



# ARTIST CALL FOR QUALIFICATIONS

**APPLICATION DEADLINE:** May 17, 2023, at 1:00 pm MST

**ARTIST BUDGET:** \$300,000

**TOTAL PROJECT BUDGET:** \$400,000

## 521 W Grove St Public Art Project

To apply visit the City of Boise's Bids Homepage and click the JAGGAER link next to the Project Title:

<https://www.cityofboise.org/departments/finance-and-administration/purchasing/bids/>

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### Opportunity

The Boise City Department of Art & History invites artists or artist teams to submit qualifications to lead the design and integration of artwork for a new public site located at 521 W Grove Street. One artist or artist team will be selected and awarded \$300,000 to collaborate with the project design team, provide input on park amenity design, engage with community members to inform art concepts, develop design options for artwork(s), formalize the design and respond to feedback, fabricate the work, and transport the work to the site. Construction of the footing/anchor system and installation of the work will be coordinated with and managed by the City of Boise and is not anticipated to exceed \$50,000.

The City intends to award the contract to one artist or artist team; however, the City reserves the right to award to more than one Applicant, or no Applicants if none of the applicants are deemed acceptable.



*Future public site: 521 W Grove St. Boise, Idaho*

The location for this project is 521 W Grove St., Boise, Idaho, in the Old Boise Blocks area (pictured above).

## Project Background

The Boise Valley is the traditional, ancestral, and unceded territory of the Shoshone, Bannock, and Northern Paiute peoples and prior to Euro-American settlement, the land was sagebrush desert. Grove Street was one of the originally platted streets on the city's first plat, in 1864. Historical records illustrate significant trends in urban development along its length, from a mixed-use residential area with lush tree groves, to a commercial neighborhood dominated by the automobile industry in the mid-20<sup>th</sup> century. Today, the street is home again to residents, and is beginning to return to a dense, mixed-use corridor. In examining the history of Grove Street it's mixed-use past, the importance of irrigation, innovations in transportation, a wide variety of industrial endeavors, and its history as a neighborhood to a variety of residents, sheds light on the area's evolution. For more information, visit [Historic Grove Street](#) and [521 West Grove Street History](#).

The 521 W Grove Street Public Space Project is a partnership between Capital City Development Corporation (CCDC), Boise Parks and Recreation, and the Boise City Department of Arts & History to bring a new public space to downtown that celebrates the history of the Old Boise Neighborhood. The new public space, as envisioned by the Old Boise community, would potentially provide an area where people can enjoy the outdoors, gather for community events and street



festivals on the adjacent Basque Block, and learn about and connect with the multi-cultural and historic richness of one of Boise's oldest neighborhoods.

## Project Vision

The selected artist or artist team will work with the public space design team to impact the aesthetic design of the public site and identify opportunities for integrated artworks to be incorporated into the public site. The project should be informed by a meaningful community engagement process in order to reflect identity and communicate an authentic and unique sense of place. The selected artist(s) will design an iconic and meaningful artwork that embodies the stories and experiences of past residents of the neighborhood. This area was once home to a variety of people, and artists are encouraged to consider how they might engage with and reflect underrepresented individuals that call(ed) this neighborhood home. Artists are encouraged to explore individual stories, shared experiences, and common histories, myths, and folklores.

1. This area is the ancestral, cultural, traditional, and unceded territory of the Shoshone, Bannock, and Northern Paiute peoples.
2. This area was once home to numerous immigrants and Boise's second Chinatown (now demolished) was just a block away.
3. The area around this street is also central to Boise's Basque population.

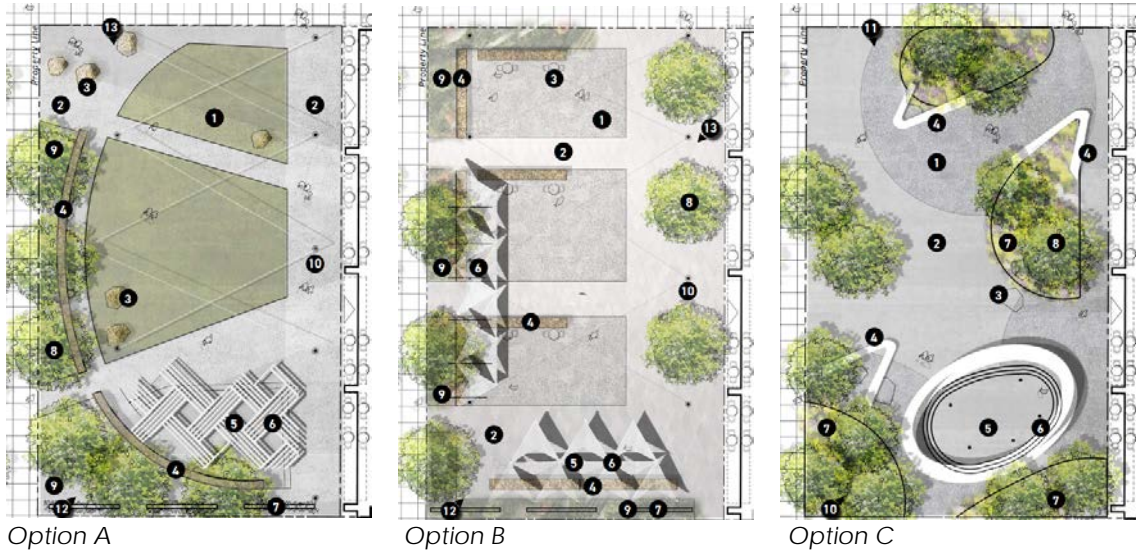
## Public Site Goals

A public survey assessed the community's vision for the public site at 521 W Grove St. The survey received strong public participation and allowed shared values to emerge. Artists should consider the following themes as frameworks that resonated with the local community for the overall look and feel of the public site:

1. The site should contribute to placemaking and create a unique feel for the Old Boise Blocks.
2. The site should provide an interface with nature and greenspace without significant or excessive maintenance.
3. The public art at the site should serve to beautify, speak to/reflect neighborhood identity, and inspire creativity.
4. The site should recognize and celebrate the history, contributions, and culture of the area.
  - a. Respondents indicated that welcoming/belonging, gathering/celebration, and cultural diversity were areas of importance.



At the time of the release of this RFQ, there are three (3) preferred site designs to be presented for public comment (pictured below). Public input as well as participation from the selected artist will inform the final site design.



Site elements identified by the design team that could influence the integration of public art include but are not limited to seating, structure/stage element, landscaping, and ambiance.

### Public Art Goals

1. The public art will be integrated into the public space.
2. The public art will be informed by meaningful community engagement or collaboration.
3. The public art will uplift the historical presence of underrepresented communities.
4. The public art will encourage viewers to explore experiences that may not be their own.

### Budget

The selected artist(s) will be provided a \$300,000 contract to collaborate with the public site design team, engage with community stakeholders, formalize the design of the public artwork to be integrated into the public site, to arrange the fabrication of the artwork, and to provide oversight for the installation of the public artwork. The selected artist(s) will be responsible for any and all costs necessary to complete their scope of services including but not limited to any materials, fees, related travel, and permits. Project administration, site prep, and

installation, will be coordinated, managed, and paid for separately by the City of Boise for a combined project total of \$400,000.

## Eligibility

This opportunity is open to established artists residing in the United States. Idaho artists are strongly encouraged to apply. Artists must be at least 18 years of age. Boise City Department of Arts & History does not discriminate in its programs and activities on the basis of race, religion, national origin, sex, age, sexual orientation, gender identity and/or disability.

## Anticipated Project Timeline

Call to Artist Released	April 14, 2023
Application Workshop - optional	May 1, 2023, 11:00 am MST
Questions/Clarifications	May 10, 2023, 5:00 pm MST
Application Deadline ( <i>late applications will NOT be accepted</i> )	May 17, 2023, 1:00 pm MST
Final Artist Selection and Contract Signed	June, 2023
Preferred Public Site Design Open House	June, 2023
Art & Design Team Meetings	July – August, 2023
Community Engagement	July - September, 2023
Preliminary Concept (location) Submitted for Public Site Design Review	August, 2023
Design Development/Construction Document Package Development	August – December, 2023
Concept Submitted for Approval	September, 2023
Final Design Submitted for Final Approval	December, 2023
Review and Approvals	December - February, 2024
Fabrication of Artwork	February – June, 2024
Delivery of Finished Work for Installation	July, 2024
Installation	August, 2024

This timeline is intended to provide applicants a loose framework for project phase expectations. The timeline, with exception to dates relating to the call-to-artists, are subject to change based on the approval process and needs of the overall project.



## **Application Requirements and Process**

**Application deadline** is May 17, 2023, at 1:00 pm MST.

**Questions & Clarifications** must be submitted to Purchasing Staff by May 10, 2023, at 5:00 pm MST.

All responses will be posted to the Q&A Board in JAGGAER.

### **APPLICATION INFORMATION**

All applications must be submitted through JAGGAER, a digital procurement platform.

**Solicitation Number: RFQ2023-026**

**Project Name: 521 W Grove St Public Art Project**

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### **Statement on Diversity, Equity and Inclusion:**

Boise City Department of Arts & History does not discriminate in its programs and activities on the basis of race, religion, national origin, sex, age, sexual orientation, gender identity and/or disability. We encourage persons with disabilities and those who require language assistance to participate in its programs and activities. If you anticipate needing an accommodation, please contact Jennifer Yribar, 208-608-7051 or email [jyribar@cityofboise.org](mailto:jyribar@cityofboise.org), as soon as possible, but no later than 72 hours before the application is due. To request assistance, you may also dial TTY 1-800-377-3529.

