



**Request for Qualifications: Art Installation for the Church Street – Truckee Way
Roundabout
Public Art Commission of Truckee, Town of Truckee California**



Photo 1: Church Street – Truckee Way Roundabout

The Town of Truckee invites artists or artist teams to submit qualifications to lead the design and create artwork for the Church Street – Truckee Way Roundabout located in Truckee, California. The submittals received in this Request for Qualifications (RFQ) process will be evaluated and up to three artists or artist teams will be selected and awarded \$2,000 to develop site concepts. Upon review of the concept submittals, one artist or artist team will be selected and awarded up to \$82,000 to collaborate with the Public Art Commission of Truckee (PACT) and Town of Truckee Engineering team to design, fabricate, deliver, and install the artwork. The design of any footing/anchor system will be the responsibility of the

artist. Installation of the footing/anchor system and the fabricated art piece will be completed by the Town of Truckee.

PROJECT AND SITE DESCRIPTION

Summary

The Public Art Commission of Truckee (PACT) has identified several high priority locations for future art. One of those is the Church Street – Truckee Way Roundabout. The Church Street – Truckee Way roundabout, depicted in Photo 1 (above) and Photo 2 (aerial photo), is one of the entrances to Downtown Truckee as well as the Railyard. With more development to occur in the Railyard and its access to Truckee's popular Downtown Corridor, PACT has identified it as an important location for a permanent art piece to welcome visitors and residents alike as well as promote public art pieces.



Photo 2: Aerial Photo of Church Street – Truckee Way Roundabout

Objective / Artwork Goal

The selected artwork will enhance the aesthetic appeal of the existing roundabout and provide visual interest.

The site is located in the Railyard Master Plan area, which states the following about Public Art:

Public Art

Public art provides visitors and residents of Truckee with a visual landmark, large or small, that inspires a sense of identity, pride and creativity. Art can be geared toward “cultural representations” of the area, which focus on the historic and indigenous character of the Town. This presents an opportunity not only to enhance public spaces, but also to celebrate the Town’s historic character and cultural diversity. The repetition of public art would enhance the Town’s green spaces, provide interest to users, and offer another element to unify the Town. The trail system in Truckee lends a unique opportunity to accommodate public art with spaces made available at trailheads and at key locations along the trail. (G10)

Guidelines

- *Public art should incorporate the area’s cultural heritage by recognizing key historic individuals and events. (G10a)*
- *Art should be incorporated wherever feasible into building architecture, plazas, and parks. (G10b)*
- *Public art may include items big and small such as tilework, enhanced paving, skateboard deterrents, murals, sculptures, statues, etc. (G10c)*
- *Public art that reflects the site’s railroad and lumber mill history is encouraged. (G10d)*
- *Consider public art installations (wall murals, free standing sculptures, and decorative sidewalk mosaics, etc.) within public spaces of the Railyard Master Plan Area as development projects are reviewed (per DTSP Chapter 9, Parks and Gateways). (G20) Standards*
- *Public art shall be incorporated into the design of the community gathering spaces (per DTSP Chapter 9, Parks and Gateways). (S20)*

The Railyard Streetscape Plan also includes the following guidelines:

- *Incorporate public art opportunities at both the street level and at key building locations.*
- *Art will play a major role in providing color. Art should be integrated into the paving, wall murals, kiosks, bike racks etc.*
- *Art installations to highlight unique Truckee features.*
- *Inspired by the concept of “Truckee funk”, color and form-follows function concepts are encouraged to set the area apart from the existing downtown.*
- *Streetscapes to include artistic bike racks, tree grates or other usable unusual streetscape amenities.*
- *Larger standalone art installations will be considered for on-site terminated view vista’s or as part of on-site developments in the balloon track area.*

Project Site Information

The Church Street – Truckee Way Roundabout was constructed as a part of the Railyard Phase 1 development project in 2018. The roundabout serves as a gateway to the Railyard as well as Truckee’s popular downtown for visitors and residents alike. The Railyard will continue to be developed with public and private/commercial infrastructure in the future. Residents and participants of recent surveys have shown interest in the next public art piece to be implemented within a Town of Truckee roundabout to be the Church Street – Truckee Way Roundabout. The Public Art Commission of Truckee has taken the

feedback from the survey results and decided for the Church Street - Truckee Way Roundabout to be the next public art Implementation project.

