

AGREEMENT FOR THE COMMISSION OF PUBLIC ARTWORK

THIS AGREEMENT, is entered into this _____ day of _____, 20____, by and between the Chabot-Las Positas Community College District, with offices at 5020 Franklin Drive, Pleasanton, California (hereinafter the "District") and _____ WOWHAUS _____ [artist's name or artist's business name] (hereinafter the "Artist") with offices at: _____ 885 JONIVE ROAD, SEBASTOPOL, CALIFORNIA 95472 _____.

WHEREAS, the District has implemented the Chabot College Public Art Project pursuant to its allocation of \$500,000 for the search for, establishment and display of Artwork at the Chabot College campus; and

WHEREAS, authority lies with the District to make payments from District funds for the project's administration, selection process, design concept, fabrication and installation; and

WHEREAS, the Artwork entitled "___SPARK_____" has been chosen by the District as a Winning Design of the Chabot Public Art Call for Entries; and

WHEREAS, the Artist and District wish to undertake the obligations expressed herein;

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

Article 1 Scope of Services

1.1 Artist's Obligations

- a. The Artist shall perform all services and arrange or furnish all supplies, material and/or equipment as necessary for the planning, fabrication and installation of the above named Artwork in accordance with this Agreement. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- b. The Artist shall return this Agreement, signed, within thirty (30) days from the day of receipt. In addition to submitting this signed Agreement, the Artist shall also submit, within thirty (30) days of receipt, the Timeline and Contract Amount pursuant to Section 1.4(a), 1.4(b) of this Agreement for the realization of the

installed Artwork. Any changes or amendments to the Timeline or Contract Amount must be requested in writing and approved by the District.

- c. Within sixty (60) days of returning the signed Agreement, the Artist shall submit Construction Documents as described in Section 1.3 of this Agreement.
- d. The Artist shall submit four (4) Progress Reports, along with invoices, during the planning and fabrication of the Artwork as pursuant to Section 1.5(c) of this Agreement.
- e. The Artist shall secure any and all required licenses, permits and similar legal authorizations at the Artist's expense as may be necessary for the fabrication, installation, and maintenance of the Artwork at the Site.
- f. If fabricated offsite, the Artist shall arrange the transportation and installation of the Artwork in consultation with the District. If the Artist does not install the Artwork himself or herself, the Artist shall personally supervise and approve the installation.
- g. The Artist shall provide required insurance in amounts and limits specified in Article 6.
- h. The Artist shall provide a list of all subcontractors along with a copy of the agreement between the Artist and each subcontractor.
- i. Upon completion of the Artwork, the Artist shall provide a maintenance manual with a description of all materials and products utilized in the Artwork and the required care and upkeep involved, along with product data sheets for any material(s) or finish(es) used.
- j. The Artist shall be available with reasonable advance notice for meetings, ceremonies and the like, as necessary.
- k. Upon Final Acceptance of the Artwork by the District, the Artist shall provide the District with a Transfer of Title in substantially the form attached hereto as Exhibit 2.

1.2 District's Obligations

- a. The District shall perform all obligations in compliance with all terms and conditions in this Agreement.

- b. The District 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.
- c. The District 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 District agrees to pay the Artist a fixed fee sum, to be distributed over four (4) Progress Payments, each equaling one-fourth (1/4th) of the Contract Amount as pursuant to Section 1.5 and Exhibit I of this Agreement.
- e. The District shall prepare the Site in accordance with the specifications detailed in the approved Construction Documents described in Section 1.3 of this Agreement. The District shall be responsible for all expenses, labor and equipment to prepare the Site for the timely arrival and installation of the Artwork. The District shall complete the Site preparations by the scheduled installation date as identified in the Artist's Timeline (see Section 1.4(a) of this Agreement) or shall contact the Artist in writing informing him or her of any delays.
- f. It is the District's responsibility to safely store or otherwise protect the fabricated, delivered Artwork during any delay, planned or unforeseen, which may occur between the delivery and installation of the Artwork.
- g. The District shall provide and install a permanent plaque on or near the Artwork containing a credit to the Artist and a copyright notice substantially in the following form: Copyright © [Artist's name, date of publication].
- h. The District shall not permit any use of the Artist's name or misuse of the Artwork which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Artwork, should such use or misuse be within the District's control.