**All questions and clarifications not related to accommodations must be submitted to Purchasing Staff via the JAGGAER Q&A Board by May 10, 2023, at 5:00 pm MST.**

### **Applying via JAGGAER:**

Electronic applications can be viewed on the City of Boise's Purchasing website (<https://www.cityofboise.org/departments/finance-and-administration/purchasing/bids/>). Applications must be submitted through this page. After uploading your application, Applicants are encouraged to verify the successful upload of the document.

### **JAGGAER Registration Instructions:**

In addition to completing the application requirements, applicants must initially register in JAGGAER with a vendor account before beginning their application.

1. Access the City of Boise Vendor Portal here: <https://solutions.sciquest.com/apps/Router/SupplierLogin?CustOrg=CityofBoise>
2. Follow the registration prompts – **only starred fields are required.**

- a. Legal Company Name (this can be your name)
  - b. First Name, Last Name
  - c. Phone Number
  - d. Time Zone
  - e. Email
  - f. Password
3. You will be re-routed to your email to complete registration
  4. Log in to your account and from the homepage, navigate to "Manage Registration Profile"
  5. Under the "Business Details" tab, include these commodity codes to your profile, as well as any other relevant codes: **961-04 (Artists), 918-86 (Public Art) and 962-07 (Arts Services, Cultural)**.
  6. Complete "Addresses" tab
  7. Complete "Contacts" tab, with your main contact as "Sales"
  8. Complete "Certify & Submit" tab

All applications must be submitted before the application deadline. In the event of a technology failure, the City reserves the right to accept all applications submitted and electronically time stamped prior to application deadline. The City will require application receipt documentation to be on file as proof of timely submission. Applicants are encouraged to confirm the successful up-load of their application document. The City will not accept applications submitted after the scheduled application deadline.

**Applications will NOT be accepted by mail, fax, or in person.**

It is the Applicant's sole responsibility to timely submit their application by the scheduled deadline date and time.

Applicants are responsible for all costs (including site visits where needed) incurred in preparing or responding to this RFQ. All materials and documents submitted in response to this RFQ become the property of Boise City and will not be returned.

### **APPLICATION WORKSHOP**

An Application Workshop will be held **May 1, 2023, at 11:00 am MST**, virtually via Microsoft Teams (link below). At the workshop, staff will review the application process, discuss the process for design, fabrication and installation, and answer any questions applicants may have. This is the only opportunity to speak directly with Arts & History staff. Inquiries at any other time must be submitted in writing to Purchasing Staff via the JAGGAER Q&A Board. Attendance is strongly recommended but not required.

Please use the following link to join the virtual Application Workshop:

# Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 218 790 972 311

Passcode: jkrYPe

[Download Teams](#) | [Join on the web](#)

**Or call in (audio only)**

[+1 208-593-7896,,997512185#](#) United States, Boise

[\(833\) 533-1404,,997512185#](#) United States (Toll-free)

Phone Conference ID: 997 512 185#

[Find a local number](#) | [Reset PIN](#)

## **AMENDMENTS**

In the event it becomes necessary to revise any part of this RFO, amendments will be issued. Information given to one Applicant will be available to all other Applicants if such information is necessary for purposes of submitting an application or if failure to give such information would be prejudicial to uninformed Applicants. It is the Applicant's responsibility to check for amendments prior to submitting an application. Failure to do so may result in the application being declared non-responsive. No amendments will be issued fewer than three (3) business days before the application deadline unless the deadline is extended.

## **REQUIRED CONTENT, EVALUATION, AND SELECTIONS**

The application format explained below is meant to allow uniform review and easy access to information by the Selection Panel. Applications not conforming to the requested format or not in compliance with the specifications will be considered non-responsive. The applications are to be clear and to the point.

Applicants are invited to include information about innovative methods and/or ideas which they can provide to achieve successful results for the artwork. Unique qualities and/or capabilities and cost efficiencies may be identified. For each of the specific areas listed below, Applicants should include a description of qualifications to serve as an Artist.

## **SELECTION CRITERIA AND PROCESS (100 TOTAL POINTS AVAILABLE)**

Submitted applications will be reviewed and scored by a selection panel consisting of community stakeholders. We encourage innovative ideas and diverse use of media/materials. Scoring criteria for jurying each section of the Application Content will be based on the following:

1. Application Information and Signature Page (**pass/fail**)
2. Completeness of application (**pass/fail**)
3. Artistic quality as exemplified in past work (**25 points available**)



4. Evidence working collaboratively with design teams **(25 points available)**
5. Evidence of ability to engage across cultures and within diverse communities to create artwork that is responsive to community and location **(25 points available)**
6. Evidence of ability to follow through (to work with appropriate scale and materials, and to navigate complex deadlines) **(25 points available)**

Full scoring rubric included as an attachment with the Award Criteria in the Prerequisites.

## Application Content

1. **Application Information and Signature Page**
  - Name
  - Pronouns
  - Artistic Medium(s)
  - Address (street, city, state, postal code)
  - Phone Number
  - Email
  - Social Media
  - Website
2. **Short responses (Please limit your response to each question to 200 words or less. Answers that exceed 200 words may not receive full points.)**
  - 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? 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?
  - e. What is your experience working with diverse communities? If you have not worked with diverse communities, what skills or experience do you have to successfully complete this project?
  - f. How have you successfully engaged community to influence your work?
3. **Reference contact sheet**

Contact information for 3 professional references.
4. **Artist resume**

Include a detailed resume of qualifications and past experience.
5. **Three (3) past work examples**

Provide three (3) examples of your completed artwork that demonstrates your ability to best meet the desired outcomes of this RFQ. Examples can be provided in photo or video form and must adhere to the following standards: Image files must include the artwork title in the file name, are not to exceed 300dpi and 10" on the longest side, video files are not to exceed 2 minutes in duration. List details including title, type of work, materials used, and date finished in the table provided. File sizes in JAGGAER are limited to 25MB for video and 50MB for files.

In addition to images, include detailed descriptions of the process. This may include a description of leading a design from conception through implementation, any relevant community engagement, and collaborative efforts.

6. **Two (2) examples of community engaged process**

Examples can be anything that show evidence of past projects that successfully engaged community in a meaningful way.

### **EVALUATION OF APPLICANT**

In determining the best qualified Applicants, City of Boise will consider all acceptable applications on a basis consistent with this RFQ. A selection committee will rank all eligible applications directly from the evaluation process and basis of qualifications identified in this document. The selection committee may include representatives from: Boise City Arts & History Commission, Boise City Council, a local artist, Boise Parks and Recreation, and neighborhood representatives. Once the initial scoring is complete, the highest ranked artist(s) may be shortlisted and asked to participate in an interview. Initial scoring will be adjusted based upon discussion and/or interviews resulting in a final ranking. The highest ranked Artist resulting from the final ranking will be recommended for selection.

The City may conduct reference checks by contacting references submitted by the Applicants. In addition, the City may contact references not listed by the Artist. The information obtained for the reference checks may impact the scores assigned by the selection committee.

### **QUALIFICATION BASED SELECTION**

The City of Boise reserves the right to reject any and all applications, to waive any irregularities in the applications received and to accept the applications that are in the best interest of the City. Boise City is an Equal Opportunity Employer. The City of Boise is exempt from Federal and State taxes and will execute the required exemption certificates.



## Scoring Rubric for 521 W Grove St Public Art Project (RFQ2023-026)

Using the criteria on the left, score in the column to the right **according to the scale provided** (ex. Pass/Fail, 0-5). Use Poor, Weak, Good, Very Good, and Excellent as guides when scoring and remember to be as consistent as possible. Any scored section(s) in which an Applicant did not provide a response, will receive 0 points in that section.

