

Call for Artists

OPEN COMPETITION

[California-based]

Permanent Public Art:
Request for Qualifications,
Artist Selection, Design
Concept, Fabrication,
and Installation

City Services Building
Capital Improvement Program
Project No. PF2310

Date issued July 3, 2025

Due August 7, 2025
4 PM (PST)

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City of Ontario, CA

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Cover Image Credit:
City Services Building
Construction Design Concept – HMC Architects

Project Summary

The City of Ontario's Museum, Arts & Culture Department seeks to qualify an artist or artist team to enter into an agreement to develop a **site-integrated sculptural** work of art for the **City Services Building** located at 311 N. Sultana Avenue in Ontario, California, with construction estimated to be completed by February 2027. A work of art that **fosters community, connectivity, and civic pride**, while reflecting **multiple cultural identities** and **intergenerational values**, ultimately becoming a **well-known visual landmark to this site** for all to enjoy.

The total budget for this **public art project is not to exceed \$300,000**.

Project Description & Background

City Services Building

Overview

The City of Ontario has launched the Civic Center Campus Expansion, a part of the broader Ontario Plan to reactivate downtown. This effort envisions a modernized Civic Center Campus, enhancing facilities for public employees, attracting more individuals to downtown, and optimizing available space.

The City's anticipated expansion initiatives include the construction of a City Services Building, a Civic Center Parking Structure, and establishing a new Fire Station 1. Additionally, the Civic Center is expected to include the following through public-private partnerships: the University of La Verne College of Health and Community Well-Being and the future home to the Ontario-Montclair School District Headquarters.

Situated at the City's core, the Civic Center is crucial to Ontario's downtown revitalization, encompassing high-density housing, dining, retail, services, public spaces, offices, and civic facilities. Through joint expansion efforts and collaborations, Ontario is committed to driving economic growth, promoting innovation, and fostering community development downtown.

Purpose and Need

The purpose of the project is to provide office space to accommodate 345 City employees and seven City departments— Community Life & Culture, the Ontario Police Department, Information Technology, Broadband Infrastructure and Services, Community Improvement, Finance, Human Resources, and the Ontario Public Employee Federal Credit Union. A key consideration during the design was to develop a flexible and adaptable building that would accommodate future changes, expansions, and modifications, ensuring that it can adapt to the evolving needs of the City and its employees.

Public Art Project Budget

The **total budget for this public art project is not to exceed \$300,000**.

The selected artist will:

- Receive a design contract (Exhibit B) for \$50,000 to develop a site-integrated design proposal,
- Receive a subsequent contract of up to \$205,000 to fabricate and install the artwork after the design proposal has been accepted, and
- Additionally, \$45,000 will be withheld for administrative, conservation, and other related project costs.

Artists should know that any proposal by a selected artist or artist team must undergo an extensive approval process which may include revisions or modifications. Please consider this approval process, contractual process, obligations, and expedited project timeline when submitting qualifications. The process, fees, and services are subject to negotiation based on proposed deliverables, must meet the City's fabrication and installation standards, and must adhere to all City Public Works processes related to construction and safety regulations.

The total project budget is not to exceed \$300,000, inclusive of all travel expenses, taxes, insurance, materials, artwork delivery, installation services, all other related project costs, as well as submission of a maintenance plan.

Project Goals

With this public art installation, it is the goal of the City of Ontario's Public Art Advisory Commission and the City of Ontario to achieve the following:

- Create a design that is visually captivating and engaging in all vantage points
- Have a strong visual presence both day and night
- Generate a site-specific work of art that evokes a memorable sense of place authentic to the City as a premier destination for arts and culture in the Inland Empire

Some potential identified themes shared by the Public Art Advisory Commission, include:

- Unique to and a reflection of Ontario
- Inspires a sense of community, connectivity, and civic pride
- Reflects multiple cultural identities, as well as intergenerational values
- Fosters the City's innovative future and forward momentum

Project Location Details

The site placement for public art will be located at the main entrance to the City Services Building, Northwest Approach, on the exterior area of the building. Placement of the public art element will be highly accessible and visible from individuals walking or driving by. As a free-standing sculpture in the round, the public art element will need to be anchored into place to meet all safety requirements.

***The City Services Building public art infrastructure may include;**

- The construction bid will include structural engineering, uplighting, and sculpture installation, excluding delivery. The construction bid will include \$200K for a Structural Engineer to design the footing for the public art element to ensure meeting code requirements
- Reinforced concrete pad, 5' 3/16 in final size and depth to be determined based on the weight of the final public art element(s)
 - Below grade footing is an option as well, meeting 100mph wind shear and max weight
(This will need to go through plan check process, separate from building plan check process)
 - Footings, connections and attachments to withstand weight of the public art
- The surrounding space adjacent to the public art will be open for design and inclusion of artwork provided by the artist, if desired

- The site plan includes conduit and power to support uplighting of the public art
 - Final type of uplighting may depend on the aesthetics of the landscaping and architecture
- Surrounding pathways that provide accessibility, ease to view the work of art
- Retaining wall around the public art site (thickness and height may vary), if needed
- Low landscaping with drip irrigation (no trees or large foliage to impede on viewing the work of art, as well as no sprinklers to hit the area where the public art is placed)

*The City will cover the costs of the infrastructure for the public art element. The infrastructure costs will be covered within the construction budget, provided the artist meets their deadlines as the project moves forward.

