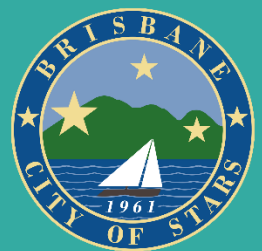


BRISBANE

Firth Park Public Art Project

RELEASE DATE (TBD)

**CALL FOR ARTISTS/REQUEST
FOR PROPOSALS**



The City of Brisbane, CA is seeking proposals from qualified artists, individuals, or teams (hereinafter referred to as ARTIST) with demonstrated experience in developing public art for functional spaces. Artists are invited to submit a proposal outlining their experience and qualifications in performing work directly related to the services required.

Selection will be made from responsive proposals that will best serve the interests of the City based on a combination of experience, qualifications, availability, and capacity to perform the scope of services within the outlined schedule.

Please submit your proposal using the format specified in this Request For Proposals (RFP).

PROPOSALS MUST BE RECEIVED BY DATE, NO LATER THAN 12:00PM. Any proposal received after the specified time and date will not be considered. Proposals may be submitted one of the following ways:

Preferred:

1. Electronically via PDF to nleek@brisbaneca.org AND jbondoc@ci.brisbane.ca.us.

Note: An email will be sent to confirm receipt of the electronic proposal.

Accepted:

2. Mailed to:

ATTN: Noreen Leek
Parks & Recreation Director
City of Brisbane
50 Park Place
Brisbane, CA 94005

If mailed, it must be received by the City by no later than 12:00 p.m. on DATE.

3. Dropped off in person to the Parks & Recreation Department on the second floor of Brisbane City Hall, 50 Park Place, Brisbane, CA 94005 during business hours. The deadline to drop off in person is 12:00 p.m. on DATE.

Questions regarding the information contained in the RFP document must be submitted in writing by e-mail to: nleek@brisbaneca.org. All questions must be received by DATE. Questions will be responded to in writing. Written summaries of all questions and answers will be recorded and will be shared with all prospective Artists. Anonymity of the source of specific questions will be maintained in the responses and a clarification addendum will be issued, if necessary. Verbal inquiries are discouraged and the intent behind this requirement is to ensure that all prospective Artists have the same information available to them and no inconsistent, incomplete, or misinformation is communicated to any party.

Noreen Leek
Parks & Recreation Director
(415) 508-2141
nleek@brisbaneca.org

INTRODUCTION

The City of Brisbane is seeking proposals from experienced artists for a public art installation that will enhance an existing park. The selected Artist will work collaboratively with the City's Public Art Advisory Committee and City staff to finalize a vision for these public art pieces.

BACKGROUND

The City of Brisbane is a small City in San Mateo County, approximately 20.1 square miles, nestled into the lower slopes of San Bruno Mountain. The city is located immediately south of San Francisco and is bordered to the east by the San Francisco Bay. The City of Brisbane was incorporated on November 27, 1961. Brisbane is known as "The City of Stars" due to a holiday tradition dating back to 1939. Residents and businesses adorn their homes and buildings with illuminated stars in early Winter delighting passersby.

In 2014, the City of Brisbane adopted a Public Arts Ordinance to increase citizens' appreciation of art, to improve quality of life, and to enhance Brisbane's identity as a unique community within the greater Bay Area. Additionally, public art should stimulate creativity, imagination, induce creative conflict, and add a unique human quality to the environment and enrich public spaces. A city rich in art becomes an outdoor cultural museum accessible to everyone.

As outlined in the City's Art in Public Places Ordinance, public art has the power to energize our public spaces, arouse our thinking, and transform the places where we live, work, and play into more welcoming and beautiful environments that invite interaction. By its presence alone, public art can heighten our awareness, question our assumptions, transform a landscape, or express community values, and for these reasons it can have the power, over time, to transform a city's image. Public art helps define a community's identity and reveal its unique character.

The Brisbane Public Art Advisory Committee is the City Committee responsible for ensuring all public art projects in the City of Brisbane meet the program criteria and guidelines for selection of an artist or artist team, artwork, and artwork location established in the Public Arts Implementation Guidelines. In 2025, the City of Brisbane (with support from NINEdotARTS) adopted its first ever Public Art Master Plan, intended to integrate public art into the fabric of the city and thereby promote beauty, creativity, and community engagement. The master plan provides long-term guidance and direction to the City of Brisbane on the planning and processes necessary to administer and maintain a successful public art program.

[Link to Public Art Master Plan](#)



PROJECT SCOPE & DESCRIPTION

The Public Art Advisory Committee, in collaboration with the Brisbane City Council, seeks to commission signature works of art to complement its existing collection at Firth Park located at 201 Glen Park Way, Brisbane, CA 94005. The Park already houses two art pieces designed by Jim Miller-Melberg which were recently restored but have been onsite since the 1970's. See images in Enclosure A. This site offers several opportunities to integrate artwork into the landscape. The Public Art Advisory Committee seeks applications from artists working in a variety of media and artistic approaches, who will be responsible for the design and implementation of the artwork. Examples of opportunities for artwork integration on the site include (but are not limited to) the following: artwork on the existing staircase, rejuvenation of the park's marquee sign, a decorative barrier between the park and the adjacent roadway, benches, etc.

