June 7, 2010

BOARD OF SUPERVISORS
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

PLEASURE POINT PARK / PARKWAY PUBLIC ART

Dear Members of the Board:

This letter is to recommend a public art component for Pleasure Point Park / Parkway (PPP). The 2009-2010 Public Art Plan included a public art component for PPP, with a budget of $14,000. Consistent with the Percent for Arts Program, the funds necessary for the artist's contract will come from the Redevelopment Agency (RDA). Redevelopment funds may be used because it has been determined that the improvements are of benefit to the project area or the immediate neighborhood in which the project is located, that no other means of financing the improvements are available to the community, that the construction of the project will assist in the elimination of blight, and that the project is consistent with the Redevelopment Agency's Five Year Implementation Plan. Elsewhere on your agenda today, RDA is recommending approval of the financing of this public art component.

Background
The County Arts Commission formed an Art Selection Panel (Panel) for the PPP public art project. The Panel met in March of 2010 to review seven proposals. Two of the artists were invited to participate in the second phase of the selection process, an interview with the Panel in late April. The artists were asked to provide additional, detailed information about their proposals, including drawings and/or a maquette, to present at their interview. Based on the quality and appropriateness of her proposal and her receptiveness to the public art process, the Panel recommended that Confluence Design and Fabrication LLC (Ann Cunningham) continue in the selection process for the public art component for PPP.

Artist Proposal
The proposed artwork for PPP includes three bronze plaques which will range in size from between 15" x 20" and 13" x 23", with the final choice of subject matter determining the final size. The plaque imagery will be reflective of the animal life of the Pleasure Point area (Exhibit 1). Explanatory text in both English and Braille will accompany the images on the plaques. Each plaque will be installed on an approximately 30" high concrete base, making the ARTWORK wheelchair accessible. The chosen images will be a celebration of the marine environment specific to the Pleasure Point area, as a reminder of what lives in and around the ocean. The individual designs may change, as the artists learn more about flora.
and fauna found in the Pleasure Point area.

The anticipated total cost is not-to-exceed $13,450.00. The balance of funds, $550.00, is set aside for identifying plaques, and other relevant items necessary to complete the public art project.

**Arts Commission Recommendation**

At the June 2, 2010 meeting of the Arts Commission, the Commissioners reviewed the recommendation of the Panel. The Commissioners felt that Ann Cunningham's proposed project is a good fit for PPP, as well as the associated Monterey Bay Marine Sanctuary Trail elements and the natural environment, and that it is accessible, durable, and will work well in this high public-use environment.

As a result, the Arts Commission recommends that your Board approve the selection of Confluence Design and Fabrication LLC as the public artist for Pleasure Point Park / Parkway. The agreement mentioned above is attached for your approval.

It is therefore RECOMMENDED that your Board:

1. Adopt the Resolution accepting unanticipated revenue from Redevelopment Agency in the amount of $86,000; and
2. Make findings that the improvements are of benefit to the project area or the immediate neighborhood in which the project area is located, that no other reasonable means of financing the improvements are available to the community, that construction of the project will assist in the elimination of blight, and that the project is consistent with the Redevelopment Agency's Five Year Implementation Plan; and
3. Approve the selection of Confluence Design and Fabrication, LLC as the public artist for the Pleasure Point Park / Parkway public art project; and
4. Approve the attached agreement in the amount of $13,450; and
5. Authorize the Parks Director to sign the agreement and take related actions as needed on behalf of the County.

Sincerely,

Joe Schultz
Director

SUSAN A. MAURIELLO
County Administrative Officer

RECOMMENDED:

JS:KD:cb

Attachments: Exhibit 1, Contract, ADM-29
cc: CAO, AUD, RDA, Arts Commission, Artist
Confluence Design & Fabrication, LLC
Pleasure Point Park / Parkway - Public Art Project

Proposed Design 1 of 3

Sketch of Base
bronze panel

Example of Previous Work
Bas Relief Sculpture

EXHIBIT 1
BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

Resolution No. _______________________

On the motion of Supervisor _______________________
Duly seconded by Supervisor _______________________
The following resolution is adopted:

RESOLUTION ACCEPTING UNANTICIPATED REVENUE

WHEREAS, the County of Santa Cruz is a recipient of funds from the Redevelopment Agency for the Pleasure Point Public Art; and

WHEREAS, the County is a recipient of funds in the amount of $14,000 which are either in excess of those anticipated or are not specifically set forth in the current fiscal year budget of the County; and

WHEREAS, pursuant to Government Code §29130(c) / 29064(b), such funds may be made available for specific appropriation by four-fifths vote of the Board of Supervisors.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Santa Cruz County Auditor-Controller accept funds in the amount of $14,000 into Parks/Art in Public Places:

<table>
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<tr>
<th>T/C</th>
<th>Index Number</th>
<th>Subobject Number</th>
<th>Account Name</th>
<th>Amount</th>
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<td>001</td>
<td>134909</td>
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<td>Contrib fr Outside Agencies</td>
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and that such funds be and are hereby appropriated as follows:

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<tr>
<th>T/C</th>
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<th>Subobject Number</th>
<th>Account Name</th>
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<tr>
<td>021</td>
<td>134909</td>
<td>6610</td>
<td>Structures &amp; Improv.</td>
<td>$14,000</td>
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DEPARTMENT HEAD: I hereby certify that the fiscal provisions have been researched and that the Revenue has been received within the current fiscal year.

