

**Notice Requesting Proposals for**  
**PUBLIC ART**  
**Buena Vista Avenue and Garfield Street at Monterey Street**  
**Specification No. 90838**

The Art in Public Places Program of the City of San Luis Obispo, California is requesting proposals in an open competition for artists to incorporate art into the street improvements at Buena Vista Avenue and Garfield Street at Monterey Street. At total of, **\$88,000** is available to the artist or artists commissioned for this piece.

Interested artists are invited to submit proposals for the artwork by no later than **3:00pm on July 31, 2008**. Proposals shall be submitted to the City of San Luis Obispo, Department of Finance and Information and Technology, 990 Palm Street, San Luis Obispo, CA 93401. The City intends to use a blind selection process; wherein no names are shown to the selection committee that determines which artists will be chosen for interviews. Proposals must contain the artist's name, address and telephone number on a separate sheet of paper, which will be removed from the proposal package. Any identification placed on any of the submitted materials should be put on the reverse or under side. Proposals will be opened publicly. **Proposals received after said time will not be considered.**

**A pre-proposal informational meeting and walk-thru** will be offered so that artists may become familiar with the layout, the design, and functions of the intersections at Buena Vista Avenue and Garfield Street at Monterey Street. This will be an opportunity to ask any questions regarding the City's request for proposals. A non-mandatory walk-thru will be held on **May 30, 2008 at 10:00am** in front of the Apple Farm Inn, 2015 Monterey Street.

Proposal packages may be obtained for free on the City's website: [www.slocity.org](http://www.slocity.org) under Bids & Proposals, or by emailing your request to [sbates@slocity.org](mailto:sbates@slocity.org), or by faxing your request to (805) 781-7292. Please include your company name, street address, phone, fax, and email address, along with the name and specification number of the RFP that you are requesting.

Additional information may be obtained by contacting Shannon Bates, Public Art Coordinator, at (805) 781-7296 or [sbates@slocity.org](mailto:sbates@slocity.org).

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## **A. DESCRIPTION OF WORK**

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### **BACKGROUND**

In 2003, City Public Works staff identified a significant collision pattern at the location of Buena Vista Avenue and Garfield Street at Monterey Street which involved westbound vehicles turning off Monterey Street, crossing the intersection diagonally and colliding with southbound Buena Vista vehicles. In February 2005, a temporary realignment was installed in order to correct the pattern, while City staff met with adjacent property owners to receive their input for a permanent solution. From late 2005 to mid 2006, City staff held several meetings with adjacent property owners to develop a solution which addressed both the safety aspects of the temporary realignment and the access issues of the surrounding businesses. The solution called for a realignment which also provided opportunities for aesthetic improvements within the unused portions of the right-of-way.

The realignment of Buena Vista to Monterey and the realignment of Garfield to Buena Vista consist of removing excess road sections and the installation of a landscaped median and parkways in their place. The landscaped median serves as a major entry and exit way to the City, as well as a pedestrian refuge island, providing improved pedestrian access across Monterey. Given the opportunity to improve aesthetics as part of this project; landscaping, additional pedestrian access and public art have been included to beautify the corridor and key City gateway.

### **THEME**

The location of Buena Vista Avenue and Garfield Street at Monterey Street is a key City gateway for entering and exiting vehicles. In the heart of “Uptown”, this intersection is home to many of San Luis Obispo’s most notable hotels and restaurants as well as a major entryway to Cal Poly State University. The City of San Luis Obispo is looking for a wide range of ideas for public art with emphasis on, but not limited to, gateway to the City of San Luis Obispo. Artists are encouraged to work either independently or collaboratively to propose a project that could encompass several features such as, but certainly not limited to artistic hardscapes and retaining walls, sculptures or tile works. Proposals that include smaller pieces that could be selected in combination with other smaller pieces are welcome. The artwork should create a sense of place and reflect the environment and the surrounding architecture. It is the City of San Luis Obispo’s wish that the artwork should reflect, inspire and delight the public from both up close and from afar. In this way the visual language of the public art can both contribute to the community and develop a sense of place.

The selected artist(s) would be required to work with the contracted landscape architect to design landscaping that would not only complement the selected piece but satisfy the landscaping needs for the location.

### **PLACEMENT**

The street improvements at Buena Vista Avenue and Garfield Street at Monterey Street feature a landscaped parkway for placement of public art. Artists should consider the visual impact of the

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work on the neighboring businesses and visibility from pedestrian and vehicle traffic. See *Exhibit F* of this proposal package for the designated area for public art.

#### **MEDIA AND MATERIALS**

The outdoor artwork must be constructed of materials appropriate for San Luis Obispo's climate. The materials used for the public art shall be low maintenance, durable and fade resistant keeping in mind public safety. Selected artist will be required to complete and submit a Maintenance Record, shown as *Exhibit B* in this package.

#### **ARTIST ELIGIBILITY**

**Applications must be complete.** Complete applications contain all requested information, including digital photo description sheet with value of work, appropriately labeled digital photos, application form, signature of applicant, and the appropriate number of copies of materials. Incomplete applications will not be considered.

#### **BUDGET**

A total of **\$88,000** is available for the design and installation of the selected art.

#### **INFORMATION**

Please read the application directions carefully. **INCOMPLETE OR LATE APPLICATIONS WILL NOT BE REVIEWED.** The deadline for receipt of applications for the projects described herein is July 30, 2008 at 3:00 p.m. Applications received either by mail or hand delivered to the Department of Finance and IT after 3:00 p.m. that afternoon, will not be accepted.