Completeness of Application						SCORE:
Signature Page	<b>FAIL</b>				<b>PASS</b>	
Completion of Application	<b>FAIL</b>				<b>PASS</b>	
Artistic Quality (25 Points Available)						
Reference all Application Content below: <ul style="list-style-type: none"> <li>• Short responses</li> <li>• References</li> <li>• Artist resume</li> <li>• Past work</li> <li>• Examples of community engagement</li> </ul>	1 – Poor (5 Points)	2 – Weak (10 Points)	3 – Good (15 Points)	4 – Very Good (20 Points)	5 – Excellent (25 Points)	
	Artistic quality is not clearly communicated	Artistic quality is not aesthetically pleasing and would not enhance the space	Artistic quality is aesthetically pleasing and would likely enhance the space	Artistic quality is aesthetically pleasing and would greatly enhance the space	Artistic quality is aesthetically pleasing and would uniquely define the space	
Collaborative Ability (25 Points Available)						
Reference all Application Content below: <ul style="list-style-type: none"> <li>• Short responses</li> <li>• References</li> <li>• Artist resume</li> <li>• Past work</li> <li>• Examples of community engagement</li> </ul>	1 – Poor (5 Points)	2 – Weak (10 Points)	3 – Good (15 Points)	4 – Very Good (20 Points)	5 – Excellent (25 Points)	
	Little to no collaborative experience	Sparse examples of collaborative experience do not relate to successful final product	Some examples of collaborative experience loosely relate to successful final product	Examples of collaborative experience clearly relate to successful final product	Ample examples of innovative collaborative experience clearly relate to successful final product	

<b>Community Engagement Ability (25 Points Available)</b>						
Reference all Application Content below: <ul style="list-style-type: none"> <li>• Short responses</li> <li>• References</li> <li>• Artist resume</li> <li>• Past work</li> <li>• Examples of community engagement</li> </ul>	<b>1 – Poor (5 Points)</b>	<b>2 – Weak (10 Points)</b>	<b>3 – Good (15 Points)</b>	<b>4 – Very Good (20 Points)</b>	<b>5 – Excellent (25 Points)</b>	
	Little to no community engagement experience	Sparse examples of community engagement do not relate to successful final product	Some examples of community engagement loosely relate to successful final product	Examples of community engagement clearly relate to successful final product	Ample examples of innovative and meaningful community engagement clearly relate to successful final product	
<b>Ability to Follow Through (25 Points Available)</b>						
Reference all Application Content below: <ul style="list-style-type: none"> <li>• Short responses</li> <li>• References</li> <li>• Artist resume</li> <li>• Past work</li> <li>• Examples of community engagement</li> </ul>	<b>1 – Poor (5 Points)</b>	<b>2 – Weak (10 Points)</b>	<b>3 – Good (15 Points)</b>	<b>4 – Very Good (20 Points)</b>	<b>5 – Excellent (25 Points)</b>	
	Little to no evidence of ability to follow through	Sparse evidence of ability to follow through with complex deadlines	Some evidence of ability to follow through with complex deadlines	Evidence of ability to follow through with complex deadlines	Ample evidence of flexibility and ability to follow through with complex deadlines	

**Total:**

**Notes:**



## **GENERAL CONDITIONS**

These General Conditions are presented for clarification of the Terms and Conditions included with the Artist Agreement.

### **1.1 Intent of Application**

It is the intent of this application to describe the services being sought in sufficient detail to secure qualified Applicants, based on past work. Applications will be evaluated using a weighted scoring method. Applications not conforming to the requested format or not in compliance with the specifications will not receive full scoring.

### **1.2 Applicant's Costs**

The Applicant will be responsible for all costs (including site visits where needed) incurred in preparing or responding to this solicitation. All materials and documents submitted in response to the solicitation become the property of the City and will not be returned.

### **1.3 Indemnification and Insurance**

The awarded proposer will provide the insurance coverage designated hereinafter and in future Contract Provisions and pay all costs associated with the insurance coverage. Any submitted insurance policy, or certificate of insurance will name the City as a named insured (Attn: Purchasing), where appropriate, and such insurance policy or certificate of insurance will be kept and maintained in full force and effect at all times during the term described in future Contract Provisions. The insurance policy or certificate of insurance must be filed with Purchasing prior to commencing work under this contract and no insurer will cancel the policy or policies or certificate of insurance without first giving thirty (30) days written notice thereof to the awarded proposer and the City, but the awarded proposer may, at any time, substitute a policy or policies or certificate of insurance of a qualified insurance company or companies of equal coverage for the policy or policies or certificate then on file with Purchasing.

In case of the breach of any provision of this article, the City, at its option, may take out and maintain at the expense of the awarded proposer, such insurance as the City may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the awarded proposer under this contract.

The awarded proposer and SubVendor(s) and trade Vendor proposer's Insurance: The awarded proposer will not commence providing service under the contract until awarded proposer has obtained all the insurance required hereunder and described in future Contract Provisions, and such insurance has been reviewed by the City. Review of the insurance by the City will not relieve or decrease the liability of the awarded proposer hereunder.

**Commercial General Liability Insurance** coverage with minimum aggregate coverage of One Million dollars (\$1,000,000.00) on occurrence basis (rather than a claims-made bases). The City of Boise will list as an additional insured.

**Automobile Insurance** with minimum coverage of Five Hundred Thousand Dollars (\$500,000.00) per occurrence for owned, non-owned and hired vehicles. *If Vendor has no owned motor vehicles*, then hired and non-owned motor vehicle liability coverage with limits not less than Five Hundred Thousand Dollars (\$500,000.00) per accident for bodily injury and property damage is required.

**Worker's Compensation Insurance** in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for each occurrence, for all of the company's employees to be engaged in work on the project under the contract and, in case any such work is subcontracted, the awarded proposer will require

the subVendor(s) and trade Vendor(s) similarly to provide Worker’s Compensation and Employer’s Liability Insurance for all the subVendor(s) and trade Vendor(s) to be engaged in such work.

E.L. Disease – Each Employee	\$100,000
E.L. Disease – Policy Limit	\$500,000
E.L. Each Accident	\$100,000

**1.4 Reserved Rights**

The City of Boise reserves the right to accept or reject applications. The City may select an artist on the basis of the written application and may request oral presentations and/or interviews from the most highly rated applicants under the evaluation criteria outlined in the Scoring Criteria & Application Requirements and the Scoring Rubric. The applicant selected through this process as the best qualified will then be requested to negotiate a contract.

**1.5 Public Records**

The Idaho Public Records Act, Title 74, Chapter 1, Idaho Code, allows the open inspection and copying of public records. Public records include any writing containing information relating to the conduct or administration of the public’s business prepared, owned, used, or retained by a State or local agency regardless of the physical form or character. All, or most, of the information contained in your Application will be a public record subject to disclosure under the Public Records Act and will be available for inspection and copying by any person. The Public Records Act contains certain exemptions. One exemption potentially applicable to part of your response may be for trade secrets. Trade secrets include a formula, pattern, compilation, program, computer program, device, method, technique, or process that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons and is subject to the efforts that are reasonable under the circumstances to maintain its secrecy.

If you consider any element of your Application to be a trade secret, or otherwise protected from disclosure, you **must**:

Indicate by marking each page of the pertinent document confidential; and,

Include the specific basis for your position that it be treated as exempt from disclosure.

Prices quoted in your Application are not a trade secret.

The following is **NOT ACCEPTABLE** or **IN ACCORDANCE** with the Public Records Act and **will not be honored**:

Marking your entire Application as exempt; or,

Placing a statement or legend on one (1) page stating that all or substantially all of the response is exempt.

The City, to the extent allowed by law and in accordance with these Instructions, will honor a designation of nondisclosure. If you claim material to be exempt from disclosure under the Idaho Public Records Act, the Proposer will expressly agree to defend, indemnify, and hold harmless the City from any claim or suit arising from the City’s refusal to disclose any such material. Any questions regarding the applicability of the Public Records Act should be addressed to your own legal counsel – **Prior to submission.**

**1.6 Taxes**

The City of Boise is exempt from Federal and State taxes and will execute the required exemption certificates for items purchased and used by the City. Items purchased by the City and used by an Artist are subject to Use Tax. All other taxes are the responsibility of the Artist. For more information visit: <https://tax.idaho.gov/i-1013.cfm>

### **1.7 Request for Clarification or Questions, Protest of Application Requirements or Process**

Any Artist who wishes to request clarifications, or protest the requirements, or processes outlined in this solicitation may submit a written notification to the Department of Finance & Administration, to be received no later than April 19, 2023. The notification will state the exact nature of the clarification, protest, describing the location of the protested portion or clause in the Application document and explaining why the provision should be struck, added, or altered, and contain suggested corrections. The Finance & Administration Department may deny the protest, require that the Application document be modified, modify the application, and/or reject all or part of the protest. Changes to these specifications will be made by written addendum. Verbal responses will not be binding on the City or the Applicant.

**Written requests are to be submitted to the Jaggaer Q&A Board for this event.**

### **1.8 Amendment to the RFQ**

If this specification is modified by the Purchasing Office, the modifications will be sent to each Applicant in writing through a website attachment or by email. Verbal modifications are not binding on the City or the Artist. No oral changes will be considered or acknowledged. Artists are requested to acknowledge each amendment received in their Application.

### **1.9 Modification and Withdrawal of Application**

An application may be modified or withdrawn by the Artist prior to the set date and time for the opening of applications. Applications may not be modified or withdrawn after the opening.

### **1.10 Application Questions**

Questions and responses of any one Applicant, which the City of Boise deems may affect or cause an ambiguity in application responses, will be supplied to all prospective Applicants by addendum.

The City of Boise may, by written notice to all Applicants, cancel, postpone or amend the Request for Qualifications (RFQ) prior to the due date. If, in the opinion of the City of Boise, the revisions or amendments will require additional time for a response, the due date will be extended to all Applicants. If revisions and amendments are not furnished to Applicants prior to the due date, applications shall be considered withdrawn and the process shall be re-initiated without further discussion.

### **1.11 Award Criteria**

Criteria necessary to evaluate the applications in relation to the service being sought are included in the RFQ documents and will be established and weighted. At a minimum, criteria will include general qualifications, specific project experience, compliance to the specifications and requirements for the service.

### **1.12 Idaho's Reciprocal Preference Law**

Reciprocal preference applies to any purchase of materials, supplies, services or equipment that is competitively bid/proposal, regardless of the dollar amount, is subject to Idaho's Reciprocal Preference Law, Idaho Code §67-2349.

