

SERVICES AGREEMENT (GENERAL)

Design, Fabrication and Installation of Public Artwork for the Soscol Medians

City Agreement No. C2023-652City Budget Code: 30030210-33PA22PR04-53210

This Services Agreement (General) for Design, Fabrication and Installation of Public Artwork for the Soscol Medians ("Agreement") by and between the City of Napa, a California charter city ("City"), and Redux Design Shop, LLC ("Artist"), is effective on the Effective Date identified on the signature page. City and Artist may be collectively referred to herein as the "Parties".

RECITALS

A. The Artist has developed a proposal ("Design Proposal") to design, fabricate, transport, and install an original piece of art at the Soscol Medians ("Project Site") as more particularly set forth in the proposal submitted by Artist and attached hereto as **Exhibit "A"** and incorporated herein by reference in response to the City's Request for Proposal (the "Artwork").

B. The City's Public Art Steering Committee recommended that the City Council select the Artwork for the Project Site.

C. The City Council approved the Public Art Steering Committee's recommendation to select the Artist and authorized the City's Parks and Recreation Director to enter into an agreement with the Artist for the design, fabrication, transportation, and installation of the Artwork at the Project Site.

NOW, THEREFORE, the City and the Artist, for the mutual consideration described herein, agree as follows:

1. SCOPE OF SERVICES.

1.1. Services. Artist will perform the services described in the *Scope of Services and Schedule of Performance*, attached hereto as **Exhibit "B"** and incorporated herein by reference ("**Services**"), in accordance with the terms and conditions of this Agreement and to the satisfaction of the City's authorized representative, Katrina Gregory, Recreation and Public Art Manager ("**City's Authorized Representative**").

1.2. Standard of Care. In performing the Services, Artist will meet or exceed the applicable standard of care for and exercise the degree of skill and diligence ordinarily used by reputable service providers within the greater San Francisco Bay Area who provide the same or similar type of services as the Services required under this Agreement. Artist will require and ensure that all of its employees, subconsultants, or agents performing or contributing to the Services will comply with the requirements of this Agreement.

1.3. Independent Contractor. Artist will control the manner and means for performing the Services, acting as an independent contractor and not as an employee of the City. Artist will not be entitled to any of the benefits that the City provides to its employees, including, but not limited to, health or retirement benefits.

1.4. Subcontracting. If Artist subcontracts with a subconsultant to perform any of the Services, the City is deemed an intended beneficiary of that subcontract and the subconsultant will owe a duty of due care to the City. City reserves the right to approve or reject any proposed subconsultant based on the subconsultant's qualifications, relevant experience, or reputation.

1.5. Third Party Beneficiaries. Except to the extent expressly stated herein, this Agreement will not be construed to create any rights in third parties.

1.6. Time for Performance. Time is of the essence for the performance of all Services and duties under this Agreement. Artist will commence and complete all Services by the date and within any timeframes set forth in Exhibit "A." Services for which times for performance are not specified in this Agreement will be commenced and completed by Artist in a reasonably prompt and timely manner based upon the circumstances and direction from the City's Authorized Representative. Artist will submit all requests for extensions of time to the City in writing no later than ten days after the start of the circumstances or events giving rise to the delay, and no later than the time by which performance is due. The City's approval of any extension of time for performance of the Services will not operate to waive the City's rights or remedies with respect to damages caused by Artist's delay.

1.7. Unsatisfactory Services. Upon written notice from the City that any of the Services are unsatisfactory or fail to comply with the requirements of this Agreement (collectively, "**Unsatisfactory Services**"), Artist must promptly correct or cure any such Unsatisfactory Services as specified in the City's written notice within ten days of the notice, or such other time period as may be agreed to by the City in writing. Artist will not be entitled to any additional compensation or extension of time to correct or cure the Unsatisfactory Services. Artist's correction or cure of Unsatisfactory Services will not operate to waive the City's rights or remedies with respect to any damages caused by the Unsatisfactory Services, the cost of which may be recovered by the City as an offset from payment otherwise due or to become due to Artist.

2. COMPENSATION.

2.1. Payment. The City will pay Artist for Artist's time and authorized expenses necessary to perform the Services, at the rates and charges set forth in the *Compensation Rates and Charges* attached hereto as **Exhibit "C"** and incorporated herein by reference, as compensation in full for Services satisfactorily performed in compliance with this Agreement. Artist's total compensation for performing the Services may not exceed \$180,000, without prior written authorization from the City. If the City authorizes Artist to perform services in addition to the Scope of Services set forth in Exhibit "A," Artist will be compensated in accordance with the rates and charges in Exhibit "B." Artist will not be entitled to any compensation for additional services performed without the City's prior written consent, or which exceed the scope of the City's written consent.

2.2. Invoices. The Artist will submit invoices to the City's Authorized Representative in accordance with the requirements outlined in Exhibit "B", for the Services. At a minimum, the invoice must identify the Services performed, as outlined in Exhibit "B." The City will pay the Artist within 30 days after approval of each invoice, with the exception of any disputed amounts.