Public Survey Results

Town staff asked the public for input on potential themes for public art pieces. Links to previous surveys are included below. Please note that the survey results below are being provided for information only, and artists should not feel confined by the results provided.

Links to Surveys → [Town of Truckee Public Art Surveys](#)

Materials

All media appropriate for outdoor long-term exposure to the climate in a mountainous environment, with considerations for extreme weather, temperature, snow, and sun will be considered. The art must be able to accommodate snow removal activities and require very minimal maintenance. Paint and other chemically bonded elements are not recommended and will likely be rejected unless the proposal is accompanied by substantial evidence that the materials will hold up to the location conditions. To be consistent with the Historic District guidelines, natural/authentic materials are preferred and may include, but not limited to, wood, brick, logs, rough-cut granite stones, rock, metal and iron. Other durable materials may be considered but will be reviewed by Town Staff prior to acceptance.

Expected Life and Maintenance

The minimum lifespan of the work shall be 20 years. The selected artist will be required to provide a long-term maintenance plan for the 20-year lifespan. The artwork must also adhere to all the safety standards required by the Town. A maintenance plan will be requested from the commissioned artist as a part of the final design submittal. Pieces that require ongoing annual maintenance will not be acceptable.

Budget

A budget of up to \$82,000 inclusive of all artist fees, design, travel, fabrication, foundation design and engineering, delivery, and materials is available for the Artwork. The Town of Truckee will be responsible for the installation of the foundation and art piece upon delivery.

Prevailing Wage

California law requires the payment of specific minimum wage amounts for work on “public works projects”. These minimum wage amounts are known as “prevailing wages” and are tied to union wage scales. Depending on the artwork cost, scope, fabrication location, and installation methods, your artwork may be considered a “public works project” for this purpose and may be subject to prevailing wage requirements. These requirements are summarized below. The following types of artwork will not be subject to prevailing wage requirements:

- Artwork for which the total cost (including design, fabrication, and installation) is less than \$25,000, or
- Artwork that the Town of Truckee Public Works staff is able to install (see “Budget” above) and for which all the fabrication is completed off site.
- Artwork that is not permanently affixed to the site.

Prevailing Wage Requirements

Any artwork that is not exempt (as described above, such as art that needs the artist to install in place) is subject to prevailing wage requirements, which entails registering with the California Department of Industrial Relations (DIR) prior to the execution of a contract, tracking and paying prevailing wages, and sending certified payrolls electronically to both the Town of Truckee and DIR, as further described below.

Prevailing wage artwork is subject to Labor Code section 1720 et seq., and artist, team members and any subcontractor (collectively referred to as “Subs”) shall conform to any and all prevailing wage requirements applicable to such work/and or services. Artists and Subs shall adhere to the prevailing wage determinations made by the DIR pursuant to California Labor Code Part 7, Chapter 1, Article 2, applicable to the work, if any. All workers employed in the execution of a public works contract (as such term is defined California Labor Code section 1720 et seq. and section 1782(d)(1)) must be paid not less than the specified prevailing wage rates for the type of work performed. **Artist acknowledges that they and any Subcontractors shall not be qualified to submit a proposal or be listed in a bid proposal (subject to the requirements of section 4104 of the Public Contract Code) or engage in the performance of any contract for public work, unless currently registered with the DIR and qualified to perform public work pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. A proposal shall not be accepted nor any contract or subcontract entered into without proof of the Artist or Sub current registration to perform public work. Labor Code section 1771.1(b).**

Prevailing Wage Determination

California’s prevailing wage requirements are highly complex. Unless the artist is absolutely certain that the proposed artwork will fit into one of the categories described above as being exempt from prevailing wages, please contact Project Manager, Riley Powers, at rpowers@townoftruckee.com by May 21, 2024. Riley can provide an initial determination as to whether prevailing wages will apply to the proposal and can explain the prevailing wage requirements in greater detail. The Town of Truckee recommends proposals where art pieces are fabricated offsite, and the foundation and/or structural support is designed in a fashion where the Town of Truckee Public Works Department may assemble/install the fabricated artwork or hire a contractor to do so.

REQUEST FOR PROPOSALS PROCESS AND SUBMITTAL REQUIREMENTS

The artist and concept selection process is proposed to occur over several steps, summarized below:

1. RFQs submitted
2. RFQs reviewed by PACT
3. PACT to select up to three finalists, consisting of artists or artist teams to develop concept designs for a fee of \$2,000 per artist.
4. PACT to review concept designs. This step may also include receiving feedback from the community.
5. PACT to select one artist or artist team to award the commission.
6. PACT recommendation will be brought to the Town Council for final approval and contract award.

