

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND GORDON HUETHER + PARTNERS, INC.**

This Agreement is entered into this 17th day of June, 2020, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Gordon Huether + Partners, Inc., hereinafter called "Contractor."

\* \* \*

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of Artist and Fabricator.

**Now, therefore, it is agreed by the parties to this Agreement as follows:**

**1. Exhibits and Attachments**

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A—Services
- Exhibit B—Payments and Rates
- Attachment IP – Intellectual Property

**2. Services to be performed by Contractor**

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000). In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

**4. Term**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from August 4, 2020 through August 3, 2023.

**5. Termination**

This Agreement may be terminated by Contractor or by the County Manager's Project Development Unit or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

**6. Contract Materials**

At the end of this Agreement, or in the event of termination, and subject to Artist's intellectual property rights set forth in Exhibit A to this Agreement, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

**7. Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

**8. Hold Harmless**

**a. General Hold Harmless**

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or
- (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

**b. Intellectual Property Indemnification**

Contractor hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement.

Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

**9. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

**10. Insurance**

**a. General Requirements**

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

**b. Workers' Compensation and Employer's Liability Insurance**

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

**c. Liability Insurance**

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

(a) Comprehensive General Liability...	\$1,000,000
(b) Motor Vehicle Liability Insurance...	\$1,000,000
(c) Professional Liability.....	\$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

**11. Compliance With Laws**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Further, Contractor certifies that it and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware. Accordingly, Contractor shall not use any non-recyclable plastic disposable food service ware when providing prepared food on property owned or leased by the County and instead shall use biodegradable, compostable, reusable, or recyclable plastic food service ware on property owned or leased by the County.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

**12. Non-Discrimination and Other Requirements**

**a. General Non-discrimination**

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

**b. Equal Employment Opportunity**

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

**c. Section 504 of the Rehabilitation Act of 1973**

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

**d. Compliance with County's Equal Benefits Ordinance**

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

**e. Discrimination Against Individuals with Disabilities**

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

**f. History of Discrimination**

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

**g. Reporting; Violation of Non-discrimination Provisions**

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of

the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

#### **h. Compliance with Living Wage Ordinance**

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall, to the extent applicable, fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

#### **13. Compliance with County Employee Jury Service Ordinance**

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

#### **14. Retention of Records; Right to Monitor and Audit**

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

**15. Merger Clause; Amendments**

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

**16. Controlling Law; Venue**

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

**17. Notices**

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Adam Ely, Director  
Address: 1402 Maple Street, Redwood City CA 94063 Telephone: 650 722 8112  
Email: aely@smcgov.org

In the case of Contractor, to:

Name/Title: Gordon Huether  
Gordon Huether + Partners, Inc.  
Address: 1821 Monticello Road, Napa, CA 94558



Telephone: 707 255 5954 or 707 815 1645  
Email: dt@gordonhuether.com

**18. Electronic Signature**

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

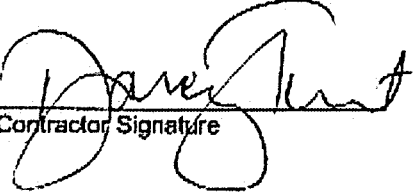
**19. Payment of Permits/Licenses**

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

\* \* \*

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: Gordon Huether + Partners, Inc.

  
Contractor Signature

7/21/20  
Date

Darce Tunt  
Contractor Name (please print)

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COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board

## Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

San Mateo County reserves the right to remove the Work at any point in time, at the County's sole discretion.

### **Recitals.**

- A. The Artist is an internationally recognized artist.
- B. The Client wishes to commission the Artist to create a work(s) of art to be known as the San Mateo County Memorial (the "**Work**"), which will be created under the supervision of the Artist and which Work shall be installed at the San Mateo County Government Center Campus in close proximity to the Hall of Justice and Records as generally depicted on Schedule A to this Exhibit A (the "**Site**").
- C. The Artist and the Client wish to have the creation and installation of the Work (hereinafter, the "**Project**") governed by the mutual obligations, covenants, and conditions herein.