Project Timelines

City Services Building Construction Timeline:

- **July – 2025:** Final plan check for the City Services Building to be completed
- **July – 2025:** Public Works will go out for construction bid
- **September – 2025:** Public Works will go to City Council to award the construction contract
- **November – 2025:** Construction is anticipated to begin
- **January/February – 2027:** Construction anticipated to be completed

Public Art Anticipated Timeline:

- **July 3, 2025**
Call for Artists Qualifications released on an online platform: Submittable.com
- **August 7, 2025 by 4 PM (PST)**
Deadline for submissions
- **August – 2025**
Qualifications reviewed
- **September /October – 2025**
Artist Selection Panel meets to review artist submissions and identifies top highly ranked artists/artist teams
- **November – 2025**
Highest ranked artists/artist teams will be invited to give presentations to the Artist Selection Panel. Final selection of artist or artist team will be made
- **December – 2025**
The final selection of artist or artist team by the Artist Selection Panel will be shared with the Public Art Advisory Commission. If the Public Art Advisory Commission approves the selection, then the artist will enter into the design agreement
- **February – 2026**
The artist/artist team will begin the development of the design concept for the artwork. The artist or artist team will begin dialogue with multiple stakeholders to gather input for the development of the design concept

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- **May – 2026**
The design concept will be shared with the Public Art Advisory Commission, and if approved then the artist or artist team will enter into a fabrication/installation agreement, which will be approved by the Ontario City Council
- **July – 2026**
Fabrication begins. Artist provides ongoing status reports on progress
- **October/November – 2026**
Staff will conduct studio visits
- **November/December – 2026**
Plan for installation details. Site visit to ensure infrastructure is in place
- **January/February – 2027**
Installation of the public art
- **February – 2027**
Artist provides final report on conservation and maintenance plan with accompanying outlines materials list

Public Art Anticipated Timeline may be adjusted due to changes in construction timeline.

The City of Ontario reserves the right, at any time, to modify the City's Agreement or Contract, to reject any or all submissions, to re-open the Call for Artists Qualifications. Award of a Professional Services Agreement for design and a contract for the fabrication portion does not guarantee the selected firm will perform all or any portion of the services described in this Call for Artists Qualifications, nor does it guarantee that the maximum amount will be expended. Please review Exhibit D of this Call for Artists Qualifications, Professional Services Agreement. The selected artists will enter into an agreement with the City of Ontario. The sample City agreement is attached for reference and the artist should be aware of the requirements prior to submitting a response to this Call for Artists Qualifications. Review the description of insurance requirements outlined in Exhibit D, listed in section 3.3.11 for more information.

The City's contract process is dictated by many levels of review and may take several months to complete. This agreement will not be subject to negotiations; therefore, if the artist is not able to comply with the terms of this agreement, please do not submit a response to this Call for Artists Qualifications.

About the City's Public Art Program

The City of Ontario's Public Art Program promotes public art, as a cultural resource for the community, and acts as a mechanism to enhance the City's commercial vitality and economic stability. The program serves to enrich the community aesthetic and built urban environment, by making a variety of artwork available to the public throughout the City.

About the City's Public Art Process

The City of Ontario's [Public Art Ordinance No. 3256](#), Section 5-33.07, allocates one percent (1%) of the total cost of certain construction projects to fund permanent public art. The City's Public Art Program is administered by the City's Museum, Arts & Culture Department, and works closely with the City's Public Art Advisory Commission on all public art projects.

The public art process involves:

- Organizing an Artist Selection Panel representing key stakeholders
- Holding focus group sessions to engage in two-way conversations about this public art project with key stakeholders
- Initiating an artist selection process
- Engaging in review and approval by the City's Public Art Advisory Commission and City Council
- Liaising with the City's Public Works staff
- Finalizing and installing new public art
- Maintaining the public art

Submittal Requirements, Eligibility, and Selection Process

The Call for Artists Qualifications is established for professional artists based in California and eligible to work in the United States. Preference will be given to artists who reside in Southern California.

Ontario-based artists and artists who reside in San Bernardino County are strongly encouraged to apply.

Submittals for the Call for Artists Qualifications shall be submitted on an online platform

Submittable.com at:

[Call for Artists Qualifications, City Services Building Public Art](#)

Artists or artists teams will be rated on a total of 100 points, and will be required to submit the following information:

Artist Vitae and Statement of Interest.

Submission of artist vitae. Description of the artist or artist team's interest in the project, artist's statement to include the approach and style of work and relevant experience or background that qualifies you for this project.

[Rating criteria weight: 30 points]

Artist Portfolio.

A minimum of four (4) and up to ten (10) samples of past work, including an annotated image list stating the title of the piece, commissioning body, project budget, date, medium, and dimensions.

Naming convention of images:

ArtistLastName_ArtistFirstName_ArtworkTitle_Dimensions_YearCreated_UniquelIdentifier.filetype

[Rating criteria weight: 40 points]

Work Experience and Working within the Public Sector.

List public art projects conducted in the public sector; documentation of two or more public art commissions over \$50,000 per project. List materials costs, rates and other costs per referenced project. Provide brief (no more than 200 words) narrative on community engagement process involved with each project. Artist or artist teams should have extensive public outreach experience. Include contact information: name, organization, title, their role in the project scope, date(s)/project name, address, phone, email with the list of references.

[Rating criteria weight: 25 points]

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Project Schedule and Value-Added Offerings.

Estimated schedule for completion of work for the proposed project. Value-added offerings describe how the artist or artist team will provide the best value to the City of Ontario. Value-added offerings could include rates, specialized expertise, project management approach to increase efficiency, familiarity with the City of Ontario or other ways you will ensure maximum value for dollars spent and delivering the project on time and on budget.