A summary of the proposed schedule is provided below, although it is subject to change.

Deadline to Apply: May 17, 2024

Timeline/Schedule

Phase 1: RFQ

Request for Qualifications Released:	April 5, 2024
Applications Due:	May 17, 2024
Public Art Commission of Truckee Qualification	
Review Workshop and Recommendation:	June 4, 2024, at 4:00 PM
Request for Concept Proposals from Top Three Artists:	June 6, 2024
Site Visit:	June 13, 2024
Requests for Information from Artists Due:	June 27, 2024
Concept Proposals Due:	August 6, 2024
Final Proposals Due:	September 10, 2024

Phase 2: Artist Selection

Public Art Commission of Truckee Concept Review Workshop:	October 1, 2024
Town Council Presentation/Approval:	October 22, 2024
Artist Contract Executed:	October 31, 2024

Phase 3: Artwork Development and Installation

Detailed Design Complete:	December 16, 2024
Design Review Complete:	January 3, 2024
Begin Fabrication:	January 15, 2024
Delivery Deadline:	April 15, 2024
Installation completed:	June 30, 2025

Eligibility

All artists that are able to demonstrate adequate experience and ability to complete a successful project are eligible. Local artists are encouraged to apply.

Terms

The selected artist will be required to enter into an agreement with the Town, a draft of which is attached (Attachment A). The agreement includes information about payment schedules, insurance requirements, the artist's copyright retention, the Town's right to remove or relocate the art, and the Town's right to use images of the artwork. The chosen artist will be required to enter into this agreement.

How to Apply

Please submit the materials listed below utilizing the application form at [Town of Truckee Request for Qualifications Application](#) (Link to Form). Note that late submittals will be rejected and failure to include any of the information may also result in the proposal being rejected as incomplete.

The application form above includes the following information:

- 1) Name and contact information (phone number, email, and mailing address) of the artist or primary contact for the artist team. If the proposal is being submitted by a team, provide the name of each artists as well as a brief bio.
- 2) A statement of interest (no more than 300 words), including a description of a concept approach or past work that might be relevant. Some questions that might be answered in this statement are:
 - a. What is your approach to public art?

- b. What is your interest in this project?
- c. What is your experience working with design teams or public agencies? If you have not worked with a design team, what skills or experience do you have to successfully complete this project?
- d. What is your experience integrating artwork into a larger public site? If you have not integrated artwork, what skills or experience do you have to successfully complete this project?
- 3) A resume or CV listing artist qualifications and / or relevant experience. If proposing an artist team, include relevant qualifications team members/ subcontractors as appropriate.
 - 1) Up to 10 high quality images of previously completed artwork which demonstrates the artist's/artist team's ability to complete this project. Images files should be no more than 2 MB in size. Only jpeg, png and pdf file types will be accepted. Image files must be labeled in the order they will be viewed and include the artist name. e.g. {01_JaneSmith_myartwork.jpg}
- 4) Two professional references who may support the artist's/artist team's ability to complete the project on time and within budget.
- 5) Include a corresponding image list, providing the following information for each image: Project Name, Date Completed, Commissioning Agency and a brief project description.

Public Record

All submittals will be subject to public disclosure per the "California Public Records Act" (California Government Code Sections 6250 – 6270) and will be posted to the Town website as a part of the Public Art Commission of Truckee's application review workshop and selection process. Any proposal section alleged to contain proprietary information will be identified by the Artist in boldface text at the top and bottom as "PROPRIETARY." Designating the entire proposal as proprietary is not acceptable and will not be honored. Submission of a proposal will constitute an agreement to this provision for public record. Cost information is not considered proprietary information.

Conflict of Interest

The Public Art Commission of Truckee (PACT) members are directly involved in the art industry, as working artists, business owners, or board members of arts-related organizations. The intent of the Art Commission of Truckee Conflict of Interest Recusal Policy (Attachment B) is to avoid an actual conflict of interest or the appearance of a conflict of interest when a PACT member desires to participate in such opportunities. PACT members or their businesses are not eligible to apply, be part of an artist team, or provide materials. Please see attached policy for more information, or email Riley Powers at rpowers@townoftruckee.com with any questions.