Reciprocal Preference Information:

<https://www.naspo.org/research-innovation/state/ID>

### **1.13 Significant Local Economic Presence**

Boise City Council may exercise a preference for an Applicant with a significant local and Idaho economic presence even if such Applicant is not the selection committee's highest ranked Applicant. To qualify as an Applicant with a significant local economic presence, an Artist must maintain in the Metropolitan Impact Area a fully staffed office, or fully staffed sales offices, or fully staffed sales outlets, or manufacturing facilities, or warehouses, and, if required, be registered with the Secretary of State of Idaho to do business in Idaho at the time of the bid/proposal opening.

- **Metropolitan Impact Area:** Includes and is limited to the counties of Ada, Boise, Canyon, Elmore,

Gem, Owyhee and Payette in the state of Idaho.

#### **1.14 Disadvantaged Business Enterprises (D.B.E.)**

D.B.E. firms and business enterprises are encouraged to submit an application. Women owned and minority owned firms are encouraged to submit an application. The City actively encourages any applications by D.B.E. firms for goods and services for the City.

#### **1.15 Highest Ranked Proposer**

The selection committee shall recommend to Boise City Council that the contract or award of applicant be awarded to the highest ranked Applicant, with all evaluation criteria considered, provided that, the Boise City Council may award contracts to the Applicant it determines appropriate.

#### **1.16 Rejection of Applications**

The City of Boise may, at its sole option, reject any and all applications, for any reason, and reserves the right to re-solicit applications in the event no response to the call is acceptable to the City of Boise. City of Boise is in no way obligated to any Applicant for the work as set forth in the call.

**1.14.1** The City of Boise reserves the right to accept or reject applications on each item separately or the RFQ as a whole, without further discussion.

**1.14.2** Applications, which are incomplete, will be considered non-responsive to this opportunity and may be rejected without further consideration.

**1.14.3** If, in the opinion of the City of Boise, the opportunity does not result in reasonable qualifications and experience required by the City of Boise, then all applications shall be rejected. All participating Applicants shall be notified of the rejection, the reasons for the rejection, and advised of the disposition of the requirement.

The City of Boise reserves the right to reject any and all applications, to waive any irregularities in the applications received, to award on an "each item" basis (however, the Applicant may indicate "all or none"), and to accept the application deemed most advantageous to the best interest of the City of Boise.

#### **1.17 Protest of Artist Selection or Contract Award**

The right to protest an award is governed by Boise City Code (Title 1, Chapter 12, Article 3), which provides:

- Only a proposer or proposer who **participated** in the solicitation process through submission of a Proposal may protest an intended award;
- The award to be protested must be for a **formal level contract**, which consists of either a goods, ,personal services purchase, purchase of \$100,000 or more or a construction project of \$200,000 or more. Any attempted protest to a semi-formal or informal level contract will not be considered;
- The award to be protested must be to a proposer **other than the lowest responsive proposer** in the case of a formal solicitation **or other than the highest-ranking proposer** in the case of a Request for Proposal or Request for Proposals;
- In the event that the winning proposer is less than the formal level threshold, then the project is considered "semi-formal", and an award protest will not be considered.
- A protest must be in **writing**;



- A protest must **specify the reason(s)** the proposed award is in error; and
- A protest must be submitted within **seven (7) calendar days** after the City's transmittal or posting of a Notice of Intent to Award (ITA) letter.

**Written protests are to be directed to: [purchasing@cityofboise.org](mailto:purchasing@cityofboise.org).** Any protest addressed to the Mayor or City Council may be re-directed to the City's Purchasing Agent. Purchasing will address the protest with input from the Project Manager if necessary.

The protest of an award may **not** be based upon the specifications. Any objection to specifications attempted to be pursued through an award protest is untimely and will not be considered. Rather, the right to protest specifications is provided for as described in Section 1.8 (Request for Clarification, Protest of Proposal Requirements, Standards, Specifications, or Process) herein.

In the event the Purchasing Agent denies a protest, the protesting proposer or proposer may elevate the matter to Boise City Council through submission of an appeal to the Boise City Clerk's Office within **three (3) business days** of transmission or posting of the denial by the Purchasing Agent. The Boise City Clerk will then schedule the matter before Boise City Council.

If Federal grant funds are involved and the protestor is not satisfied with the way that the City has resolved the protest, the protestor may have the option to appeal to the Federal Grant Provider.

Payments are processed weekly. The awarded Proposer can expect issue and mail of payment within 45 days after receipt of invoice.

#### **1.18 Stop Work Order**

Any "Stop Work Order" given to Awarded Proposer will cause all physical work to stop and a complete cessation of all expenditures, ordering of materials, etc., on the part of the Awarded Proposer and/or his/her assigns.

#### **1.19 Delivery**

All costs must include any applicable delivery charges

#### **1.20 Payments and Billings**

The awarded applicant will submit all invoices to:

City of Boise Department of Arts & History  
P.O. Box 500  
Boise, Idaho 83701

Payments through City Hall are processed weekly. The awarded applicant can expect the city to issue and mail payment within 45 days after receipt of invoice.

#### **1.21 Anti-Boycott**

If this Agreement has a total potential value of \$100,000 or more and if applicant is a company with ten (10) or more employees, then pursuant to Idaho Code 67-2346, Applicant affirmatively states that it does not boycott Israel and will not boycott Israel during the term of this Agreement. In this paragraph, the terms 'company' and 'boycott Israel' shall have the meanings described in Idaho Code 67-2346.

## **2.1 Assignment or Subcontracting**

The successful Applicant may not assign or transfer this agreement or any interest therein or claim there under, or subcontract any portion of the work there under, without the prior written approval of the City of Boise. If the City of Boise consents to such assignment or transfer, the terms and conditions of this Agreement shall be binding upon any assignee or transferee.

## **2.2 Contract**

The selected applicant(s) will be expected to execute a contract with the City of Boise. Specific exception must be proposed prior to application opening.

## **2.3 Ownership and Access to Records**

While ownership of confidential or personal information about individuals shall be subject to negotiated agreement between the City of Boise and the Applicant, records will normally become the property of the City of Boise and subject to state law and City of Boise policies governing privacy and access to files.

## **2.4 Examination of Records**

The City of Boise shall have access to and the right to examine any pertinent books, documents, papers, and records of the Applicant involving transactions and work related to this Agreement until the expiration of five years after final payment hereunder. The Applicant shall retain project records for a period of five years from the date of final payment.

## **2.5 Conflict of Interest**

- 2.5.1. The Consultant shall not hire any officer or employee of the City of Boise to perform any service covered by this Agreement.
- 2.5.2. The Consultant affirms that to the best of his/her knowledge there exists no actual or potential conflict between the Consultant's family, business, or financial interests and the services provided under this Agreement, and in the event of change in either private interests or service under this Agreement, any question regarding possible conflict of interest which may rise as a result of such change will be raised with the City of Boise.
- 2.5.3. The Consultant shall not be in a reporting relationship to a City of Boise employee who is a near relative, nor shall the near relative be in a decision-making position with respect to the Consultant.

## **2.6 Copyright**

The City shall own the right, title and ownership of the copyright to any copyrightable material delivered under this Agreement. The City shall grant to the Applicant a royalty-free, irrevocable, perpetual, non-exclusive license to make two-dimensional reproductions of the Work for non-commercial purposes, including, but not limited to, reproductions used for self-promotion including social media, brochures, media publicity, and exhibition catalogues or other similar publications. The Applicant warrants that all creators of copyrightable material delivered under this Agreement to the City of Boise are, at the time of the material's creation, bona fide employees or subcontractors of the Applicant, and that such creation is within the course and scope of the creator's employment.

## **2.7 Non-Waiver**

Waiver or non-enforcement by either party of a term or condition shall not constitute a waiver or non-enforcement of any other term or condition or of any subsequent breach of the same or similar term or condition.

## **2.8 No Third-Party Rights**

Nothing in this Agreement is intended to make any person or entity that is not signatory to the

agreement a third-party beneficiary of any right created by this Agreement or by operation of law.

**2.9 Standard for Performance**

The parties acknowledge that the City of Boise, in selecting the Consultant to perform the services hereunder, is relying upon the Consultant's reputation for excellence in the performance of the services required hereunder. The Consultant shall perform the services in the manner of one who is a recognized specialist in the types of services to be performed. All deadlines set forth in the Agreement are binding and may be modified only by subsequent written agreement of the parties. The Consultant shall devote such time to performance of its, her, or his duties under this Agreement as is reasonably necessary for the satisfactory performance of such duties within the deadlines set forth herein. Nothing in the foregoing shall be construed to alter the requirement that time is of the essence in this Agreement.

**2.10 Attorney's Fees**

In the event of any action brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts of fees, costs and expenses, including attorneys' fees, as may be set by the Court.

**2.11 Applicable Law**

The laws of the State of Idaho shall govern this agreement.

## SAMPLE AGREEMENT FOR 521 W GROVE ST PUBLIC ART PROJECT BETWEEN THE CITY OF BOISE CITY AND ARTIST

**THIS AGREEMENT** is made and entered into effective upon its mutual acceptance (“Effective Date”) by and between the city of Boise City, an Idaho municipal corporation (“the City”), by and through its Department of Arts & History (“Arts and History”), and ARTIST (“Artist”), collectively referred to as “the Parties” and individually as “Party,” for the purpose of defining the rights and responsibilities of the Parties regarding the design of a public art piece (the “Work”) for the 521 W Grove St Public Site (the “Site”) as depicted by Exhibit A.