At this time, the Public Art Advisory Committee invites proposals from artists working in a variety of media and artistic approaches, who will be responsible for the design and installation of the artwork.

The artwork(s) should:

- Provide excitement for visitors and residents of the community by elevating the space
- Establish a sense of place
- Reinforce the individuality of the community
- Be distinctive, dynamic, and unique
- Integrate into the existing natural environment

This artwork will become a permanent addition to the Brisbane public art collection. All applicants must consider the issues of long-term conservation and maintenance of public art, along with time and budget. The design of all art for this project shall be very durable, require minimal maintenance, and be resistant to theft, vandalism, and weathering. Art for this project should not cause any kind of safety hazard for traffic or pedestrians. The art should adhere to the highest standards of quality, timelessness, permanence, and general appeal. NOTE: Art must comply with City building codes and the City’s dark-sky ordinance. Artist proposals will be reviewed by the City of Brisbane’s Public Art Advisory Committee to ensure conformity with city standards of maintenance and durability, as well as Americans with Disabilities Act (ADA) standards. Artists are expected to stay on budget and to complete work in an approved timeframe.

PROJECT TIMELINE

The anticipated schedule for this project is as follows:

City Council reviews and authorizes RFP	TBD
RFP Release Date	TBD
Question Submission Cutoff Deadline	TBD
Proposal Submission Deadline	TBD
Selection Committee review and recommendation	TBD
City Council award of Contract	TBD
Notice to proceed issued to Artist	TBD

**Disclaimer: This timeline is subject to change and the City of Brisbane reserves the right to adjust as deemed necessary.*

BUDGET

The budget range for this project is TBD, which will be allocated to the artist selected. **Please note:** the Public Art Advisory Committee may choose to recommend dividing the budget between multiple successful applicants or awarding project contracts to multiple artists. The budget should include all costs associated with the completion of the project, including but not limited to: artist fees, materials, labor costs for assistants, insurance, permits, taxes, business and legal expenses, operating costs, art dealer’s fees (if applicable), fabrication, and installation. Applicant shall provide a proposed budget itemized by task, as well as the total project cost proposed. Hourly rates for project staff shall also be provided if applicable.

***Cost proposal must be submitted separate from the rest of the RFP response.**

SUBMISSION REQUIREMENTS

To be responsive, each RFP submission must include the following information in the format indicated. The submittals shall be organized to match the following categories. Submittals not organized according to the following format may be rejected.

-
1. **Letter of Interest** - not to exceed one page explaining interest in the project and including pertinent information about the artists approach and projects of a similar nature.
 2. **Resume** - not to exceed two pages listing professional artistic accomplishments, contact information, education or other relevant information, and current contact information for at least two references.
 3. **Proposal** - not to exceed five pages describing the artwork and the artist's approach. Include drawings, renderings, materials, and dimensions.
 4. **Images of Original Representative Work** -not to exceed 10 images.
 5. **Annotated Image List** – Each image must include the artist's name and a brief description of each image stating its title, medium, size, location, and purchase price or commissioned price.
 6. **Sealed Fee Proposal** - The Fee Proposal shall be submitted in a separate sealed envelope or PDF document marked "Stairway Art Budget Proposal".

SELECTION PROCESS

Pursuant to Sections 4525-4529 of the Government Code of the State of California, the Consultant selection will be based on qualifications. The City's Public Art Advisory Committee will review the proposals received by the deadline and make recommendations to Brisbane City Council. The City of Brisbane reserves the right to reject any or all proposal(s), to waive technicalities, and to accept whichever proposal(s) that may be in the best interest of the City, at its sole discretion.

GENERAL TERMS AND CONDITIONS

1. This RFP does not commit the City to enter into an agreement, to pay any cost incurred in the preparation of a submittal to this request or in subsequent negotiations, or to procure or contract for the project.
2. At any time prior to the specified time and date set for the submission, a person/firm, or their designated representative, may withdraw their proposal.
3. The issuance of this RFP and the acceptance of a proposal do not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves the right to:
 - a. Reject any or all proposals.
 - b. Reissue an RFP.
 - c. Extend the time frame for submission of the proposals by notification to all parties who have registered an interest in this RFP with the City.
 - d. Request more information from any or all applicants.
 - e. Waive any immaterial defect or informality.
 - f. Decline to go forward with the RFP.

-
- g. Reject any Subcontractor or Contractor proposed by the Proposer.
 - h. The City expressly reserves the right not to award a contract under this RFP.
4. All services shall be provided in accordance with Enclosure "A," the City's Professional Services Agreement. Final terms of any agreement will be established during negotiations. Negotiations may be terminated by the City for failure to reach mutually acceptable terms.
 5. Each artist will be responsible for all costs incurred in preparing a response to this RFP.
 6. All materials and documents submitted in response to this RFP will become the property of the City and will not be returned. Artists selected for further negotiations will be responsible for all costs incurred by it during negotiations whether or not such negotiations lead to a contract with the City.
 7. Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify the City, in writing, if the proposer discovers any ambiguity, discrepancy, omission or other error in the RFP. Any such notification should be directed to the City promptly after discovery, but in no event later than five working days prior to the date for receipt of proposals.