By: ____________________________ Date: 6-10-10
RESOLUTION ACCEPTING UNANTICIPATED REVENUE

COUNTY ADMINISTRATIVE OFFICER / __________________________/Recommended to Board
/ __________________________/Not recommended to Board

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, the __________ day of __________, 2010 by the following vote:
(requires four-fifths vote of approval)

AYES: __________________________ Supervisors

NOES: __________________________ Supervisors

ABSENT: __________________________ Supervisors

ABSTAIN: __________________________ Supervisors

_______________________________ Chair of the Board of Supervisors

ATTEST: __________________________ Clerk of the Board

Approved as to form:

_______________________________ County Counsel

APPROVED AS TO ACCOUNTING
DETAIL:

_______________________________ Auditor-Controller

Distribution:
Auditor-Controller
County Counsel
County Administrative Officer
Parks Dept.
TO: Clerk of Board  
FROM: Kathy DeWild  
RE: Public Art Item for June 22nd  
DATE: June 8, 2010

Please list this item at the beginning of the Agenda as the artist will be there and are traveling to/from Colorado just for the meeting.
COUNTY OF SANTA CRUZ
REQUEST FOR APPROVAL OF AGREEMENT

TO: Board of Supervisors
    County Administrative Office
    Auditor Controller
FROM: Parks, Open Space & Cultural Services (Department)
    [Signature] (Date)
BY: [Signature] (Date)

AGREEMENT TYPE (Check One)

Expenditure Agreement ☑ Revenue Agreement ☐

The Board of Supervisors is hereby requested to approve the attached agreement and authorize the execution of same.

1. Said agreement is between the County of Santa Cruz Parks Department (Department/Agency) and Confluence Design & Fabrication, LLC, 11697 W. 13th Ave., Golden CO 80401 (Name/Address).

2. The agreement will provide The design, fabrication, delivery and installation of a work of art at the Pleasure Point Park/Parkway.

3. Period of the agreement is from June 22, 2010 to until work is complete.

4. Anticipated Cost is $13,450.00. □ Fixed □ Monthly Rate □ Annual Rate ☑ Not to Exceed

5. Detail: □ On Continuing Agreements List for FY □ Contract No: ☑ 1st Time Agreement
   ☐ Section II ☐ No Board letter required, will be listed under Item B
   ☐ Section III ☐ Board letter required
   ☐ Section IV ☐ Revenue Agreement

6. Appropriations/Revenues are available and are budgeted in 134909 (Index) 6610 (Sub object).

NOTE: IF APPROPRIATIONS ARE INSUFFICIENT, ATTACHED COMPLETED AUD-74 OR AUD-60.

Proposal and accounting detail reviewed and approved. It is recommended that the Board of Supervisors approve the agreement and authorize

Director of Parks Department (Dept/Agency Head) to execute on behalf of the County of Santa Cruz (Department/Agency).

Date: 16 June 2010

By: [Signature]
County Administrative Office

Distribution:
Board of Supervisors - White
Auditor Controller - Canary
Auditor-Controller - Pink
Department - Gold

State of California
County of Santa Cruz
I [Signature] ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, State of California, do hereby certify that the foregoing request for approval of agreement was approved by said Board of Supervisors as recommended by the County Administrative Office by an order duly entered in the minutes of said Board on 20.

Auditor-Controller Use Only

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Date

TC110

Auditor Description

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Index
Sub object
User Code
INDEPENDENT ARTIST AGREEMENT
PLEASURE POINT PARK & PARKWAY PUBLIC ART
CONFLUENCE DESIGN AND FABRICATION, LLC

THIS CONTRACT is entered into this 22nd day of June, 2010, by and between the COUNTY OF SANTA CRUZ, hereinafter called COUNTY, and Confluence Design and Fabrication, LLC (Ann Cunningham), hereinafter called ARTIST.

Whereas, the COUNTY established a Percent for Arts Program on April 2, 1991, requiring that up to 2% of the construction cost of a project be used to integrate public art into the project, enhancing the development of those public sites; and

Whereas, the ARTIST has been selected pursuant to procedures adopted by the COUNTY to design, fabricate, deliver and install a work of art, on such terms and conditions as follow;

Now therefore, the parties agree as follows:

1. DUTIES.
ARTIST agrees to design, fabricate, deliver and install a work of art, generally described as follows: Three bronze plaques which will range in size from between 15” x 20” and 13” x 23”, with the final choice of subject matter determining the final size. The plaque imagery will be reflective of the animal life of the Pleasure Point area (e.g. otters, seals, dolphins). Explanatory text in both English and Braille will accompany the images on the plaques. Each plaque will be installed on an approximately 30” high concrete base. The work of art is intended to be installed at PLEASURE POINT PARK AND PARKWAY (hereafter called “Site”). A more detailed description of ARTIST’s duties is included in Attachment A (Scope of Work) and incorporated herein by reference. For purposes of this Agreement, the specific work of art created by ARTIST shall be referred to as the “ARTWORK” and the range of duties required of ARTIST under this Agreement to design, fabricate, deliver and install the ARTWORK shall be referred to as the “WORK.”

2. COMPENSATION.
In consideration for ARTIST accomplishing said result, COUNTY agrees to pay ARTIST $13,450 (Thirteen Thousand Four Hundred Fifty dollars). Payment shall be made as set forth in Attachment B (Payment Schedule). It is understood that total compensation for all services, deliverables and travel in this Contract shall not exceed $13,450 (Thirteen Thousand Four Hundred Fifty dollars).