NOW THEREFORE, in consideration of the mutual promises set forth herein, each of the parties hereby agrees as follows.

### **1. Scope of Artist's Services**

- 1a. The Artist shall furnish all the materials, equipment, and labor required for the Project described in Paragraph 1 of Schedule A to this Agreement.
- 1b. The Scope of Work for the Project includes design, fabrication, delivery, and installation of the Work. After the determination regarding final project design is made, the parties anticipate that the substance of that project design determination will be reflected in an amendment to this Agreement with the specifications set forth in Paragraph 2 of Schedule A to this Agreement, provided that the total project budget set forth in this Agreement shall remain unchanged.
- 1c. The Artist shall determine the artistic expression, scope, and design, of the Work, subject to review and acceptance by the Client, as set forth in this Agreement.
- 1d. The Client agrees that the Artist may assign any portion of its duties to any appropriately skilled subcontractor, craftsman, artist, engineer, or fabricator, provided that such assignment of duties shall not affect the design, appearance, or visual quality of the Work and that the assigned duties shall be carried out under the personal supervision of the Artist. Nothing contained in this Agreement shall create any contractual relation between any subcontractor of the Artist and the Client, or result in any employee or subcontractor of the Artist being deemed to be an employee of the Client.

### **2. Client's Responsibilities.**

- 2a. The Client will provide the Artist with architectural plans, site plans, and any/all relevant documentation of the site for the completion of the Artist's duties under this Agreement.
- 2b. Client and Artist will determine scope of site work needs and responsibilities upon completion of design development for the Work.
- 2c. The Client shall secure any and all required licenses, permits and similar legal authorizations at the Client's expense as may be necessary for the preparation of the Site and for the installation of the Work.

**3. Phases of Project. The following is a description of each phase within the Scope of Work:**

**3a. Design Development Phase**

- (i) Upon the execution and receipt of Design Development deposit as required by Paragraph 5 of Schedule A, the Artist shall begin the Design Development Phase. Artist will provide at least 3 schematic designs to the Client for review.
- (ii) Throughout the Design Development Phase, the Artist will be available for meetings and consultation as needed with the Client, County representatives, Landscape Architects, or other parties as reasonably required for the coordination and development of the Project. The Artist will be available for in-person meetings as needed (and as allowed per county and state health code and health order requirements) or via conference call or videoconference, and as mutually agreeable.
- (iii) Upon selection of a chosen concept/design, the Artist will provide the opportunity for two refinements of the chosen concept. In the development of these refinements, the Artist will provide digital renderings and digital models as needed to express the final design for the Client's approval.
- (iv) Upon the Client acceptance of the final design, the Artist will fully develop the final design prior to entering into the Fabrication Phase. This full development process will include full research and development of the methods and materials required for fabrication of the Work, detailed job costing to ensure the Project will stay within budget, preparation of Shop drawings outlining the fabrication details of the Work, California certified engineer-stamped construction documents to ensure the structural integrity of the Work, and any other research or development required for approval of the design to move into fabrication.
- (v) Upon completion of the Design Phase, Schedule A will be revised: the Artist will provide a revised and detailed project schedule for fabrication of the final design, project scope and revised payment schedule prior to entering into the Fabrication Phase, provided, however, that the overall project budget set forth in this Agreement shall not be revised.

**3b. Fabrication Phase.**

- (i) Upon the Artist's receipt of the Fabrication Deposit required by Paragraph 5 of Schedule A, the Artist shall provide all materials, labor and project management for complete transcription of the design into the medium or media specified in Paragraph 1 of Schedule A.
- (ii) The Artist shall complete the fabrication of the Work in substantial conformity with the Final Design. If the Artist believes that changes are required, the Artist shall present to the Client in writing for further review and approval any significant changes in the scope, design, color, size, material, or texture of the Work not permitted by or not in substantial conformity with the approved final design. A significant change is any change in the scope, design, color, size, material, texture, or location on the Site of the Work, which affects installation, scheduling, site preparation, or maintenance for the Work.