If you require more information or clarification, please contact:  
Shannon Bates, (805) 781-7296

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## B. GENERAL TERMS AND CONDITIONS

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### PROPOSAL REQUIREMENTS

1. **Requirement to Meet All Provisions.** Each individual or firm submitting a proposal shall meet all of the terms, and conditions of the Request for Proposals (RFP) specifications package. By virtue of its proposal submittal, the proposer acknowledges agreement with and acceptance of all provisions of the RFP specifications.
2. **Proposal Submittal.** Proposal documents shall be enclosed in an envelope, which shall be sealed and addressed to the City of San Luis Obispo Department of Finance and Information Technology, 990 Palm Street, San Luis Obispo, CA, 93401. In order to guard against premature opening, the proposal should be clearly labeled with the proposal title, name of bidder, and date and time of proposal opening. No FAX submittals will be accepted.
3. **Proposal Withdrawal and Opening.** A proposer may withdraw a proposal, without prejudice, prior to the time specified for the proposal opening, by submitting a written request to the Project Manager for its withdrawal, in which event the proposal will be returned to the proposer unopened. No proposal received after the time specified or at any place other than that stated in the "Notice Requesting Proposals" will be considered. All proposals will be opened and declared publicly. Proposers or their representatives are invited to be present at the opening of the proposals.
4. **Submittal of One Proposal Only.** No individual or business entity of any kind shall be allowed to make or file, or to be interested in more than one proposal, except an alternative proposal when specifically requested.
5. **Communications.** All timely requests for information submitted in writing will receive a written response from the City. Telephone communications with City staff are not encouraged, but will be permitted. However, any such oral communication shall not be binding on the City.

### CONTRACT AWARD AND EXECUTION

6. **Proposal Retention and Award.** The City reserves the right to retain all proposals for a period of 60 days for examination and comparison. If requested, the original proposal will be returned to the artist at the completion of the jury process. One copy of the proposal will be retained in City files for a period of three years and all other copies will be destroyed. The City also reserves the right to waive non-substantial irregularities in any proposal, to reject any or all proposals, to reject or delete one part of a proposal and accept the other, except to the extent that proposals are qualified by specific limitations. See the "special terms and conditions" in Section C of the specifications for proposal evaluation and contract award criteria.
7. **Competency and Responsibility of Proposer.** The City reserves full discretion to determine the competence and responsibility, professionally and/or financially, of proposers. Proposers will provide, in a timely manner, any and all information which the City deems necessary to make such a decision.
8. **Contract Requirement.** The proposer to whom award is made (Artist) shall execute a written contract with the City within ten (10) calendar days after notice of the award has been sent by mail to it at the address given in its proposal. The contract shall be made in the form adopted by the City and incorporated in these specifications.
9. **Insurance Requirements.** The Risk Manager, based on the nature of the artwork selected, will determine insurance and indemnification requirements.
10. **Business Tax.** The Artist must have a valid City of San Luis Obispo business tax certificate prior to execution

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of the contract. Additional information regarding the City's business tax program may be obtained by calling (805) 781-7134.

## **CONTRACT PERFORMANCE**

11. **Ability to Perform.** The Artist warrants that it possesses, or has arranged through subcontracts, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all federal, state, county, city, and special district laws, ordinances, and regulations.
12. **Laws to be Observed.** The Artist shall keep itself fully informed of and shall observe and comply with all applicable state and federal laws and county and City of San Luis Obispo ordinances, regulations and adopted codes during its performance of the work.
13. **Payment of Taxes.** The contract prices shall include full compensation for all taxes that the Artist is required to pay.
14. **Safety Provisions.** The Artist shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial Safety.
15. **Immigration Act of 1986.** The Artist warrants on behalf of itself and all subcontractors engaged for the performance of this work that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.
16. **Artist Non-Discrimination.** In the performance of this work, the Artist agrees that it will not engage in, nor permit such subcontractors as it may employ, to engage in discrimination in employment of persons because of age, race, color, sex, national origin or ancestry, sexual orientation, or religion of such persons.
17. **Payment Terms.** The City's payment terms are 30 days from the receipt of an original invoice and acceptance by the City of the materials, supplies, equipment, or services provided by the Artist (Net 30).
18. **Inspection.** The Artist shall furnish City with every reasonable opportunity for City to ascertain that the services of the Artist are being performed in accordance with the requirements and intentions of this contract. All work done and all materials furnished, if any, shall be subject to the City's inspection and approval. The inspection of such work shall not relieve Artist of any of its obligations to fulfill its contract requirements.
19. **Contract Assignment.** The Artist shall not assign, transfer, convey or otherwise dispose of the contract, or its right, title or interest, or its power to execute such a contract to any individual or business entity of any kind without the previous written consent of the City.
20. **Termination.** If, during the term of the contract, the City determines that the Artist is not faithfully abiding by any term or condition contained herein, the City may notify the Artist in writing of such defect or failure to perform; which notice must give the Artist a 10 (ten) calendar day notice of time thereafter in which to perform said work or cure the deficiency. If the Artist has not performed the work or cured the deficiency within the ten days specified in the notice, such shall constitute a breach of the contract and the City may terminate the contract immediately by written notice to the Artist to said effect. Thereafter, neither party shall have any further duties, obligations, responsibilities, or rights under the contract except, however, any and all obligations of the Artist's surety shall remain in full force and effect, and shall not be extinguished, reduced, or in any manner waived by the termination thereof. In said event, the Artist shall be entitled to the reasonable value of its services performed from the beginning date in which the breach occurs up to the day it received the City's Notice of Termination, minus any offset from such payment representing the City's damages from such breach. "Reasonable value" includes fees or charges for goods or services as of the last milestone or task

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satisfactorily delivered or completed by the Artist as may be set forth in the Agreement payment schedule; compensation for any other work, services or goods performed or provided by the Artist shall be based solely on the City's assessment of the value of the work-in-progress in completing the overall work scope. The City reserves the right to delay any such payment until completion or confirmed abandonment of the project, as may be determined in the City's sole discretion, so as to permit a full and complete accounting of costs. In no event, however, shall the Artist be entitled to receive in excess of the compensation quoted in its proposal.