1.3 Construction Documents

The Artist shall prepare and submit Construction Documents (also known as structural drawings) detailing every physical feature of the construction of the Artwork and its integration with the Site within sixty (60) days of signing this Agreement. These Construction Documents shall indicate any risks involved in the construction, integration and maintenance of the Artwork, as well as any third party subcontractors needed to work on the project.

The Artist shall present such Construction Documents to a qualified engineer,

licensed by the State of California and paid by the Artist, for certification that the Artwork will be of adequate structural integrity and the Artist shall provide the District with such certification.

Where appropriate, the Artist shall present the Construction Documents to a qualified conservator, who will make recommendations on the maintenance of the Artwork, and the Artist shall provide a written copy of the conservator's recommendations to the District.

To ensure that the Artwork as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, and safety devices and procedures at the Site, the Artist's proposal shall be reviewed and approved by the applicable District departments, including, where appropriate, the Public Art Committee and the Public Art Technical Review Team to ensure compliance with these objectives.

1.4 Timeline and Contract Amount

a. Timeline

At the time the Artist submits this signed Agreement, the Artist shall also submit a Timeline for the fabrication, delivery and installation of the Artwork. The Timeline shall also indicate when the Artist anticipates reaching four (4) Fabrication Benchmarks, pursuant to Sections 1.5b.i through 1.5b.vi. The Timeline shall also include a description of the anticipated physical and visual condition of the Artwork at each of the Benchmarks. Benchmarks occur at these stages: when the required Construction Documents are approved by the District; when the Artwork is one-third (1/3) fabricated; when the Artwork is two thirds (2/3) fabricated, and when the Artwork is completely fabricated and installed. The Timeline may be amended later by written agreement provided the District approves the amendment.

b. Contract Amount

- i. At the time the Artist submits this signed Agreement, the Artist shall also submit the final Contract Amount, including an itemized listing of all costs to explain the Contract Amount. In addition to the Contract Amount, the Artist shall also submit a completed Exhibit 1, with dollar amounts as indicated by the form and as reflects the Contract Amount. The Contract Amount may be amended later by written agreement provided the District approves the amendment.
- ii. The Artist shall keep a log of the Artist's project hours and shall retain all original receipts pertaining directly to the project.
- iii. If the Artist incurs costs in excess of the amount specified in the Contract Amount, the Artist shall pay such excess from the Artist's own funds unless the

Artist previously obtained approval for such costs from the District, or such costs were the result of actions or inaction of the District.

1.5 Fabrication, Benchmarks, Progress Reports and Progress Payments

a. Fabrication

- i. The Artist shall fabricate the Artwork in substantial conformity with the approved Winning Design. The Artist may not deviate from the Winning Design without written approval of the District.
- ii. The Artist shall take reasonable measures to protect or preserve the integrity of the Artwork such as the application of protective or anti-graffiti coatings, if applicable, unless the District disapproves. If the Artwork is being fabricated on-site, the Artist shall avoid creating nuisance conditions arising out of the Artist's operations. If the Artwork is being fabricated off-site, then prior to requesting authorization to transport and install the Artwork, the Artist shall be required to provide the District with a list of all workers or subcontractors and equipment to be used along with the hours of operation and the scope of work to be performed on site. All additional workers or subcontractors must provide proof of insurance prior to entering the site.
- iii. If fabricated off-site, the Artist shall notify the Public Art Committee Chair (Diane Zuliani) when fabrication of the Artwork has been completed and the Artwork is ready for delivery and installation at the Site.