Questions

Please submit any questions related to this Request of Qualifications to Assistant Engineer, Riley Powers, at rpowers@townoftruckee.com by May 21, 2024. Responses to questions will be posted on the Town of Truckee website and emailed to all applicants by May 28, 2024. It shall be the applicant's responsibility to review the responses to any questions for updated information.

Criteria for Selection

The initial RFQ submittals from which three artists will be chosen will be evaluated based on the following:

- Experience;
- Demonstrated ability to collaborate in the early phases of a project with design teams and community stakeholders;
- Artistic merit of concept (if proposed) or past work;

- Demonstrated ability to complete projects on time and within budget.

The top 3 artists will be commissioned to develop concepts, which will then be evaluated on the following for a final artist and concept selection:

- Overall Concept Approach
- Originality and Innovation
- Appropriateness, relevance, and compatibility with the site context, including the Railyard area and Mobility Hub
- Longevity
- Artist references and experience
- Demonstrated ability to implement the project

The Town of Truckee staff will also review the selected proposal to confirm that it is appropriate for the site and site conditions, is safe, and is something Town staff can maintain. The Public Art Commission of Truckee will hold a public meeting to conduct an initial review of the RFQ submittals as well as a review of the design concepts from the top three selected artists. The PACT's final recommendation will be presented to the Town Council at a regularly scheduled meeting for final approval.

Once selected, the commissioned artist will enter into a contract with the Town and will be required to submit a more detailed design proposal for Town approval, prior to the execution of fabrication and installation.

Attachments:

Attachment A: Draft Artist Agreement

Attachment B: Public Art Commission of Truckee Conflict of Interest Recusal Policy

Attachment A: Draft Artist Agreement

TOWN OF TRUCKEE AGREEMENT FOR COMMISSIONING OF ART

1. PARTIES AND DATE

This Agreement for the Commissioning of Art ("Agreement") is made and entered into this _____ day of _____, 2022, by and between the Town of Truckee, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 10183 Truckee Airport Rd., Truckee, California, 96161 ("Town") and _____ with a principal place of business at _____ ("Artist"). Town and Artist are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS

2.1 Artist.

Artist desires to perform and assume responsibility for designing and fabricating certain public art required by Town on the terms and conditions set forth in this Agreement.

2.2 Artwork.

Town desires to engage Artist to provide such public art as set forth in this Agreement.

3. TERMS

3.1 Scope of Work.

Artist promises and agrees to furnish to the Town all labor, materials, tools, equipment, services, and incidental and customary work necessary to create the piece of art more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Artwork").

3.2 Responsibilities of Artist.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The Artwork shall be created and fabricated by Artist or under Artist's supervision. Town retains Artist on an independent contractor basis and not as an employee. Any additional personnel assisting Artist with the Artwork under this Agreement shall also not be employees of Town and shall at all times be under Artist's exclusive direction and control. Neither Town, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Artist or any of Artist's officers, employees, or agents, except as set forth in this Agreement. Artist shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Artist shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Work. Artist shall cause the Artwork to be completed not later than 130 days from the from the execution of this contract. **[Insert additional details depending on whether art will be picked up by the Town, or shipped, or installed by the Artist.]** In addition, the following is a submittal schedule, including necessary review time:

Design Development Proposal:

Due 20 days after contract execution

Arts Commission Reviews Development Proposal:

15-35 days

Fabrication:

75 calendar days after design approval.

Installation complete:

____ days from execution of this contract.

The schedule shall be extended due to delays caused by the Town.

3.2.3 Town's Representative. Town hereby designates _____, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("Town's Representative"). Town's Representative shall have the power to act on behalf of the Town for review and approval of all sketches, mockups, models, and conceptual designs submitted by Artist but not the authority to enlarge the Scope of Work or change the total compensation due to Artist under this Agreement. The Town Manager shall be authorized to act on Town's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Artist's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Artist shall not accept direction or orders from any person other than the Town Manager, Town's Representative or his/her designee.

3.2.4 Laws and Regulations. In creating the Artwork, Artist shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall ensure that the Artwork does not infringe upon any third party's intellectual property rights or moral rights. Artist shall defend, indemnify and hold Town, its officials, directors, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations, and/or any actual or alleged infringement of any third party's intellectual property rights or moral rights.