All requests for payment must be accompanied by a detailed invoice and submitted to: County of Santa Cruz Department of Parks, Open Space, and Cultural Services, attn: Kathy DeWild, Recreation Supervisor, 979 17th Avenue, Santa Cruz, California 95062.

COUNTY agrees to exercise due diligence in the payment of invoices received from ARTIST provided no claims have been made against the WORK. If a claim(s) has/have been filed
against the WORK within 45 days of acceptance, final payment will be withheld until COUNTY can ascertain the basis and amount of said claim. COUNTY will consider and determine the claim(s) and it will be the responsibility of ARTIST to furnish information and details as may be required by the COUNTY to determine the facts or contentions involved in the claim(s). Failure to submit such information within 60 days of being notified by the COUNTY will be sufficient action for denying final payment. Furthermore, COUNTY may use final payment and any other contract funds not yet disbursed to ARTIST to pay any outstanding claim(s).

3. **TERM.**
The term of this contract shall be 12 months from the date of execution of this Contract or until the WORK described herein is completed and installed as indicated in Attachment A, whichever occurs first. This Contract may be extended upon mutual consent of the parties.

4. **RIGHT, TITLE AND INTEREST TO THE WORK; RISK OF LOSS.**
   A. All work produced under this CONTRACT shall be the property of the COUNTY. All documents including, but not limited to, reproducible copies of tracings, drawings, estimates, field notes, investigations, design analysis and studies which are prepared in the performance of the creation of the WORK are to be and remain the property of the COUNTY and are to be delivered to the Department of Parks, Open Space and Cultural Services at 979 17th Avenue, Santa Cruz, California 95062.

   B. Upon final payment to ARTIST, all right, title and interest in the WORK shall become vested in the COUNTY. ARTIST will retain all right, title and interest to any designs that are rejected by the COUNTY.

   C. ARTIST bears the risk of damage to or loss of the WORK until title passes to the COUNTY, and shall take all necessary measures to protect the WORK from loss or damage until title passes. ARTIST, at ARTIST's own expense, shall rebuild, repair, restore and make good all damage to any portion of the WORK that occurs prior to title passing to the COUNTY. However, ARTIST is not responsible for damage occurring during installation of the WORK through the sole negligence of COUNTY or COUNTY's general contractor.

5. **INTELLECTUAL PROPERTY AND PUBLICITY RIGHTS.**
   A. Copyright. Subject to usage rights and licenses granted to COUNTY hereunder, ARTIST shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement. ARTIST’s copyright shall not extend to predominantly utilitarian aspects of the WORK, such as landscaping elements, furnishings, or other similar objects. If ARTIST is comprised of two or more individual persons, the individual persons shall be deemed joint authors of the WORK.

   B. COUNTY’s Intellectual Property License. ARTIST grants to COUNTY and to COUNTY’s agents, authorized contractors, and assigns, an unlimited, non-exclusive and irrevocable license to do the following with respect to the WORK, the ARTWORK, and any original works of authorship created under this Agreement, whether in whole or in part, in all media (including electronic and digital) throughout the universe:
(1) Implementation, Use and Display. COUNTY may use and display the ARTWORK. To the extent the ARTIST's WORK under this Agreement involves design elements that are incorporated by COUNTY into the design of the Site, COUNTY may implement such elements at the Site.

(2) Reproduction and Distribution. COUNTY may make, display and distribute, and authorize the making, display and distribution of, photographs and other 2-dimensional reproductions. COUNTY may use such reproductions for any COUNTY-related purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic and multimedia publicity, gifts for the COUNTY benefactors, documentation of COUNTY's public art collection, and catalogues or similar publications. COUNTY shall ensure that such reproductions are made in a professional and tasteful manner, in the sole and reasonable judgment of the COUNTY. Any proceeds from the sale of any such reproductions shall be used to maintain and support COUNTY's public art collection or for any other public purposes that COUNTY deems appropriate. The license granted hereunder does not include the right to create reproductions on 3-dimensional items such as tote-bags, T-shirts, coffee mugs and similar merchandise. Such reproductions may only be created pursuant to separate license agreements with ARTIST.

(3) Public Records Requests. Any documents provided by ARTIST to COUNTY are public records and COUNTY may authorize third parties to review and reproduce such documents pursuant to public records laws, including the California Public Records Act.

C. Third Party Infringement. The COUNTY is not responsible for any third party infringement of ARTIST's copyright and is not responsible for protecting the intellectual property rights of ARTIST.

D. Credit. ARTIST agrees that all formal references to the ARTWORK and any reproductions of the ARTWORK in any form shall include the following credit: "Collection of the County of Santa Cruz." COUNTY shall credit ARTIST for the ARTWORK upon publication of any two dimensional reproductions of the ARTWORK.

E. Publicity. COUNTY shall have the right to use ARTIST's name, likeness, and/or biographical information in connection with the display or reproduction and distribution of the ARTWORK, including all advertising and promotional materials regarding COUNTY. ARTIST shall be reasonably available to attend any inauguration or presentation ceremonies relating to the public dedication of the ARTWORK.

F. Trademark. In the event that COUNTY's use of the ARTWORK creates trademark, service mark or trade dress rights in connection with the ARTWORK, COUNTY shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.