ENCLOSURES

Enclosure A	Site photos including images of existing art on location
Enclosure B	Sample Professional Services Agreement

ENCLOSURE A

Firth Park site photos

Existing art on location:



Additional site photos:









**AGREEMENT FOR THE DESIGN, FABRICATION, AND INSTALLATION OF
PUBLIC ART WORK**

THIS AGREEMENT for the design, fabrication, and installation of Public Art Work is entered into this DATE, between the City of Brisbane (“City”), ARTIST NAME (“Artist”), with offices at LOCATION.

WHEREAS, City requires the services of an artist to design, fabricate and install a work of art, namely DESCRIPTION (“the Artwork”) on public property located ADDRESS (“the Project Site”); and

WHEREAS, the Artwork shall include DESCRIPTION; and

WHEREAS, Artist is a professional artist whose work and qualifications make the Artist well qualified to create the Artwork; and

WHEREAS, Artist has developed a proposal to design, fabricate, and install the Artwork at the Project Site, as more particularly described in the Art Work Proposal submitted by the Artist pursuant to that certain proposal described in Exhibit A; and

WHEREAS, the City’s Public Art Committee reviewed the Art Work Proposal and recommended to the City Council that it enter this Agreement; and

WHEREAS, City has allocated funds from money it has received under its Public Art Ordinance for the design, fabrication, and installation of the Artwork at the Project Site; and

WHEREAS, on DATE, the Brisbane City Council approved the recommendation of the Public Art Committee to select Artist and authorized this Agreement with Artist; and

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions of this Agreement, the parties agree as follows:

Article 1 Scope of Services

1.1 Artist’s Obligations

- a. The Artist shall perform all services and furnish all supplies, material and/or work equipment as necessary for the design, fabrication, and installation of the Artwork. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- b. The Artist shall determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the City and any regulatory agencies with project oversight, as set forth in this Agreement.
- c. The Artist shall prepare the design concept described in Section 1.3 of this Agreement.

- d. The Artist shall complete the fabrication, and installation of the Artwork by the scheduled dates as provided in Section 1.5 of this Agreement.
- e. The Artist shall secure any and all required licenses, permits and similar legal authorizations at the Artist's expense as may be necessary for the installation of the Artwork at the Project Site.
- f. The Artist shall arrange for the installation of the Artwork in coordination with the City. If the Artist does not install the Artwork itself, Artist shall supervise and approve the installation. Prior to the installation of the Artwork, Artist shall inspect the Project Site to ensure that it is ready to accept the Artwork and compliant with the specifications provided by the Artist. Artist shall notify the City of any perceived conflict, defect or non-compliance with specifications and resolve, at no expense to the City, all such conflicts, defects or non-compliance with the specifications before installing the Artwork. All work shall be performed by qualified professionals and by licensed contractors as required by law.
- g. Artist shall provide required insurance in amounts and limits specified in Article 5 and Exhibit C.
- h. Artist shall provide a list of all subcontractors along with a copy of the agreement between the Artist and each subcontractor.
- i. Artist shall provide a set of "as built" drawings if there is significant deviation from approved and permitted construction documents.
- j. Artist shall provide a list of all final materials used including the manufacturer name and supplier and for each material, a Product Data Sheets (PDS), Technical Data Sheets (TDS), and Safety Data Sheets (SDS).
- k. Artist shall provide a maintenance manual with the expected lifetime of the Artwork, a description of all materials, processes and products to be used for maintaining the Artwork, the required care and upkeep involved, and the recommended procedures in the event of necessary conservation intervention. The maintenance plan is subject to review by a professional conservator.
- l. Artist shall provide photographic documentation of the Artwork in a format acceptable to Artist and the City.
- m. Artist shall be available with reasonable advance notice for a reasonable number of meetings required to coordinate design and project implementation, ceremonies and the like, as necessary.
- n. The Artist shall be responsible for researching whether there are any required permits, building and municipal code regulations, or any other policies, guidelines or approvals required by regulatory or oversight agencies that may impact the Artwork and/or the installation of the Artwork.
- o. Consistent with plaque guidelines provided by the City, the Artist shall design and install a plaque on or near the Artwork containing a credit to the Artist and a copyright notice substantially in the following form: Copyright © [Artist's name, date of publication]. The plaque design and installation plans must be approved by City staff prior to installation.

1.2 City's Obligations

- a. The City shall perform all obligations in strict compliance with all terms and conditions in this Agreement.
- b. The City shall not knowingly permit any use of the Artist's name or misuse of the Artwork which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Artwork, should such use or misuse be within the City's control.