3.2.5 Insurance.

3.2.5.1 Time for Compliance. Artist shall not commence work under this Agreement until it has provided evidence satisfactory to the Town that it has secured all insurance required under this section. In addition, Artist shall not allow any subconsultant to commence work on any subcontract until it has either: (i) provided evidence satisfactory to the Town that the subconsultant has secured all insurance required under this section; or (ii) procured insurance covering each subconsultant to the same extent as Artist.

3.2.5.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Artist, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Artist agrees to amend, supplement or endorse the policies to do so. If Artist maintains higher limits than the specified minimum limits, Town requires and shall be entitled to coverage for the higher limits maintained by Artist.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, or the exact equivalent, and shall be no less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions limiting coverage for (1) contractual

liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities shall be in an amount of not less than \$1,000,000 combined limit for each occurrence. **[Delete this if travel to Truckee is not required.]**

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease. **[Delete this if the Artist has no employees.]**

3.2.5.3 Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the Town for approval.

(A) The policy or policies of insurance required by Section 3.2.5.2(A), Commercial General Liability and 3.2.5.2(B), Automobile Liability Insurance, shall be endorsed to provide the following:

- (1) Additional Insured: Artist agrees to endorse the third party general liability coverage required herein to include as additional insureds Town, its officials, officers, employees and agents, using standard ISO endorsement No. CG 2010 with an edition date of 2010, or such other edition date as may be acceptable to Town. Artist also agrees to require all subcontractors involved in delivery and installation associated with the Project contemplated by this Agreement to do likewise. **[Actual requirements will depend on the nature of the work. Examples are available upon request.]**
- (2) Artist shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self insured retention is increased.

(B) The policy or policies of insurance required by Section 3.2.5.2(C), Workers' Compensation, shall be endorsed to provide the following:

- (1) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.
- (2) Artist shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self insured retention

is increased. **[Delete subsection B if the Artist has no employees.]**

3.2.5.4 Primary and Non-Contributing Insurance. All insurance coverages shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.5.5 Waiver of Subrogation. Required insurance coverages shall not prohibit Artist from waiving the right of subrogation prior to a loss. Artist shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

3.2.5.6 Deductible. Any deductible or self-insured retention must be approved in writing by the Town and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.5.7 Evidence of Insurance. Artist, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the Town. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the Town. If such coverage is cancelled or reduced, Artist shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the Town evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.5.8 Failure to Maintain Coverage. Artist agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the Town. The Town shall have the right to withhold any payment due Artist until Artist has fully complied with the insurance provisions of this Agreement. In the event that the Artist's operations are suspended for failure to maintain required insurance coverage, the Artist shall not be entitled to an extension of time for completion of the Services because of production lost during suspension.

3.2.5.9 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.3 Fees and Payments.

3.3.1 Compensation. Artist shall receive compensation for the Artwork and the shipping of the Artwork to a location designated by Town, in the amount of _____ dollars (\$_____). Extra Work may be authorized, as described below, and if authorized,

will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Unless other terms are agreed upon by Town and Artist in writing, Artist shall submit to Town invoices upon completion of the following tasks/phases of the Artwork, but no more frequent than once a month:

[This is an example only. Payment schedule will be determined based on selected artwork and cost proposal. Items below can be combined into one payment request depending on timing.]

- \$ [redacted] ***once design is complete and submitted.***
- \$ [redacted] ***once design is approved.***
- \$ [redacted] ***once material is purchased for fabrication. Proof of possession of materials is required.***
- \$ [redacted] ***once fabrication is approximately 50 percent complete (will require documentation).***
- \$ [redacted] ***once fabrication is complete but not installed.***
- \$ [redacted] ***once artwork is installed, accepted by the Town as satisfactorily complete, and the long-term maintenance plan is submitted.***

3.3.3 Reimbursement for Expenses. Artist shall not be reimbursed for any expenses unless authorized in writing by Town, or included in Exhibit "B" of this Agreement.

[If prevailing wage applies, insert prevailing wage requirements here.]