b. Benchmarks, Progress Reports and Progress Payments

- i. The fabrication of the Artwork shall be assessed at four (4) Benchmarks. The first Benchmark shall be achieved when Construction Documents (see Section 1.3) are approved by the District. The second Benchmark shall occur when the Artwork is approximately one-third complete. The third Benchmark shall occur when the Artwork is approximately two-thirds complete. The fourth Benchmark shall occur when the artwork has been completed and installed.
- ii. The Artist shall submit four (4) Progress Reports as evidence of having reached each of the four (4) Benchmarks. The Progress Report for Benchmark One shall be the submission of Construction Documents and an invoice (see Section 1.5(b)iii below). Progress Reports for Benchmarks Two, Three and Four shall consist of photographic and written documentation of the completion of the Artwork to that current Benchmark, along with invoices. Photographic documentation shall consist of ten digital JPG or TIFF images taken from multiple and pertinent viewpoints of the Artwork. Written documentation shall consist of a 250 word narrative summary describing the fabrication process to

that Benchmark.

- iii. The Artist shall submit an invoice with each Progress Report. The dollar amount of each invoice shall represent one-fourth (1/4th), or twenty-five percent (25%), of the total Contract Amount.
- iv. The Progress Report for Benchmark One shall be the submission, by mail or in person, of the physical Construction Documents, along with an invoice, to the Chair of the Public Art Committee, Diane Zuliani. Progress Reports for Benchmarks Two, Three and Four, including photographic images, written narratives, and invoices, shall be sent electronically via email to Diane Zuliani at: dzuliani@chabotcollege.edu.
- v. Upon District approval of each Progress Report, the District shall pay the Artist a Progress Payment equal to one fourth (1/4th) of the Contract Amount.
- vi. If the District, upon review of any Progress Reports as described above, determines that the Artwork does not reasonably conform to either the required Benchmark, or to the Winning Design, the District reserves the right to notify the Artist of the deficiencies and that the District intends to withhold the Progress Payment for that Benchmark until such time the Artist cures the District's objections.
- vii. The Artist will promptly cure the District's objections and will notify the District in writing of completion of the cure. The District shall promptly review the Artwork, and upon approval shall release the next Progress Payment. If the Artist disputes the District's determination that the Artwork does not conform to the Benchmark or the Winning Design, the Artist shall promptly submit reasons in writing to the District within fifteen (15) business days of the District's prior notification to the contrary. The District shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether the Artist has complied with the Benchmark and the Winning Design shall remain with the District.

1.6 Transportation, Inspection, and Initial Approval of Artwork Fabricated Off-Site

- a. If fabricated off-site, the Artist shall arrange the transportation of the fabricated Artwork to the Chabot campus in consultation with the District. Transportation fees shall be paid by the Artist.
- b. If fabricated off-site, the District shall have fifteen (15) business days to inspect the Artwork after its arrival on campus, but before its installation. If the District determines that the Artwork conforms to the Design and approves of the installation of the Artwork, the District will give initial approval of the fabricated

Artwork.

- c. The District shall not unreasonably withhold initial approval of the fabricated Artwork. In the event that the District does withhold initial approval, the District shall submit the reasons for such disapproval in writing within twenty (20) business days of examining the work. The Artist shall then have thirty (30) days from the date of the District's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. The Artist shall not be penalized for any delay in the delivery and installation of the Artwork to the Site unless the Artist has willfully and substantially deviated from the Design without the prior approval of the District. The Artist shall then be held responsible for any expenses incurred in correcting such deviation.
- d. The District shall promptly notify the Artist of any delays impacting installation of the Artwork. Any additional storage fees incurred as a result of such delays are the responsibility of the District. The Artist shall be required to inspect the Site prior to the transportation and installation of the Artwork and shall notify the District of any adverse Site conditions that will impact the installation of the Artwork which are in need of correction.
- e. The District shall confer initial approval when all required adjustments have been determined to be acceptable to District standards.