**3b. Shipping/ Delivery.**

- (i) The Artist will notify the Client in writing when the Work is complete and ready for delivery and installation. If delivery and/or installation cannot proceed for any reason that is not within the reasonable control of the Artist, the parties will mutually make arrangements for the storage of the Work, as needed, and the parties will confer in good faith regarding any expense that may result from such storage.
- (ii) The Artist shall make all necessary efforts to secure the work for safe shipping and delivery. The work shall be transported in such a way as to protect the safety of the Work during shipment and to allow for easy handling upon delivery.

- (iii) Should additional shipping/delivery costs be incurred due to jobsite conditions that were not made evident to the Artist at the time of this Agreement with reasonable diligence by the Artist, or, if the Site Address changes, the Client agrees to reimburse Artist in full for any and all additional installation-related costs incurred.

**3e. Installation and Acceptance of The Work.**

- (i) As soon as the Client approves the fabricated Work and the Artist receives authorization to proceed with installation, the Artist will have access to the Site, upon reasonable prior notice to the Client.
- (ii) The Client shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, reports, and other existing relevant data, if any, which is needed by the Artist in order to install the Work at the Site.
- (iii) The Artist shall install the Work at the Site in accordance with all architectural plans, and instructions provided by the Client, in accordance with the Preliminary Design, and in accordance with all other drawings, reports, plans, specifications, or materials furnished by the Artist to the Client under this Agreement.
- (iv) Upon installation of the Work, the Artist shall provide the Client with written instructions for the appropriate maintenance and preservation of the Work, along with product data sheets for any material or finish used.
- (v) The Artist shall advise the Client in writing when all the Work has been fully installed in substantial conformity with this Agreement.
- (vi) The Client shall notify the Artist of its final acceptance of the Work. Final acceptance shall be effective as of the earlier to occur of (a) the date of the Client's notification of final acceptance or (b) the 30th day after the Artist has sent the written notice to the Client required under subparagraph (v) of this Section 3e, unless the Client, upon receipt of such notice and prior to the expiration of the 30-day period, gives the Artist written notice specifying and describing the services which have not been completed.

**4. Compensation**

- 4a. The Client shall pay the Artist the compensation shown on Paragraph 4 of Schedule A, for the creation, fabrication, delivery, and installation of the Work. Paragraph 5 of Schedule A, the payment schedule, will be revised upon the completion of Design Development, provided, however, that the overall project budget shall not change. Except as otherwise set forth in this Agreement, the costs and expenses that are required for the performance of the Artist's obligations under this Agreement, including the costs of crating and shipping of the Work, will be paid by the Artist from the compensation described in this Paragraph.
- 4b. If the Client or the Client's Representative identified in Paragraph 7 of Schedule A requests the Artist to render services not covered by this Agreement or if the Artist incurs additional expenses to comply with such request(s), the Client will execute a change order setting forth the additional services and expenses therefor. Additional Services requiring a change order include, but are not limited to, changes in the scope of work, changes in the schedule for performing the Work described in Section 6a of this Agreement and changes made after a final design is approved, including changes pursuant to Section 3b(ii) of this Agreement.
- 4c. The cost of a change order will be determined by the amount of work that has been performed that must be either performed again or modified in order to accommodate dimensional revisions or other requested additional services.

**5. Payment Schedule.**

- 5a. The payment of the compensation shall be made according to the estimated schedule set forth in Section 5 of Schedule A, which will be revised upon completion of Design Development. *The Artist* shall send invoices to the Client showing the portion of the compensation due in accordance with such schedule. Payments are due within 45 days of receipt of invoice. All invoices for reimbursable expenses shall be payable within 45 days of the receipt of invoice.
- 5b. In the event the Client fails to make progress payments when due, a late charge of 1-1/2% per month shall be assessed against the amount then due and payable. In the event that a payment is not processed within the time frame set forth in Section 5.a., above, the County shall, upon request by Artist, demonstrate reasonable diligence in processing such payment and if County fails to demonstrate such reasonable diligence, Client shall be entitled to an extension in the timeline for performance of the Work, commensurate with the delay in payment. Any delay in payment of more than 60 days shall be considered default of agreement and terms and conditions, including project schedule, may need to be revised accordingly.