1.3 Final Design, Budget and Related Documents Phase

Artist shall submit to the City for its review the Final Design Documents as described in subsections a. and c. of this Section 1.3, and any revisions as required by the City. Once the City has approved the Final Design Documents, the Final Budget and Schedule of Deliverables, and the Artist has all required licenses, permits and similar legal authorizations for the installation of the Artwork at the Project Site, the Artist is authorized to proceed with the Fabrication Phase as described in Section 1.5.

a. Final Design

Artist shall proceed with the Final Design Documents of the Artwork which shall include the following: presentation quality materials, which shall include colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artwork and how it will be installed at the Project Site, mock-ups, final color and materials samples, proposed fabrication methods, feasibility studies and final cost estimates at design completion. When used in reference to the proposed Artwork, Final Design Documents shall fix and describe the size and character of the Artwork with respect to its relationship to the Project Site, including architectural, structural, mechanical and electrical systems, materials and other elements as may be appropriate.

b. Construction Documents and Maintenance Plan

- i. Artist shall, if Construction Drawings are required for construction and installation of the Artwork, submit Construction Documents to the City Permit Center for construction and/or installation of the proposed Artwork as approved, which must be signed and stamped by design professionals licensed in the State of California, as required by the California Building Code and any local government amendments to the Building Code.
- ii. Artist shall deliver computer-generated (or otherwise as agreed to by both parties) color and material design samples.
- iii. Artist shall review Architect's Design Development and/or Construction Documents for accuracy of the integration of Artist's Proposal within the Site and provide the City with written comments and/or corrections.
- iv. Artist shall provide a list of all proposed materials including the manufacturer name and supplier and for each material, a Product Data Sheets (PDS), Technical Data Sheets (TDS), and Safety Data Sheets (SDS).
- v. Artist shall provide a detailed description of future maintenance requirements for the Artwork, including the lifetime of the Artwork ("the Maintenance Plan").
- vi. City may appoint a conservator to review the Final Design Documents and the Maintenance Plan. Based on comments provided by the conservator, Artist may need to revise the Design and/or the Maintenance Plan. In addition, City may require the Artist to present the Design and/or the Maintenance Plan to a

qualified conservator for that conservator to provide to the City recommendations as to the Design and Maintenance Plan. Based on those recommendations, City may require the Artist to revise the Design and/or the Maintenance Plan.

c. **Final Budget and Schedule of Deliverables**

- i. The Artist shall prepare a Budget, not to exceed \$120,150.00, which shall include all goods, services and materials related to the Artwork, with such costs itemized.
- ii. Budget shall mean a specific and detailed document identifying the cost of completion of all work under this Agreement, including all modifications. The Budget shall include the costs for all design fees and costs; preliminary and final engineering requirements; materials and labor for fabrication, including Artist and subcontractors' costs; consultants, including engineers and specifications writers; transportation of Artwork; installation of Artwork, including any necessary permits; permits and licenses; required insurance; any sales tax; and 10% contingency allowance, which contingency allowance may be used only with written permission of the City. Calculation of the Budget will take into consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date. If the Artist incurs costs in excess of the amount in the approved Budget, including the contingency, the Artist shall pay such excess from the Artist's own funds unless the Artist obtain approval in writing from the City for such additional costs or such costs were the result of actions or inaction of the City.
- iii. The Artist shall notify the City of the anticipated schedule for the fabrication and installation of the Artwork, including a schedule for the submission of progress reports and inspections if any required by the City ("the Schedule of Deliverables"). The Schedule of Deliverables must identify a specific date or timeframe for the completion of the Artwork. The Schedule of Deliverables may be amended by written agreement.

1.4 Payment Schedule and Progress Reports

- a. Artist's completion milestones and payment schedule is as set forth in Exhibit B, Payment Schedule, which is incorporated herein by reference.
- b. The Artist shall inform the City of the progress of each phase of work completed under the Agreement.

1.5 Fabrication Phase

Following City's approval of all Design Phase documents described in Section 1.3:

- a. The Artist shall fabricate the Artwork in substantial conformity with the Final Design. The Artist may not deviate from the approved design without written approval of the City.
- b. If the Artwork is being constructed on site, the Artist shall avoid creating nuisance conditions arising out of the Artist's operations.
- c. The City shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice.

- d. If the City, upon review of the Artwork, determines that the Artwork does not conform to the approved Final Design, the City reserves the right to notify the Artist in writing of the deficiencies and that the City intends to withhold the next budget installment within 5 business days of the determination as in paragraph (g) below.
- e. The Artist will have thirty days to cure the City's objections and will notify the City in writing of completion of the cure. The City shall promptly review the Artwork, and upon approval shall release the next budget installment. If the Artist disputes the City's determination that the Artwork does not conform, the Artist shall promptly submit reasons in writing to the City within 5 business days of the City's prior notification to the contrary. The City shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether the Artist has complied with the terms of this Agreement shall remain with the City.
- f. The Artist shall notify the City in writing when fabrication of the Artwork has been completed, and that the Artwork is ready for delivery and installation at the Project Site if the Artwork was fabricated off-site.
- g. Prior to the installation of the Artwork, the City shall inspect the Artwork within 10 business days after receiving notification pursuant to paragraph (f) to determine that the Artwork conforms with the Final Design: give final approval of the fabricated Artwork and; authorize the installation of the Artwork at the Project Site. The City shall not unreasonably withhold final approval of the fabricated Artwork. In the event that the City does withhold final approval, the City shall submit the reasons for such disapproval in writing within 5 business days of examining the fabricated Artwork. The Artist shall then have 30 days from the date of the City's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. The Artist shall not be penalized for any delay in the delivery and installation of the Artwork to the Project Site unless the Artist has willfully and substantially deviated from the Final Design without the prior approval of the City. The Artist shall then be held responsible for any expenses incurred in correcting such deviation.
- h. The City shall promptly notify the Artist of any delays impacting installation of the Artwork. Any additional storage and insurance costs incurred by the Artist shall be borne by the City in the event that the delay is caused by the City.
- i. The Artist shall be required to inspect the Project Site prior to the installation of the Artwork and shall notify the City of any adverse Project Site conditions that will impact the installation of the Artwork and which are in need of correction. Failure to do so by the Artist shall be deemed as an acceptance of the Project Site conditions.
- j. The Artist shall take reasonable measures to protect or preserve the integrity of the Artwork with the application of a protective sealant, patina or anti-graffiti coating, if applicable, unless the City specifically disapproves of such.