G. Unique. ARTIST warrants that the design of the ARTWORK as expressed in the Proposal is an edition of one, and that neither ARTIST nor ARTIST's agents will execute or authorize another to execute another work of the same or substantially similar image.
design, dimensions and materials as the ARTWORK. ARTIST may create works that utilize or incorporate various individual art elements that comprise the ARTWORK, so long as the work utilizing or incorporating such individual elements (1) does not consist predominantly of such elements (2) is not the same or substantially similar in image, design, dimensions and materials as the ARTWORK, and (3) is not displayed in an environment that is the same or substantially similar to the environment in which the ARTWORK is to be displayed at the Site. This warranty shall continue in effect for a period consisting of the life of ARTIST plus 70 years or for the duration of the ARTWORK’s copyright protected status, whichever is longer, and shall be binding on ARTIST and ARTIST’s heirs and assigns. In the case where ARTIST is comprised of two or more individual persons or a group of people, the measuring life shall be the life of the last surviving individual person comprising ARTIST. Recognizing that COUNTY has no adequate remedy at law for ARTIST’s violation of this warranty, ARTIST agrees that, in the event ARTIST breaches this warranty, COUNTY shall be entitled to enjoin ARTIST’s breach. Nothing hereunder shall be construed to constrain ARTIST from creating posters, notecards, or other reproductions of the ARTWORK.

H. Resale Royalty. If COUNTY sells the ARTWORK as an individual piece, separate from or itemized as part of a real property transaction, COUNTY shall pay to ARTIST a resale royalty to the extent required by law, based upon the sale price of the ARTWORK. If COUNTY sells the ARTWORK as a fixture to real property, and if the resale value of the ARTWORK is not itemized separately from the value of the real property, the parties agree that the resale price of the ARTWORK shall be presumed to be less than the purchase price paid by COUNTY under this Agreement. Thus, COUNTY has no obligation to pay resale royalties pursuant to California Civil Code §986 or any other law requiring the payment of resale royalties.

6. INSTRUCTIONS FOR MAINTENANCE.
Unless specifically provided in this Agreement, ARTIST shall not be responsible for ongoing maintenance of the ARTWORK. ARTIST shall provide the COUNTY a General Maintenance Plan for the ARTWORK, generally describing anticipated maintenance requirements; a recommended maintenance schedule; anticipated and required care and/or replacement of any part of the ARTWORK and associated moving parts or equipment; and written instructions and manufacturer’s specifications for reasonably foreseeable maintenance and preservation activities relating to the ARTWORK. The ARTWORK must be durable, taking into consideration that the Site may be an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. ARTIST must ensure that all maintenance requirements will be reasonable in terms of time and expense.

Although COUNTY strives to maintain its public art collection in good repair and condition, COUNTY is not required by this Agreement to maintain the ARTWORK to any particular standard. COUNTY may determine to allow the ARTWORK to deteriorate in accordance with the ARTWORK’s temporary life span, if deemed appropriate by COUNTY or if COUNTY lacks sufficient funds for required maintenance and/or conservation. If the ARTWORK suffers deterioration, COUNTY shall have sole discretion to determine whether to remove the ARTWORK from display as a result of deterioration, or whether to maintain the ARTWORK on display despite its deteriorated condition.
7. **ARTIST’S WARRANTIES.**

A. Warranty of Title. ARTIST represents and warrants that ARTIST is the sole author of the ARTWORK and that ARTIST is the sole owner of any and all copyrights pertaining to the ARTWORK. ARTIST further represents that the ARTWORK is free and clear of any liens and that there are no outstanding disputes in connection with property rights, intellectual property rights, or any other rights in the ARTWORK or any parts of the ARTWORK.

B. Warranty of Workmanship. ARTIST represents and warrants that, for a period of three years after final acceptance, the WORK will be free of defects in workmanship or materials, including Inherent Defects, and that the WORK will be executed in permanent, non-fugitive materials that will not tend to degrade or fade over long-term installation at the Site. “Inherent Defect” refers to a quality within the material or materials, which, either alone or in combination, results in the tendency of the WORK to destroy itself. “Inherent Defect” does not include any tendency to deteriorate that is specifically identified in writing and approved by the COUNTY. ARTIST shall, at ARTIST’s sole cost and expense, remedy any defects in workmanship or materials that appear within a period of three years from the date of final acceptance of the ARTWORK by COUNTY.

C. Warranty of Public Safety. ARTIST represents and warrants that the WORK will not contain sharp points or edges or otherwise pose a danger to public health or safety in view of the possibility of misuse, if such misuse is in a manner that was reasonably foreseeable at any time during the term of this Agreement. ARTIST warrants that the WORK will comply with any applicable requirements of the California Uniform Building Code. ARTIST agrees to cooperate with COUNTY in making or permitting adjustments to the WORK if necessary to eliminate hazards or code violations that become apparent after the WORK is finally accepted by the COUNTY.

D. Acceptable Standard of Display. ARTIST represents and warrants as follows:

1. General routine cleaning and repair of the ARTWORK and any associated working parts and/or equipment will maintain the WORK within an acceptable standard of public display;

2. Foreseeable exposure to the elements and general wear and tear will cause the WORK to experience only minor repairable damages and will not cause the WORK to fall below an acceptable standard of public display; and

3. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the WORK will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.

E. Manufacturer’s Warranties. To the extent the WORK incorporates products covered by a manufacturer’s warranty, ARTIST shall provide copies of such warranties to COUNTY.