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## C. SPECIAL TERMS AND CONDITIONS

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### PROPOSAL CONTENT

The proposal must include the following:

1. **One page cover sheet** stating the following information in the order listed:
  - Title: "Proposal to Provide Services for the City of San Luis Obispo Buena Vista Avenue and Garfield Street at Monterey Street Public Art Piece"
  - Artist's Name
  - Artist's Telephone Number and Fax Number
  - Artist's Email Address
  - Artist's Web Address (if applicable)
  - Artist's Mailing Address
  - Artist's analysis of proposed art's ability to withstand weather and vandalism; and expected on-going maintenance efforts to sustain the Artist's intention
2. **A Professional Résumé**, (up to two pages) including education, experience, exhibits and installations.
3. **Submittal of References**. Each bidder shall submit the names of two references on the form provided in the RFP package. (*Exhibit C*)
4. **Approach to project** – A written narrative description of the Artist's approach to the project which should address the following areas:
  - How the Artist's experience will compliment this project.
  - Artist's approach to the development of an interpretive concept of how the art relates to the site and its function as a key City gateway.
  - Artist's intended materials to be used, their durability and longevity qualities.
5. **Photo inventory**, one set of four to six (4-6) digital photos of recent work. Photos will be shown one at a time and should be labeled in the order of desired presentation. The CD must be enclosed in a cover and labeled with the artist's name. Title of work must be noted on each digital photo.
6. **An annotated photo list**, with the Artist's name on the front, not to exceed two double-sided pages corresponding to the submitted digital photos. Each photo description should include; photo number, title, date of completion, medium, dimensions, location, project budget/purchase price, commissioning agency, and collaborators or design professionals, if applicable and a brief description of the artwork.
7. **One graphic rendering of the proposed art, up to 11 x 17 inch**, and fan folded to 8 ½ X 11 inches. The City intends to use a blind selection process for determining which proposals will be chosen for interviews. Please include your name, address and telephone number on a separate piece of paper that can be removed for evaluation. Any identification on other materials submitted should be on the back or bottom where it is hidden from view. (See #10 below)
8. **An estimated budget** that lists design, execution, insurance, transportation and installation costs separately, with a grand total indicated. (*Exhibit D*)
9. **One self-addressed mailing envelope** large enough to return Artist's drawings and CD and original proposal, if requested.

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Artists may submit one (1) proposal for this project.

Applications should be post marked or delivered to:

**Buena Vista Avenue and Garfield Street at Monterey Street Public Art Piece  
City of San Luis Obispo Department of Finance and Information Technology  
990 Palm Street  
San Luis Obispo, CA 93401**

After selection as a finalist:

- 10. Model:** A scaled three dimensional model or extra graphic illustrations are **not accepted** as an accompaniment to the proposal until after the first round of reviews and artists are invited back for final presentation. At that time, images may not exceed 11" x 17" and 3 dimensional models may not exceed 3' x 4' and must be delivered and picked up by the Artist. City is not responsible for artwork that is not picked up in a timely manner.

## REQUIREMENTS

1. **Artist is required** to attend and present at a minimum of three meetings prior to execution of agreement.
  - a. **Public Art selection Committee** – for selection (possibly twice)
  - b. **Architectural Review Commission** – for approval
  - c. **City Council Meeting** – for approvalFailure to attend may be cause for the City to recommend another entry.
2. **Submittal of Maintenance Record.** Selected artist will be required to complete and submit a maintenance record prior to the final contract payment. (*Exhibit B*)
3. **Ownership of Artwork.** Upon completion and installation of the artwork, the work becomes the property of the City of San Luis Obispo.
4. **Artist is responsible** to make all necessary arrangements for equipment, manpower and appropriate permits to complete installation of public art. Installation shall take place on the weekend or before 8 a.m. on a weekday to minimize disruption of city streets and operations.

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## PROPOSAL EVALUATIONS AND SELECTION

A selection committee (jury) of up to six (6) people consisting of: San Luis Obispo County Arts Council member(s), local artist(s), and a neighbor(s) will review proposals. After an initial blind screening and evaluation by the jury, three to five artists submitting the top-ranked proposals will be invited to a second interview with the selection committee. The finalists will be provided a small honorarium (not to exceed \$150.00 per artist) to conduct research, develop final proposal materials and create models (see #10, Special Terms and Conditions, pg. 9) for presentation of their proposal to the art selection committee for the final selection. If no proposal is determined to be appropriate, the Art Selection Committee and/or the Council may decide to reopen the selection process.

The City's Public Art Guidelines have been attached as *Exhibit A*.

Proposals will be evaluated based on:

- a. Understanding of the work required by the City
- b. Evaluation of artistic excellence
- c. Appropriateness of scale, form, material, content and design relative to the site
- d. Relationship to the social, cultural and/or historical identity of the site
- e. Appropriateness of proposed materials in regards to structural and surface integrity, public safety and weathering and its protection against theft and vandalism
- f. Appropriateness of proposed method of installation of artwork, and the safety and structural factor involved in installation
- g. Ease of maintenance
- h. Evaluation of proposed budget and the artist's ability to successfully complete the project within the proposed budget
- i. Experience in working on comparable projects

The City reserves the right to refuse all entries. Selected artwork must meet the City of San Luis Obispo Public Art Guidelines and includes final approval by the City Council. (Exhibit A)

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## PROPOSAL REVIEW AND AWARD SCHEDULE

The following is an outline of the anticipated schedule for proposal review and contract award:

<b>Notice of Request for Proposals made available</b>	<b>May 14, 2008</b>
<b>Pre-proposal conference/ walk thru</b> Question and Answer Roundtable immediately following the walk-thru at ArtsObispo (570 Higuera St, Suite 175)	<b>10:00am, May 30th</b>
<b>Proposal Due Date</b> Submit to: Dept. Of Finance and IT 990 Palm Street, San Luis Obispo, CA 93401	<b>3:00 pm, July 30, 2008</b>
<b>Jury Review</b>	<b>August 13, 2008</b>
<b>Notification of Finalists</b>	<b>August 18, 2008</b>
<b>Presentations for Final Selection</b> Three to five artists will be asked to prepare for a final presentation to the selection committee. Following presentations, selection committee will select one proposal for recommendation to City Council for award of contract.	<b>August 28, 2008</b>
<b>Architectural Review Commission</b> Determination of whether chosen artwork meets public art guidelines (attached as Exhibit A)	<b>October 6, 2008</b>
<b>City Council</b> Award of Contract	<b>November 4, 2008</b>
<b>Design and Fabrication of Artwork</b>	<b>November 2008- May 2009</b>
<b>Installation of Artwork</b>	<b>May 2009</b>

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Sample – Do not sign

**AGREEMENT FOR COMMISSION OF PUBLIC ART WORK**

THIS AGREEMENT is entered into this XX day of XXXX, 2008, by and between the City of San Luis Obispo, a charter city and municipal corporation (hereinafter the “City”), and XXXXXX (hereinafter the “Artist”).

**RECITALS**

**WHEREAS**, on [date], the City requested proposals for the design and fabrication of artwork in accordance with the specifications in the proposal package dated \_\_\_\_\_ for \_\_\_\_\_ [specify project]; and

**WHEREAS**, the Artist’s proposal was reviewed and approved by the Public Art Jury and the Architectural Review Commission in accordance with San Luis Obispo Municipal Code Chapter 17.98; and

**WHEREAS**, on [date], the City Council approved of the Artist’s proposal recommended by the Public Art Jury and the Architectural Review Commission; and

**WHEREAS**, the Artist is a recognized professional artist, and the City acknowledges sufficient familiarity with the style and quality of the Artist’s work, and; the City desires the Artist to create an original work of art entitled “\_\_\_\_\_” (“the Work”) for location at \_\_\_\_\_ (“the Site”). The Artist’s concept design (“the Proposal” which shall be attached as Exhibit “A”), has been reviewed and approved by the City.

**NOW, THEREFORE**, the City and the Artist, for the consideration and under the conditions hereinafter set forth, agree as follows:

**ARTICLE 1: SCOPE OF SERVICES**

**1-1 GENERAL**

- (a) The Artist shall perform all services and furnish all supplies, materials, artist and agent travel, and equipment as necessary for the design, execution, fabrication, transportation, and installation of the Work at the Site with the exception of the foundation, and in accordance with

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the terms in this Agreement.

**1-2 REVIEW OF THE PROPOSAL**

(a) The Artist or designee has prepared and submitted to the City artwork specifications and presentation drawings of the Work in elevation and plans, containing the following items, which shall be the "Proposal".

i. One copy of a written description and technical specifications of the Work including the following information:

- *A professional resume;*
- *References;*
- *Approach to project;*
- *Graphic rendering;*
- *Estimated budget;*
- *Maintenance and Conservation Form;*
- *Work plan and Production Schedule;*
- *Proposed list of subcontractors (those known to date);*
- *Other information about the Work as may be reasonably required by the City in order to certify the compliance of the Work with applicable statutes and ordinances. Said exhibits will become the property of the City upon submission by the Artist. Upon request by Artist, the City shall promptly furnish all available exhibits in connection with said submission at the artist's expense.*

(b) Upon approval by the City Council and written direction to move forward, the Artist shall commence with fabrication, transportation, and installation of the Work at the Site.

(c) The City may require the Artist to make such revisions to the proposed Work as are necessary for the Work to comply with applicable statutes, ordinances, or regulations governing the project.

(d) The City may require revisions of the Work for practical (non-aesthetic) reasons.

(e) The Artist fee may be equitably adjusted for any increase or decrease in the Artist's cost of, or time required for, performance of any revisions pursuant to this Section 1-2. Any claim of the Artist for adjustment under this paragraph must be presented to the City in writing within thirty (30) days after the date of the revision by the Artist.

(f) Within thirty (30) days after receipt of the Artist's revisions, pursuant to this Section 1-2,

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the City shall notify the Artist of its approval or disapproval of such revisions. The City may require the Artist to submit additional revisions until such revisions are accepted by the City. Revisions made and accepted by the City pursuant to this Section 1-2 become a part of the final design, technical specifications and fabrication and installation schedule of the Work, which shall be attached to this Agreement as Exhibit "B".

**1-3 EXECUTION OF THE WORK**

(a) Pursuant to Section 1-2 above, the Artist shall commence fabrication of the Work, in accordance with such schedules. Although the schedule may be amended by written agreement between the City and the Artist, it is agreed that the Artist shall perform all of the obligations under this contract on or before XXXXXXXX.

(b) The City shall have the right to review the Work at reasonable times during the fabrication. The Artist shall submit to the City progress reports in accordance with the schedule required by Section 1-2.

(c) The Artist shall complete the fabrication and installation of the Work in substantial conformity with the approved Proposal.

(d) The Artist shall present to the City, in writing, for further review, 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 Proposal. A "significant change" is:

- i. Any material change in the scope, design, color, size, material, texture, or location of the Work on the Site;
- ii. Any material change in the Work that affects installation, scheduling, site preparation, or maintenance for the Work; or
- iii. Any change in the concept of the Work as represented in the accepted proposal.