1.6 Installation Phase

- a. Upon the City's final approval of the fabricated Artwork as being in conformity with the Final Design, the Artist shall install the completed Artwork to the Project Site in accordance with the schedule provided for in Section 1.3.
- b. The Artist will coordinate closely with the City to ascertain that the Project Site is prepared to receive the Artwork. Artist must notify the City of any adverse

conditions at the Project Site that would affect or impede the installation of the Artwork.

- c. The Artist is responsible for timely installation of the Artwork. Artist may not install the Artwork until authorized to do so by the City.
- d. Artist shall install the artwork in compliance with all local, regional and national safety regulations such as OSHA. The installation site is to be protected for safety of the public and workers at all times.
- e. The Artist shall be present to supervise the installation of the Artwork.
- f. Upon installation, the Artwork shall be deemed to be in the custody of the City for purposes of Article 3 and Article 5 of this Agreement.
- g. Upon completion of the installation of the Artwork, the Artist shall provide the City with written instructions for the future maintenance and preservation of the Artwork.

1.7 Approval and Acceptance

- a. The Artist shall notify the City in writing when all services as required by this Agreement prior to this paragraph have been completed in substantial conformity with the Final Design and contract documents.
- b. The City shall promptly notify the Artist in writing of its final acceptance of the Artwork within 7 business days after the Artist submitted written notice pursuant to paragraph (a) above. The effective date of final acceptance shall be the date the City submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that the City acknowledges completion of the Artwork in substantial conformity with the Final Design, and that the City confirms that all services as required by this Agreement prior to paragraph (c) of this section have been completed. Title to the Artwork to the City passes upon final acceptance of the Artwork and final payment by City to Artist. If a regulatory agency must approve the completed artwork, the City should move promptly to gain such approval as it will be a precondition to the City's ability to accept and approve the finished Artwork from the Artist.
- c. If the City disputes that all the services have been performed, the City shall notify the Artist in writing of those services the Artist has failed to perform within 7 business days after the Artist submitted written notice pursuant to paragraph (a) above. The Artist shall promptly perform those services indicated by the City.
- d. If the Artist disputes the City's determination that not all services have been performed, the Artist shall submit reasons in writing to the City within 7 business days of the City's prior notification to the contrary. The City shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether all services have been performed shall remain with the City.
- e. Upon the resolution of any disputes that arise under paragraphs (c) and (d) of this Section, the City shall notify the Artist of its final acceptance of the Artwork pursuant to paragraph (b).

Article 2. Terms of Agreement

- a. Duration

- i. This Agreement shall be effective on the date that this contract has been signed by both parties, and, unless terminated earlier pursuant to such provisions in the Agreement, shall extend until final acceptance by the City under Section 1.7(b), or submission of final payment to the Artist by the City under Exhibit B, whichever is later. Extension of time of performance hereunder may be granted upon the request of one party and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall be in writing, signed by both parties, and attached to the schedule described in Section 1.3.
- b. Force Majeure
 - i. The City shall grant to the Artist a reasonable extension of time in the event that conditions beyond the Artist's control render timely performance of the Artist's services impossible or unduly burdensome. All such performance obligations shall be suspended for the duration of the condition. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. 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.

Article 3. Risk of Loss

The Artist shall bear the risk of loss or damage to the Artwork until the installation of the Artwork. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. The City shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, the partially or wholly completed Artwork is in the custody, control or supervision of the City or its agent(s) for the purposes of performing services to the Artwork.

Article 4 Artist's Representations and Warranties

4.1 Warranties of Title

The Artist represents and warrants that:

- a. the Artwork is solely the result of the artistic effort of the Artist;
- b. except as otherwise disclosed in writing to the City, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;
- c. the Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- d. the Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
- e. the Artwork is free and clear of any liens from any source whatsoever;
- f. all Artwork created by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party;
- g. the Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;

- h. all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence;
- i. these representations and warranties shall survive the termination or other extinction of this Agreement.