**WHEREAS**, the Artist is a recognized artist whose work and reputation make the Artist uniquely qualified to create the Work; and

**WHEREAS**, Arts and History desires to enter into a contract with the Artist to engage with community members, collaborate with the public space design team, design, fabricate, and deliver the Work subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, the Parties agree as follows:

- 1. Scope of Services: (Design, Fabrication, and Delivery).** The scope of services for this Agreement and description of the work to be performed by the Artist is for the Artist to develop the design of a public artwork in the Site. The Artist is responsible for engaging with community members in the development of the design concept, and to collaborate with the public space design team to ensure the Work’s integration in the public space. The Artist is responsible for formalizing the design in a manner so that it can be digitized, scaled, fabricated, delivered, and installed. The Artist shall provide one design proposal for the approval by Arts & History. The Artist shall finalize the design based on feedback and check-ins, complete the design of the Work, deliver the work to the fabricator, and perform any and all other duties and obligations

as set forth in this Agreement. The Work shall, at all times, be subject to the City's general review and approval. The Scope of Services for this agreement is described in greater detail in attached Exhibit B "Project Description."

**2. Artist's Responsibilities.**

- a. The Artist shall engage with community members to develop the design concept of the Work.
- b. The Artist shall collaborate with the public space design team to ensure the integration of the Work in the public space.
- c. The Artist shall complete the design of the Work in advance of the scheduled installation date as stated in this Agreement.
- d. The Artist shall organize and arrange for the design of the Work to be fabricated and transported to the site in advance of the scheduled installation date as stated in this Agreement.
- e. The Artist shall perform all services and furnish all supplies, material and/or equipment as required for the design, delivery of the design files and coordination with and oversight of the installation contractor including color correction, layout, and installation of the Work at the Site in accordance with the schedule required by this Agreement. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- f. The Artist shall attend design, construction, and check-in meetings in person or virtually with the City, general contractor, architect, or other parties, as

appropriate, to communicate about the Work to ensure appropriate integration and/or installation of the of the Work.

- g. Until the Work is complete and has been accepted by the City, the Artist shall not post or share information or photos about the Work online in any form, including but not limited to email, websites, message boards, blogs, or social networking websites without prior permission from the City.
- h. The Artist agrees to participate, at no additional cost to the City, in at least one public event, such as a “Meet the Artist” event, or the public dedication of the Work as staged or planned by the Artist and Arts and History. Such events shall be timed to the extent possible to occur when the Artist is available in Boise.
- i. Artist shall provide required insurance in amounts and limits specified in Section 11.
- j. Artist shall complete a Care and Conservation report, as provided by the City, with a description of all materials and products utilized in the Work and the required care and upkeep involved. When appropriate, artist will consult and gain sign-off from an art conservation professional.
- k. Artist agrees that the City shall have the right to review the final Work and request changes to ensure the Work meets the project’s goals. The Artist agrees that any such requested changes will be made and that such changes will be made in consultation with the City. Subtle design refinements or improvements shall be left to the discretion of the Artist.
- l. The Artist shall not assign any of his or her obligations under this Agreement without the express written consent of the City. This provision shall not prevent

the Artist from subcontracting for obligations that do not require his or her artistic talents.

**3. The City's Responsibilities.** The City agrees to timely furnish the Artist all information, reports, data, statistics, drawings, and information in its possession related to matters covered by this Agreement, together with timely access to all facilities, personnel, and data necessary to perform the Work unless such disclosure is prohibited by law.

- a. The City shall perform all obligations in strict compliance with all terms and conditions in this Agreement.
- b. The City shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data, if any, which is needed by the Artist in order to perform under this Agreement.
- c. The City shall be responsible for compliance with all applicable laws and regulations, including but not limited to zoning or environmental regulations, and shall explain any limitations imposed by such laws and/or regulations to the Artist.
- d. The City shall provide and install a sign on or near the Work containing a credit to the Artist and the dedication year.
- e. The City shall not permit any use of the Artist's name or misuse of the Work which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Work, should such use or misuse be within the City's control.

- f. The City shall be responsible for leading the Artist through the required review process. The City shall be responsible for organizing and scheduling meetings with review entities, and for providing the Artist written instructions for the materials required at such meetings.

**4. Term of Agreement.**

- a. **Time of Performance.** This Agreement shall be effective on the date that this contract has been signed by both Parties, and, unless terminated earlier pursuant to this Agreement, or until final acceptance by the City under Section 6(d), or submission of final payment to the Artist by the City, whichever is later. The Artist shall coordinate commencement of design upon signing this Agreement and/or by a date agreed upon between the Parties. The Artist shall complete the preliminary concept (location) on or before August 30, 2023. The Artist shall complete the design concept September XX, 2023. The Artist shall complete the final design on or before December XX, 2023. The Artist shall complete the Scope of Services on or before December XX, 2024 or on such other later date as may be agreed upon between the Parties in writing. The Artist shall comply with these deadlines and all other requirements and obligations as described in the “Timeline, Approvals, and Payment Plan” attached as Exhibit C.
- b. **Force Majeure.** Neither Boise City nor Artist shall be considered in default in the performance of their obligations hereunder to the extent that performance of such obligations is delayed, hindered, or prevented by force majeure. Force majeure shall be any cause beyond the control of the parties hereto which they could not reasonably have foreseen and guarded against. Force majeure shall



include, without limitation, pandemic, epidemic, acts of God, strikes, lockouts, fires, riots, civil commotion or civil unrest, incendiarism, interference by civil or military authorities, compliance with the regulations or orders of any governmental authorities which were not in effect at the time.

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.

## **5. Artist Fee, Payment Schedule, and Invoices.**

### **a. Artist Fee.**

i. The Artist's fee for the work and services to be performed under this Agreement shall not to exceed Three Hundred Thousand Dollars (\$300,000.00). This amount shall constitute the full payment for all services the Artist shall perform, including necessary materials and fees, related travel, permits, and necessary costs as set forth in the Scope of Services and this Agreement.

1. An initial payment of **\$X** (X Dollars) shall be disbursed to the Artist no later than forty-five (45) days from the Effective Date to provide for the design and community engagement process.

2. A second payment of **\$X** (X Dollars) shall be disbursed to the Artist no later than forty-five (45) days from design concept approval by the City.
  3. A third payment of **\$X** (X Dollars) shall be disbursed to the Artist no later than forty-five (45) days from final design approval by the City.
  4. A fourth payment of **\$X** (X Dollars) will be made upon delivery of Work.
  5. The remaining balance of **\$X** (X Dollars) shall be disbursed to the Artist no later than forty-five (45) days from final approval by the City confirming that the Artist has met all terms and conditions of this Agreement.
- b. **Invoices.** The Artist shall be responsible for the preparation and submission of invoices for the initial design fee, throughout the duration of the project, and at the conclusion and acceptance of their work.
- i. Arts and History shall be responsible for receipt and approval of invoices, and for disbursement of funds to the Artist.

- 6. Approvals.** The Artist shall allow the City to review the Artist's progress as follows:
- a. The City may request periodic reviews or updates regarding the Work's design and fabrication progress. The City may choose to request a written statement and/or photographs documenting the status of the Work.
  - b. The City may request to review and approve the Work prior to the commencement of fabrication or installation, as appropriate.
  - c. The Artist shall notify the City in writing when all services as required of both Parties by this Agreement prior to this paragraph have been completed in substantial conformity with the design.

- d. The City shall promptly notify the Artist of its final acceptance of the Work within 14 days after the Artist submitted written notice pursuant to paragraph (c) 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 Work. The final acceptance shall be understood to mean that the City acknowledges completion of the Work in substantial conformity with the Design, and that the City confirms that all services as required of both Parties by this Agreement have been completed.
- e. **Non-Conformity.** If, during the approval reviews, the City concludes that the Work does not conform to the approved design, within two weeks of the reviews, or as otherwise mutually agreed upon by the Parties in writing, the City shall provide the Artist with notice in writing specifying the non-conformity and request that the Artist address and cure the specific non-conformity. The Artist shall have thirty (30) days within which to address, cure, and correct any non-conformity. If, after resubmission, the Work still does not conform, this Agreement shall be subject to immediate termination for cause. Failure by the City to reject the design in writing in a timely fashion shall be deemed to be approval of the Work.

**7. Project Close-Out.**

- a. The Artist shall comply with all applicable federal, state, and local laws, statutes, rules, regulations, and ordinances.
- b. The Artist shall complete and submit the Conservation Report and the title and a written statement about the work. If deemed necessary by Arts & History staff, the

Artist shall consult with a conservation professional prior to submitting the Conservation Report.

- c. The Artist shall submit digital files of the approved Work to Arts & History to assist with future maintenance, repair, and public education.

#### **8. 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 Work) throughout a **warranty period of two (2) years** after the delivery of the Work. “Inherent vice” refers to a quality within the material or materials which comprise the Work which, either alone or in combination with other materials used in the Work or reacting to the environment, results in the tendency of the Work to destroy itself.
- b. The Artist represents and warrants that reasonable maintenance of the Work will not require procedures substantially in excess of reasonably contemplated by the Parties at the time of contracting.
- c. The Artist is responsible for all parts and workmanship of the Work throughout the duration of the Warranty. During this period, the Artist shall replace any defective parts or rework any defective craftsmanship in a timely fashion, satisfactorily and consistent with professional standards, at no cost to the City.
- d. If the City observes a breach of warranty described in this Section that is not curable by the Artist, the Artist shall be responsible for reimbursing the City for damages, expenses, and loss incurred by the City as a result of the breach.