(e) If changes reviewed by the City are not approved, the Artist will not resume the Work nor resume the payment schedule until changes to the Work are reviewed and approved by the City.

**1-4 DELIVERY AND INSTALLATION**

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- (a) Prior to commencement of work at the Site, the Artist shall notify the City of schedules for installation. The Artist shall be responsible for all expenses, labor, and permits.
- (b) Prior to delivery of the Work, the Artist shall notify the City in writing when fabrication of the Work is completed and the Artist is ready for delivery of the Work to the Site.
- (c) The Artist shall provide for completion of the Work in compliance with appropriate codes and the approved schedule.

**1-5 POST INSTALLATION**

- (a) Within thirty (30) days after the installation of the Work, the Artist shall furnish the City with the following documentation of the Work as installed:
  - i. One set of digital photographs of the completed Work, one taken from each of three different view points;
  - ii. The City shall have the right to duplicate and distribute for any noncommercial purpose the artwork documentation supplied by the Artist under this Agreement;
  - iii. The Artist shall be available at such time or times as may be agreed between City and Artist to attend any inauguration or dedication ceremonies relating to the transfer of The Work to the City. The City shall use its best efforts to arrange for publicity for the completed work in such art publications and otherwise as may be determined between the City and the Artist as soon as is practical following installation.
- (b) Upon execution of the Agreement, the Artist shall provide the City with written instructions for appropriate maintenance and preservation of the Work.

**1-6 FINAL ACCEPTANCE**

- (a) The Artist shall advise the City in writing when all services required under this Agreement have been completed in substantial conformity with this Agreement.
- (b) The City shall notify the Artist in writing of the final acceptance (or nonacceptance) of the Work.

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- (c) Final acceptance shall be effective as of the earlier of the following dates:
  - i. The date of the City's notice of final acceptance; or
  - ii. The 30<sup>th</sup> day after the Artist has sent written notice to the City required under Section 1-6(a) unless the City, upon receipt of such 30-day 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.

**1-7 RISK OF LOSS**

The risk of loss or damage to the Work shall be borne by the Artist until final acceptance, and the Artist shall take such measures as are necessary to protect the Work from loss or damages until final acceptance.

**1-8 INDEMNITY**

Upon final acceptance of the Work, the Artist shall indemnify and hold the City and its elected officials, employees, and/or agents harmless from any and all claims or liabilities then existing or arising thereafter from the Artist's negligence or willful misconduct in connection with the Work.

**1-9 TITLE, ASSIGNMENT OF ROYALTY RIGHTS, AND WAIVER**

(a) Title to the Work shall pass to the City upon final acceptance. The Artist hereby assigns the right to collect any royalty payment provided by Civil Code section 986(a) to the City and to the City's assigns.

(b) Except as expressly provided below, the City shall not intentionally damage, alter, modify, or change the Work without the prior written consent of the Artist.

(c) The Artist acknowledges and agrees that the City may require the Site for purposes other than the display of the Work. The City agrees that it will notify the Artist of any proposed alteration of the Site that would require the removal or relocation of the Work or affect the intended character and appearance of the Work and will consult with the Artist in the planning and execution of any such removal, relocation, or alteration and will make a reasonable effort to maintain the integrity of the Work.

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(d) The Artist acknowledges and agrees that the City retains the right to relocate or remove the Work from public display for any reason, at the sole discretion of the City. Reasons for removing the Work from public display shall include, but not be limited to: hazards to public health, safety or welfare; unsightly or deteriorated conditions of the Work; or the need to access, repair and maintain public facilities.

(e) Except as provided above, the Artist expressly waives, for himself and his successors in interest, to the greatest extent allowed by law, any rights he or she may have under California Civil Code sections 986, 987, 988 and 989.

## ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

### 2-1 AGREEMENT AMOUNT AND PAYMENT

(a) The City shall pay the Artist an amount not to exceed \$xx,xxx.xx, which will constitute full compensation and payment for all services to be performed under this Agreement including execution, fabrication, artist and/or agent travel, transportation, and installation. Payment shall be made in accordance with Schedule included in Proposal.

#### **Commencement of Fabrication**

Twenty-five percent (25%) (\$xx,xxx.xx) of the payment upon execution of Agreement.

#### **Midpoint of Agreement**

Fifty percent (50%) (\$xx,xxx.xx) of the payment upon completion of 50% of the work as determined by the Public Art Coordinator.

#### **Final Acceptance**

Twenty-five percent (25%) (\$xx,xxx.xx) of the payment upon completion of all outstanding work and review and acceptance of Work by the City.

(b) All requests for payment shall be submitted to the Public Art Coordinator in writing for review and approval and must be accompanied by a detailed invoice and original receipts and other documentation as required by the Public Art Coordinator

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supporting work completed.

- (c) Payment shall be issued within 30 days of approval of detailed invoices and requests for payment by the Public Art Coordinator.

**2-2 ARTIST'S EXPENSES**

The Artist shall be the responsible party for all mailing or shipping charges on submissions to the City, and the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

**ARTICLE 3: WARRANTIES**

**3-1 WARRANTIES OF TITLE**

The Artist represents and warrants that:

- (a) The Work is solely the result of artistic effort of the Artist;
- (b) Except as otherwise disclosed in writing to the City, the Work is unique and original and does not infringe upon any copyright;
- (c) That the Work, or a duplicate thereof, has not been accepted for sale elsewhere; and
- (d) The Work is free and clear of any liens or claims from any source whatsoever.

**3-2 WARRANTIES OF QUALITY AND CONDITION**

The Artist represents and warrants that:

- (a) The execution and fabrication of the Work will be performed in a professional manner (expert, qualified, skilled);
- (b) The Work, as fabricated and installed, will be free from defects in material (except such defects as are normally present and unavoidable in natural materials and outlined in Proposal) and workmanship, including any defects or qualities which cause or accelerate deterioration of the Work; and
- (c) Reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendations by the Artist to the City;

**PUBLIC ART**

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(d) The warranties described in this Section 3-2 shall survive for a period of one (1) year after final acceptance of the Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the instruction of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional standards, including for example, cure by means of repair or refabrication of the Work as determined by the City.