4.2 Warranties of Quality and Condition

- a. The Artist represents and warrants that all work will be performed in accordance with professional “workmanlike” standards and free from defective or inferior materials and workmanship (including any defects consisting of “inherent vice,” or qualities that cause or accelerate deterioration of the Artwork) for 2 years after the date of final acceptance by the City under Section 1.7(b).
- b. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.
- c. The Artist represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Section 1.6(g).
- d. If within one year the City observes any breach of warranty described in this Section 4.2, the Artist shall cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the City. The City shall give notice to the Artist of such breach with reasonable promptness. However, if Artist did not disclose this risk of breach in the Proposal and Maintenance and Conservation manual, and if breach is not curable by Artist, the Artist is responsible for reimbursing the City for damages, expense and loss incurred by the City as a result of the breach of warranty. However, if the Artist disclosed the risk of this breach in the Proposal and maintenance and conservation manual and the City accepted that it may occur, as indicated by the written final acceptance of the artwork, it shall not be deemed a breach for purposes of this Section 4.2 of this Agreement.
- e. If after one year the City observes any breach of warranty described in this Section 4.2 that is curable by the Artist, the City shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist’s lifetime. The Artist shall have the right of first refusal to make or supervise repairs or restorations. Should the Artist be unavailable or unwilling to accept reasonable compensation under the industry standard, the City may seek the services of a qualified restorative conservator and maintenance expert.
- f. The foregoing warranties are conditional and shall be voided by the failure of the City to maintain the Artwork in accordance with the Artist’s specifications and the applicable conservation standards. If the City fails to maintain the Artwork in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist’s creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork’s condition is satisfactorily repaired.

Article 5 Insurance

5.1 General

- a. The Artist acknowledges that until installation of the Artwork under Section 1.6(e), any injury to property or persons caused by the Artist's Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artist's Artwork are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the Artist's Artwork, regardless of where such loss occurs.
- b. Terms for the procurement and duration of insurance are provided in Exhibit C.
- c. Required insurance policies are described in Exhibit C.

5.2 Indemnity

- a. The Artist shall indemnify the City, its respective officers, agents, and employees, from any claims brought arising out of the breach of this Agreement or any negligent occurrence which occurs pursuant to the performance of this Agreement by the Artist, its subcontractors, agents or employees.
- b. The City shall indemnify the Artist, Artist's subcontractors, agents or employees from any claims brought arising out of the breach of this Agreement or any negligent occurrence which occurs pursuant to the performance of this Agreement by the City, its respective officers, agents, and employees.
- c. Each Party shall immediately notify the other of any written claim regarding any matter resulting from or relating to the Party's obligations under this Agreement. Each Party shall cooperate, assist, and consult with the other in the defense or investigation of any such claim arising out of or relating to the performance of this Agreement.
- d. The indemnification shall include reasonable attorneys' fees and costs.
- e. This indemnification shall survive the termination or expiration of this Agreement.
- f. Notwithstanding any provision of this Agreement to the contrary, no Party shall recover from a Party to this Agreement in an action, of whatever nature, in contract or tort, any consequential or incidental damages, lost profits, or any type of expectancy damages.

Article 6 Ownership and Intellectual Property Rights

6.1 Title

Title to the Artwork shall pass to the City upon the City's written final acceptance and payment for the Artwork pursuant to Section 1.7(b) and Exhibit B.

6.2 Ownership of Documents

One set of presentation materials prepared by Artist and submitted to City under this Agreement shall be retained by the City.

6.3 Copyright Ownership

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. §101 et seq., as the sole author of the Artwork for the duration of the copyright.

6.4 Reproduction Rights

- a. In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate [three]-dimensional reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the City. However, nothing shall prevent the Artist from creating works in the Artist's manner and style of artistic expression.
- b. The Artist grants to the City and its assignees an irrevocable license to make two-dimensional reproduction of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publication provided that these rights are exercised in a tasteful and professional manner.
- c. All reproductions by the City shall contain a credit to the Artist and a copyright notice in substantially the following form: © [Artist's name, date of publication].
- d. The Artist shall not reproduce nor replicate the Artwork without the City's express written permission which the City in its sole discretion may give except for the use of photographs of the Artwork for purposes of the Artist's resume, in which case the Artist must provide acknowledgment to the City in substantially the following form: "An original artwork owned and commissioned by the City of Brisbane."
- e. If the City wishes to make reproductions of the Artwork for commercial purposes including, but not limited to, tee shirts, post cards and posters, the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.

Article 7 Artist's Rights

7.1 General

- a. The Artist retains all rights under state and federal laws including §106A of the Copyright Act of 1976.
- b. The City will not intentionally alter, modify, change, destroy or damage the Artwork without first obtaining permission from the Artist. The City shall take reasonable measures to avoid these from occurring from the gross negligence of the City, its representatives, or employees pursuant to the federal Visual Artists' Rights Act.
- c. If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies the Artist may have in law or equity under this Agreement. Upon written request, the City shall remove the identification plaque and all attributive references to the Artist at its own expense within 60 days of receipt of the notice. No provision of this Agreement shall obligate the City to alter or remove any such attributive reference printed or published prior to the City's receipt of such notice. The Artist may take such other action as the Artist may choose in order to disavow the Artwork.
- d. Artist shall on an ongoing basis provide to the City the Artist's contact information, such as address, email address, phone number, etc., City shall have no obligation other than to make reasonable efforts to notify the Artist.
- e. If the Artist is deceased or becomes mentally incapacitated, City shall make reasonable efforts to notify the Artist's heirs, successors, assigns or conservator.