3.3.5 Prevailing Wages. Artist is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, Artist agrees to fully comply with such Prevailing Wage Laws. Town shall provide Artist with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Artist shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Artist's principal place of business and at the project site. Artist shall defend, indemnify and hold the Town, its officials, officers, employees, agents, and volunteers free and Town of Truckee harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Artist shall comply, and shall require each subcontractor employed by Artist to provide services pursuant to this Agreement to comply, with the requirements of Labor Code Section 1776, including without limitation the requirement to maintain certified payroll records. Artist shall submit certified payroll records directly to the California Labor Commissioner. At all times during the course of Artist's work, Artist shall remain registered with the Department of Industrial Relations and qualified to perform public work pursuant to Labor Code Section 1725.5, and Artist shall ensure that all subcontractors employed by Consultant also remain so registered. Pursuant to Labor Code Section 1771.1(a), a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal (subject to the requirements of Section 4104 of the Public Contract Code), or engage in

the performance of any contract for public work, as defined in Chapter 1 of Part 7 of Division 2 of the Labor Code, unless currently registered with the Department of Industrial Relations and qualified to perform public work pursuant to Section 1725.5. However, an unregistered contractor may submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Sections 10164 or 20103.5 of the Public Contract Code, provided that the contractor is registered to perform public work at the time the contract is awarded. This project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

3.4 Acceptance of Artwork.

Town agrees to accept the completed Artwork unless:

- a. The Artwork was not completed in substantial conformance with the Proposal or the approved Design Proposal, or
- b. The Artwork as completed, or any portion thereof, does not conform to a reasonable standard of artistic or technical quality. Town shall provide its reasons for this finding to Artist in writing.

Upon the Town's refusal to accept the Work for the reasons stated in subparagraphs A or B, Town shall have the right to: 1) request that Artist correct the deficiencies in the Work within a reasonable time, or 2) terminate this Agreement and recover all sums previously paid to Artist. Enforcement of one such remedy shall not be exclusive nor shall it be deemed an election of such remedy to the exclusion of any other or further remedy. However, nothing contained herein shall limit Town's available remedies at law and equity.

No payments to Artist shall be deemed as a waiver of Town's right to refuse to accept the Work.

If the Town does not agree to accept the Artwork and the Artist disagrees with the Town's decision, the Town and Artist agree to meet and confer to develop a resolution.

3.5 Intellectual Property and Artist's Warranties.

3.5.1 Copyright. Artist reserves all copyrights and rights of reproduction in the Artwork and Artist shall retain the copyright and the right to claim authorship of the Artwork. Nothing herein shall prohibit Artist from making, exhibiting, using selling, or licensing for sale the images contained in the Artwork for any purpose whatsoever. Artist shall retain ownership and possession of any production models or molds created in connection with the completion of the Artwork. Artist also retains the right to dissociate from the Artwork if it is removed, or altered in a way that no longer represents the original intent of the project. If the Town is to relocate the artwork, they will make a reasonable effort to consult the artist in the relocation design.

3.5.2 Waiver of Certain Rights. Artist, as the author and Artist of the Artwork, hereby acknowledges the existence of his or her federal and state statutory moral rights under VARA and CAPA, as those rights are more particularly described in 17 U.S.C. section 106A(a) ("VARA"), and in the California Civil Code section 987 ("CAPA"), and knowingly executes this waiver on the following terms:

- a. Scope: This waiver applies to the following visual work: the Artwork, as described in this Agreement and attached as Exhibit A.
- b. Uses Covered: This waiver applies to all applicable uses reserved to an owner of a lawfully copyrighted work under the copyright laws, including but not limited to, display the visual artwork publicly and to any and all applications in which either the attribution right, the integrity right, or the personal moral right may be implicated.
- c. Waiver: With respect to the Artwork enumerated in subparagraph (a) above and for uses enumerated in subparagraph (b) above, Artist, as the artist and author of the Artwork, hereby expressly and forever waives any and all moral rights arising under 17 U.S.C. section 106A(a) and California Civil Code section 987, and any rights arising under U.S. federal or state law or under the laws of any other country that conveys rights of the same nature as those conveyed under 17 U.S.C. section 106A(a) and California Civil Code section 987, or any other type of moral rights or droit moral.

3.5.3 VARA AND CAPA. As used herein, VARA means 17 U.S.C. section 106A added by the Visual Artists Rights Act of 1990, which confers upon authors of works of visual arts, several types of attribution and integrity rights, including the right to prevent any intentional distortion, mutilation, or other modifications of that work. As used herein, CARA means the California Art Preservation Act, which confers to artists of works of fine art (original paintings, sculpture, drawings or original work of art in glass, of recognized artistic quality). In addition, this act prohibits the intentional commission of any physical defacement, mutilation, alteration, or destruction of a work of fine art by any person or entity who possesses or owns the fine art.