3. AUTHORIZED REPRESENTATIVE. Artist hereby assigns Jacques Lesec to serve as the Artist's authorized representative ("**Artist's Authorized Representative**"), to personally participate in and manage the Services provided under this Agreement, and to serve as the primary point of contact for all matters pertaining to this Agreement.

3.1. Substitutions. As a material inducement to entering into this Agreement, the City has relied upon Artist's representations regarding Artist's qualifications (including the qualifications of Artist's Authorized Representative, its personnel, and its subconsultants, if any, as identified on Exhibits "A" and "B"). Artist will not replace Artist's Authorized Representative (or any of its personnel or its subconsultants, if any, as identified on Exhibits "A" and "B") without the City's prior written consent.

4. NOTICES. All notices or requests required or contemplated by this Agreement will be in writing and delivered to the other party's Authorized Representative by personal delivery, U.S. Mail, nationwide overnight delivery service, email, or as otherwise specified herein. Delivery is deemed effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, (b) actual receipt at the address identified below, or (c) three business days following deposit in the U.S. Mail of registered or certified mail sent to the address identified below. A party's contact information, below, may be changed by providing written notice of any change to the other party.

TO CITY: Katrina Gregory
CITY OF NAPA
P.O. Box 660
NAPA, CA 94559-0660
kgregory@cityofnapa.org

TO ARTIST: Redux Design Shop, LLC
Attn: Jacques Lesec
1450 Yajome St.
Napa, CA 94559
jacqueslesec@gmail.com
Ph: 310-498-7422

5. TERM. The term of this Agreement begins on the date it is signed by the City Clerk, below, attesting to full execution of the Agreement by both Parties ("**Effective Date**"), and ends upon Artist's completion of the Services required by this Agreement, unless terminated earlier as provided herein. The following provisions will survive expiration or termination of this Agreement: Section 7.2 (Dispute Resolution), Section 8.1 (Confidentiality), Section 8.4 (Records of Performance), Section 10 (Indemnification), Section 13.3 (Taxes), and Section 14 (General Provisions).

6. CITY'S RIGHT TO TERMINATE. The City may terminate this Agreement for convenience (with or without cause) by providing written notice of termination to Artist, effective upon the date stated in the notice. If the City terminates the Agreement it will pay Artist for all Services satisfactorily performed up to and including the effective date of the termination including material procured or any associated fees for restocking of returned material, subject to the provisions of Sections 2 and 8.2.

7. DEFAULT AND DISPUTE RESOLUTION.

7.1. Default. Artist will be deemed in default of this Agreement if Artist is not complying with the terms of this Agreement, or the City has reason to believe that Artist's ability to perform the Services has been or will be impaired. If either of these circumstances exist, the City may give written notice of default to Artist and demand that the default be cured or corrected within ten days of the notice, unless the City determines that additional time is reasonably necessary to cure the default. If Artist fails to cure the default within of the time specified in the notice, and the Artist fails to give adequate written assurance of due performance within the specified time, then the City may terminate this Agreement in accordance with Section 6, or the City may pursue dispute resolution in accordance with Section 7.2.

7.2. Dispute Resolution. If any dispute arises between the Parties in relation to this Agreement, the Authorized Representatives for each party will meet, in person, as soon as practicable, to engage in a good faith effort to resolve the dispute informally. If the Parties are unable to resolve the dispute, in whole or in part, through informal discussions, the Parties agree to participate in mediation. Notwithstanding the existence of a dispute, the Artist will continue providing the Services during the course of any dispute, unless otherwise directed by the City.

7.2.1. Either party may give written notice to the other party of a request to submit a dispute to mediation, and a mediation session must take place within 60 days of the date that such notice is given, or sooner if reasonably practicable. The Parties will jointly appoint a mutually acceptable mediator. The Parties will share equally the costs of the mediator; however, each party will pay its own costs of preparing for and participating in the mediation, including any legal costs.

7.2.2. Good faith participation in mediation pursuant to this Section is a condition precedent to either party commencing litigation in relation to the dispute. In addition, any claims by Artist arising from or related to this Agreement are subject to the claim presentment requirements in the Government Claims Act (Government Code section 900 et seq.).

8. INFORMATION AND RECORDS.

8.1. Confidentiality. Artist will not disclose any information or records related to the performance of this Agreement, including information and records received from the City, as well as information and records created by the Artist, to any person other than a City employee, unless and only to the extent that the City provides the Artist with prior written consent to make a disclosure. Artist will notify the City's Authorized Representative of any request for disclosure of information, or any actual or potential disclosure of information, under this Agreement.

8.2. Title to Artwork; Artist's Waivers.

8.2.1. Upon the City's acceptance of the Artwork in accordance with the procedures set forth in Exhibit "B" the Artwork shall be the property of the City. The City shall have no obligation to display or maintain the Artwork for any particular time and the City reserves the right to remove, relocate or destroy the Artwork at any time after Artist's completion of the Services.