7.2 Alteration of Site or Removal of Artwork

- a. Subject to paragraphs d and e of Section 7.1, the City shall notify the Artist in writing upon adoption of a plan of construction or alteration of the Project Site which would entail removal or relocation of the Artwork which might result in the Artwork being destroyed, distorted or modified. The Artist shall be granted the right of consultation regarding the removal or relocation of the Artwork. If the Artwork cannot be successfully removed or relocated as determined by the City, the Artist may disavow the Artwork.
- b. The Artwork may be removed or relocated or destroyed by the City should the Artist and the City not reach mutual agreement on the removal or relocation of the Artwork after a period not to exceed [90] days after written notice to the Artist. During the [90] day period, the parties shall engage in good faith negotiations concerning the Artwork's removal or relocation.
- c. In the event of changes in building codes or zoning laws or regulations that cause the Artwork to be in conflict with such codes, laws or regulations, the City may authorize the removal or relocation of the Artwork without the Artist's prior permission. In the alternative, the City may commission the Artist by a separate agreement to make any necessary changes to the Artwork to render it in conformity with such codes, laws or regulations.
- d. If the City reasonably determines that the Artwork presents an imminent hazard to the public, other than as a result of the City's failure to maintain the Artwork as required under this Agreement, the City may authorize the removal of the Artwork without the prior approval of the Artist.
- e. This clause is intended to replace and substitute for the rights of the Artist under the Visual Artists' Rights Act to the extent that any portion of this Agreement is in direct conflict with those rights. The Parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.

Article 8 Artist as an Independent Contractor

The Artist shall perform all work under this Agreement as an independent contractor and not as an employee of the City. The Artist acknowledges and agrees that the Artist shall not hold itself out as an authorized agent of the City with the power to bind in any manner.

The Artist shall provide the City with the Artist's Tax Identification number and any proof of such number as requested by the City. The Artist shall provide the City with a copy of the Artist's City business license.

Article 9 Assignment of Artwork

The work and services required of the Artist are personal and shall not be assigned, sublet or transferred. Any attempt by the Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by the City. The City shall have the right to assign or transfer any and all of the City's rights and obligations under this Agreement, subject to the Artist's consent, if ownership of the Project Site is transferred; if the Artist refuses to give consent, this Agreement shall terminate.

Article 10 Termination

- a. Either Party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as, but not limited to, acts of nature; war or warlike operation; superior governmental regulation or control; public emergence; or strike or other labor disturbances. Notice of termination of this Agreement shall be given to the non-terminating party in writing not less than 30 days prior to the effective date of termination.
- b. The City may terminate this Agreement without cause upon [60] days written notice to the Artist. The City shall pay the Artist for services performed and commitments made prior to the date of the termination, consistent with the schedule of payments set forth in Exhibit B of this Agreement. The Artist shall have the right to an equitable adjustment in the fee for services performed and expenses incurred beyond those for which the Artist has been compensated to date under Exhibit B with allowance for documented lost opportunities, unless the parties come to a settlement otherwise. The Artist shall retain possession and title to the studies, drawing, designs, maquettes, and models already prepared and submitted or prepared for submission to the City by the Artist under this Agreement prior to the date of termination.
- c. If either party to this agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have 30 days after the effective date of the notice to cure the default. If it is not cured by that time, this Agreement shall terminate.
- d. If the Artist defaults for cause other than death or incapacitation, the Artist shall return to the City all funds provided by the City in excess of the expenses already incurred. The Artist shall provide an accounting of these expenses. All finished and unfinished drawings, sketches, photographs and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall be retained by the Artist.
- e. Upon notice of termination, the Artist and the Artist's subcontractors shall cease all services affected.

Article 11 Death or Incapacity

- a. If the Artist becomes unable to complete this Agreement due to death or incapacity, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the Artist for purposes of Article 10.
- b. In the event of incapacity, the Artist's conservator shall assign the Artist's obligations and services under this contract to another artist provided that the City approves of the new artist and so agrees in writing. If the City does not agree, the City may elect to terminate this Agreement. The Artist shall retain all rights under Article 6 and Article 7. The Artwork and any reproductions thereof shall contain a

credit to the Artist and a copyright notice in substantially the following form: ©
[Artist's name, date of publication].

- c. In the event of death, this Agreement shall terminate effective the date of death.
The Artist's heirs shall retain rights under Article 6 and Article 7.

Article 12 Notices and Documents

Notices under this Agreement shall be delivered personally or through the [registered or certified mail, return receipt requested] mail, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a Party:

For the City:

City Manager
City of Brisbane
50 Park Place
Brisbane, CA 94005

For the Artist:

NAME
ADDRESS

Notice shall be deemed effective on the date personally delivered or, if mailed, [three (3) days] after the postmarked date.

Article 13 Waiver

The Parties agree that a waiver of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

Article 14 Conflict of Interest

The Artist and Owner shall avoid all conflicts of interest or appearance of conflicts of interest in the performance of this Agreement.

Article 15 Amendments

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties.

Article 16 Conflict with the Law

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction or arbitration panel to be in conflict with the laws, rules and/or regulations of the United States or the State of California, invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

to the extent the remainder of the terms, covenants, conditions or provisions of this Agreement are capable of execution.

Article 17 Choice of Law

This contract shall be governed by the laws of the State of California both as to interpretation and performance and any legal action shall be filed in San Mateo County, California.