[Rating criteria weight: 5 points]

Only complete applications with all of the attachments, as specified above will be considered. This Call for Artists Qualifications process does not require that the artist or artist team prepare any specific ideas or proposed design concepts for their submission materials.

Additional Considerations

The artist and artist teams will be selected on the basis of the following criteria:

- Quality of concept, design and craftsmanship of past works
- Visual and technical sophistication
- Ability to produce original artwork
- Creativity of approach of past work
- Ability to produce durable outdoor art
- A proven ability to coordinate and collaborate with City staff and project design professionals
- Demonstrated ability to work directly with sensitivity and awareness to community character, input, and concerns
- Ability to communicate effectively
- Demonstrated ability to complete projects on time and within budget
- Ability to work in a public environment with multiple project members on a condensed and aggressive time frame
- Portfolio review

Application submissions will be ranked based on a weighted scoring system.

Criteria	Weight
Artist vitae. Artist or artist team experience, qualifications, statement of interest	30 points
Artist portfolio featuring past public art projects, with annotated image list	40 points
Examples working within public sector with extensive public outreach and references. Documentation of two or more public art commissions over \$50,000 per project, materials costs, rates, and other costs	25 points
Estimated labor costs, materials costs, project schedule, and value-added offerings	5 points

No Deviations from the Call for Artists Qualifications

In submitting an application in response to this Call, the artist is certifying that it takes no exceptions to this Call including, but not limited to, the Agreement. If any exceptions are taken, such exceptions must be clearly noted in the application and may be reason for rejection of the application. As such, artist is directed to carefully review the sample Agreement and, in particular, the insurance and indemnification provisions therein.

Non-Responsive Applications

An application may be considered non-responsive if conditional, incomplete, or if it contains alterations of form, additions not called for, or other irregularities that may constitute a material change to the application.

Costs for Preparing

The City will not compensate any artist for the cost of preparing any application, and all materials submitted with an application shall become the property of the City. The City will retain all application materials submitted and may use any idea in an application regardless of whether that application is selected.

No Commitment to Award

Issuance of this Call for Artists Qualifications and receipt of applications does not commit the City to award a contract. City expressly reserves the right to postpone the application for its own convenience, to accept or reject any or all applications received in response to this Call, to negotiate with more than one artist concurrently, or to cancel all or part of this Call.

Conflict of Interest

The artist or artist team has no conflict of interest with regard to any other work performed by the artist or artist team for the City.

Non-Discrimination

The City does not discriminate on the basis of race, color, national origin, religion, age, ancestry, medical condition, disability, or gender in consideration for an award of contract.

Notification of Results

Artists will be notified of the Artist Selection Panel's decision by email. The City of Ontario reserves the right not to select any of the submissions.

We're here to help:

City of Ontario, Museum, Arts & Culture Department

Tonya Rodzach, Arts & Culture Manager

(909) 395-2510

MuseumInfo@ontarioca.gov

Subject line: Call for Artists – City Services – Public Art Project _ARTIST's name (First, Last)

About the City of Ontario

The City of Ontario is enhancing the quality-of-life by creating urban lifestyle districts that create sustainable places to live, work and play. Located just east of Los Angeles and Orange counties, the City of Ontario is ideally situated as a gateway to Southern California. With major freeways, rail transportation, and an International Airport, Ontario invites the rest of the world to be a part of a culturally diverse community with rich history that is well positioned for quality development and economic sustainability for its residents. Complementing its business and residential core, Ontario offers premium entertainment venues such as the Ontario Convention Center, Toyota Arena, and Ontario Mills.