8.2.2. The City shall have the right to make photographs, drawings, or other two-dimensional reproductions of the Artwork without prior consent of the Artist if used solely for non-commercial purposes. For the purposes of this Agreement, the following are deemed to be reproductions for non-commercial purposes: reproduction in exhibition catalogues, books, slides, photographs, postcards, posters and calendars, and the City's website; in art magazines, art books, and art and news sections of newspapers; in general books and magazines not primarily devoted to art but of an educational, historical or critical nature; slides and film strips not intended for a mass audience; and television from stations operated for educational purposes or on programs for educational purposes from all stations.

8.2.3. Without limitation of any other provision hereof, Artist expressly agrees to waive any and all rights Artist may have pursuant to title 17 U.S.C. Section 106A, (commonly known as the "Visual Artists Rights Act of 1990") as Artist's rights under the Act apply, if at all, to the Artwork. In addition, City shall have the right to reproduce the Artwork as provided in this Agreement; City shall have the right to move, relocate or remove Artwork from the Project Site and to store or dispose of Artwork as City deems appropriate; and City shall have the right to loan the Artwork as City deems appropriate.

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

8.3. Contract Cost Disclosure. For any document or report prepared in whole or in part by Artist pursuant to this Agreement, Artist will include the numbers and dollar amounts of related contracts or subcontracts as further specified by Government Code Section 7550.

8.4. Records of Performance. Artist will maintain adequate records of performance under this Agreement (including Services provided, invoices for payment, and payments received) and make these records available to the City for inspection, audit, and copying, during the term of this Agreement and until four years after the Agreement has expired or been terminated.

8.5. Electronic Communications. Artist will use reasonable good faith efforts to avoid transmitting electronic viruses or other damaging coding, and will promptly advise the City if Artist discovers that an electronic virus or similar destructive coding may have been transmitted to the City.

8.6. Copyrights/Patents; Artist's Warranties.

8.6.1. In performing the Services under this Agreement, Artist will not unlawfully infringe on any

copyrighted or patented work. Artist is solely responsible for the cost of any authorizations necessary to use any copyrighted or patented work.

8.6.2. Artist shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the State of California and the United States. Artist hereby represents and warrants that (a) the Artwork is solely the result of the artistic effort of the Artist and (b) the Artwork does not, and Artist has not and will not, utilize any protected patent, trademark or copyright in performance under this Agreement.

8.6.3. Without limiting any of the provisions of Section 10 of this Agreement, "Indemnification," Artist will indemnify, hold harmless, release, and defend the City (including its officers, elected or appointed officials, employees, volunteers, and agents) from and against any and all resulting Liability (as defined in Section 10) from the performance under this Agreement which infringes upon any patent, trademark or copyright or other right protected by law.

8.6.4. Artist hereby expressly warrants to the City that the Artwork, and all services and materials incorporated therein, shall conform to all plans and specifications of the Artwork approved by the City. The Artwork shall be subject to inspection and rejection with due cause by the City from the beginning of fabrication until the final completion and acceptance. An inspection by the City of any work or material shall not be deemed to be a waiver of any future right of inspection or of any right to demand correction of any subsequently discovered defect. Any work or material found to be unsatisfactory or defective before final approval of the Artwork shall be corrected or replaced by the Artist within a reasonable time. Inspection shall not relieve the Artist of the Artist's obligation to furnish materials and workmanship in accordance with this Agreement.

8.6.5. Artist warrants that the Artwork will be fit for the intended purpose; will be safe and will not have any nuisance or harmful effect; and will be free of defects in workmanship or materials, including inherent defects. Artist warrants that it shall, at Artist's cost and expense, remedy such defects in workmanship or materials that appear within twenty-four (24) months of the installation of the Artwork.

8.6.6. Artist warrants that the Artwork is durable and may withstand exposure to elements such as varying weather conditions, vehicular and pedestrian traffic, constant vibration and public access.

8.6.7. Artist warrants that the maintenance requirements for the Artwork will be reasonable in terms of the City's time and expense.

9. **ACCIDENT REPORT.** If any death, personal injury, or property damage occurs in connection with the performance of the Services, Artist will promptly submit to the City Clerk's Office a written notice of the incident of damage with the following information:

9.1. A description of the damage including date, time, and location, and whether any City property was involved;

9.2. Name and contact information of any witness;

9.3. Name and address of the injured or deceased person(s); and

9.4. Name and address of Artist's insurance company.

10. **INDEMNIFICATION.** To the full extent permitted by law, Artist will indemnify, hold harmless, release, and defend the City (including its officers, elected or appointed officials, employees, volunteers, and agents) from and against any and all liability or claims (including actions, demands, damages, injuries, settlements,

losses, or costs [including legal costs and attorney's fees]) (collectively, "**Liability**") of any nature, arising out of, pertaining to, or relating to Artist's acts or omissions under this Agreement, including the design, fabrication, transportation and installation of the Artwork. Consistent with Civil Code Section 2782, Artist will not be obligated to indemnify City for the proportionate share of the Liability caused by the City's active negligence, sole negligence, or willful misconduct. Artist's indemnification obligations under this Agreement are not limited by any limitations of any insurance held by Artist, including, but not limited to, workers' compensation insurance.