1.7 Changes to Design

- a. Prior to the execution of any change in the Winning Design (hereafter the "Design"), the Artist shall present proposed changes in writing to the District for further review and approval. Prior to the execution of any significant change in the Design, the Artist must provide a detailed written and pictorial description of whatever he or she proposes that is not in substantial conformity with the already approved design. Such notice will also include a detailed description of any additional costs that may be incurred or changes in the Contract Amount. A significant change is any change which materially affects installation, scheduling, site preparation or maintenance of the Artwork or the concept of the Artwork as represented in the Design.
- b. If the District approves the changes, the District shall promptly notify the Artist.
- c. If the District disapproves of the changes, the District shall promptly notify the Artist and the Artist shall continue to fabricate the Artwork in substantial conformity with the Design.
- d. Contingent upon prior District approval, the Artist's fee shall be equitably adjusted

for any mutually agreed upon increase or decrease in the Artist's cost of, or time required for, performance of any services under this Agreement as a result of revisions made to the Design under Section 1.7(a) of this Agreement. Any claim of the Artist for adjustment under this paragraph must be asserted in writing within ten (10) business days after the date of the revision by the Artist.

1.8 Installation

- a. Whether the Artwork is fabricated off-site or on-site, the Artist will coordinate closely with the District to ascertain that the Site is prepared to receive the Artwork. The Artist must notify the District of any adverse conditions at the Site that would effect or impede the installation of the Artwork. The Artist is responsible for timely installation of the Artwork. The Artist will confer and coordinate with the District to ensure timely coordination with the District's construction and/or maintenance teams. The Artist may not install the Artwork until authorized to do so by the District.
- b. The Artist shall either install the Artwork himself or herself or be present to supervise the installation of the Artwork.
- c. Upon installation of the Artwork, the Artist shall provide the District with written instructions for the appropriate maintenance and preservation of the Artwork along with product data sheets for any material or finish used (see Section 1.1(i) of this Agreement). The Artwork must be durable, taking into consideration that the Site is 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. The District is responsible for the proper lighting, care and maintenance of the Artwork.
- d. Upon installation of the Artwork, the Artist shall submit the fourth (4th) and final Progress Report, which is to include an invoice in a dollar amount equaling one-fourth (1/4th) of the total Contract Amount.

1.9 Final Acceptance

- a. Once the District is satisfied that all components of the project are acceptable, the District shall promptly notify the Artist of its Final Acceptance of the Artwork. The effective date of Final Acceptance shall be the date the District makes the final Progress Payment to the Artist. Final Acceptance shall be understood to mean that the District acknowledges completion of the Artwork in substantial conformity with the Design, and that the District confirms that all services as required of both Parties by this Agreement prior to this paragraph have been completed.

- b. Upon Final Acceptance, Title to the Artwork shall pass to the District pursuant to Section 7.1 of this Agreement.
- c. If the District disputes that not all the services have been performed by the Artist, the District shall notify the Artist in writing of those services the Artist has failed to perform within twenty (20) business days after the Artist has submitted his or her final invoice. The Artist shall promptly perform those services indicated by the District.
- d. If the Artist disputes the District's determination that not all services have been performed, the Artist shall submit reasons in writing to the District within ten (10) business days of the District's prior notification to the contrary. The District shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether all services have been performed shall remain with the District.
- e. Upon the resolution of any disputes that arise under paragraphs (c) and (d) of this section, the District shall notify the Artist of its final acceptance of the Artwork pursuant to paragraph (a).
- f. After Final Acceptance of the Artwork, the Artist shall be available at such time(s) as may be mutually agreed upon by the District and the Artist to attend any public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to the dedication of the Artwork.
 - i. During such public presentations by the Artist, the Artist shall acknowledge the District's role in funding the Artwork.
 - ii. The District shall be solely responsible for coordinating public information materials and activities related to public presentations.