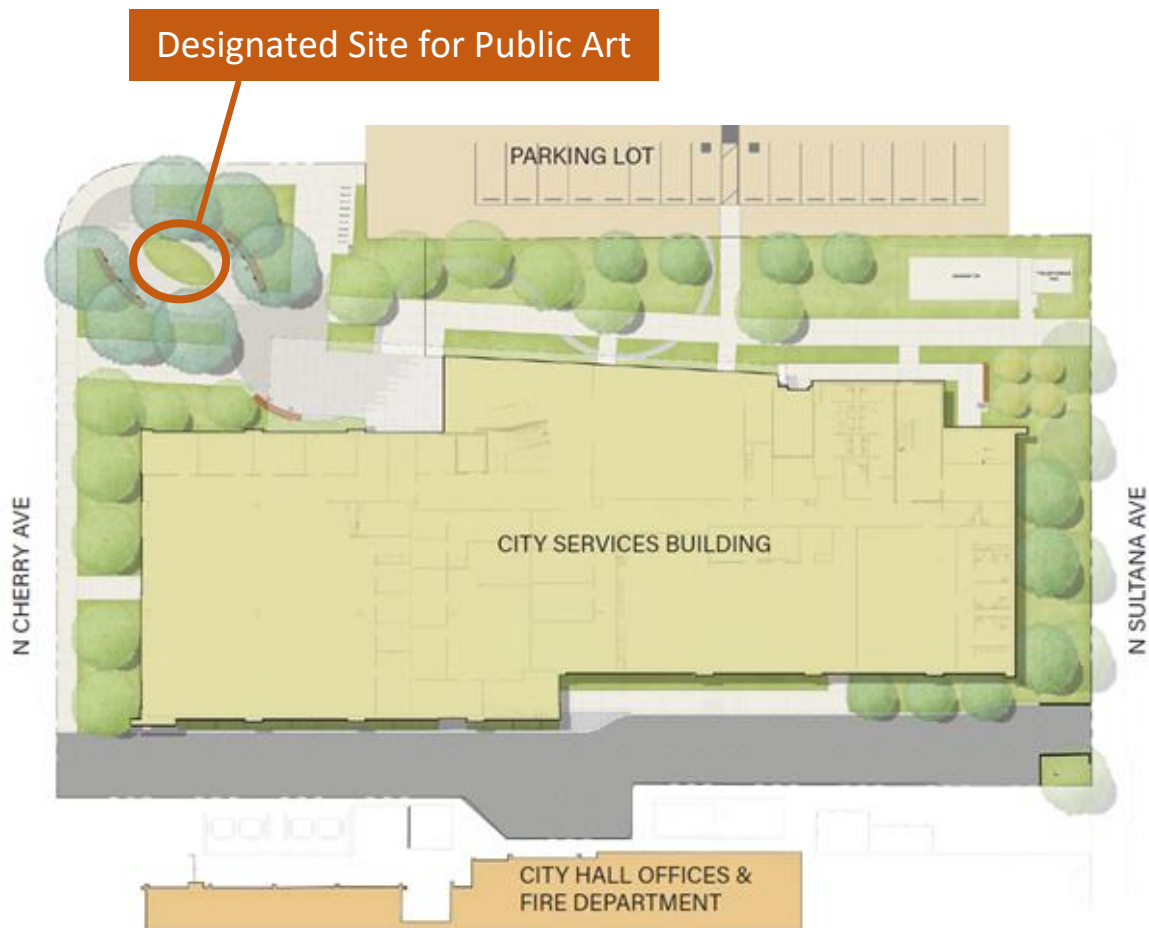
Arts and Culture in Ontario

The City of Ontario's Department of Museum, Arts & Culture advances an understanding of regional history and art through museum exhibits, collections stewardship, educational programs, annual arts festivals, and public art. The Ontario Museum of History & Art was founded in 1979 and is located on tree-lined Euclid Avenue in a historic building that originally served as Ontario's second City Hall. In 2022 Ontario's City Council established the Public Art Program and the Museum department was expanded to encompass Museum, Arts & Culture. The department's programs enhance knowledge and understanding of our community through dynamic and vibrant experiences that reflect pride in who we are, where we live, and our legacy.

Additional Research Resources

- [2025 State of the City Video](#)
- [The Ontario Plan](#)
- [Downtown Ontario Design Guidelines](#)
- US News and World Report – Best Places to work [2024](#) & [2025](#)

Exhibit A, Public Art Site



***Final design subject to change.*

Key	
	- Public art site; concrete pad diameter setting, up-lighting
	- Close proximity surrounding area of the public art site-inclusive of artist interpretation
	- Low landscaping with drip irrigation