## 6. Project Schedule.

- 6a. The Artist shall complete the Work in accordance with the Project Schedule set forth in Section 6 of Schedule A, once revised after completion of Design Development. Each party shall inform the other in writing of any delays to the Project. Such excusable delays may result in a change in the Project Schedule.
- 6b. The parties will identify a completion date for the Work after completion of Design Development and this completion date will be set forth in Section 6 of Schedule A, shall be extended in the event of delays caused by events beyond the control of the Artist, including but not limited to fire, theft, strikes, labor unrests, shortages of materials, Acts of God, or similar events or in the event that Gordon Huether or any other individual responsible for the design and fabrication of the Work on behalf of the Artist becomes disabled by illness, preventing progress of the Work. 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. However, neither party shall be excused from performance due to financial difficulties or other matters relating to the operations of such party's business or other matters within the control of such party.
- 6c. A pause or delay in the project, according to Schedule A, greater than 90 days caused by Client, other than as noted in Section 6b., will require a new schedule to be established and job costing will need to be reviewed as well, to determine if there are any cost implications due to the delay.

## 7. Termination.

- 7a. If either party breaches any of the covenants, agreements or stipulations material to this Agreement, the non-defaulting party shall 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. Failure of the Client to make payments to Artist within sixty days of the due date under Section 5a of this Agreement shall be considered substantial nonperformance and cause for a notice of termination under this Paragraph. The defaulting party shall have fifteen days after the effective date of the notice to cure the default, if the default is curable within that time. If the default is not cured within fifteen days of the giving of written notice to cure, the Agreement shall terminate.
- 7b. If this Agreement is terminated because of a default by the Client pursuant to Section 7a of this Agreement, the Client shall promptly compensate the Artist for all services performed by the Artist prior to termination. The Client shall pay the Artist for services performed and commitments made prior to the date of termination in accordance with Section 5a 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.
- 7c. In the event of termination of the Agreement as a result of a default by the Artist after the completion

of the Design Services, the Client shall have the right to have the Work fabricated, delivered and installed in accordance with the Design Materials, but shall have no right to use the Design Materials on any other projects or for any other purposes. The Artist shall retain the copyright in the Design Materials and the Work.

- 7d. Prior to the completion of the Design Services, the Client shall have the right to terminate this Agreement on the death of Gordon Huether. If such event occurs after the completion of the Design Services, the Artist shall complete the Project as outlined during the Design Development phase.

## **8. Ownership of the Work and Design Materials**

- 8a. Title to the Work shall remain in the Artist's possession until the Client has accepted the Work and the Artist has received payment of all compensation due under the Agreement.
- 8b. Title to all drawings, photographs, samples, prototypes, mock-ups, models, maquettes, material samples, studies, specifications, and incidental works created by the Artist or its subcontractors in the design of the Work ("Design Materials") shall remain in the Artist's possession at all times. Any Design Materials provided to the Client during the term of the Agreement shall be returned to the Artist upon completion of the Work or, upon the earlier termination of this Agreement. However, the Artist agrees that the Client may retain two-dimensional copies of the Design Materials solely for information and reference in connection with the Client's use of the Work if the Client accepts the Work installed by the Artist or fabricates and/or installs the Work pursuant to this Agreement. Any copies of the Design Materials retained by the Client shall contain a copyright notice substantially in the following form: Copyright © Gordon Huether + Partners, Inc., date of publication.
- 8c. The Design Materials and copies thereof retained pursuant to Section 8b of this Agreement shall not be used by the Client or others on other projects, for additions to this Project, for completion of this Project by others, or for any other purpose than the purposes specified in Section 8b or Section 8d of this Agreement, unless the parties otherwise agree in a writing that provides for appropriate compensation to the Artist.
- 8d. In the event of termination of this Agreement pursuant to Sections 7a or 7b the Artist shall retain all rights of ownership of the Work, and shall have the right to complete, exhibit, and sell the Work if the Artist so chooses.