However, if the Artist disclosed the risk of this breach in the Proposal and the City accepted that it may occur, it shall not be deemed a breach for purposes of this Section.

- e. Upon written notification of a defect in materials or workmanship, the Artist shall have sixty (60) days to commence repairs and shall conclude the repairs within a reasonable time thereafter

**9. Repairs, Maintenance, or Alterations.**

- a. The City may provide basic maintenance, restoration, or repairs as it deems necessary. The City shall be responsible for and pay for repairs following expiration for the two-year warranty.
- b. The Artist shall not be responsible for any damage beyond the control of the Artist to the Work, its surfaces, or environment caused by personnel of the City or its employees, visitors, or third parties (excluding subcontractors engaged by Artist).
- c. The Artist shall not be responsible for any damage to the Work caused by acts of nature, or vandalism.
- d. In the City's sole discretion, the Artist may be given an opportunity to perform or act as a consultant for the repair or restoration of the Work. If design work is necessary, the Artist shall receive compensation to be agreed upon by the Parties by separate written agreement. If after one year the City observes any breach of warranty described in this Section that is curable by the Artist, the City may contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist's lifetime. 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 or maintenance expert.

- e. In the event that the Work is damaged or destroyed, the City may, in its sole discretion, relocate, repair, or restore the Work subject to receipt of any insurance proceeds and availability of sufficient funds.
- f. All artworks owned by the City may be deaccessioned, following a careful and impartial evaluation of the artwork within the context of its designated lifespan as well as the collection as a whole. As a part of the deaccession process, Arts and History will make a reasonable effort to notify the artist and may choose to involve the artist in the disposition process. Work may only be approved for deaccession once the appropriate approvals and criteria for deaccession have been met.

**10. City's Insurance.** The City shall obtain all necessary property and commercial general liability insurance as may be required in order to protect its insurable interests for its rights and obligations described within this Agreement. Upon final acceptance of the Work, the City shall obtain property insurance for the Work which may be included as part of the City's self-insurance program.

**11. Artist's Insurance.**

- a. Artist shall procure and maintain at their expense during the contract period the following insurance coverage:
  - i. **Commercial General Liability Insurance:** Limit will not be less than \$1,000,000.00 or the minimum amount as specified in the Idaho Tort

Claims Act set forth in Title 6, Chapter 9 of the Idaho Code, whichever is higher. Coverage shall include, but not be limited to, bodily injury and property damage to third parties, contractual liability, products-completed operations, personal injury and advertising injury liability (\$1,000,000.00 limit).

- ii. **Automobile Insurance:** With minimum coverage of Five Hundred Thousand Dollars (\$500,000.00) per occurrence for owned, non-owned and hired vehicles. If Artist has no owned motor vehicles, then hired and non-owned motor vehicle liability coverage with limits not less than Five Hundred Thousand Dollars (\$500,000.00) per accident for bodily injury and property damage is required.
- iii. **Workers Compensation and Employers Liability:** Unless the Artist demonstrates that they are exempt from maintaining works compensation insurance and verified by the City, the Artist shall have and maintain during the life of this contract, statutory workers' compensation, regardless of the number of employees (including him/herself) to be engaged in work on the project under this agreement in the statutory limits as required by law and employers' liability with a limit of no less than \$500,000.00 for bodily injury by accident or disease. In case any such work is sublet, the Artist shall require the subcontractor to provide workers compensation insurance for her and any/all the subcontractor's employees engaged in such work. The Artist shall provide proof of insurance to the City prior to the start of work.

- b. Artist hereby grants to the City a waiver of any right to subrogation which any insurer of the Artist may acquire against the City by virtue of the payment of any loss under such insurance. The Artist agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. All of Artist's policies shall be primary and the Artist agrees that any insurance maintained by the City shall be non-contributing with respect to Artist's insurance. The Artist shall advise the City of any cancellation, non-renewal, or material change in any policy within five business days of notification of such action.
- c. By requiring the Artist to maintain insurance with the City named as an additional insured herein, the City does not agree that such coverage and limits will necessarily be adequate to protect Artist, or such coverage and limits are a limitation on Artist's liability under the indemnities granted to the City in this Agreement. The Artist may use commercial umbrella/excess liability insurance so that the Artist has the flexibility to select the best combination of primary and excess limits to meet the total insurance limits required by this Agreement. If the Artist maintains higher limits than the minimum shown above, the City requires and shall be entitled to coverage for the higher limits maintained. Any deductibles or self-insured retentions must be declared to and approved by the City.
- d. The failure of the City at any time to enforce the insurance provisions, to demand such certificate or other evidence of full compliance with the insurance



requirements, or to identify a deficiency from evidence that is provided shall not constitute a waiver of those provisions nor in any respect reduce the obligations of the Artist to maintain such insurance or to defend and hold City harmless with respect to any items of injury or damage covered by this Agreement.

- e. Artist shall provide Arts and History with a valid certificate of insurance and amendatory endorsements or copies of the applicable policy language affecting coverage, in advance of the performance of any work and as soon as possible after renewal, exhibiting coverage as required by the City's contract terms and conditions. Failure to obtain the required documents prior to the work beginning shall not waive the Artist's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. The Artist shall be responsible for ensuring that all subcontractors independently carry insurance appropriate to cover each subcontractors' exposures or that all such liabilities are covered under Artist's policies. The Certificate of Insurance shall be provided on the industry standard form (ACORD 25) or other form acceptable to the City. Certificates of insurance shall be issued to:

City of Boise  
Department of Arts & History  
Post Office Box 500  
Boise, Idaho 83701

**12. Indemnification.** The Artist shall indemnify, defend, save, release, and hold harmless the City, its elected officials, officers, employees, agents, and volunteers, from and for

any and all liability, losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses, including reasonable attorney fees, arising from all acts or omissions to act of the Artist or his/her servants, officers, agents employees, guests, and business invitees in rendering services under this contract or otherwise caused or incurred by the Artist, his/her servants, officers, agents employees, guests, and business invitees, and not caused by or arising out of the tortious conduct of the City or its employees. The limits of insurance will not be deemed a limitation of the covenants to indemnify, save and hold harmless the City, its elected officials, officers, employees, agents, and volunteers. If the City becomes liable for an amount in excess of the Artist's insurance limits, the Artist covenants and agrees to indemnify, save, defend, release, and hold harmless the City, its elected officials, officers, employees, agents, and volunteers, from and for any and all liability, losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses, including reasonable attorney fees, to the extent permitted by law.

The Artist represents and warrants that any and all materials or deliverables, including, but not limited to: the design, and the Works, provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. The Artist agrees to indemnify, save, defend, release, and hold harmless the City, its elected officials, officers, employees, agents, contractors, licensees, successors or assigns from and against any injury, loss, liability, expense claim, law suits, and damages arising from the Artist's Artwork/Work, including but not limited to copyright, trademark, patent or other intellectual property infringement or violations. If deliverables,

materials, or the Work provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, the City shall have the right, in its sole discretion, to require the Artist to produce, at the Artist's own expense, a new non-infringing materials, deliverables, or Works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity.

### **13. Ownership, Copyright, and Artists' Rights.**

- a. **Ownership.** The Artist warrants that, unless otherwise stipulated, the Work is original, in that the visual component of the Work owes its creation or origin to the Artist and is not the product of copying another's work in any manner. Furthermore, the Artist warrants and represents he/she has not previously published the Work which is transferred by, and the subject of, this Agreement and that the Artist is the sole owner of all rights therein. Upon final approval and acceptance of the Work, subject to delivery, installation, and final payment, the City shall own the Work. Except as set forth in Sections 15(b) and 15(c), herein, the Artist hereby expressly waives any ownership right, title or interest in the original file and the documentation of the Work.
- b. **Ownership of Copyright.** The City shall own the right, title and ownership of the copyright of the Work. Models or drawings shall not be identified or represented to be the finished Work. The Artist shall be identified, whenever possible, on all printed material, signage, websites or other promotional material as the original creator of the design and the Work. The Artist shall retain the right to claim authorship of the design of the Work and may utilize such authorship in any of his/her printed material or other promotional material

pursuant to the license granted to the Artist in section 15(b). The grant of rights under this section shall survive the expiration or early termination of this Agreement.

- c. **Waivers and Relinquishments of Rights.** The Artist agrees to relinquish all ownership rights, title, and interest to the Work created for the Project and hereby expressly waives the right of integrity, but not attribution, with respect to the Work as conferred by the federal Visual Rights Act of 1990, Title 17 U.S.C. Sections 101, *et seq.* If at any time following final approval, the City chooses to move or modify the Work, the City will make reasonable attempts to contact and to notify the Artist regarding the City's plans, provided that the Artist shall have no right to override or veto the City's plans. The Artist hereby waives his/her right to file a claim or demand of any type against the City based upon any future decision regarding the placement or modification of the Work, including those granted pursuant to the Copyright Act of 1976 and the Visual Rights Act of 1990. To the extent that the provisions of this Agreement differ from the Copyright Act of 1976 and Visual Rights Act of 1990, the provisions of this Agreement shall govern and the Artist expressly waives any such differences.