11. **INSURANCE.** Without limiting Artist's indemnification obligations in Section 10, Artist will procure and maintain throughout the period of this Agreement the following policies of insurance and endorsements from insurers (if other than the State Compensation Fund) with a current A.M. Best rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of Artist, its agents, employees or subcontractors:

11.1. **General Liability Policy.** Comprehensive or Commercial General Liability Insurance ("**CGL**") at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$1,000,000 per occurrence. If the Services involve explosive, underground or collapse risks, XCU will be included. If a general aggregate limit is used, either the general aggregate limit will apply separately to this Agreement or the general aggregate will be twice the required occurrence limit.

11.2. **Workers' Compensation.** Workers' Compensation insurance meeting statutory limits of the Labor Code. The workers' compensation policy will contain or be endorsed to contain a waiver of subrogation against the City, its officials, officers, agents, and employees.

11.3. **Endorsements.** The CGL and automotive liability policies will contain or be endorsed with the following provisions:

11.3.1. The City, its officers, elected or appointed officials, employees, volunteers, and agents, are covered as additional insureds for liability arising out of the operations performed by or on behalf of Artist. The coverage will contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, volunteers, and agents.

11.3.2. The Artist's insurance is primary and no insurance held by the City will be called upon to contribute to a loss.

11.3.3. The inclusion of more than one insured will not operate to impair or limit the rights of one insured against another, and the coverage will apply as though separate policies have been issued to each insured.

11.4. **All Policies.**

11.4.1. For all insurance policies required under this Agreement, prior to City's execution of this Agreement, Artist will furnish the City with certificates and original endorsements effecting the required coverage. Each certificate of insurance will state that the coverage afforded by the policy or policies will not be reduced, cancelled, or allowed to expire without at least 30 days written notice to City, unless due to non-payment of premiums, in which case at least 10 days written notice is required. Notice required under this subsection will be sent by certified mail. Each required policy will include an endorsement providing that the insurer agrees to waive any right of subrogation it may have against the City. The endorsements will be on forms provided by City or as approved by City's Risk Manager.

11.4.2. Any deductible or self-insured retention of \$100,000 or more will be disclosed to the City prior to City's execution of this Agreement and is subject to approval by the City.

11.4.3. If Artist does not keep all required insurance policies in full force and effect, the City may, in addition to other remedies under this Agreement, terminate or suspend this Agreement.

12. CONFLICTS OF INTEREST. Artist warrants that as of the Effective Date of this Agreement it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Services. Artist further warrants that in the performance of the Services, Artist will not employ or enter into a subcontract with any person or entity having any such conflict of interest.

12.1. Financial Interest. Artist will not make or participate in making or in any way attempt to use Artist's position to influence a City decision in which Artist knows, or has reason to know, Artist has a financial interest other than the compensation promised by this Agreement. Artist represents that it has diligently conducted a search and inventory of its financial interests, as defined in the regulations promulgated by the Fair Political Practices Commission, and has determined that Artist does not, to the best of Artist's knowledge, have a financial interest that would conflict with Artist's duties under this Agreement. Artist will immediately notify the City in writing if Artist learns of a financial interest that may conflict with Artist's obligations under this Agreement.

12.2. Covenant Against Contingent Fees. Artist warrants that it has not employed, retained, or entered into a contract with any person or entity, other than a bona fide employee working for the Artist, to solicit or secure this Agreement; and that it has not paid or agreed to pay any person or entity, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the making of this Agreement. For breach or violation of this warranty, the City may void this Agreement without liability or any further obligation to Artist, or, alternatively, may elect to deduct from payments due or to become due to Artist, the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

12.3. Statement of Economic Interest. If the City determines Artist (or any of its employees or subconsultants) is subject to disclosure requirements under the Political Reform Act (Government Code section 87100 et seq.), Artist (including any required employees or subconsultants) will complete and file a "Statement of Economic Interest" (Form 700) with the City Clerk's Office disclosing Artist's financial interests.

13. COMPLIANCE WITH LAW.

13.1. Legal and Licensing Compliance. Artist will comply with all applicable federal, state and local laws, rules, and regulations related to the Services under this Agreement. Artist represents and warrants to City that Artist has and will keep in effect during the term of this Agreement all licenses (including, but not limited to, the City of Napa business license), permits, qualifications, and approvals of whatsoever nature which are legally required for Artist to practice Artist's profession or perform the Services.

13.2. Nondiscrimination. At all times during the term of this Agreement, Artist will comply with all applicable federal, state, and local laws, rules, and regulations prohibiting discrimination based on race, ethnicity, color, national origin, religion, marital status, age, sex, sexual orientation, disability (including any physical or mental impairment that substantially limits a major life activity), medical condition, or any protected class.

13.3. Taxes. Artist will file tax returns as required by law and pay all applicable taxes on amounts paid pursuant to this Agreement. Artist will be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes.