### **3-3 WARRANTIES OF WORK**

The Artist represents and warrants that:

- (a) The Work will not substantially vary or deviate from the City approved Work without the prior written consent of the City.
- (b) The Work will not include any hidden, subliminal or camouflaged messages or statements of any kind or nature.

## **ARTICLE 4: INSURANCE**

### **4-1 GENERAL [Encroachment Permit provisions may not be applicable to every project] [Insurance provisions are mandatory for all projects]**

**Before commencement of any work at the site, the Artists shall apply for and must receive approval for an Encroachment Permit from the Department of Public Works. The permit requires execution of a Hold Harmless Agreement and an Agreement to provide insurance for the duration of the work performed.** The insurance specifications required in a standard **Encroachment Permit** include general liability insurance with a \$1,000,000 combined single limit, and an endorsement adding the City, its agents, officers, and employees as additional insured. If the artist is using a vehicle for delivery and installation, automobile liability insurance is required and, if the artist has additional workers directly employed, Workers Compensation insurance is required at the statutory limits. **The Encroachment Permit application (attached) provides additional details.** The Artist shall not commence work under this Contract until the Artist has secured all insurance required under this section, and provided written proof to the

#### **PUBLIC ART**

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City, nor shall the Artist allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been obtained and submitted to the City in writing.

## ARTICLE 5: COPYRIGHT

**5-1** Copyright in the Work and related design, drawings, sketches, and models will be owned by the Artist until acceptance of the Artist's Work by the City pursuant to Section 1-6 hereof. Notwithstanding the foregoing, the Artist agrees not to make use of such copyright in the Work for any purpose other than the performance by the Artist of the Artist's obligations under this Artwork Agreement, without the written consent of the City. Upon acceptance of the Artist's Work pursuant to Section 1-6 hereof, copyright in the Work will be owned jointly by the City and the Artist and no further use of the copyright will be made by the Artist or the City without the written consent of the other, which consent will not be unreasonably withheld.

**5-2** The Artist certifies that the Artwork is a unique work of art especially designed for the City, and shall not duplicate or reproduce the Work nor shall the Artist permit others to do so except with the written permission of the City.

**5-3** The City has the right to reproduce and distribute in printed form and on commercial documents and or brochures or any other literature of the City describing or dealing with its real estate holdings, photographs, realistic renderings, videotapes, or films of the Work. Such reproductions and use of the images of the Work for promotional purposes shall not constitute a breach of copyright and no royalty shall be due and payable by the City to the Artist for such use.

**5-4** **CREDIT TO THE ARTIST**

All reproductions of the Work by the City shall contain a credit to the Artist.

**5-5** **CREDIT TO THE CITY**

The Artist shall use his best effort to give a credit in any public showing under the Artist's control of illustrations of the Work as follows: "An original work owned and commissioned by the City of San Luis Obispo, California."

### **PUBLIC ART**

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## ARTICLE 6: ARTIST'S RIGHTS

### 6-1 **MAINTENANCE**

The City shall reasonably protect and maintain the Work against the ravages of time, vandalism, and the elements, in accord with the instructions of the Artist provided under Section 1-5(b).

### 6-2 **ARTIST REPRODUCTION RIGHTS**

Pursuant to Article 5, Section 5-1, the City agrees that the Artist shall have the right to reproduce and distribute in printed form and on non-commercial educational materials and brochures advertising or promoting the Artist and the Artist's career, two-dimensional images such as photos, slides or realistic renderings, video tapes, or films of the Work as installed and formally accepted by the City. Such reproductions and use of the images of the Work for promotional and educational purposes shall be deemed to not constitute a breach of copyright in any way and no royalty fee shall be due and payable to the Artist for such use. Such reproduction and images of the Work for publicity, promotion, and educational purposes shall, to the extent reasonably possible and appropriate, give reference to the City of San Luis Obispo.

## ARTICLE 7: ARTIST AS INDEPENDENT CONTRACTOR

The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or employee of the City. The Artist shall not be supervised by any employee or official of the City nor shall the Artist exercise supervision over any employee or official of the City. The City alerts the Artist to the provisions of the Labor Code §1771, which may require the payment of prevailing wages.

## ARTICLE 8: ASSIGNMENT, TRANSFER AND SUBCONTRACTING

Neither the City nor the Artist shall assign or transfer any interest in this Agreement without prior written consent of the other. The Artist may subcontract portions of the services to be provided hereunder at the Artist's expense provided that said subcontracting shall not affect the design, appearance or visual quality of the Work and shall be carried out under the personal supervision

### **PUBLIC ART**

Buena Vista Avenue and Garfield Street at Monterey Street

of the Artist, and in accordance with all applicable laws.

#### ARTICLE 9: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill, in a timely or proper manner, or otherwise violate any of the covenants or agreements material to this Agreement, then the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate, specifying the grounds for termination. The defaulting party shall have ten (10) days after receipt of the notice to cure the default. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other products prepared and submitted or prepared for submission by the Artist under this Agreement shall, at the City's option, become City property. This, however, shall not relieve the Artist of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist. In addition to all other remedies, the City may reasonably withhold payments to the Artist until such time as the exact amount of damages due the City from the Artist is determined.

#### ARTICLE 10: CONTRACT ADMINISTRATOR

The Contract Administrator for this Agreement shall be the Public Art Coordinator of the City of San Luis Obispo as defined in San Luis Obispo Municipal Code section 17.98.020 D, or his or her designee.