## **9. Rights to Create Reproductions of the Work.**

- 9a. The Client acknowledges that the Artist is the owner of all copyright rights and other intellectual property rights in the Work and the Design Materials. The Artist retains all Copyright rights in and to the Work and the Design Materials, all rights of reproduction, and all other copyright interests in and to the Work. This Agreement is not intended to transfer any rights in the Work other than ownership and possession to the Client except as otherwise provided in this Article 9.
- 9b. The Client agrees that without in any way limiting the rights of the Artist described in Section 9a of this Agreement, the Artist may photograph, film, or videotape the interior and exterior of the Project after installation of the Work at a time mutually convenient to both parties for any purpose. The Artist shall provide a credit to the Client reading substantially, "an original work owned by the Client" in any public showing under the Artist's control of any reproduction of the Work created by the Artist.
- 9c. In view of the intention that the installed Work shall be unique, the Artist shall not make any additional exact duplicate, three-dimensional reproductions of the installed Work or permit others to do so except with the written permission of the Client. However, this Agreement shall not be deemed to prohibit the Artist from reusing the themes, separate elements, and concepts incorporated in the Work in new works so long as any such reuse in new works does not result in

a combination, which as a whole constitutes a work substantially similar to the Work.

- 9d. The Artist grants to the Client a non-exclusive, perpetual, irrevocable and royalty free license to make two dimensional photographs of the Work for non-commercial purposes, such as for use in brochures, media publicity, and exhibition catalogues or other similar publications or for other fundraising or promotional purposes. The Client may also create photographic, filmed, or videotaped reproductions of the Work to appear solely for non-commercial editorial purposes in newspapers, periodicals, books, motion picture films and/or videotaped films. Provided, however, that any publication, distribution, or other use of reproductions of the Work by the Client for the purpose of, or with the effect of, obtaining any profit from such use shall be deemed to be a commercial use prohibited by this Agreement unless the Artist otherwise agrees in a written agreement providing for compensation for the Artist.
- 9e. All photographic, filmed or videotaped reproductions created by the Client of the Work shall identify the Artist and the title to the Work, and shall contain a copyright notice substantially in the following form: Copyright ©, Gordon Huether + Partners, Inc. with the date of installation, and shall identify the location of the original.

## **10. Publicity.**

- 10a. The Artist grants to the Client the right to use the Artist's name, biography, photograph or likeness in connection with the Work in any manner and in any media, provided that the use is for a non-commercial purpose according to the standards set forth in Section 9d of this Agreement. The Artist shall have the right to approve in advance any photograph, likeness or biographical information utilized by the Client under this Section. The Client shall not use the Artist's name or Gordon Huether's name or biography, photograph and/or likeness as endorsing any product, service, organization or cause.
- 10b. The Client grants to the Artist the right to use the Client's name [and biography] for non-commercial purposes in connection with the Work.

## **11. Confidential Information.**

Certain methods, techniques, and processes used by the Artist in the fabrication of the Work are considered proprietary information of the Artist. In the event it is necessary to disclose such information to the Client, the Client agrees to keep such information confidential to the full extent authorized by law and, to the full extent allowed by law, agrees not to disclose such proprietary information to any third parties without the consent of the Artist. The Client agrees to obtain this same agreement from such third parties to keep such information confidential. The Artist will notify Client that information provided to the Client is proprietary information by either marking such information "Confidential" or "Proprietary Information" or by informing Client of the proprietary nature of the information being supplied. At the completion of the Project, by delivery of the Work to the Client and upon acceptance of the Work after delivery, the Client shall return all proprietary information in the Client's possession to the Artist.