#### **14. Changes to the Work.**

a. **Material Changes After Acceptance/Completion:**

- i. If any material change occurs to the Work after final acceptance by the City (whether such change is an intentional act of a third party, an accident, or an act of nature), including but not limited to a change to the exterior surface

of the Work or the interrelationship or relative locations of the parts of the Work, the City reserves the right to determine, after consultation with an independent, professional art conservator, if, when and how any repair or restoration to the Work can be made, and the nature, scope and anticipated cost of any such repair or restoration. The City reserves the right to contract with a conservator or other professional, rather than the Artist, to perform any such repairs or restoration.

- ii. The City reserves the right to manage its buildings, facilities, and public sites for public purposes, and in doing so, may determine that it is necessary to relocate or remove the Work and/or modify the site in/on which it is located. The City shall not relocate or remove the Work and/or substantially modify the site in/on which it is located without attempting to notify the Artist of the proposed change; provided, however, the Artist shall have no right to object to any such relocation, removal, or modification.
- iii. If a modification of the Work occurs, the Artist may give written notice to the City requesting that her name and the Work be disassociated, and the Work shall no longer be designated as the Artist's Work.
- iv. For purposes of this Agreement, no modification of the Work resulting from the passage of time or the inherent nature of the materials used in the Work shall constitute a modification. In addition, no modification of the Work resulting from conservation or public presentation (including but not limited to lighting and placement) shall constitute a modification that is prejudicial

to the Artist's honor or reputation or for which the Artist may claim relief or any remedy from the City.

- v. The action of the City in the exercise of its governmental powers (including but not limited to the issuing of any permit for the redevelopment of land or any structure thereon other than action by the City on the specific site of the Work) shall not constitute a modification of the Work for which the Artist may claim any form of relief from the City.
- vi. By executing this Agreement, the Artist consents to the installation of the Work in or around the site specified by this Agreement. The Artist acknowledges that such installation may subject the Work to destruction, distortion, mutilation, or other modification by reason of its removal from that location.

#### **15. Publicity and Reproduction Rights.**

- a. In view of the intention that the final Work shall be unique, the Artist shall not make any additional exact, duplicate reproductions of the final Work, 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 future Works in the Artist's manner and style of artistic expression.
- b. The City grants to the Artist a royalty-free, irrevocable, perpetual, non-exclusive license to make two-dimensional reproductions of the Work for non-commercial purposes, including, but not limited to, reproductions used for self-promotion including social media, brochures, media publicity, and exhibition

catalogues or other similar publications provided that these rights are exercised in a tasteful and professional manner.

- c. In retaining the Artist's right of attribution as set forth in Section 13(c) above, all reproductions by the City shall contain a credit to the Artist.
- d. If the Artist wishes to make reproductions of the Work for commercial purposes, including, but not limited to, tee shirts, post cards and posters, the Parties shall execute a separate agreement to address.
- e. The Artist shall make best efforts in any public showing or other professional use of reproductions to acknowledge the City in the following form: "[Title of Work]: an original Work commissioned by and held within the public art collection of Boise City."
- f. Third Party Infringement. The City is not responsible for any third-party infringement of Artist's license and is not responsible for protecting the intellectual property rights of Artist.

**16. Nondiscrimination.**

- a. In the performance of this Agreement, the Artist and any subcontractors agree not to discriminate in their employment practices against any employee, contractor, subcontractor or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, age, disability or sexual orientation and/or gender identity/expression.
- b. The Artist also agrees to comply with all provisions of Idaho law relative to labor, and all other applicable federal, state, and/or local statutes, ordinances, and regulations relative to employment, wages, and hours of labor.

**17. Workers' Compensation:**

The Artist, an independent contractor (choose one),

Artist Initial \_\_\_\_\_ confirms the Artist has workers' compensation insurance coverage as required by state law (Attach proof of insurance).

Artist Initial \_\_\_\_\_ confirms the Artist has no employees and is not required to provide workers' compensation per Idaho state law (Idaho Code §72-212).

The Artist understands and agrees to indemnify, save, defend, and hold harmless, City of Boise, from any loss, claims, actions, judgments for damages, costs or expenses caused by injury to Artist. In case the Artist employs a worker(s) or the Artist sublets any work, the Artist shall acquire or require subcontractor to obtain workers' compensation insurance and show proof of same prior to start or resumption of work.

**18. Independent Artist.** The Parties intend that this Agreement create only an independent contractor relationship and that the Artist is not an employee, agent, joint venturer or partner of Arts and History or the City. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the Artist and the City or between the Artist and any official, agent or employee of the City. The Artist shall retain the right to perform services for others during the term of this Agreement.

**19. Attorney's Fees.** If either Party brings any action or proceeding to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, in addition to any other relief awarded, the prevailing Party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction.



- 20. Agreement Made in Idaho.** The laws of the State of Idaho shall govern the validity, interpretation, performance and enforcement of this Agreement. In the event of a dispute, venue shall be in the courts in Ada County, Idaho.
- 21. Cumulative Rights and Remedies.** All rights and remedies here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.
- 22. Agreement Made in Writing.** This Agreement contains all agreements and conditions made between the Parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the Parties hereto or their respective successors in interest.
- 23. Termination for Cause.** If either Party willfully or negligently fails to fulfill its obligations under this Agreement, the other Party shall have the right to terminate the agreement by giving written notice to the defaulting Party of its intent to terminate and specify the grounds for termination. The defaulting Party shall have thirty (30) days after receipt of the notice to cure the default. If the defaulting Party does not cure the default, this Agreement shall terminate. In the event of termination for non-performance by the City, it shall compensate the Artist for all phases of the Scope of Services the Artist has successfully completed and any additional services and materials performed or supplied prior to termination; provided however, that such payment shall be limited to the amount of compensation set forth herein. In the event of default by the Artist, except that caused by the death or incapacity of the Artist, all finished and unfinished drawings, photographs, and other Work products prepared and

submitted or prepared for submission under this agreement shall, at the City's option, become its property. This shall not relieve the Artist of any liability for damages sustained by virtue of the Artist's breach or default of this Agreement and the City may reasonably withhold payments due until the exact amount of damages has been determined.

**24. Termination for Convenience of City.** The City may terminate this Agreement for any reason at any time by giving at least fifteen (15) days' notice in writing to the Artist. If the Agreement is terminated by the City as provided herein, the City shall compensate the Artist for all phases of the Scope of Services the Artist has completed up to the date of written notice of termination and any additional services and materials performed or supplied prior to termination, less payments of compensation the City has previously made, not to exceed the amount set forth in Section 5(a)(i). If payments the City has previously made exceed the amount of compensation due hereunder, the Artist shall immediately refund the unearned balance to the City. If the City terminates this Agreement due to the fault of the Artist, Section 24 shall apply.

**25. Severability.** If any provision of this Agreement or application thereof is held invalid, such invalidity will not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to that end, the provisions hereof are declared to be severable.

**26. Party Representatives.** For purposes of this Agreement the following persons or their designees shall act as Party representatives:

**Arts and History:** Stephanie Johnson or her designee

**Artist:** ARTIST

**27. Successors and Assigns.** All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon each Party and their successors, assigns, legal representatives, heirs, executors and administrators.

**28. Effective Date.** The effective date of this Agreement shall be upon the Parties mutual acceptance of this Agreement.

**29. Renewal.** This agreement shall not be valid for more than one year from the date of approval by the Owner. This agreement is renewable upon mutual written agreement by both Parties. Up to three renewals shall be allowed under this Agreement.

**30. Notices.** Written notices to the Parties shall be given by registered or certified mail, postage prepaid, and addressed to said parties at the addresses below, unless otherwise designated by written notice to the other Parties:

<b>Boise City Department of Arts and History</b>	<b>ARTIST</b>
P.O. Box 500	ADDRESS
Boise, Idaho 83701-0500	ADDRESS

All such notices, except as otherwise provided, may either be delivered personally deposited in the United States mail, properly addressed with postage fully prepaid by certified or registered mail, return receipt requested, and shall be effective five (5) days after deposit in the mail.

**[End of text; signatures on following page.]**

IN WITNESS HEREOF, the City and the Artist have executed this Agreement effective  
this \_\_\_\_ day of \_\_\_\_\_, 2023.

**Artist's Name**  
**Street Address/PO Box**  
**City, State Zip Code**

**Email:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

### ACKNOWLEDGEMENT

State of \_\_\_\_\_)

) ss

County of \_\_\_\_\_)

On this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me personally appeared \_\_\_\_\_

known to me and known by me to be the person who executed the above instrument,

who, being by me first duly sworn, did depose and say that he/she is

\_\_\_\_\_

and that he/she executed the foregoing instrument on behalf of said firm for the use and purposes stated therein.