Article 2 Taxes

Any state or federal sales, use or excise taxes, or similar charges relating to the services and materials under this Agreement shall be paid by the Artist in a timely fashion. The District shall report payments made to the Artist annually to the Internal Revenue Department in a 1099 statement.

Article 3 Term of Agreement

- a. Duration and Extension

the Artwork

This Agreement shall be effective on the date that it is been signed by both parties, and, and shall extend, unless suspended or terminated earlier pursuant to such provisions in the Agreement, until Final Acceptance by the District under Sections 1.9(a) or submission of the fourth (4th) and final Progress Payment to the Artist by the District under Section 1.9(b) and Exhibit 1, whichever is later. Extension of time of performance hereunder may be granted upon the request of one Party and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall be in writing, signed by both parties, and attached to the Timeline under section 1.4(a).

b. Force Majeure

The District shall grant to the Artist a reasonable extension of time in the event that conditions beyond the Artist's control render timely performance of the Artist's services impossible or unduly burdensome. All such performance obligations shall be suspended for the duration of the condition. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions.

Article 4 Risk of Loss

The Artist shall bear the risk of loss or damage to the Artwork until the District's final acceptance of the Artwork under Section 1.9(a). The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. The District shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, the partially or wholly completed Artwork is in the custody, control or supervision of the District or its agent(s) for the purposes of transporting, storing, installing or performing other services to the Artwork.

Article 5 Artist's Representations and Warranties

5.1 Warranties of Title

The Artist represents and warrants that:

- a) the Artwork is solely the result of the artistic effort of the Artist;
- b) except as otherwise disclosed in writing to the District, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;

- c) the Artwork (or duplicate thereof) has not been accepted for sale elsewhere; the Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
- d) the Artwork is free and clear of any liens from any source whatsoever.
- e) all Artwork created or performed by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others, shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party.
- f) the Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.
- g) all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence.
- h) these representations and warranties shall survive the termination or other extinction of this Agreement.

5.2 Warranties of Quality and Condition pursuant to

- a. The Artist represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork for one (1) year after the date of final acceptance by the District under Section 1.9(a) of this Agreement.
- b. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.
- c. The Artist represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Section 1.9(c) of this Agreement.
- d. If within one (1) year the District observes any breach of warranty described in this Section 5.2 that is curable by the Artist, the Artist shall, at the request of the District, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the District. The District shall give notice to the Artist of such breach with reasonable promptness.

- e. If after one (1) year the District observes any breach of warranty described in this Section 5.2 that is curable by the Artist, the District shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist's lifetime. The Artist shall have the right of first refusal to make or supervise repairs or restorations. Should the Artist be unavailable or unwilling to accept reasonable compensation under the industry standard, the District may seek the services of a qualified restorative conservator and maintenance expert.
- f. If within one (1) year the District observes a breach of warranty described in this Section 5.2 that is not curable by the Artist, the Artist is responsible for reimbursing the District for damages, expenses and loss incurred by the District as a result of the breach. However, if the Artist disclosed the risk of this breach in the Proposal or any subsequent document and the District accepted that it may occur, it shall not be deemed a breach for purposes of this Section 5.2 of this Agreement.
- g. Acceptable Standard of Display. The Artist represents and warrants that:
 - i. General routine cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard of public display.
 - ii. Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display.
 - iii. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork 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.
 - iv. Manufacturer's Warranties. To the extent the Artwork incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties to the District.

The foregoing warranties are conditional, and shall be voided by the failure of the District to maintain the Artwork in accordance with the Artist's specifications and the applicable conservation standards. If the District fails to maintain the Artwork in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.

Article 6 Insurance

6.1 General

The Artist acknowledges that until Final Acceptance of the Artwork by the District under Section 1.9(a), any injury to property or persons caused by the Artist's Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artist's Artwork are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the Artist's Artwork, regardless of where such loss occurs.