3.5.4 Warranties of Title. Artist represents and warrants that:

- a. The Artwork is solely the result of artistic effort of the Artist;
- b. Except as otherwise disclosed in writing to Town, the Artwork is unique and original and does not infringe upon any copyright; and
- c. The Artwork is free and clear of any liens from any source whatsoever.

3.5.5 Warranties of Quality and Condition. Artist represents and warrants that the fabrication of the Artwork will be performed in a professional manner; will be free of defects or qualities which cause or accelerate deterioration of the work; and that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance recommendations by Artist to Town. The warranties described in this section shall remain in place for 1 year after final acceptance of the Artwork by Town. Artist shall, at the request of Town, and at no cost to Town, cure reasonably and promptly any breach of any such warranty which is curable by Artist and which cure is consistent with professional standards, including, for example, cure by means of repair or refabrication of the Artwork. Upon completion of the Artwork, Artist shall supply long-term maintenance instructions to the Town.

3.6 Repair of Work.

In the event repair of the Work is required, at its sole discretion Town may give Artist the

opportunity to perform the repairs for a reasonable fee. In the case of disagreement between Town and Artist as to what constitutes a reasonable fee, the fee determined by an independent conservator selected by Town shall be considered a reasonable fee.

3.7 Town's Rights Regarding the Artwork

3.7.1 Town intends to display the Artwork on a site selected by Town, as represented in the project Request for Proposal and the RFP and Exhibit "A." Town may, in its sole discretion: change the position or placement of the Artwork, sell the Artwork, modify or dismantle or destroy the Artwork. However, Artist retains the right to dissociate from the Artwork if it is removed or altered in a way that no longer represents the original intent of the project. If the Town is to relocate the artwork, they will make a reasonable effort to consult the artist in the relocation design.

3.7.2 Town shall have a permanent and irrevocable license to graphically and photographically depict the Artwork for any purpose, including, without limitation, depictions of the Artwork designed to promote the Town, the area in which the Artwork is displayed, and/or Truckee as a visitor destination. Depictions of the Artwork may be included in, or in connection with, commercial or merchandising products or services (e.g., hats, t-shirts), whether or not for sale, without Artist's prior written consent.

3.8 General Provisions.

3.8.1 Termination of Agreement.

3.8.1.1 Grounds for Termination. Town may, by written notice to Artist, terminate the whole or any part of this Agreement at any time for a breach or default by Artist or any obligation hereunder, by giving written notice to Artist of such termination and the breach or default for which termination is being made, and specifying the effective date thereof, at least 30 days before the effective date of such termination. Artist shall have 30 days from receipt of such notice to cure the breach or default. If such cure is not timely completed, this Agreement shall terminate. Upon termination, Artist shall be compensated only for those services which have been adequately rendered to Town, in part or whole, and Artist shall be entitled to no further compensation. Artist may not terminate this Agreement except in case of a breach or default by Town of its obligations hereunder.

3.8.1.2 Effect of Termination. If this Agreement is terminated as provided herein, Town may require Artist to provide all finished or unfinished artwork or related documents or materials and other information of any kind prepared by Artist in connection with this Agreement. Artist shall be required to provide such document and other information within fifteen (15) days of the request.

3.8.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Artist: _____

Town: Town of Truckee
10183 Truckee Airport Road
Truckee, CA 96161
ATTN: Town Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.8.3 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.8.4 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.8.5 Indemnification.

3.8.5.1 Scope of Indemnity. Artist will defend, indemnify and hold harmless Town, its directors, officials, officers, employees, volunteers and agents free from and against any liabilities, losses, investigations or inquiries, claims, suits, damages, costs and expenses (including without limitation, reasonable attorneys' fees and expenses) (each, a "Claim") arising out of or otherwise relating to Artist's performance or negligent failure to perform as required by this Agreement, Artist's acts or omissions, or any of Artist's representations or warranties contained in this Agreement. The provisions of this Section 3 shall survive four years past the installation of the Art.

3.8.5.2 Additional Indemnity Obligations. Artist shall defend, with counsel of Town's choosing and at Artist's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.8.5.1 that may be brought or instituted against Town or its directors, officials, officers, employees, volunteers and agents. Artist shall pay and satisfy any judgment, award or decree that may be rendered against Town or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Artist shall also reimburse Town for the cost of any settlement paid by Town or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for Town's attorney's fees and costs, including expert witness fees. Artist shall reimburse Town and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Artist's obligation to indemnify shall not be restricted to insurance proceeds, if any,

received by the Town, its directors, officials officers, employees, agents, or volunteers.

