. SLOMA’s personal property, fixtures, equipment, inventory, and vehicles are not insured by City against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause.

Exhibit E

[Placeholder for description of the City Property]