6.2 General Liability Insurance

The Artist shall at all times during the term of this Agreement, or any extension thereof, maintain comprehensive general liability insurance coverage in the amount of \$1,000,000 per occurrence and in the aggregate for all claims made during any one policy year. The Artist shall, upon request of the District, provide proof that the services provided are covered under its policy and that the District is named or fully covered as an additional insured.

6.3 Worker's Compensation Insurance

The Artist agrees to comply fully with all provisions of all applicable worker's compensation insurance laws, and shall procure and maintain in full force and effect worker's compensation insurance covering his or her partners, employees and agents while said persons are performing services pursuant to this Agreement. In the event that an employee of the Artist performing this Agreement files a worker's compensation claim against the District, the Artist agrees to defend and hold the District harmless from such claim.

6.3 Indemnity

- a. The Artist shall indemnify the District, its respective officers, agents, and employees, from any claims brought arising out of the breach of this Agreement or any negligent occurrence which occurs pursuant to the performance of this Agreement by the Artist, its subcontractors, agents or employees.
- b. The District shall indemnify the Artist, Artist's subcontractors, agents or employees from any claims brought arising out of the breach of this Agreement or any negligent occurrence which occurs pursuant to the performance of this Agreement by the District, its respective officers, agents, and employees.
- c. Each Party shall immediately notify the other of any written claim regarding any matter resulting from or relating to the Party's obligations under this Agreement. Each Party shall cooperate, assist, and consult with the other in the defense or

investigation of any such claim arising out of or relating to the performance of this Agreement.

- d. The indemnification shall include reasonable attorneys' fees and costs.
- e. This indemnification shall survive the termination or expiration of this Agreement.
- f. Notwithstanding any provision of this Agreement to the contrary, no Party shall recover from a Party to this Agreement in an action, of whatever nature, in contract or tort, any consequential or incidental damages, lost profits, or any type of expectancy damages.

Article 7 Ownership and Intellectual Property Rights

7.1 Title

Title to the Artwork shall pass to the District upon the District's written final acceptance and payment for the Artwork pursuant to Section 1.9 and Exhibit 2. Artist shall provide District with a Transfer of Title in substantially the form attached hereto as Exhibit 2.

7.2 Ownership of Documents

One set of presentation materials prepared and submitted under this Agreement shall be retained by the District for possible exhibition and to hold for permanent safekeeping.

7.3 Copyright Ownership

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

7.4 Reproduction Rights

- a. In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the District. However, nothing shall prevent the Artist from creating future Artworks in the Artist's manner and style of artistic expression.
- b. The Artist grants to the District and its assigns an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publications provided that these rights are exercised in a tasteful and professional manner.

- c. All reproductions by the District shall contain a credit to the Artist and a copyright notice in substantially the following form: Copyright © [Artist's name, date of publication].
- d. The Artist shall use the Artist's best efforts in any public showing or resume use of reproductions to give acknowledgment to the District in substantially the following form: "an original Artwork commissioned by and in the public art collection of the Chabot Las Positas Community College District."
- e. The Artist shall, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright in the Artwork in the Artist's name.
- f. If the District wishes to make reproductions of the Artwork for commercial purposes, including, but not limited to, tee shirts, post cards and posters, the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.
- g. Third Party Infringement. The District is not responsible for any third party infringement of Artist's copyright and not responsible for protecting the intellectual property rights of Artist.

Article 8 Artist's Rights

8.1 General

- a. The Artist retains all rights under state and federal laws including §106A of the Copyright Act of 1976.
- b. The District agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first obtaining permission from the Artist.
- c. If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies the Artist may have in law or equity under this contract. Upon written request, the District shall remove the identification plaque and all attributive references to the Artist at its own expense within ninety (90) days of receipt of the notice. No provision of this Agreement shall obligate the District to alter or remove any such attributive reference printed or published prior to the District's receipt of such notice. The Artist may take such other action as the Artist may choose in order to disavow the Artwork.

8.2 Alterations of Site or Removal of Artwork

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

Article 9 Permanent Record

The District shall maintain on permanent file a record of this agreement and of the location and disposition of the Artwork.