Exhibit B, Exterior Rendering, HMC Architects

Designated
public art site



Northwest Approach (From Main City Hall Building)
HMC Architects



West View (From Conservation Park)
HMC Architects

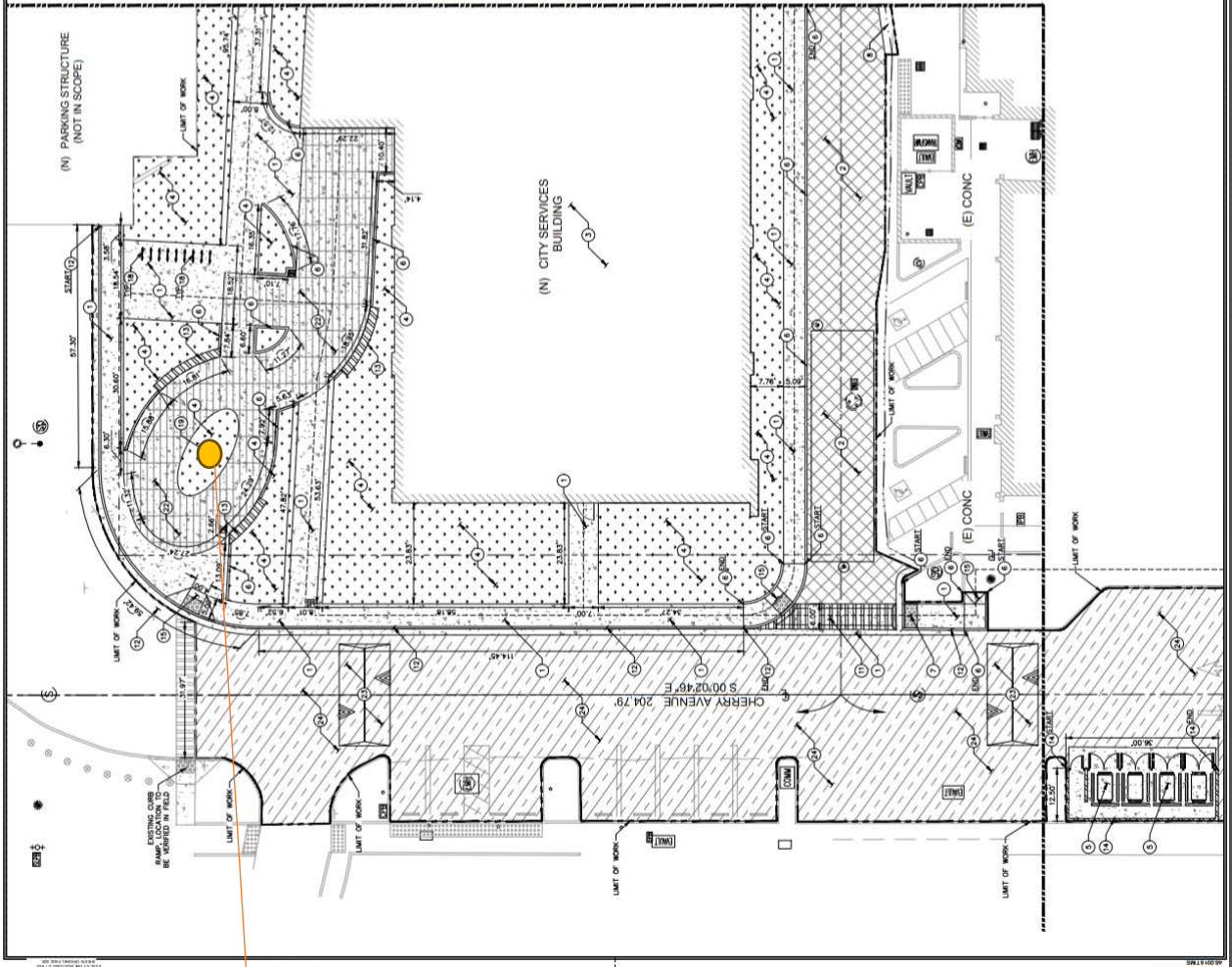


South West View (From N. Cherry Avenue)
HMC Architects

***Please note: Exterior building design and landscaping elements are subject to change.*

Detail

Public Art Site Location



- CONSTRUCTION NOTES:
1. CONSTRUCT 1.5" THICK ASPHALT CONCRETE PAVEMENT OVER 6" BASE PER DETAIL 1 ON SHEET C-2.10.
 2. CONSTRUCT 1.5" THICK ASPHALT CONCRETE SURFACING OVER 4" THICK GRADED AGGREGATE BASE (GAB) PER DETAIL 1 ON SHEET C-2.10.
 3. CONSTRUCT NEW BUILDING PER ARCHITECTURAL DRAWINGS.
 4. CONSTRUCT NEW TRASH ENCLOSURE AS PER ARCHITECTURAL DRAWINGS.
 5. CONSTRUCT NEW CURB PER DETAIL 3 ON SHEET C-2.10.
 6. CONSTRUCT 3" WIDE CONCRETE V-GUTTER PER DETAIL 2 SHEET C-2.10.
 7. NEW RAISED CROSSWALK PER ARCHITECTURAL DRAWINGS.
 8. CONSTRUCT NEW SEAT WALL PER DETAIL 3 ON SHEET C-2.10.
 9. CONSTRUCT NEW SEAT WALL PER DETAIL 3 ON SHEET C-2.10.
 10. CONSTRUCT NEW CURB RAMP PER CITY STANDARD DRAWING 1213.
 11. INSTALL BIKE RACK PER ARCHITECTURAL DRAWINGS.
 12. CONSTRUCT PRECAST CONCRETE PANELS PER LANDSCAPE DRAWING 1213.
 13. NEW ASPHALT DRIVE PER ARCHITECTURAL DRAWINGS.
 14. NEW ASPHALT DRIVE PER DETAIL 1 ON SHEET C-2.10.
 15. CONSTRUCT 1.5" THICK ASPHALT CONCRETE SURFACING OVER 4" THICK GRADED AGGREGATE BASE (GAB) PER DETAIL 1 ON SHEET C-2.10.
 16. CONSTRUCT 6" THICK CONCRETE PAVEMENT OVER 4" THICK GRADED AGGREGATE BASE (GAB) PER DETAIL 2 ON SHEET C-2.10.
 17. NEW PLANTER AREA PER ARCHITECTURAL DRAWINGS.
 18. CONSTRUCT NEW BUILDING PER ARCHITECTURAL DRAWINGS.
 19. INSTALL TRUNCATED DOWNS PER ARCHITECTURAL DRAWINGS.
 20. NEW WALL FOR ARCHITECTURAL AND LANDSCAPE DRAWINGS.
 21. PRECAST CONCRETE PAVES PER LANDSCAPE DRAWINGS.
 22. CONSTRUCT AND OVERLAY 4" ASPHALT PER DETAIL 7 ON SHEET C-2.10.
 23. LIMIT OF WORK
- LEGENDS:
- 1. CONSTRUCT 1.5" THICK ASPHALT CONCRETE SURFACING OVER 4" THICK GRADED AGGREGATE BASE (GAB) PER DETAIL 1 ON SHEET C-2.10.
 - 2. CONSTRUCT 6" THICK CONCRETE PAVEMENT OVER 4" THICK GRADED AGGREGATE BASE (GAB) PER DETAIL 2 ON SHEET C-2.10.
 - 3. NEW PLANTER AREA PER ARCHITECTURAL DRAWINGS.
 - 4. CONSTRUCT NEW BUILDING PER ARCHITECTURAL DRAWINGS.
 - 5. INSTALL TRUNCATED DOWNS PER ARCHITECTURAL DRAWINGS.
 - 6. NEW WALL FOR ARCHITECTURAL AND LANDSCAPE DRAWINGS.
 - 7. PRECAST CONCRETE PAVES PER LANDSCAPE DRAWINGS.
 - 8. CONSTRUCT AND OVERLAY 4" ASPHALT PER DETAIL 7 ON SHEET C-2.10.
 - 9. LIMIT OF WORK
- KEYMAP
- ENLARGED SITE CONTROL PLAN
- SCALE 1"=40'

AGENCY APPROVAL:

DESIGNING AGENCIES STAMP HERE

CITY OF ONTARIO
SOUTHERN CALIFORNIA

HMC Architects
2518003000

ISSUE
1. REVISION

KEYNOTES

NOTES

PROJECT ARCHITECT OF RECORD:
1. For the purpose of this project, the project architect of record is the person who is responsible for the design of the project.