3.8.6 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.8.7 Governing Law. This Agreement shall be governed by the laws of the State of California. Any action to interpret or enforce this Agreement shall be brought in the Truckee branch of the Nevada County Superior Court.

3.8.8 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.8.9 Town's Right to Employ Other Artists. Town reserves the right to obtain art from other artists at any time.

3.8.10 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.8.11 Assignment or Transfer. Artist shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the Town. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. Artist shall not delegate the conception, design, or artistic direction in the production of the Artwork or substitute any person other than Artist to perform these tasks.

3.8.12 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Artist include all personnel, employees, agents, and subconsultants of Artist, except as otherwise specified in this Agreement. All references to Town include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.8.13 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.8.14 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.8.15 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.8.16 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.8.17 Prohibited Interests. Artist maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Artist, to solicit or secure this Agreement. Further, Artist warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Artist, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Town shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Town, during the term of his or her service with Town, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.8.18 Equal Opportunity Employment. Artist represents that he/she/it is an equal opportunity employer and shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.8.19 Labor Certification. By its signature hereunder, Artist certifies that he/she/it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.8.20 Authority to Enter Agreement. Artist has all requisite power and authority to conduct his/her/its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.8.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

TOWN OF TRUCKEE

Approved by:

Jen Callaway
Town Manager

Date

Approved as to Form:

Andrew Morris
Town Attorney

Date

ARTIST

Reviewed and Accepted by Artist

Signature

Name

Title

Date

EXHIBIT “A”
THE ARTWORK

EXHIBIT “B”

ARTIST REIMBURSEMENT

Attachment B: Public Art Commission of Truckee Conflict of Interest Recusal Policy

Many Public Art Commission of Truckee (PACT) members are directly involved in the art industry, as working artists, business owners, or board members of arts-related organizations. PACT members are eligible to participate in public art opportunities under the jurisdiction of the Commission. The intent of the Public Art Commission of Truckee Conflict of Interest Recusal Policy is to avoid an actual conflict of interest or the appearance of a conflict of interest when a PACT member desires to participate in such opportunities. This policy uses the California conflict of interest laws and the associated regulations of the Fair Political Practices Commission as its starting point, but goes beyond those minimum requirements.

- A. A PACT member may not participate in making any decision or attempt to influence that decision if the member has a disqualifying financial interest under any of the standards set forth in Chapter 7 of the FPPC conflict regulations, available at <http://www.fppc.ca.gov/the-law/fppc-regulations/regulations-index.html>. Among other things, a disqualifying financial interest (and thus a conflict of interest) exists if any of the following are true:
- The PACT member has an ownership interest in a business that is proposing to produce or sell art that is part of a proposal before the PACT.
 - The artist or fabricator of art in a proposal before the PACT is a source of income to an PACT member, unless the PACT member is an owner of a retail business and the artist or fabricator is simply a retail customer of that business.
 - The artist or fabricator of art in a proposal before the PACT has given or promised the PACT member \$500 or more in gifts in the preceding 12 months.
 - The PACT's decision about an art proposal may result in the PACT member or any member of his or her immediate family receiving a financial benefit or loss of \$500 or more.
- B. In addition to the example of conflicts of interest set forth above, an PACT member has a conflict of interest and shall publicly disclose that conflict if a project, partnership, or public art proposal comes before PACT in which the member, or the member's close family member, is directly involved. Examples of direct involvement include being a contributing artist in the project or partnership, owning a business with a financial interest in the project or partnership, or current appointment as a board member of an organization with a financial interest in the project or partnership.
- C. A project application will be considered ineligible for a competitively evaluated project in the event that a PACT member directly involved in the proposed project participated in developing project-specific requirements, guidelines, or selection criteria, or participated in artist selection for that project. To facilitate this policy, in the event that an PACT member has an interest in applying for a project, the member shall declare a conflict of interest regarding the project before such specific criteria are considered by PACT.
- D. In the event that a PACT member has a conflict of interest, the member shall declare the conflict of interest in writing to the PACT and Town staff, or declare the conflict verbally at a PACT meeting, and then recuse him/ herself from all discussion and decisions directly related to the specific project. This includes not only discussions with other PACT members, but also discussions with Town staff.