Article 10 Artist as an Independent Contractor

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

The Artist shall provide the District with the Artist's Tax Identification Number and any proof of such number as requested by the District.

Article 11 Nondiscrimination

The Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

Article 12 Assignment of Artwork

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

Article 13 Suspension and Termination

- a. The District may temporarily suspend this Agreement for up to twenty-four (24) months without cause upon thirty (30) days written notice to the Artist.
- b. Either Party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as, but not limited to, acts of nature; war or warlike operations; superior governmental regulation or control, public emergency or strike or other labor disturbance. Notice of termination of this Agreement shall be given to the non-terminating Party in writing not less than thirty (30) days prior to the effective date of termination.
- c. The District may terminate this Agreement without cause upon thirty (30) days written notice to the Artist. The District shall pay the Artist for services performed and commitments made prior to the date of termination, consistent with the schedule of Progress Payments set forth in Exhibit 1 of this Agreement. The Artist shall have the right to an equitable adjustment in the fee for services performed and expenses incurred beyond those for which the Artist has been compensated to date under Exhibit 1 with allowance for lost opportunities, unless the parties come to a settlement otherwise.
- d. If either Party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the other Party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting Party

of its intent to terminate specifying the grounds for termination. The defaulting Party shall have thirty (30) days after the effective date of the notice to cure the default. If it is not cured by that time, this Agreement shall terminate.

- e. If the Artist defaults (for cause other than death or incapacitation), the Artist shall return to the District all funds provided by the District in excess of expenses already incurred. The Artist shall provide an accounting. All finished and unfinished drawings, sketches, photographs and other Artwork products prepared and submitted or prepared for submission by the Artist under this Agreement shall be retained by the Artist. The District shall retain the right to have the Artwork completed, fabricated, delivered and installed. However, the Artist shall retain the copyright to the Artwork and all rights under Article 7 and Article 8.
- f. If the District defaults, the District shall promptly compensate the Artist for all services performed by the Artist prior to termination. The District shall pay the Artist for services performed and commitments made prior to the date of termination, consistent with the schedule of Progress Payments set forth in Section 1.5 and Exhibit 1. The Artist shall have the right to an equitable adjustment in the fee for services performed and expenses incurred beyond those for which the Artist has been compensated to date with reasonable allowance for lost opportunities.
- g. Upon notice of termination, the Artist and his or her subcontractors shall cease all services affected.

Article 14 Death or Incapacity

If the Artist becomes unable to complete this Agreement due to death or incapacitation, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the Artist for the purpose of Article 13. However, nothing in this Article shall obligate the District to accept the Artwork.

- a. In the event of incapacity, the Artist shall assign the Artist's obligations and services under this contract to another artist provided that the , in the District's sole discretion, approves of the new artist. Alternatively, the District may elect to terminate this Agreement. The Artist shall retain all rights under Article 7 and Article 8. The Artwork and any reproductions thereof shall contain a credit to the Artist and a copyright notice in substantially the following form: Copyright © [Artist's name, date of publication].
- b. In the event of death, this Agreement shall terminate effective the date of death. The Artist's heirs shall retain all rights under Article 7 and Article 8. The Artist's executor shall deliver to the District the Artwork in whatever form or degree of

completion it may be at the time. Title to the Artwork shall then transfer to the District. However, the Artwork shall not be represented to be the completed Artwork of the Artist unless the District is otherwise directed by the Artist's estate.

Article 15 Notices and Documents

Notices required under this Agreement can be delivered by U.S. mail, postage prepaid, or, when allowed, by electronic mail, to the persons and addresses stated below, or to any other address as may be noticed by a Party:

For the District:	Diane Zuliani, Public Art Committee Chair School of the Arts, Chabot College 25555 Hesperian Boulevard Hayward, CA 91545 dzuliani@chabotcollege.edu
For the Artist:	[Artist] _____ [mailing address] _____ [City, State, Zip] _____

If delivered through the U.S. mail, notices shall be deemed effective five (5) business days after the postmarked date. If delivered via electronic mail, notices shall be deemed effective five (5) business days after the electronic post was sent.