8. **ARTIST’S MORAL RIGHTS; COUNTY’S OWNERSHIP RIGHTS.**
The COUNTY, having expended considerable public funds to commission the ARTWORK, and pursuant to its governmental responsibilities, intends to display at the Site the ARTWORK, as originally created by ARTIST, and to maintain the ARTWORK in good condition. Public artworks commissioned by the COUNTY are sometimes integrated into their sites, such that they become an integral, permanent and site-specific part of the building’s architecture or landscaped environment and removal of the ARTWORK would result in significant changes to the ARTWORK and the building’s architecture. COUNTY, however, must preserve complete flexibility to operate and manage COUNTY property in the public’s interest. Therefore, COUNTY retains the absolute right to Alter the ARTWORK in COUNTY’s sole judgment. For example, COUNTY may Alter the ARTWORK to eliminate hazard, to comply with the disabled access laws, to otherwise aid COUNTY in the management of its property and affairs, or through neglect or accident. If, during or after the term of this Agreement, COUNTY finds the Site to be inappropriate, COUNTY has the right to install the ARTWORK at an alternate location that COUNTY chooses in its sole discretion. If the ARTWORK is free-standing such that it can be removed without significant damage to the ARTWORK or the Site, and if the COUNTY authorizes the removal of the ARTWORK, the COUNTY shall take reasonable precautions to minimize Alteration of the ARTWORK during removal.

With respect to the ARTWORK produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, ARTIST waives any and all claims, arising at any time and under any circumstances, against COUNTY, its officers, agents, employees, successors and assigns, arising under the federal Visual Artist Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. If the ARTWORK is incorporated into a building such that the ARTWORK cannot be removed from the building without Alteration of the ARTWORK, ARTIST waives any and all such claims against any future owners of the Site, and its agents, officers and employees, for Alteration of the ARTWORK.

If COUNTY intends to take any action with respect to the Site or the ARTWORK that would Alter the ARTWORK, other than routine cleaning and maintenance, the following procedures shall apply:

A. Notice. Where time permits, COUNTY shall make reasonable good faith efforts to notify ARTIST at least 20 calendar days prior to authorizing any Alteration of the ARTWORK, at the last phone number or address provided by ARTIST to the Parks Director. Where time does not permit prior to Alteration of the ARTWORK – for example, in cases of public hazard, accident or unauthorized Alteration – COUNTY shall notify ARTIST within 30 calendar days after such Alteration.

B. Consultation. After receiving such notice, ARTIST shall consult with COUNTY to determine whether the ARTWORK can be restored or relocated and to attempt to come to a mutually agreeable plan for disposition of the ARTWORK. Such consultation shall be without charge by ARTIST unless otherwise specifically agreed in writing. If COUNTY intends to remove the ARTWORK, ARTIST shall consult regarding methods to
minimize or repair any Alteration to the ARTWORK caused by such removal and the potential costs of such removal.

C. Restoration. If the ARTWORK is Altered, with or without prior notice to ARTIST, and COUNTY intends to maintain the ARTWORK on display, COUNTY shall make a reasonable good faith effort to engage ARTIST in the restoration of the ARTWORK and to compensate ARTIST for ARTIST's time and efforts at fair market value, which may be the subject of a future Agreement between ARTIST and COUNTY. However, COUNTY has no obligation under this Agreement to restore the ARTWORK to its original condition, to compensate ARTIST for any restoration work, or to maintain the ARTWORK on display. If ARTIST fails or refuses to negotiate with COUNTY in good faith with respect to any restoration, COUNTY may contract with any other qualified art conservator or artist for such restoration.

D. Removal by ARTIST. Where time permits, if COUNTY intends to take action that will destroy or significantly Alter the ARTWORK, such as destruction of all or part of the Site, and COUNTY determines that it will not remove the ARTWORK itself, COUNTY shall allow ARTIST to remove the ARTWORK at ARTIST's expense within 60 days of notice from the COUNTY of the need to remove the ARTWORK, in which case title shall revert to ARTIST. If ARTIST fails to remove the ARTWORK within that 60 day period, COUNTY may Alter the ARTWORK in any manner, in COUNTY's sole discretion.

E. Remedies. If COUNTY breaches any of its obligations under this Section, ARTIST's remedies shall be limited as follows: If COUNTY inadvertently fails to provide a required prior notice of Alteration, COUNTY will provide notice as soon as it discovers the omission, and before Alteration of the ARTWORK if that remains possible. If COUNTY Alters the ARTWORK without providing ARTIST a required prior notice of Alteration, ARTIST shall be given the first right of refusal to restore the ARTWORK at the same location and COUNTY shall make reasonable efforts to provide funding for the restoration. If COUNTY funds cannot be made available after reasonable efforts are made to secure such funding, ARTIST may, but is not obligated to, restore the ARTWORK at ARTIST's expense. If ARTIST elects not to restore the ARTWORK, COUNTY may retain another artist or conservator to restore it, or may Alter the ARTWORK in any manner, at COUNTY's sole discretion.

If COUNTY Alters the ARTWORK without ARTIST's consent in a manner that is prejudicial to ARTIST's reputation, ARTIST retains the right to disclaim authorship of the ARTWORK in accordance with California Civil Code §987(d) and 17 U.S.C. §106A(a)(2).

Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, successors or assigns of COUNTY, ARTIST retains ARTIST's moral rights in the ARTWORK, as established in the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 and 989), or any other local, state, federal or international moral rights laws that protect the integrity of works of art. Accordingly, nothing herein shall prevent ARTIST from pursuing a claim for Alteration of the ARTWORK against a third party who is not an officer, employee, agent, successor or assign of COUNTY. COUNTY has no obligation to pursue claims against third
parties to remedy or prevent Alteration of the ARTWORK. However, as owner of the ARTWORK, COUNTY may pursue claims against third parties for damages or to restore the ARTWORK if the ARTWORK has been Altered without COUNTY’s authorization.

F. Definition. For purposes of this Agreement, the terms “Alter” or “Alteration” shall mean, with respect to the ARTWORK, to alter, repair, modify, remove, relocate, sell, dispose of, distort, destroy, mutilate, or deface, as those terms are understood within the context of laws protecting ARTISTS’ rights to the integrity of their artwork.

9. ACCESS TO THE DISABLED.
ARTIST acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through ARTIST, may be required to be accessible to persons with disabilities. ARTIST shall provide the services specified in this Agreement in a manner that complies with the ADA. ARTIST shall cooperate with COUNTY and allow COUNTY to take reasonable steps to ensure that the ARTWORK is accessible to the disabled, with respect to the elimination of both architectural and programmatic barriers. Such cooperation shall include assisting with modifications to the ARTWORK, or preparing or authorizing tactile models, reproductions, or other materials necessary to provide access to the ARTWORK. If requested by COUNTY, ARTIST shall engage a consultant, as part of the project budget, to review the ARTWORK for compliance with the ADA.

10. ADDITIONAL SERVICES.
If authorized by COUNTY, ARTIST will provide additional services or items (those provided beyond the basic WORK or services as described herein) which shall be paid by a negotiated fee for such item(s) or service(s).

11. EARLY TERMINATION.
Either party hereto may terminate this contract at anytime by giving 30 days written notice to the other party. In the event ARTIST abandons the WORK, defaults on any terms of this Contract or otherwise causes it to be terminated without cause prior to final acceptance of the WORK, ARTIST shall not be owed or paid any further compensation by the COUNTY, and shall remit to the COUNTY all sums of money previously paid under the terms of this Contract, with the exception of those sums of money previously paid for the fabrication of the ARTWORK, if ARTIST turns over a completed ARTWORK to the COUNTY for installation. In the event the COUNTY terminates this Contract without cause, the COUNTY shall only pay ARTIST for work completed and materials purchased towards fabrication of the ARTWORK up to the effective date of the termination.

12. INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.
ARTIST shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of this Agreement shall include, without limitation, its officers, agents, employees and volunteers) from and against:
A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature (including attorneys' fees, court costs and all other litigation expenses) which COUNTY may sustain or incur, or which may be imposed upon it for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with ARTIST'S performance under the terms of this Agreement, excepting any liability arising out of the sole negligence of the COUNTY. Such indemnification includes any damage to the person(s), or property(ies) of ARTIST and third persons. This provision applies to all claims for any infringement of the patent rights, copyright, trade secret, or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of COUNTY's acceptance of ARTIST's WORK or the use of the WORK by COUNTY.

B. Any and all federal, state and local taxes, charges, fees, or contributions required to be paid with respect to ARTIST and ARTIST'S officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

13. INSURANCE.
ARTIST, at ARTIST's sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain at minimum compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be excess of ARTIST's insurance coverage and shall not contribute to it.

If ARTIST utilizes one or more subcontractors in the performance of this Agreement, ARTIST shall obtain and maintain Independent ARTIST'S Insurance as to each subcontractor or otherwise provide evidence of insurance coverage for each subcontractor equivalent to that required of ARTIST in this Agreement, unless ARTIST and COUNTY both initial here ______.

A. Types of Insurance and Minimum Limits

(1) Worker's Compensation in the minimum statutorily required coverage amounts. COUNTY shall not require ARTIST to provide proof of this insurance coverage if ARTIST has no employees and certifies to this fact by initialing here: _____.

(2) Automobile Liability Insurance for each of ARTIST'S vehicles used in the performance of this Agreement, including owned, non-owned (e.g. owned by ARTIST'S employees), leased or hired vehicles, in the minimum amount of $500,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage shall not be required if vehicle use by ARTIST is not a material part of performance of this Agreement and ARTIST and COUNTY both certify to this fact by initialing here: _____ / _______.

(3) Comprehensive or Commercial General Liability Insurance coverage in the minimum amount of $1,000,000 combined single limit, including coverage for: (a) bodily injury, (b) personal injury, c) broad form property damage, (d) contractual liability, and (e) cross-liability.
(4) Professional Liability Insurance in the minimum amount of $__________ combined single limit, if, and only if, this Subparagraph is initialed by ARTIST and COUNTY here: ______/_______.

(5) Fine Arts Insurance or other insurance against loss in the minimum amount of $__________, to cover the fair market value of the ARTWORK, if, and only if, this Subparagraph is initialed by ARTIST and COUNTY here: ______/_______. Artist shall obtain such insurance prior to commencing fabrication of the ARTWORK.

B. Other Insurance Provisions

(1) If any insurance coverage required in this Agreement is provided on a “Claims Made” rather than “Occurrence” form, ARTIST agrees to maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter “post agreement coverage”) and any extensions thereof. ARTIST may maintain the required post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post agreement coverage shall be deemed to be reasonable.