CONSULTANT:
1. For the purpose of this project, the consultant is the person who is responsible for the design of the project.

KEY PLAN

PROJECT:
ONTARIO CITY SERVICES BUILDING

311 NORTH SULTANA AVE, ONTARIO, CA 91702

ENLARGED SITE CONTROL PLAN
BID SET

DATE: 08/08/2025
CLIENT PROJECT NO: 2410030000
SHEET: C-2.10

Public Art Site Location

Exhibit D, Professional Services Agreement
SAMPLE - DO NOT COMPLETE AT THIS TIME

**CITY OF ONTARIO
PROFESSIONAL SERVICES AGREEMENT
FOR DESIGN OF PUBLIC ARTWORK**

1. PARTIES AND DATE.

This Agreement is made and entered as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City") and *****INSERT NAME OF COMPANY/ARTIST**, a **INSERT TYPE OF BUSINESS; I.E., CORPORATION (INCLUDE STATE OF INCORPORATION), LIMITED LIABILITY COMPANY, SOLE PROPRIETORSHIP, ETC.*****, with its principal place of business at *****INSERT ADDRESS***** ("Contractor" or "Artist" used interchangeably). City and Contractor/Artist are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing public art services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Contractor to render such professional services for the development of a site-integrated work of art for the City Services Building ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional public art consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from *****INSERT DATE***** to *****INSERT DATE*****, unless earlier terminated as provided herein. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Compensation.

3.2.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed *****INSERT AMOUNT WRITTEN OUT (\$***INSERT NUMBER)** without written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2.2 Payment of Compensation. Contractor shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Contractor. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges. If the City disputes any of Contractor's fees, the City shall give written notice to Contractor within thirty (30) days of receipt of an invoice of any disputed fees set forth therein. Payment shall not constitute acceptance of any Services completed by Contractor. The making of final payment shall not constitute a waiver of any claims by the City for any reason whatsoever.

3.2.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "C" of this Agreement.

3.2.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.2.5 Automated Clearing House ("ACH") payments. It is the City's policy to pay its Contractor invoices via electronic fund transfers through the ACH network. All payments due and owing pursuant to a properly issued and correct invoice or under this Agreement shall be made through electronic ACH transfers, unless otherwise agreed upon by both Parties in writing. Contractor shall provide the City with ACH payment details whereby the City shall initiate the ACH transfers to Contractor in the amount required pursuant to a properly issued and correct invoice or under this Agreement. Each Party shall undertake any and all required actions and execute any required documents, instruments, or agreements required to effectuate the requirements of this Section. In the event the City erroneously deposits funds into an account, or otherwise deposits funds to which Contractor is not entitled: (1) Contractor shall immediately notify the City and the financial institution; (2) Contractor shall not withdraw any of the funds which were erroneously deposited or to which Contractor is not entitled; and (3) Contractor authorizes both the City and financial institution to take all actions necessary to correct the error and return to the City all funds erroneously deposited or to which Contractor is not entitled.

3.3 Responsibilities of Contractor.

3.3.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Contractor or under its supervision. Contractor will determine the

means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Any personnel performing the Services on behalf of Contractor shall not be employees of City and shall at all times be under Contractor's exclusive direction and control. Neither City, or any of its officials, officers, directors, employees or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees or agents, except as set forth in this Agreement. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3.2 Schedule of Services. Contractor shall perform the Services in a prompt and timely manner and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services expeditiously. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.3.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

3.3.4 Substitution of Key Personnel. Contractor has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Contractor cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: *****INSERT NAME AND TITLE*****.

3.3.5 City's Representative. The City hereby designates *****INSERT NAME AND TITLE*****, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Contractor but not the authority to enlarge the Scope of Services or change the total compensation due to Contractor under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Services or change the Contractor's total compensation subject to the provisions contained in this Agreement. Contractor shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.3.6 Contractor's Representative. Contractor hereby designates *****INSERT NAME AND TITLE*****, or his/her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.3.7 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, Contractors and other staff at all reasonable times.

3.3.8 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its subcontractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.3.9 Period of Performance.

3.3.9.1 Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the City and Contractor ("Performance Milestones"). Contractor agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

3.3.9.2 Neither City nor Contractor shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Contractor and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the services and Agreement.

3.3.9.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Contractor to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.3.10 Laws and Regulations; Employee/Labor Certification.

3.3.10.1 Compliance with Laws. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with the Services and this Agreement. All violations of such laws and regulations shall be grounds for the City to terminate the Agreement for cause.

3.3.10.2 Employment Eligibility; Contractor. Contractor certifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time and shall require all subcontractors and sub-subcontractors to comply with the same. Contractor certifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement.

3.3.10.3 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.3.10.4 Air Quality. To the extent applicable, Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Contractor shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.3.10.5 Water Quality Management and Compliance. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such

authority. Contractor must additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. City may seek damages from Contractor for delay in completing the Services caused by Contractor's failure to comply with the laws, regulations and policies described in this Section, or any other relevant water quality law, regulation, or policy.

3.3.10.6 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3.11 Insurance.

3.3.11.1 Time for Compliance. Contractor shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.3.11.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Contractor, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Contractor agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, or the exact equivalent, with limits of not less than \$2,000,000 per occurrence and no less than \$4,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); (3) products/completed operations liability; or (4) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence.