Article 16 Waiver

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

Article 17 Audit

The District shall maintain records of all documents, notices, checks, and other records required or produced under this Agreement or related thereto. The Artist agrees to the maintenance of such records for archival purposes. Such records shall be made available for inspection or audit, at any time during regular business hours, upon written request by a District Auditor, Attorney, Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the District for inspection when it is practical to do so. Access to such records and documents shall also be granted to any Party authorized by the Artist, the Artist's representatives, or the Artist's successors-in-

interest. The District will comply with any open records law applicable to these records.

Article 18 Conflict of Interest

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

Article 19 Arbitration

If, during the creation of the Artwork, its installation and subsequent existence, either Party breaches this Agreement, each Party agrees to submit to arbitration upon the request of the other provided that the breach is not cured within a reasonable time under paragraph (d) of Article 13. If an ambiguity arises regarding this Agreement upon which the parties cannot agree or a dispute arises as to the completion of a provision, the Parties shall submit to arbitration. Each Party agrees to be responsible for its own attorney's fees except as otherwise provided by statute.

Article 20 Amendments

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

Article 21 Conflicts of Law

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

Article 22 Choice of Law

This contract shall be governed by the laws of the State of California, County of Alameda, both as to interpretation and performance.

Article 23 Entire Agreement

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

For District:

Name

Signature

Title

Date

For Artist:

EVE OSTERMAS-CONSTABLE

Name
Eve Ostermas-Constable

Signature
[Handwritten Signature]

Title
PARTNER

Date
2/14/2011

Exhibit 1

Progress Payments of Contract Amount

Contract Amount

The District shall pay the Artist the Contract Amount of \$ 117,855, which shall constitute full and complete compensation for all the services performed and materials furnished by the Artist under this Agreement. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and materials provided prior to payment thereof:

Progress Payments

1. One-fourth (1/4th) of the Contract Amount (or \$ 29,463.75) shall be paid upon approval by the District of the first (1st) Progress Report. The first (1st) Progress Report shall consist of Construction Documents (pursuant to Section 1.3 of the Agreement), and an invoice for one-fourth of the Contract Amount;
2. One-fourth (1/4th) of the Contract Amount (or \$ 29,463.75) shall be paid upon approval by the District of the second (2nd) Progress Report, submitted when fabrication of the Artwork is approximately one-third (1/3rd) complete, along with an invoice for one-fourth of the Contract Amount;
3. One-fourth (1/4th) of the Contract Amount (or \$ 29,463.75) shall be paid upon approval by the District of the third (3rd) Progress Report, submitted when fabrication of the Artwork is approximately two-thirds (2/3rd) complete, along with invoice for one-fourth of the Contract Amount;
4. One-fourth (1/4th) of the Contract Amount (or \$ 29,463.74) shall be paid upon final acceptance by the District of the installed Artwork pursuant to Section 1.9(a) of the Agreement.

Exhibit 2

STATE OF CALIFORNIA; COUNTY OF ALAMEDA

TRANSFER OF TITLE

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the undersigned Artist located at the address noted below does hereby sell, transfer and convey to the District, located in Pleasanton, California, its assigns and successors, all right, title and interest in the ownership of the Artwork commissioned by Agreement of the Chabot Las Positas Community College District.

Title: _____.

Location: _____.

IN WITNESS WHEREOF, Artist has executed this written transfer of title on this the _____ day of _____, 20_____.

HUNTER COFF

ARTIST'S NAME

ARTIST'S ADDRESS

ARTIST'S SOC. SEC. NO. _____ - _____ - _____

WITNESS

Sworn to and subscribed before me this _____ day of _____, 20_____.

NOTARY PUBLIC

My Commission Expires: _____

NOTARY SEAL: _____