## **12. Artist's Rights.**

- 12a. The Client shall provide and install, at the Client's expense, a plaque on or near the Work, containing a credit to the Artist and identifying the title of the Work. If requested by the Artist, the plaque shall also identify the Fabricator of the Work. The plaque shall contain a copyright notice substantially in the following form: Copyright © Gordon Huether + Partners, Inc., date of installation. If the plaque is to be placed on the Work or on a pedestal holding the Work, placement should be made in consultation with the Artist. The Client shall reasonably maintain such plaque and notice in good repair.
- 12b. The parties understand that the specific location of the Work and its permanent public installation



is integral to this Work and this Agreement. The Client agrees to make all reasonable efforts to maintain the integrity of the Work as enhanced by the Site. The Artist shall be notified if the Work is to be relocated from the address specified in Section 3 of Schedule A. The Client shall notify the Artist of any proposed alteration of the site or adjoining area that would affect the intended character and appearance of the Work, and shall consult the Artist in the planning of any such alteration, for which the Artist will receive a reasonable fee. If any alteration of such Site or Areas of the Work is made without the express written approval of the Artist, the Artist may elect to enter upon the site, at reasonable hours and after reasonable notification to the Client, and at the expense of the Client, to remove or obliterate his credit in the work, including but not limited to any signature or other emblem identifying the Artist or the Artist with the Work. This Section shall apply to any alteration of the Site affecting the intended appearance and character of the Work, whether intentional, accidental, with or without the control of the Client, or otherwise.

- 12c. The Client will not make any use of the Work in a manner that would reflect unfavorably on the name and reputation of Gordon Huether or the Artist as an artist, or that would violate the spirit of the Work or interfere with the Work's creative intent.
- 12d. The Client agrees that no part of the Work will be separated from the whole. The Client agrees that it will not intentionally alter, modify, change, destroy, or damage the Work without first obtaining the written approval of the Artist. If any alteration or damage to the Work occurs, the Artist and Gordon Huether shall have the right to disclaim authorship of the Work in addition to any remedies the Artist and Gordon Huether may have in law or equity or pursuant to the Visual Artist's Rights Amendments to the Copyright Law of the United States ("VARA") under this Agreement. Upon written notice, the Client shall remove the identification plaque described in Section 11a and all attributive references to the Artist at its own expense within fifteen days of receipt of the notice. The Artist and Gordon Huether may take such other action as they may choose in order to disavow the Work.
- 12e. The Client recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. The Client shall reasonably assure that the Work is properly maintained and protected, taking into account the instructions of the Artist, and shall reasonably protect and maintain the Work against the ravages of time, vandalism and the elements. The Client shall have the right to determine, after consultation with a professional conservator, when and if repairs and restorations to the Work will be made. During the lifetime of Gordon Huether, the Artist shall have the right to approve all repairs and restorations, provided, however, that the Artist shall not unreasonably withhold approval for any repair or restoration of the Work. If the Artist unreasonably fails to timely approve any repair or restoration, the Client shall have the right to make such repair or restoration. To the extent practical, the Artist, during Gordon Huether's life-time shall be given the opportunity to make or personally supervise significant repairs and restorations and shall be paid a reasonable fee for any such services, provided that the Client and the Artist shall agree in writing, prior to the commencement of any significant repairs or restorations, upon the Artist's fee for such services. All repairs and restorations shall be made in accordance with recognized principles of conservation.
- 12f. The rights provided to the Artist and to Gordon Huether in this Article 12 are in addition to any rights that the Artist or Gordon Huether may have under VARA.

### **13. Risk of Loss and Insurance.**

- 13a. The risk of loss or damage to the Work shall be borne by the Artist during fabrication and installation of the Work. The Artist shall take such measures as are necessary to protect the Work from loss or damage until final acceptance of the installed Work; except that the risk of loss or damage shall be borne by the Client prior to final acceptance during such periods of time, if any, as the partially or wholly completed Work is in the custody, control or supervision of the Client or its agents for the purposes of transporting, storing, installing or performing any other ancillary services to the Work.
- 13b. The Artist and/or its subcontractors shall procure and maintain for the duration of this Agreement, at the Artist's and/or subcontractor's expense, insurance in the kinds and amounts provided in

Schedule B of this Agreement. The required insurance shall cover the Artist's employees, agents, contractors or subcontractors. The coverage shall contain no special limitations on the scope of protection afforded to the Client.