13.4. Provisions Deemed Inserted. Every provision of law required to be inserted or referenced in this Agreement will be deemed to be inserted or referenced.

14. FUTURE MODIFICATION OR RELOCATION.

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

14.2. Except to the extent permitted by Section 14.1 above, City agrees not to intentionally modify the Artwork without first attempting to obtain Artist's written consent, which Artist shall not unreasonably withhold.

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

Without limitation of City's rights under this Agreement, it is City's practice to notify and consult with the Artist before intentionally moving, modifying, relocating or removing Artwork. If, after the initial discussion, Artist and City do not reach a mutually agreeable decision regarding relocation or modification of the Artwork, or do not agree upon compensation to Artist for providing Artist's input on proposed relocation or modification of the Artwork, City may take such actions as City deems necessary in management of the Artwork, and no further agreement or compensation is due to Artist. Notwithstanding the foregoing, whether or not City notified or consulted with Artist, if City removes, relocates, or modifies the Artwork without Artist's prior written consent, City shall not be liable to Artist for damages. Under such circumstances, if Artist objects to the modification or new location, then (i) City may restore the Artwork or replace the Artwork to its original location, or (ii) if the City does not restore the Artwork or to relocate the Artwork to the original location, Artist may request that Artist's association with the Artwork be severed. In either event, City shall have no further obligation or liability to Artist.

14.4. If City moves the Artwork from its originally installed location without Artist's oversight, Artist shall not be held responsible for the structural integrity or safety of the Artwork to the extent that City's action impaired the structural integrity or safety of the Artwork, nor shall Artist be held responsible for code compliance of the Artwork to the extent that City's action rendered the Artwork non-compliant with applicable codes.

14.5. Artist's rights under this Agreement cease with Artist's death and do not extend to Artist's heirs, successors or assigns.

15. GENERAL PROVISIONS.

15.1. Headings. The heading titles for each section of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

15.2. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement will be construed as not containing that term, and the remainder of this Agreement will remain in full force and effect; provided, however, this section will not be applied to the extent that it would result in a frustration of the Parties' intent under this Agreement.

15.3. Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement will be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement will be filed and heard in a court of competent jurisdiction in the County of Napa.

15.4. Attorney's Fees. If any litigation is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

15.5. Assignment and Delegation. This Agreement will not be assigned or transferred in whole or in

part, nor will any of the Artist's duties be delegated without the City's prior written consent. Any attempt to assign, transfer, or delegate this Agreement, in whole or any part, without the City's prior written consent will be void and of no force or effect. Any consent by the City to one assignment, transfer, or delegation will not be deemed to be consent to any subsequent assignment, transfer, or delegation.

15.6. Modifications. This Agreement may not be amended or modified orally. No amendment or modification of this Agreement is binding unless it is in a writing signed by both Parties.

15.7. Waivers. No waiver of a breach, default, or duty under this Agreement will be effective unless it is in writing and signed by the party waiving the breach, default, or duty. Waiver of a breach, default, or duty under this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach, default, or duty under this Agreement.

15.8. Entire Agreement. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the Parties concerning the Services. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all. If any provision in any document attached or incorporated into this Agreement conflicts or is inconsistent with a provision in the body of this Agreement, the provisions in the body of this Agreement will control over any such conflicting or inconsistent provisions.

15.9. Interpretation. Each party to this Agreement has had an opportunity to review the Agreement, and to consult with its respective legal counsel regarding the meaning of the Agreement. Accordingly, Civil Code Section 1654 will not apply to interpret any uncertainty in the meaning of the Agreement.

[Signature page follows.]

16. SIGNATURES.

16.1. Counterparts. This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

16.2. Signatures; Electronic Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. The Parties agree that this Agreement may be executed and transmitted electronically and that electronic signatures shall have the same force and effect as original signatures in accordance with the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.; the California Uniform Electronic Transactions Act, Civil Code Section 1633.1 et seq. and California Government Code Section 16.5.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective on the Effective Date set forth below.

CITY:
CITY OF NAPA, a California charter city

DocuSigned by:
Steve Potter
By: _____
5486592219F8429
Steve Potter, City Manager

ARTIST:
Redux Design Shop, LLC

DocuSigned by:
Jacques Lesec
By: _____
CD461755A94C487...
Jacques Lesec

Date: September 6, 2023 | 11:55:46 AM PDT

("Effective Date")

COUNTERSIGNED:

DocuSigned by:
Erika Leahy

Erika Leahy
Risk Manager

APPROVED AS TO FORM:

DocuSigned by:
Sabrina Wolfson

SABRINA WOLFSON
Assistant City Attorney

EXHIBIT "A"

**ARTWORK
(attach PROPOSAL)**

EXHIBIT "B"

SCOPE OF SERVICES AND SCHEDULE OF PERFORMANCE

1.0. SCOPE OF SERVICES. Artist will perform the Services described in this Exhibit "A," in accordance with the terms of the Agreement.

Artist shall commence and complete the design, fabrication, transportation, and installation of the Artwork at the Project Site and satisfy all other obligations and conditions of this Agreement with respect thereto within the time frames set forth below, as such time frames may be amended by mutual written agreement of the parties.

