



DEPARTMENT OF ARTS AND HISTORY

MAYOR: David H. Bieter | DIRECTOR: Terri Schorzman

# RFQ 19-094 ARTIST CALL FOR APPLICATIONS

## Boise City Seeks Artist to Design Public Art for Downtown Festival Block

**Deadline:** December 5th, 2018 at 1pm. Mountain Standard Time

### Opportunity:

Boise City invites public artists to apply for an opportunity to design and fabricate public artwork(s) to be integrated into the streetscape on a new downtown festival block. Up to three artists may be selected from this Request for Qualifications as finalists who will be invited to participate in an interview process. Finalist artists will be invited to visit Boise, the site, and the project team, receive more information about the project opportunity and be interviewed by members of the project team and selection panel. Finalist artists will be compensated for travel to Boise for the interview and site visit. The artist(s) selected through the interview process will be placed on a design contract and be asked to collaborate with the project team to develop design options to present to the selection panel. The selected artist(s) will be provided a combined project total of \$60,000 to develop and formalize the design, fabricate, and transport the work to the site. Installation of the work will be coordinated with a contractor who has an Idaho State Public Works License and will be paid for separately by the City of Boise.

The City intends to award the contract to one artist; however, the City reserves the right to award to more than one applicant.

### BACKGROUND

#### LIV DISTRICT

Built on the City of Boise's focus on livability through Lasting Environments, Innovative Enterprises and Vibrant Communities, a LIV District is a geographic area of focused investment that builds on the existing neighborhood fabric, addresses sustainability and takes a balanced approach to life, work and play.

For Boise's first LIV District, it's hard to imagine a better spot than the Central Addition. A neighborhood with a rich history in its connection to Boise's downtown amenities, economy and culture, it is being revitalized by collaborative public and private investment.

Marked by thriving businesses, boutique shops, residential housing, parks, unique public art, hotels, universities and grocery stores, the Central Addition is at the epicenter of Boise's best amenities. Connectivity to each is made easier with transportation options for all. Whether you want to hop on a Boise Green Bike for a ride across town, or walk to Julia Davis Park for a picnic using the new pedestrian pathway at 5th Street and Myrtle, or catch a bus from Main Street Station a few blocks away, you can do any or all effortlessly.

The Central Addition's development has been deliberate with the goal of sustainability at the forefront, showcased by plenty of new LEED-certified construction. The neighborhood is powered in part by geothermal energy, a renewable resource with zero emissions and a near-zero carbon footprint, for which Boise has the largest direct-use system in the entire country. Additional features include smart design in sidewalks, roads and tree planting that naturally helps filter pollutants from rainwater runoff, sending cleaner water to the Boise River.

## **CENTRAL ADDITION HISTORY**

One hundred and twenty-five years ago the Central Addition was platted on Lafayette Cartee's land to fit the growing needs of a community. Joseph C. Straughan, Samuel Hays, and Walter S. Bruce developed fifteen acres of Cartee's land in 1890, naming it the Central Addition after much deliberation. They wanted to emphasize the closeness of the area to the city, as well as the mature landscaping. The addition proved popular, and by the end of the year eighteen homes had been built, valued at over \$12,000. By 1912 most of the lots in the Central Addition were sold and developed, which resulted in over 100 homes. From the beginning, the neighborhood featured both elegant mansions and modest homes. Residents of the mansions included Boise's early developers and shop owners. More modest homes housed employees of the local newspaper, shop clerks, and seamstresses. The idyllic nature of the neighborhood changed quickly when the Oregon Short Line Railroad extended their tracks along Front Street in 1893, putting the Central Addition on the "wrong" side of the tracks--similar to what happened in the River Street neighborhood. Many high-income residents moved, while others fought to protect the area's accessibility and sense of place. By the 1970s many homes were divided into apartments and others were removed for newer buildings and parking lots.



## **SELECTION PANEL**

The selection panel will be composed of members representing the following groups; Boise City Department of Arts & History Commission, Arts & History Advisory Team, Department of Public Works, Members from the LIV District Placemaking Committee, an arts professional and a local artist.