(2) All required Automobile and Comprehensive or Commercial General Liability Insurance shall be endorsed to contain the following clause:

“The County of Santa Cruz, its officials, employees, agents and volunteers are added as an additional insurance as respects the operations and activities of, or on behalf of, the named insured performed under Agreement with the County of Santa Cruz.”

(3) All required insurance policies shall be endorsed to contain the following clause:

“This insurance shall not be canceled until after thirty (30) days prior written notice has been given to:
Parks, Open Space and Cultural Services
Attn: Joe Schultz, Director
979 17th Avenue
Santa Cruz, CA 95062”

(4) ARTIST agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COUNTY on or before the effective date of this Agreement with Certificates of Insurance for all required coverages. All Certificates of Insurance shall be delivered or sent to:
Parks, Open Space and Cultural Services
Attn: Kathy DeWild, Recreation Supervisor
979 17th Avenue
Santa Cruz, CA 95062
14. **EQUAL EMPLOYMENT OPPORTUNITY.**

During and in relation to the performance of this Contract, ARTIST agrees as follows:

A. ARTIST shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: Recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The ARTIST agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If this Agreement provides compensation in excess of $50,000 to ARTIST and if ARTIST employs fifteen (15) or more employees, the following requirements shall apply:

1. ARTIST shall, in all solicitations or advertisements for employees placed by or on behalf of ARTIST, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy or any other non-merit factor unrelated to job duties. In addition, the ARTIST shall make a good faith effort to consider Minority-, Women-, Disabled-Owned Business Enterprises in ARTIST’S solicitation of goods and services. Definitions for Minority-, Women-, Disabled-Owned Business Enterprises are available from the COUNTY General Services Purchasing Division.

2. ARTIST shall furnish COUNTY Affirmative Action Office information and reports in the prescribed reporting format (PER 4012) identifying the sex, race, physical or mental disability, and job classification of its employees and the names, dates and methods of advertisement and direct solicitation efforts made to subcontract with Minority-, Women-, Disabled-Owned Business Enterprises.

3. In the event of ARTIST’S non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders, said ARTIST may be declared ineligible for further agreements with the COUNTY.

4. ARTIST shall cause the foregoing provisions of this Subparagraph B to be inserted in all subcontracts for any work covered under this Agreement by a subcontractor compensated more than $50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

15. **INDEPENDENT CONTRACTOR STATUS.**

ARTIST and COUNTY have reviewed and considered the principal test and secondary factors below and agree that ARTIST is an independent contractor and not an employee of COUNTY. ARTIST is responsible for all insurance (workers compensation, unemployment,
etc.) and all payroll related taxes. ARTIST is not entitled to any employee benefits. COUNTY agrees that ARTIST shall have the right to control the manner and means of accomplishing the result contracted for herein.

PRINCIPAL TEST: ARTIST rather than COUNTY has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by contract, COUNTY may exercise over the details of the work is slight rather than substantial; (b) ARTIST is engaged in a distinct occupation or business; (c) In the locality, the work to be done by ARTIST is usually done by a specialist without supervision, rather than under the direction of any employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) ARTIST rather than the COUNTY supplies the instrumentalities, tools and work place; (f) The length of time for which ARTIST is engaged is of limited duration rather than indefinite; (g) The method of payment of ARTIST is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (i) ARTIST and COUNTY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) The COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors that indicate that ARTIST is an independent contractor.

16. NON-ASSIGNMENT OR TRANSFER.
The personal skill, judgment and creativity of ARTIST are essential elements of this Contract. Therefore, although the parties recognize that ARTIST may employ qualified personnel to work under ARTIST's supervision, ARTIST shall not assign, transfer or subcontract the creative and artistic portions of the WORK to another party without the prior written consent of the COUNTY.

17. ACKNOWLEDGMENT.
ARTIST shall acknowledge in all reports and literature that the Santa Cruz County Board of Supervisors has provided funding to ARTIST.

18. SUCCESSORS AND ASSIGNS.
The COUNTY and ARTIST each binds themselves, partners, successors, assigns and legal representatives to the other party to this Contract and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants of this Contract. Neither the COUNTY nor ARTIST shall assign, sublet or transfer an interest in this Contract without the written consent of the other. In no event shall any contractual relation be created between any third party and the COUNTY.

19. NO KICK-BACK.
ARTIST warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for commission, percentage, brokerage or
contingent fee and that no member of the COUNTY Council, or an employee of the COUNTY of Santa Cruz has any interest, financially or otherwise, in the ARTIST's business.

20. **RETENTION AND AUDIT OF RECORDS.**
ARTIST shall retain records pertinent to this Contract for a period of not less than five (5) years after final payment under this Contract or until a final audit report is accepted by the COUNTY, whichever occurs first. ARTIST hereby agrees to be subject to the examination and audit by the Santa Cruz County Auditor-Controller, the Auditor General of the State of California, or the designee of either for a period of five (5) years after final payment under this Contract.

21. **PRESENTATION OF CLAIMS.**
Presentation and processing of any or all claims arising out of or related to this Contract shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.