A. Final Design

Within 90 calendar days of the Effective Date, Artist shall submit the final design of the Artwork ("Final Design") to the City's Authorized Representative. Final Design submittal materials shall include:

- 1) To-scale working drawings for all components of the Artwork;
- 2) Structural/engineering drawings stamped by a licensed engineer;
- 3) Samples of materials to be used indicative of color or surface treatment;
- 4) A scaled site plan showing the revised and accurate site placement of the Artwork;
- 5) Budget showing final cost estimates on fabrication and materials;
- 6) Written specifications and recommendations for maintenance of the Artwork and its systems.

Within thirty (30) calendar days of receipt of the Final Design submitted by the Artist, the City's Authorized Representative shall either approve or reject the Final Design and provide Artist written notice thereof. If the Final Design is rejected, the City's Authorized Representative shall provide the Artist the reasons for such rejection; the Artist shall thereafter correct and resubmit the Final Design to the City's Authorized Representative within thirty (30) calendar days of the rejection. Once the Final Design is accepted, the City's Authorized Representative shall provide Artist with written notice of its approval of the Final Design ("Final Design Approval").

B. Building Permit.

Within fifteen (15) calendar days of the date of the Final Design Approval issued by City's Authorized Representative, Artist shall submit an application to the City's Building Division for a building permit ("Permit") to install the Artwork at the Project Site. Artist shall take all reasonable steps to secure the Permit within ninety (90) calendar days of the date of the Final Design Approval. The Final Design, as approved by the City, shall be included in the Permit application submitted to the City's Building Division.

C. Bonds

Artist shall submit to City a Performance Bond in the amount of 100% of the estimated Agreement price and a Payment "Labor and Materials" Bond in the amount of 100% of the estimated Agreement price, which shall be duly executed by Artist as principal and an admitted surety company as surety or such other security as may be approved by the City's Parks and Recreation Director as to substance and the City Attorney as to form. In conjunction with submittal of the bonds, the Artist shall furnish the original, or a certified copy, of the unrevoked appurtenant Power of Attorney or other instrument authorizing the person who executed the bonds to do so and a certificate from the Clerk of Napa County that the certificate of authority of the surety has not been surrendered, revoked, canceled, annulled or suspended. The bonds shall be subject to approval as to substance by the Parks and Recreation Director and as to form by the City Attorney.

D. Fabrication.

(a) Upon issuance of the Final Design Approval and Building Permit, City's Authorized Representative shall provide the Artist with a written Noticed to Proceed with Fabrication of Artwork ("Fabrication Notice to Proceed). Artist shall thereafter commence with fabrication of the Artwork and complete fabrication according to the timeline agreed to in writing by the parties.

(b) Artist will fabricate the Artwork in accordance with the Final Design approved by City for the design of the Artwork and Building Permit.

(c) Artist shall give City's Authorized Representative one (1) week notice of the dates of the following milestones for the fabrication of the Artwork: 25% complete, 50% complete, and 75% complete. The City retains the right to review and inspect the Artwork in studio including via video conference or other remote visual inspection techniques and to approve or reject it at each of the milestones.

(d) At each fabrication milestone (25%, 50%, 75% and 100%), the City will review and approve the Artwork as fabricated and will determine in writing, in its sole reasonable discretion, whether the Artwork meets all of the specifications previously approved by the City and that no default by Artist hereunder has occurred and is continuing (each, a "Milestone Approval Notice"). Artist shall contact City's Authorized Representative by phone two weeks prior to the date of 100% completion of fabrication of the Artwork for review and approval of fabrication of Artwork by City's Authorized Representative. Upon approval of the fabrication of the Artwork, the City's Authorized Representative shall provide Artist written notice of the approval of the fabrication of the Artwork ("Fabrication Approval Notice").

E. Transportation and Installation of Artwork.

(a) Within fifteen (15) calendar days of date of the Fabrication Approval Notice, Artist and City's Authorized Representative shall meet and confer and mutually agree to a date and time that Artist may proceed with the transportation and installation of the Artwork at the Project Site.

(b) Within thirty (30) calendar days after the meet and confer with the City's Authorized Representative, Artist shall submit an Artwork installation plan ("Artwork Installation Plan") regarding the delivery, unloading and installation of the Artwork at the Project Site to the City's Authorized Representative. The Artwork Installation Plan shall include delivery and installation dates as agreed to by the City's Authorized Representative and Artist, delivery, unloading and installation methodologies, a list of equipment and materials to be used, details regarding the limit of the work, staging and storage needs, a plan for street or lane closures if needed for material or equipment deliveries or staging, costs for an Encroachment Permit and assistance in closing the street or lanes from other City Departments, including the Department of Public Works or the Police Department, if needed, a list of subcontractors and equipment to be used on the Project Site, a detailed schedule of work at the Project Site, and any other matters that Artist and City's Authorized Representative may have agreed to during the meet and confer.