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

3.3.11.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Contractor shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability: (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Contractor; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Contractor shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability: (1) Additional Insured: The City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Vendor or for which the Vendor is responsible. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(C) Workers' Compensation: (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the City, its officials, officers, employees, agents, and volunteers.

3.3.11.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.3.11.5 Waiver of Subrogation. All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

3.3.11.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.3.11.7 Evidence of Insurance. The Contractor, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

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

3.3.11.9 Enforcement of Agreement Provisions (non estoppel). Contractor acknowledges and agrees that actual or alleged failure on the part of the City to inform Contractor of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.3.11.10 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.3.11.11 Additional Insurance Provisions

(A) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(B) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Contractor or City will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, City may cancel this Agreement.

(C) The City may require the Contractor to provide complete copies of all insurance policies in effect for the duration of the Project.

(D) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(E) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit the Contractor's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

(F) Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Services under this Agreement.

3.3.11.12 Insurance for Subcontractors. Contractor shall include all subcontractors engaged in any work for Contractor relating to this Agreement as additional insureds under the Contractor's policies, or the Contractor shall be responsible for causing subcontractors to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subcontractor's policies. All policies of Commercial General Liability insurance provided by Contractor's subcontractors performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Contractor shall not allow any subcontractor to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subcontractor's compliance with all insurance requirements under this Agreement, to the extent applicable. The Contractor shall provide satisfactory evidence of compliance with this section upon request of the City.

3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Contractor shall therefore comply with such Labor Code sections to the fullest extent required by law. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration/DIR Compliance. If the Services are being performed on a public works project of over \$25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over \$15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and all subcontractors must be registered with the Department of Industrial Relations ("DIR"). Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors.

3.4.3 Compliance Monitoring. This Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the DIR against Contractor or any subcontractor that affect Contractor's performance of services, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Contractor or any subcontractor.

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

3.5 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those Services which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.6 Indemnification.

3.6.1 To the fullest extent permitted by law, Contractor shall defend (with counsel

of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, Contractors or agents in connection with the performance of the Contractor's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Contractor, the City, its officials, officers, employees, agents, or volunteers.

3.6.2 If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, and, upon Contractor obtaining a final adjudication by a court of competent jurisdiction, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

3.7 General Provisions.

3.7.1 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.7.2 Independent Contractors and Subcontracting.

3.7.2.1 Use of Contractors. Contractor is aware of statutory and case law regarding classification of workers as independent contractors, including California Labor Code Section 2750.3 and Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903 (2018). To ensure that Contractor is in compliance with the California Labor Code, Contractor shall only utilize its employees to provide the Services. Contractor may not provide the services through any independent contractor, or subcontractor ("Subcontractor(s)") unless approved by the City as set forth in Section 3.7.2.2 below. Contractor represents and warrants that all personnel who perform the Services on Contractor's behalf are Contractor's employees, and that Contractor complies with all applicable laws, rules and regulations governing its employees, including, but not limited to, the California Labor Code, Unemployment Insurance Code and all applicable Industrial Welfare Commission Wage Orders.

3.7.2.2 Prior Approval Required. Contractor shall not use any Subcontractor to provide the Services, or any portion of the work required by this Agreement, without prior written approval of City. In the event that City authorizes Contractor to use a Subcontractor, Contractor shall enter into a written agreement with the Subcontractor, which must

include all provisions of the Agreement, including a restriction on the Subcontractor's use of further independent contractors or subcontractors without the City's prior written consent.

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

Contractor: [***INSERT BUSINESS NAME***]
[***INSERT STREET ADDRESS***]
[***INSERT CITY STATE ZIP***]
ATTN: [***INSERT NAME AND TITLE***]

City: City of Ontario
303 East "B" Street
Ontario, CA 91764
ATTN: [***INSERT NAME AND TITLE***]

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

3.7.4 Warranties and Waiver of Rights.

3.7.4.1 Warranties of Title. The Artist represents and warrants that:

(A) The Artwork is solely the result of the Artistic effort of the Artist. The Artist is the sole and absolute owner of the Artwork, the copyrights pertaining to it, and all the rights associated or relating to it. The Artist has the full power to enter into and perform this Professional Services Agreement and to make the grant of rights contained in this Agreement.

(B) The Artwork is unique and original and does not infringe upon any copyright, trademark, service mark or other intellectual property right of any third party.

(C) The Artwork is free and clear of any liens from any source whatsoever.

(D) The Artwork or a duplicate of the Artwork, the Artwork's design or any element thereof has not been sold, assigned, licensed, granted, encumbered, or utilized elsewhere.

3.7.4.2 Warranties of Quality and Condition. The Artist represents and warrants that the execution, fabrication, and installation of the Artwork will be performed in a workmanlike manner, and that the Artwork, as fabricated and installed, will be free of defects in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Artwork.

3.7.4.3 Waiver of Rights. The Artist and City acknowledge that the Contractor may have certain rights under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. § 106A, et seq.)("VARA"). The Artist acknowledges and understands that if fabrication is performed, the subsequent installation of the Artwork at the site may subject the Artwork to

destruction, distortion, mutilation, or other modification due to its removal by the City or its officials, officers, employees, agents, or representatives.

The Artist and City acknowledge that the Artist may have certain rights under California Civil Code Section 987 ("California Art Preservation Act") which are not preempted by VARA. In consideration of the terms and conditions in this Agreement, the Artist waives any rights which the Artist or the Artist's heirs, beneficiaries, devisees, or personal representatives may have under the California Art Preservation Act to prevent the removal, destruction, distortion, mutilation, or other modification of the Artwork. The Artist further agrees to waive the rights under VARA to prevent the destruction, distortion, mutilation, or other modification of the Artwork.