#### **14. Warranty.**

- 14a. The Artist warrants that the Work is unique and original and does not infringe on any copyrights, that the Work is solely the results of the artistic effort of the Artist, and that it will be free and clear of any liens.
- 14b. The Artist will apply the highest degree of skill to the design and manufacture of the Work. The Artist will use its best efforts to ensure that materials are of the highest quality and that all subcontractors, laborers, manufacturers, or shippers participating in the creation, handling, or installation of the Work are competent to perform such services and will exercise care and diligence in the execution of their work. The Artist warrants the Work to be free of defects and will promptly remedy problems or defects resulting from workmanship within one year of installation at its cost. Notwithstanding the above warranty made by the Artist, it is hereby understood and agreed that the Artist shall not be liable for any loss or damage resulting from Acts of God, theft, vandalism, the negligence of the Client or from the Client's failure to maintain and care for the Work.
- 14c. The Artist does not warrant adhesive performance, should any adhesives be required, however, the Artist will use only the highest quality of such adhesives as are made available to assure long-term performance.
- 14d. The design and quality of the Work will be suitable for normal environmental conditions at the Project site. Subject to the foregoing, the Work is purchased by the Client "as is" and the Artist does not warrant that it is of merchantable quality or that it can be used for any particular purpose and further disclaims all other implied or expressed warranties.

#### **15. Quality Assurance.**

The Artist fabricates to meet or exceed industry standards for this Work. Some work by the Artist incorporates state of the art lamination technology, which by its nature is imperfect and susceptible to visual "flaws." These "flaws" in no way detract from its performance and durability.

#### **16. Limit of Liability.**

The Client agrees that the maximum liability of the Artist, the Artist's partners, employees, agents and subcontractors (collectively, for the purpose of section 16 only, the "Artist") to the Client and the Client's agents, employees, contractors and affiliates (collectively, for the purpose of this section 16 only, the "Client") arising out of any breach of warranty regarding the work or out of any loss or damage to the work while the risk of loss belongs to the Artist shall not exceed the compensation received by the Artist under this agreement.

#### **17. Final Work Transcription.**

Client understands and agrees that the Work is unique and handcrafted. All drawings and/or models provided shall be used as guides during fabrication. The Artist shall use its discretion during the fabrication process to transcribe the work as the Artist envisions that the drawing should be interpreted, however, the intent shall be to closely represent the final design approved by the Client.

#### **18. Dispute Resolution.**

The parties agree to mediate any dispute or claim between them arising out of or relating to this Agreement or any resulting transaction before resorting to arbitration or other legal procedures, provided the parties have assurances that the status quo will be maintained during the mediation

process. Mediation is a process in which parties attempt to resolve a dispute by submitting it to an impartial, neutral mediator who is authorized to facilitate the resolution of the dispute but who is not empowered to impose a settlement on the parties. The mediator must have at least five years experience in architectural glass, a related construction industry, or other applicable experience acceptable to both parties. The mediation fee, if any, shall be divided equally among the parties involved. Before the mediation begins, the parties agree to sign a document limiting the admissibility in arbitration or any civil action of anything said, any admission made, and any documents prepared, in the course of the mediation, consistent with applicable state law. If any party commences a court action or an arbitration proceeding based on a dispute or claim to which this paragraph applies without first attempting to resolve the matter through mediation then, in the discretion of the judge in the action, that party shall not be entitled to recover attorney's fees even if attorney's fees would otherwise be available to that party in any such court action. However, the filing of a judicial action to enable the recording or preservation of an order of attachment, receivership, injunction, mechanic's liens, or stop notice, or other provisional remedies shall not constitute a loss of the right to recover attorney's fees under this provision.

#### **19. Governing Law.**

This Agreement shall be governed by the laws of the State of California and any judicial action related to this matter shall be brought in the California Superior Court for the County of San Mateo.