#### ARTICLE 11: NONDISCRIMINATION

In carrying out the performance of the services designated, the Artist shall not discriminate as to race, religion, sex, age, sexual orientation, national origin, the presence of any physical, mental or sensory handicap, or any other basis prohibited by applicable law.

#### ARTICLE 12: COMPLIANCE

The Artist shall be required to comply with all federal and state laws and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement,

#### **PUBLIC ART**

Buena Vista Avenue and Garfield Street at Monterey Street

including but not limited to, Chapter 17.98 of the San Luis Obispo Municipal Code.

#### ARTICLE 13: ENTIRE AGREEMENT

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

#### ARTICLE 14: MODIFICATION

No alteration, change, amendment, or modification of the term of this Agreement shall be valid, unless made in writing and signed by both parties hereto and approved by appropriate action of the City.

#### ARTICLE 15: WAIVER

No waiver of performance by either party shall be construed as or operate as a waiver of any subsequent default of any terms, covenants, or conditions in this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right nor an acceptance of performance.

#### ARTICLE 16: GOVERNING LAW

This Agreement, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of California.

#### ARTICLE 17: HEIRS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of the City and of the Artist and of their respective heirs, personal representatives, successors, and permitted assigns.

#### ARTICLE 18: NOTICES

All notices, requests, demands, and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon delivery and receipt thereof, as the case may be, if delivered personally or sent by certified mail, return receipt requested, postage-prepaid as follows:

#### **PUBLIC ART**

Buena Vista Avenue and Garfield Street at Monterey Street

City:  
c/o Public Art Coordinator  
City of San Luis Obispo  
1341 Nipomo Street  
San Luis Obispo, CA 93401

Artist:

**ARTICLE 19: ATTORNEY’S FEES**

Should any action or proceeding be brought to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney’s fees and costs.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by his respective authorized officers or representatives as of the day and year set forth on page one of this Agreement.

ATTEST:

CITY OF SAN LUIS OBISPO

By: \_\_\_\_\_  
CITY CLERK

By: \_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

ARTIST

\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
ARTIST

## **Exhibit A**

### **GUIDELINES FOR PUBLIC ART**

#### **Architectural Review Commission Criteria**

1. Publicly funded public art shall be located within the public right-of-way, a public building or otherwise shall be easily visible or accessible from a public right-of-way. Interior locations for public art are permitted, and shall be freely open and accessible to the public.
2. Privately funded public art shall be located on privately owned land or buildings which are places of high visibility to the public. Such places shall be in exterior locations, and not within buildings. If privately funded public art is donated to the City, Guideline No.1 above applies to location of art.
3. Consideration shall be given to the size, massing, location and scale of the proposed piece and to potential conflicts with present or future vegetation or construction.
4. Public art shall be compatible with the immediate site and neighborhood in terms of historic, social and cultural characteristics, architectural scale, materials, land use, and geographical and environmental context.
5. The design and placement of public art shall not impede pedestrian or vehicle traffic, or conflict with public or private easements.
6. Consideration shall be given to any public safety or public health concerns created by the artwork.
7. Public art shall be integrated with the site and/or building, and include landscaping, lighting, interpretive information and other amenities where appropriate.
8. Public art shall be securely installed.

#### **Public Art Jury Criteria**

1. Public artwork shall be original and of high artistic quality and shall not include any signage or other advertisement or logo, literal or abstract.
2. Public art should be considerate of the immediate site and neighborhood in terms of historic, social and cultural characteristics, architectural scale, materials, land use, and geographical and environmental context.
3. Public art shall be integrated with the site, and include landscaping, lighting, interpretive information and other amenities where appropriate.

#### **PUBLIC ART**

Buena Vista Avenue and Garfield Street at Monterey Street

4. Permanent public art shall be constructed of durable, high-quality materials and require minimal or no maintenance. Temporary public art shall be constructed of materials appropriate to its duration of public display.
5. A wide variety of artistic expression is encouraged. However, expressions of profanity, vulgarity or obvious poor taste are inappropriate.

**Other Review Criteria**

Public art proposed for areas of high historical sensitivity, such as Mission Plaza and its creek, should be given the closest scrutiny, including input from the Cultural Heritage Committee, before approval by the jury.

**PUBLIC ART**

Buena Vista Avenue and Garfield Street at Monterey Street

**PUBLIC ART MAINTENANCE RECORD**

Artist: \_\_\_\_\_

Title of Work: \_\_\_\_\_

Project Address: \_\_\_\_\_

City Job or File No.: \_\_\_\_\_

**PART I - FABRICATION AND INSTALLATION INFORMATION**

**MATERIALS**

- 1. **Material(s) used** (be specific; include also source or manufacturer, life expectancy of material according to manufacturer; attach manufacturer's technical data sheets, if available):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 2. **Material finish** (e.g., natural, paint color and type, glaze, patina, sealer, fire retardant, etc.; be specific; include also brand or manufacturer):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. **Materials used in the presentation of the artwork** (e.g., composition of base or backing, framing, type of hanging fixtures, etc.):

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FABRICATION

1. **Fabricator:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

2. **Fabrication technique or method** (attach diagrams or drawings, if necessary):

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INSTALLATION

1. **Installation executed by:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**PUBLIC ART**

Buena Vista Avenue and Garfield Street at Monterey Street

2. **Installation method** (attach plans showing footing and/or key installation details):

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EXTERNAL FACTORS

1. **Describe physical positioning of the artwork** (e.g., measured distances from relative objects or points in the environment):

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2. **Describe existing environmental factors which may affect the condition of the artwork and any precautionary measures** (e.g., direct sunlight, extremes of annual rain, temperature, air moisture or dryness, acidity of rainfall, flooding, wind, erosion, vibrations, air pollutants, vehicular and/or pedestrian traffic; animal interaction--bird droppings, potential for nesting, burrowing; human interaction with artwork--touching, sitting, climbing, vandalism):