Any contracts or written agreements between the Artist and his/her subcontractors or other Artists contributing to the Artwork shall include a waiver of the Artist's rights under this Agreement. The Artist's rights under this Agreement shall cease with the Artist's death and do not extend to the Artist's heirs, successors or assigns. In addition, in the event that any element of the Artwork constitutes a public safety hazard, the City has the right to remove the element posing the public safety hazard.

3.7.4.4 Risk of Loss. The risk of loss or damage to the Artwork will be borne by the Artist until Artwork acceptance by the City, and the Artist will take such measures as are necessary to protect the Artwork from loss or damage until Artwork acceptance.

3.7.5 Ownership of Artwork and Confidentiality.

3.7.5.1 Ownership of Completed Artwork. Title to the completed Artwork immediately vests in the City upon completion, along with all rights of ownership, possession and control. Prior to completion of the Artwork, City shall have the right, at its option, to claim ownership, possession and control of the uncompleted portions of the Artwork which are on site.

3.7.5.2 Copyright and Reproduction. Registration of the copyright shall be the responsibility of the copyright holder under this Agreement. Subject to the rights granted herein, the Artist will retain all rights under the Copyright Act of 1976, 17 U.S.C. Sections 101 et seq., as amended from time to time, except that the Artist:

(A) Grants the City of Ontario a non-exclusive, irrevocable license to graphically re-produce the Artwork. No commercial reproduction will be made without written agreement from the Artist. Artist authorizes the City to make, and to authorize the making of, photographs and other two-dimensional reproductions of the Artwork for educational, public relations, arts promotional and other noncommercial purposes. For the purpose of this Agreement, the following are some, but not all, of those deemed to be permissible reproductions for the above cited purposes: reproductions used in City business, advertising, souvenirs, brochures and pamphlets pertaining to the City; reproductions in exhibition catalogues, books, slides, photographs, postcards, posters, calendars, art magazines, art books and art and news sections of newspapers; in general books and magazines not primarily devoted to art; slides and film strips; video; computer websites; as well as in media that shall exist in the future. The City may not re-license the Artwork nor make a full scale exact duplicate of the Artwork nor alter Artwork by selecting portions without Contractor's consent.

(B) On any and all such reproductions, City will place a copyright notice, naming the same person or persons listed as the copyright owners on the copyright registration with the U.S. Copyright Office, in the form and manner required to protect the copyrights in the Artwork under United States copyright law, provided that the Artist has registered a copyright in the Artwork with the U.S. Copyright Office; and

(C) The Artist may, at the Artist's option and sole expense, place a copyright notice on the Artwork in the form and manner required to protect copyrights in the Artwork under United States copyright law. If the copyright is registered with the U.S. Copyright Office, the Artist will provide the City with a copy of the application for registration, the registration number and the effective date of registration. The City has no obligation to sue or defend on behalf of the Artist to protect the Artist's interests.

3.7.5.3 Subcontractors. Contractor shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for work the subcontractor prepares under this Agreement. Contractor represents and warrants that Contractor has the legal right to license any and all Artwork.

3.7.5.4 Indemnification. Contractor shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Artwork, including any method, process, product, or concept specified or depicted.

3.7.5.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other documents ("Documents & Data") either created by or provided to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor. Such materials shall not, without the prior written consent of City, be used by Contractor for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Contractor which is otherwise known to Contractor or is generally known, or has become known, to the related industry shall be deemed confidential. Contractor shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.7.5.6 Confidential Information. The City shall refrain from releasing Contractor's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Contractor of its intention to release Proprietary Information. Contractor shall have five (5) working days after receipt of the release notice to give City written notice of Contractor's objection to the City's release of Proprietary Information. Contractor shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of an objection notice unless either: (1) Contractor fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal

action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

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

3.7.7 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

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

3.7.9 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

3.7.10 Time of Essence. In performing the services described in this Agreement, it is mutually agreed that time is of the essence. The Artist will begin work immediately upon Agreement execution. The installation of the Artwork at the Site will be completed on or before **[INSERT DATE]** in substantial accordance with the Schedule of Services attached hereto as Exhibit B, which will be completed upon approval of the Installation Schedule submitted as part of the Final Design Proposal.

3.7.11 City's Right to Employ Other Contractors. City reserves right to employ other Contractors in connection with this Project.

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

3.7.13 Assignment or Transfer. Contractor shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Contractor shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.7.14 Construction; References; Captions. Since the Parties or their agents have

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

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

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

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

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

3.7.19 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

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

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

3.7.22 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

SIGNATURES ON NEXT PAGE

**SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF ONTARIO AND
[***INSERT NAME***]**

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on the day and year first above written.

CITY OF ONTARIO

[INSERT NAME OF CONTRACTOR]

Approved By:

[INSERT NAME]
[INSERT TITLE]

By: _____

Its: _____

Approved as to Form:

Printed Name: _____

Best Best & Krieger LLP
City Attorney

By: _____

Its: _____

Printed Name: _____

Attested By:

City Clerk

**[If Corporation, TWO SIGNATURES,
President OR Vice President AND Secretary
OR Treasurer REQUIRED]**

EXHIBIT "A"
SCOPE OF SERVICES

*****INSERT SCOPE*****

EXHIBIT "A"
SCOPE OF SERVICES CONT.

EXHIBIT "B"
SCHEDULE OF SERVICES

*****INSERT SCHEDULE*****

EXHIBIT "C"
COMPENSATION

*****INSERT RATES & AUTHORIZED REIMBURSABLE EXPENSES*****