By their signatures to the Contract, each of the undersigned certifies that it is his or her considered judgment that ARTIST engaged under this Contract is in fact an independent contractor.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

COUNTY OF SANTA CRUZ

ARTIST: **Confluence Design and Fabrication, LLC**

By: 

APPROVED AS TO INSURANCE:

By: 

Address: 11697 W. 13th Ave.
City/State: Golden, CO 80401
Telephone: 303-238-4760

APPROVED AS TO FORM:

By: 

County Counsel

DISTRIBUTION: CAO, AUD, CSL, RISK, RDA, GSD, ARTIST
ATTACHMENT A
SCOPE OF WORK

Phase I. Proposal – Conceptual Design of Artwork
ARTIST shall deliver a Conceptual Design for the ARTWORK ("Proposal"). “Conceptual Design” shall mean drawings (in plan and elevation) and/or 3-dimensional models, a written description, proposed materials and samples, and a written description of the ARTWORK in sufficient detail that ARTIST’s design intent is clearly expressed. The information provided in Conceptual Design shall be complete enough to fully illustrate the design intent of the ARTWORK.

The Proposal must be approved by the COUNTY’s Board of Supervisors.

It is ARTIST’s responsibility to coordinate ARTIST’s Proposal with any architectural designs for the Site.

The Proposal shall include a Budget for the cost of design, fabrication and transportation of the ARTWORK.

Due Date. The Proposal is due on or before June 22, 2010.

Phase II. Design Development Documents (As Needed)
If requested in writing to do so by the Parks Director as a result of the nature of the ARTWORK, ARTIST shall deliver Design Development Documents, which shall incorporate the further development and refinement of the Proposal, and continue to express the artistic intent of the Proposal. “Design Development Documents” shall mean presentation quality materials, which shall include colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the ARTWORK and how it will be installed at the Site, mock-ups, final color and materials samples, proposed fabrication methods, and feasibility studies. When used in reference to the proposed ARTWORK, Design Development Documents shall fix and describe the size and character of the ARTWORK with respect to its relationship to the Site, including architectural, structural, mechanical and electrical systems, materials and other elements as may be appropriate.

The Design Development Documents must be approved by the Director of the Department of Parks, Open Space and Cultural Services ("Parks Director").

Due Date. The Design Development Documents is due on or before: September 1, 2010.

Phase III. General Maintenance Plan
ARTIST shall deliver a General Maintenance Plan for the ARTWORK. ARTIST shall deliver all information necessary for the COUNTY to properly care for and maintain the ARTWORK, including information regarding the physical make-up of the ARTWORK, methods and materials, and information about the artistic intent of ARTIST.
SCOPE OF WORK (Continued)

The General Maintenance Plan must be approved by the Parks Director.

Due Date. The General Maintenance Plan is due on or before installation of the ARTWORK.

Phase IV. Construction Documents (As Needed)
If requested in writing to do so by the Parks Director as a result of the nature of the ARTWORK, ARTIST shall deliver Construction Documents. Construction Documents shall describe and fix the location, size, materials and character of the ARTWORK with respect to architectural, structural engineering, mechanical and electrical systems, materials, colors, method of attachment and fabrication methods, and other such elements as may be appropriate. Construction Documents must be signed and stamped by design professionals licensed in the State of California as required by the California Building Code and any local amendments thereto.

The Construction Documents must be approved by the Parks Director.

ARTIST shall deliver Mock-ups and Samples, if required by the Parks Director.

Due Date. Construction Documents are due on or before: not applicable.

Phase V. Fabrication of Artwork
ARTIST shall fabricate the ARTWORK in conformance with the Proposal, Design Development Documents (if any) and Construction Documents (if any). The fabricated ARTWORK may not deviate in size, design or material from the Proposal, Design Development Documents (if any) and Construction Documents (if any) unless the Parks Director has given prior approval of any such deviation in writing.

The final fabricated ARTWORK must be approved by the Parks Director, and ARTIST shall allow the Parks Director or a designee(s) reasonable access to the ARTWORK during fabrication for purposes of inspection.

Due Date. Fabrication of the ARTWORK shall be completed on or before: To be determined by COUNTY.

Phase VI. Delivery and Installation of Artwork
ARTIST shall deliver the ARTWORK to the Site. ARTIST shall prepare the ARTWORK for transportation in accordance with customary industry standards for the transportation of fine works of art.

ARTIST shall, in conjunction with the Parks Director, determine the optimal time for the delivery of the ARTWORK. Any change in the agreed-upon time for delivery shall require two-weeks written notice by either party.
SCOPE OF WORK (Continued)

Photographic Documentation. ARTIST shall deliver a CD with images of the ARTWORK in progress, as well as the installed ARTWORK for the COUNTY's archives.

Subcontracts. ARTIST shall deliver subcontracts of all or any Work, as well as documentation establishing that all employees, subcontractors and suppliers have been paid in a timely manner.

Due Date. Transportation and Installation are due on or before: To be determined by COUNTY.
ATTACHMENT B
PAYMENT SCHEDULE

A. Payment 1 -- Contract Execution

Upon approval of the contract by the Board of Supervisors: $6,725.00

B. Payment 2 -- ARTWORK Fabrication

Upon completion of all shop fabrication, ARTIST may invoice COUNTY for the following amount. Artist must supply a CD of digital images as support documentation: $3,362.50

C. Payment 3 -- Installation and Final Acceptance

Upon completion of installation and acceptance of the Work by the COUNTY’s Board of Supervisors, ARTIST may invoice for final payment for all funds remaining in the contract: $3,362.50

CONTRACT TOTAL: $13,450.00