(c) City's Authorized Representative will review the Artwork Installation Plan within fifteen (15) calendar days of its receipt and notify Artist in writing if it is approved or rejected by the City. At City's Authorized Representative's request, Artist shall make necessary revisions to the Artwork Installation Plan prior to its approval. Once the Artwork Installation Plan is accepted, then the City's Authorized Representative shall provide the Artist with written notice of its approval of the Artwork Installation Plan and Notice to Proceed with Transportation and Installation of the Artwork at the Project Site ("Installation Plan Approval – Installation Notice to Proceed").

(d) Artist will be responsible for the labor, material, and equipment necessary to load and transport the Artwork to the Project Site. Artist will install the Artwork in accordance with the approved Artwork Installation Plan. Artist shall transport and install, or oversee the installation of, the Artwork at the Project Site by the date set forth in the Installation Plan Approval-Installation Notice to Proceed. Artist shall coordinate the delivery and installation of the Artwork with the City's Authorized Representative.

(e) At least fifteen (15) working business days prior to transportation and

installation of the Artwork, the Artist must contact the City's Authorized Representative for approval to begin installation at the Project Site. If required by City, the City's Authorized Representative or other City staff must be present at the Project Site on the first day of installation.

(f) Artist shall contact City's Authorized Representative upon completion of installation of the Artwork at the Project Site. The City's Authorized Representative shall inspect the installation of the Artwork and notify Artist in writing of its approval of the installation of the Artwork ("Notice of Installation Approval") or of the deficiencies in meeting the installation requirements set forth herein. If deficiencies are identified by the City's Authorized Representative, Artist shall correct such deficiencies and notify the City's Authorized Representative when such deficiencies have been corrected. This process shall continue until the City issues a Notice of Installation Approval. City's issuance of the Notice of Installation Approval shall in no way be deemed to be City's final acceptance of the Artwork.

F. Documentation and Final Maintenance Plan

(a) Within fifteen (15) calendar days of the date of the Installation Plan Approval-Installation Notice to Proceed, Artist shall submit to City's Authorized Representative a documentation and final maintenance plan ("Documentation and Final Maintenance Plan") addressing the following elements:

i. A written report for the City's files including complete information regarding the intent of the Artwork and the scale, materials, and processes used in the fabrication and installation of the Artwork

ii. Final written specifications and recommendations for maintenance of the Artwork, including an estimate of annual maintenance costs associated with the Artwork.

iii. One (1) set of digital images provided for program and archival purposes, showing fabrication, installation, and completed phases of the Artwork.

(b) City's Authorized Representative shall review the Documentation and Final Maintenance Plan within fifteen (15) calendar days of receipt and provide any comments to Artist. At City's Authorized Representative's request, Artist shall make necessary revisions to the Documentation and Final Maintenance Plan prior to its approval. Once the Documentation and Final Maintenance Plan is accepted, the City's Authorized Representative shall provide Artist written notice of its approval ("Maintenance Plan Approval Notice").

G. Conditions to Final Acceptance

Notwithstanding anything to the contrary set forth herein, the completed Artwork shall not be deemed to have been accepted by the City until each of the following conditions has been fulfilled, as determined by the City's Authorized Representative:

(a) All approvals required by this Agreement shall have been obtained by Artist.

(b) The installation of the Artwork shall conform to the specifications for the Artwork approved by City, including the Final Design and the Artwork Installation Plan.

(c) The Artwork shall have been installed in accordance with the terms and time frames set forth herein.

(d) The installed Artwork shall have been inspected and accepted by the City's Authorized Representative in writing.

(e) The Artwork shall be in substantial compliance with all other terms and conditions contained in this Agreement.

(f) Artist has provided, and City's Authorized Representative has approved in writing, the Documentation and Final Maintenance Plan

Artist shall notify the City's Authorized Representative in writing when these conditions have all been met. The City's Authorized Representative shall notify Artist in writing of final acceptance of the Artwork ("Notice of Final Acceptance") or of the deficiencies in meeting the conditions for final acceptance. If deficiencies are identified by the City's Authorized Representative, Artist shall correct such deficiencies and notify the City's Authorized Representative when such deficiencies have been corrected. This process shall continue until the City issues a Notice of Final Acceptance.

H. Consultation during Design, Fabrication and Installation; Deviation from Approved Specifications

(a) Artist hereby acknowledges that the goal of the parties to this Agreement is the installation of a work of art that best represents the creative talents of Artist and conforms to the Design Proposal and requirements of the City. To those ends, Artist agrees to be available as reasonably required for consultation with the City's Authorized Representative during design and execution of the Artwork, at no additional cost to the City. Artist shall also make good faith efforts to attend any inauguration or presentation ceremonies and/or public relation events.

(b) Artist shall fabricate and install the Artwork in strict conformity with the specifications and designs approved by the City. However, Artist may at any time make a request of the City for its written approval of a deviation from the approved specifications. All such requests must be made in writing in reasonable specificity and with reasonable advance notice to provide the City with sufficient information and time to make an informed and considered decision. City reserves the right to bring such requests to the Public Art Steering Committee and/or City Council for approval. In no event shall any deviation increase the project scope and/or compensation without prior City Council approval. The City may withhold approval to any such requested deviation.