**Witness my hand and official seal**

\_\_\_\_\_

(Notary signature)

(SEAL)

APPROVED AS TO FORM AND CONTENT:

\_\_\_\_\_  
Department of Arts & History                      Date

\_\_\_\_\_  
Purchasing Agent                                      Date

\_\_\_\_\_  
Legal Department                                      Date

\_\_\_\_\_  
Risk Management                                      Date

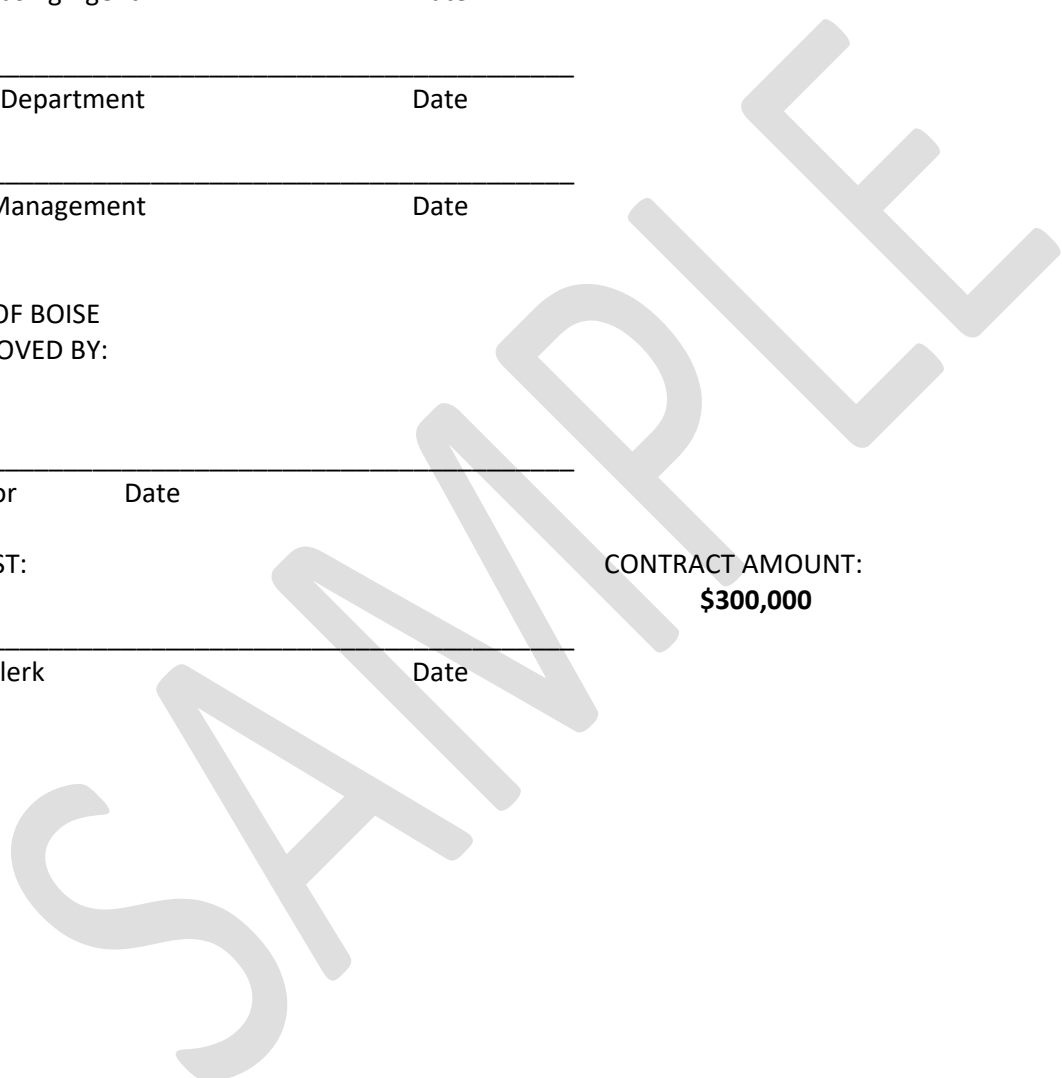
CITY OF BOISE  
APPROVED BY:

\_\_\_\_\_  
Mayor                      Date

ATTEST:

CONTRACT AMOUNT:  
**\$300,000**

\_\_\_\_\_  
City Clerk    Date



**EXHIBIT A**

Project Site: 521 W Grove St, Boise, Idaho



## EXHIBIT B

### Project Description

Full project description to be developed ahead of contracting with selected artist or artist team. Description may include but is not limited to the following:

The Boise Valley is the traditional, ancestral, and unceded territory of the Shoshone, Bannock, and Northern Paiute peoples and prior to Euro-American settlement, the land was sagebrush desert. Grove Street was one of the originally platted streets on the city's first plat, in 1864. Historical records illustrate significant trends in urban development along its length, from a mixed-use residential area with lush tree groves, to a commercial neighborhood dominated by the automobile industry in the mid-20<sup>th</sup> century. Today, the street is home again to residents, and is beginning to return to a dense, mixed-use corridor. In examining the history of Grove Street it's mixed-use past, the importance of irrigation, innovations in transportation, a wide variety of industrial endeavors, and its history as a neighborhood to a variety of residents, sheds light on the area's evolution. For more information, visit [Historic Grove Street](#) and [521 West Grove Street History](#).

The 521 W Grove Street Public Space Project is a partnership between Capital City Development Corporation (CCDC), Boise Parks and Recreation, and the Boise City Department of Arts & History to bring a new public space to downtown that celebrates the history of the Old Boise Neighborhood. The new public space, as envisioned by the Old Boise community, would potentially provide an area where people can enjoy the outdoors, gather for community events and street festivals on the adjacent Basque Block, and learn about and connect with the multi-cultural and historic richness of one of Boise's oldest neighborhoods.

The selected artist or artist team will work with the public space design team to impact the aesthetic design of the public site and identify opportunities for integrated artworks to be incorporated into the public site. The project should be informed by a meaningful community engagement process in order to reflect identity and communicate an authentic and unique sense of place. The selected artist(s) will design an iconic and meaningful artwork that embodies the stories and experiences of past residents of the neighborhood. This area was once home to a variety of people, and artists are encouraged to consider how they might engage with and reflect underrepresented individuals that call(ed) this neighborhood home. Artists are encouraged to explore individual stories, shared experiences, and common histories, myths, and folklores.

The selected artist or artist team will be responsible for designing the work, working with the City's project team and Arts & History representatives upon signing this Agreement. The artist will develop conceptual design options, informed by community engagement, which will be provided to Arts and History and the project team for feedback and final approval of one option. The artist shall have structural drawings of the approved design option stamped by an Idaho State licensed engineer. The fabrication of the Work shall not commence until final approval of the refined conceptual design drawings are received from Arts and History and the project design team. The artist shall work with the project team and Arts and History to complete any design decisions. The artist shall be responsible for hiring any necessary sub-contractors to plan, implement and coordinate the fabrication and delivery of the Work. Installation of the work will be coordinated with the project's general contractor and be paid for separately in an amount not to exceed \$50,000. Artist shall communicate clearly with installers regarding foundation needs, equipment for installing, and technical issues regarding handling the artwork.

In addition to other agreed to responsibilities, the artist shall attend meetings in person or by phone with representatives of the project team, the City and/or Arts and History to provide periodic progress reports.

SAMPLE



**EXHIBIT C**

Timeline, Approvals, and Payment Plan

SCHEDULE	Phase / Section	Description	Invoice Amount Due
June 2023		Upon receipt of contract	20%
PHASE I – Design Team Input: Attend design team meetings to provide input for the overall site design from an artistic and aesthetic perspective as well as for art integration purposes.			
July – August 2023	Phase 1, Section 1	Attend design team meetings to orient to the larger project and provide input	
PHASE 1 – Community Engagement: Artist will conduct community engagement in conjunction with providing design team input			
July 2023	Phase I, section 2	Deliver Community Engagement Plan	
		<b>Approval: City</b>	
July – September 2023	Phase I, section 2	Execute and present findings from community engagement effort	
		<b>Approval: City</b>	
PHASE II - Conceptual Design: Conceptual design must include a narrative describing the design, proposed materials, electrical and infrastructure needs/coordination, any conservation consultation, drawings, and draft engineering documents prepared by a registered professional. Once artwork is accepted, City will issue Letter to Proceed.			
By August 30, 2023	Phase I, Section 1	Delivery of Preliminary Concept (location for Design Review)	

August-September, 2023		Delivery of Concept	20%
September - October, 2023		Presentation and review of Concept and technical info (draft structural engineering)	
		<b>Approval: City, technical review, structural engineering draft</b>	
PHASE II - Final Design: Proposal should be 95% complete and must include a narrative describing response to feedback (technical, infrastructure, electrical), steps for fabrication and timeline, conservation consultation for final materials, and refined drawings.			
October – December 2023	Phase I, Section 2	Deliver and present Final Design Proposal	
January – February 2024	Phase I Section 3	Technical review of the Final Design Proposal completed	30%
		<b>Approval: City, technical review, stamped engineer drawings, conservator</b>	
PHASE III - Fabrication			
February 2024	Phase II	Negotiate timeline dates for Fabrication, Delivery and Install	
April 2023	Phase II, Section 1	Fabrication check-in 30%	
May 2023	Phase II, Section 1	Fabrication check-in 60%	

June 2023	Phase II, Section 1	Fabrication check-in 90%	
PHASE III - Delivery			
July 2024	Phase II, Section 2	Delivery & Schedule	20%
PHASE III - Installation			
August – September 2024	Phase II, Section 3	Install	
PHASE III - Closeout			
December 2024	Phase II, Section 4	Final Documentation	10%

SAMPLE