Article 18 Entire Agreement

This Agreement, including the exhibits, comprises all of the covenants, promises, agreements and conditions between the Parties. No verbal agreements or conversation between the Parties prior to the execution of this Agreement shall affect or modify any of the terms or obligation.

ARTIST NAME

CITY OF BRISBANE
A Municipal Corporation

Jeremy Dennis, City Manager

Approved as to form

Michael Roush, Legal Counsel

Exhibit A
Description of Project

DRAFT

Exhibit B

Payment Schedule

The City shall pay the Artist a fixed fee of AMOUNT, which shall constitute full and complete compensation for all the services performed and material furnished by the Artist under this Agreement.

Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and material provided prior to payment thereof:

- a. 5% upon the execution of this Agreement, recognizing that the Artist will invest time and expense in preparing the Design as set forth under Section 1.3;
- b. 15% upon the City's notification to the Artist of its approval of the Final Design Phase documents as set forth under Section 1.3, including the issuance of all planning and building permits;
- c. 30% upon commencement of fabrication
- d. 20% upon completion and approval of the fabrication and when the Artwork is ready for delivery and installation at the Project Site as set forth under Section 1.6(a);
- e. 30% upon final acceptance of the Artwork by the City as set forth under Section 1.7(b) and approval by the regulatory agency.

Exhibit C

Insurance

General

- a. The Artist shall procure and maintain for the duration of this Agreement, at the Artist's expense, insurance in the kinds and amounts as provided in this Exhibit with insurance companies authorized to do business in California. Such insurance shall cover the Artist's agents, contractors, subcontractors or employees. The City, its officials, employees, agents and contractors shall be named as additional insureds. The coverage shall contain no special limitations on the scope of protection afforded to the City its officials, employees, agents and contractors.
- b. The Artist and the Artist's subcontractors' insurance coverage shall be the primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents and contractors shall be in excess of the Artist's or the Artist's subcontractor's insurance and shall not contribute to the Artist's or the Artist's subcontractor's insurance. The coverage shall state that the Artist's or the Artist's subcontractors' insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- c. Prior to undertaking any work under this Agreement, the Artist, at no expense to the City, shall furnish to the City a certificate of insurance with original endorsements affecting coverage for each of the insurance policies provided in this Exhibit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates must be current and the Artist must submit replacement or renewal certificates of insurance for all the policies expiring during the term of this Agreement. Each certificate shall clearly indicate that the Artist has obtained insurance in the type, amount and classification as specified in this Exhibit and that no material changes, cancellation, suspension or reduction in limits of insurance shall be effective except after [30] days prior written notice to the City. Each certificate shall indicate that the subcontractors are additionally insured or the Artist shall furnish separate certificates for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including, but not limited to, naming the parties as additional insureds.
- d. Any deductibles or self-insured retentions must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors.
- e. Despite any changes to or cancellation of insurance, the Artist remains responsible for maintaining the required insurance coverage for the duration of the Agreement.
- f. Failure of the Artist to comply with any of the terms of Article 6 of the Agreement shall be considered a material breach of this Agreement and cause for its immediate termination.

Insurance Policies

- a. Commercial General Liability insurance policy, written on an occurrence form, including all the usual coverage known as:
 1. premises/operations liability
 2. products/completed operations
 3. personal/advertising injury
 4. contractual liability
 5. [broad-form property damage]
 6. [independent contractor's liability]

Said policy must provide the following minimum coverage:

1. \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
 2. \$2,000,000 annual aggregate
- b. Automobile liability insurance policy, including coverage for owner, non-owner, leased or hired vehicles, providing the following minimum coverage:
 1. \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage;
 2. \$2,000,000 annual aggregate

The Artist agrees to keep in good standing a valid driver's license at all times during the term of this Agreement.

- c. Transportation/Cartage insurance all risk. Coverage must include loading, transportation and unloading of the Artwork. If the Artwork is to be loaded, transported or unloaded by a person or entity other than the Artist, the insurance coverage must cover that person or entity. The minimum limit shall be the total amount of compensation paid to Artist through the date of loading under Exhibit B.
- d. All Risk Installation insurance which covers physical damage to or destruction of the Artwork. If the Artwork is to be installed by a person or entity other than the Artist, the insurance coverage must cover that person or entity. The minimum limit shall be the total amount of compensation paid to the Artist through the date of the beginning of the installation of the Artwork under Exhibit B.
- e. Worker's Compensation and Employers' Liability insurance in accordance with the statutory requirements of the State of California, providing coverage for any and all employees of Artist. The Artist shall require all subcontractors to carry this coverage also. The minimum coverage for the Worker's Compensation and Employers' Liability insurance shall be \$[100,000].
- f. If, however, the Artist does not have any employees as defined by state statutes and regulations and does not wish to cover him/her/itself for Worker's Compensation, the Artist shall sign the following statement:

[“I do not have, nor intend to have for the full term of this Agreement, any employees. Furthermore, I do not wish to obtain or be covered under any Worker's Compensation insurance coverage and, therefore, am signing this statement in lieu of providing the above require Worker's Compensation coverage.”]

(Artist's signature)

(Print Artist's name)

The requirement for Worker's Compensation and Employers' Liability insurance shall be waived in writing upon submission of this signed statement by the Artist to the Owner.

DRAFT