#### **20. Miscellaneous Provisions.**

- 21a. The parties acknowledge that they are executing this Agreement voluntarily; that they have read and are familiar with the provisions herein contained before signing and had the opportunity to discuss the provisions with the other party to the Agreement, that they have weighed all the facts and circumstances likely to influence their judgment; that they have sought and obtained independent advice if they deemed it advisable, and they each represent and warrant that they clearly understand and consent to all the provisions herein.
- 21b. Neither the Client nor the Artist shall assign this Agreement without the written consent of the other. Subject to the foregoing limitations, Client and Artist respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement, and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement.
- 21c. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Artist.
- 21d. This Agreement may not be modified, waived, amended or changed unless the same is in writing and signed by the party against whom the enforcement of such modification, waiver, amendment, or change is sought.
- 21e. Part or section titles or captions in this agreement are for convenience and reference only, and shall not be deemed part of this agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof.
- 21f. The provisions of this Agreement are severable and should any provision be void, violable or unenforceable under any applicable law such void, violable or unenforceable provision shall not affect or invalidate any other provision of this Agreement, which shall continue to govern the relative rights and duties of the parties as though the void, voidable or unenforceable provision were not a part hereof. In addition, it is the intention and agreement of the parties that all of the terms and conditions hereof be enforced to the fullest extent permitted by law.
- 21g. No agent, employee, or representative of the Artist has any authority to bind the Artist to any affirmation, representation, or warranty concerning the Work sold under this Agreement. *This Agreement and*

*Schedule A and Schedule B attached hereto, which are incorporated into this Agreement and constitute terms and conditions of the Agreement, contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto.*

- 21h. The Client appoints the Client Representative described in Section 7 of Schedule A as its authorized agent in connection with this Agreement. Wherever this Agreement requires any notice to be given to or by the Client, or any determination, or action, or approval to be made or given by the Client, the Client Representative shall represent and act for the Client.
- 21i. All notices, forms, and other documents delivered under this Agreement shall be delivered or mailed to the addresses listed in Section 7 of Schedule A, or to such other addresses as may be specified hereafter by either party.

**SCHEDULE A TO EXHIBIT A**

**1. Description of the Project**

The Project includes the provision of fabrication, shipping/delivery, and installation of the Work as described below:

- Project Name            San Mateo County Memorial Project, Redwood City
- Project #
- Location                400 County Center, Redwood City, CA 94063
- Medium                 TBD
- Description            TBD

**2. The following is a description of the total areas and dimensions of the Work**

Area ID	Approximate Dimensions			Quantity
	W	X	H	
TBD	XX	X	XX	X

**3. Site Address**

400 County Center

Redwood City, CA 94063

**Exhibit B**

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

**4. Compensation\***

*Budget and project scope will be verified upon completion of Design Development.*

Total estimated compensation for the San Mateo County Memorial, Redwood City ArtWork is as follows:

Design Development Phase	\$50,000
Fabrication Phase	\$275,000
Crating / Shipping and Installation Phase	\$20,000
Acceptance	\$5,000
Sales tax (if applicable)	TBD
<b>Total Compensation</b>	<b>\$350,000*</b>

**The parties acknowledge that the total compensation paid to the Artist for the Work shall not exceed \$350,000 (except to pay any applicable sales tax). However, the amounts paid at each phase may be adjusted/amended by the parties after completion of Design Development.**

**5. Payment Schedule\***

Billing Phase/ Description*	Payment Due	Amount
• Design Phase Commences	Upon Contract Execution	\$50,000
• Fabrication Deposit	Prior to procurement of materials and commencement of fabrication	\$125,000
• Fabrication Progress Payment	Upon 50% completion of the work	\$75,000

• Fabrication Completion	Prior to release of the Work for shipment	\$75,000
• Delivery/Installation	At time of installation	\$20,000
• Acceptance	Upon Client's acceptance of the Work	\$5,000

*\*Phases and payments to be made at each phase will be revised upon Completion of Design Development. The total Project budget of \$350,000 shall not be changed, however, except that applicable sales tax is not yet included in this estimated schedule.*

**6. Project Schedule\***

<b>Project Phase</b>	<b>Beginning of Phase</b>	<b>Estimated Duration</b>
Design Development	Upon Artist's receipt of executed agreement and Design Development Deposit	12 weeks
Fabrication	Upon Artist's receipt of fabrication deposit	19 weeks
Installation	Upon installation and Client acceptance of the Work	1 week

*\* Artist will work with Client to establish an appropriate schedule upon completion of Design Development and will be subject to changes as mutually agreed upon.*