I. Preparation of and Access to Project Site; Delays

(a) The preparation of the Project Site shall be the responsibility of the Artist. Artist shall not transport or install the Artwork until access to the Project Site has been approved and scheduled in coordination with the City's Authorized Representative. Cost of transportation to and from the Project Site and any parking fees incurred by the Artist are the responsibility of the Artist.

(b) Artist shall not be entitled to any damages for delays in the installation or acceptance of the Artwork due to any actions of the City, its employees, consultants or contractors. Artist shall bear any storage costs for the Artwork, materials or supplies, unless City unreasonably delays installation of the Artwork for its own convenience and unrelated to any delays caused by Artist.

2.0. PREVAILING WAGE COMPLIANCE. The City hereby determines that the Services are "public works" as defined by "Prevailing Wage Laws" (as set forth in the California Labor Code, including section 1720 et seq.), and this Agreement is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, and all related regulations, including requirements pertaining to wages, working hours, and workers' compensation insurance, and the following provisions. Subconsultants performing "public works" under this Agreement are subject to all of the requirements of this Section.

2.1. Prevailing Wages. Artist must comply with the prevailing wage requirements applicable in Napa County for each craft, classification, or type of worker needed to perform the Services, including employer payments for health and welfare, pension, vacation, and apprenticeship. The prevailing wage rates are on file with the City Engineer's office and are also available online at <http://www.dir.ca.gov/DLSR>. Pursuant to Labor Code section 1775, Artist will forfeit to City as a penalty up to \$200 for each calendar day, or portion of a day, for each worker paid less than the applicable prevailing wage rate, in addition to paying each such worker the difference between the applicable prevailing wage rate and the amount actual paid to the

- worker.
- 2.2. Working Hours. Pursuant to Labor Code section 1810, eight hours of labor constitutes a legal day's work. Pursuant to Labor Code section 1813, Artist will forfeit to City as a penalty, the sum of \$25 for each day during which a worker employed by Artist is required or permitted to work more than eight hours during any one calendar day, or more than 40 hours per calendar week, unless such worker is paid overtime wages pursuant to Labor Code section 1815. All Services must be performed during City's regular business days and hours, except as otherwise specified in this Agreement or subject to City's prior written authorization.
 - 2.3. Payroll Records. Artist must maintain certified payroll records in compliance with Labor Code sections 1776 and 1812, and any implementing regulations promulgated by the Department of Industrial Relations ("DIR"). For each payroll record, Artist must certify under penalty of perjury that the information in the payroll is true and correct and complies with the requirements of Labor Code sections 1771, 1861, and 1815. Artist must electronically submit certified payroll records as required by Labor Code section 1771.4(a).
 - 2.4. Apprentices. If the total compensation payable under this Agreement is \$30,000 or more, Artist must comply with the apprenticeship requirements in Labor Code section 1777.5.
 - 2.5. Compliance. The Agreement is subject to compliance monitoring and enforcement by the DIR. Pursuant to Labor Code section 1725.5, Artist must be registered with the DIR to perform public works projects, subject to any applicable exceptions, if any. Artist must post all job site notices required by laws or regulations pursuant to Labor Code section 1771.4. Pursuant to Labor Code section 1861, by executing this Agreement, Artist certifies as follows: "I am aware of the provisions of Labor Code 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing performance of the work on this contract."

EXHIBIT "B"

COMPENSATION RATES AND CHARGES

Notwithstanding the requirements of Section 2.2 of the Agreement, the Artist is not required to identify hourly rates for services performed under this Agreement. Rather, the Artist will submit invoices to the City based on completion of the "Performance Tasks" identified below, for which, upon approval of completion by the City's Authorized Representative, the City will pay the Artist within 30 days after approval of each invoice the corresponding lump sum payment, as set forth below, subject to the not-to-exceed limit in Section 2.1 of the Agreement:

<u>Performance Task:</u>	<u>Lump Sum Payment Amount:</u>
Initial Artist Fee (50%) (paid within 30 days of the Effective Date)	\$20,000
Final Design Completion (paid within 30 days of the date of City's Final Design Acceptance)	\$5,000
Materials Deposit (within 30 days following date of City's Fabrication Notice to Proceed)	\$90,000
Fabrication Labor 25% completion (within 30 days of date of City's 25% Milestone Approval Notice)	\$8,800
50% completion (within 30 days of date of City's 50% Milestone Approval Notice)	\$8,800
75% completion (within 30 days of date of City's 75% Milestone Approval Notice)	\$8,800
100% completion (within 30 days of date of City's Fabrication Approval Notice)	\$8,800
Permit & Inspections (within 30 days of date of City's issuance of Permit)	\$2,800
Installation of Artwork (within 30 days after date of City's Notice of Installation Approval)	\$7,000
Final Artist Fee (50%) (paid within 30 days of date of City's written Notice of Final Acceptance)	\$20,000
TOTAL	\$180,000