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**PUBLIC ART**

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DESIRED APPEARANCE

1. Describe the desired appearance in specific terms including the physical qualities such as matte rather than glossy luster; color of patina etc., for which the agency should strive in order to maintain the artist's intent. Describe what may be acceptable alterations in form surface, texture and coloration as related to natural aging of materials. Include drawings or photographs which show the condition of the artwork upon installation:

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2. If the work is site-specific, describe in detail the particular relationship of the work to its site, including any significant physical aspects of the site, which, if altered, would significantly alter the artist's intended meaning and/or appearance for the work (attach drawings as appropriate):

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PACKING AND SHIPPING INSTRUCTIONS

1. Please explain how the art should be packed and shipped should the artwork ever need to be transported\_(be specific, attach diagrams if necessary):

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**PUBLIC ART**

Buena Vista Avenue and Garfield Street at Monterey Street

**PART II - CONSERVATION INSTRUCTIONS**

The Artist should provide detailed instructions regarding the methods and frequency of maintenance for the artwork as follows (attach additional information as appropriate):

1. **Routine maintenance** (e.g., removal of dust, dirt; maintenance of protective surfaces; tightening, adjusting, oiling; trimming of plant materials, etc.):

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2. **Cyclic maintenance** (less frequent and more extensive preventive measures, e.g., disassembly and inspection; reapplication of protective sealers; repainting; cleaning of textiles, etc.):

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3. **Who should be considered competent to perform cyclic maintenance?** Describe any special training, materials, tools, or procedures required.

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4. **Who should be considered competent to perform significant repairs?**

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**PUBLIC ART**

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5. Describe any special training, materials, tools, or procedures required for refitting, replacing, or reconstructing portions of the artwork damaged by vandalism, accidents, disasters, or weathering:

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Maintenance Record Approved and Accepted:

CITY OF SAN LUIS OBISPO

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

ARTIST

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

Attachments:  
Please list:

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**PUBLIC ART**

Buena Vista Avenue and Garfield Street at Monterey Street

# Exhibit C

## REFERENCES

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Number of years engaged in providing the services included within the scope of the specifications under the present business name: \_\_\_\_\_.

Describe fully the last two contracts performed by you, which demonstrate your ability to provide the services included with the scope of the specifications. Attach additional pages if required. The City reserves the right to contact each of the references listed for additional information regarding your firm's qualifications.

### Reference No. 1

Customer Name	
Contact Individual	
Telephone & FAX number	
Street Address	
City, State, Zip Code	
Description of services provided including contract amount, when provided and project outcome	

### Reference No. 2

Customer Name	
Contact Individual	
Telephone & FAX number	
Street Address	
City, State, Zip Code	
Description of services provided including contract amount, when provided and project outcome	

### PUBLIC ART

Buena Vista Avenue and Garfield Street at Monterey Street

# Exhibit D

## BUDGET WORKSHEET

### PUBLIC ART – SPECIFICATION

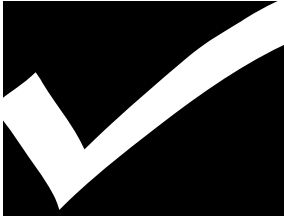
Buena Vista Avenue and Garfield Street at Monterey Street

Please use this as a guide in developing your project budget to insure that all costs are addressed. Add any other relevant expenses. Include a pricing contingency. You may use this format in your proposal, or develop one more suited to your project.

Artist's Fee	_____
Consultation Fees (engineers, architects, etc.)	_____
Materials and Supplies (itemize if necessary)	_____
Fabrication (subcontractors, if any, fabrication by artist, etc)	_____
Insurance (Installation insurance can be purchased thru the City of San Luis Obispo if necessary.)	_____
Travel	_____
Transportation of Artwork	_____
Installation (labor, equipment rental, permits, landscaping, etc)	_____
Administrative Expenses (telephone, correspondence, studio overhead, etc)	_____
Digital Photographic Documentation	_____
Pricing Contingency (a minimum of 5%)	_____
Other Expenses (please describe)	_____
 TOTAL BUDGET	 \$ _____

### PUBLIC ART

Buena Vista Avenue and Garfield Street at Monterey Street



**Public Art Proposal**

Buena Vista Avenue and Garfield Street at Monterey Street

**Specification #**

**Application Checklist**

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Department of Finance and IT, 990 Palm Street, San Luis Obispo, CA 93401 Phone: 805.781.7296 FAX: 805.781.7468  
APPLICANT: You must complete this form and submit it with your application. Check each box to indicate that you have provided the appropriate information. Everything on this checklist is required unless otherwise indicated.

See Special Terms and Conditions / Page 8

- 1. One page Cover Sheet
- 2. Application Checklist / Exhibit E
- 3. A Professional Resume
- 4. Submittal of References / Exhibit C
- 5. Approach to Project
- 6. Graphic Rendering up to 11" x 17"
- 7. Estimated Budget / Exhibit D
- 8. One self-addressed stamped envelope
- 9. Digital Photo Inventory
- 10. Annotated Photo List

**NOTE:** Please do not bind or staple your application materials.  
**Submit seven sets, clipped in order, of the above items 1 thru 7.**  
**Submit one set of items 8 and 10.\***

**Entries that do not submit all of the required items will not be reviewed.**

\*Upon request, the original proposal will be returned to the artist at the completion of the jury process. One copy of the proposal will be retained in City files for a period of three years and all other copies of will be destroyed.

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**Exhibit F**



**Buena Vista Avenue and Garfield Street at Monterey Street**  
Site of proposed public art piece

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