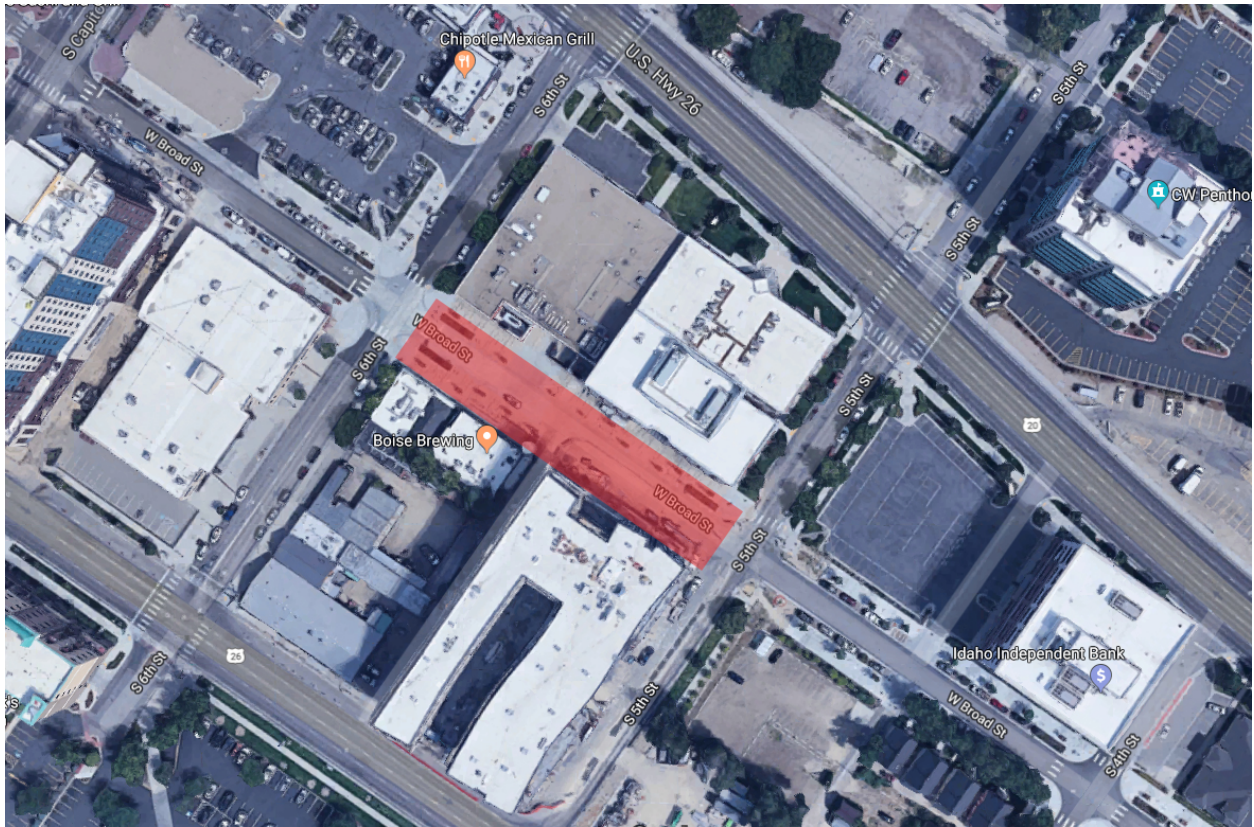
## **DESIRED OUTCOME**

The Central Addition has been the focus, for the past year, of a City led effort to convene a group of district stakeholders to identify areas of needed investment and collaborate on finding solutions. Topics included transportation, placemaking, sustainability, and economic development. The Placemaking committee was convened to develop strategies and identify locations and projects for cultural investment. The block located between 5<sup>th</sup> & 6<sup>th</sup> on Broad Street was transformed into a festival block which allows for closure of the entire block for events. In the development of the block, the Capital City Development Corporation allocated funding for public art to be included in the festival block streetscaping which will serve as an identifier for the entire district.

The selected artist is expected to have the ability to communicate and collaborate with a variety of stakeholders, with the support of public art staff, and develop a design for a unique and engaging work of art. The artist will be tasked with developing a work or works that will be incorporated into the existing streetscape and reference both the City-led efforts to improve the LIV district as well as the rich history of the neighborhood. The artwork should serve to celebrate the unique aspects of the district/neighborhood including the architecture, history, existing aesthetic improvements, reference the history, engage in the dialogue of developing an identity for the district, and develop iconic feature of the festival block.



# SITE



## ANTICIPATED PROJECT TIMELINE:

Description	Date
Call to Artist Released	October 2018
Application Workshop – <i>Optional</i>	November 15, 2018 @ 1:00 PM MST
Questions/ Clarifications due via email by	November 30, 2018 @ Noon MST
Applications due in writing by mail/ hand deliver	December 5, 2018 @ 1:00 PM MST
Artist Meeting/ Site Visit/Interviews	February/March 2019
Final Artist(s) Selected	March/April 2019
Artist(s) Join Design Team, Design Development, Fabrication	April/May 2019
Installation	TBD

## APPLICATION PROCESS:

Optional Application Workshop will be held November 15th, 2018 at 1:00 PM local time in the Boise City (Maryanne Jordan) Council Chambers located at 150 N Capitol Blvd, 3<sup>rd</sup> floor, Boise, Idaho 83702. At the Workshop staff will review the application process, discuss the process for design, fabrication and installation, and answer any questions applicants may have. This is your ***only opportunity*** to speak directly with Arts & History and Purchasing staff. Inquiries at any other time must be submitted in writing to Tammi Leatham at [tleatham@cityofboise.org](mailto:tleatham@cityofboise.org).

In determining the best qualified applications, City of Boise will consider all acceptable applications on a basis consistent with this Request for Qualification (RFQ). The Evaluation Panel will rank applications directly from the evaluation process and basis of qualifications identified in this document. Once the final ranking is complete, the City of Boise will contact the highest ranked Artists to offer them a finalist stipend to do a design concept. Should any of the selected Artists not be available at that time, the City would select the next ranked qualified Applicant(s) to offer a finalist stipend. Finalists will create design concepts; they will be put up for public comment, and a panel will select the final design(s) for commission. The City of Boise reserves the right to reject any and all applications, to waive any irregularities in the applications received and to accept the applications that are in the best interest of the City. Boise City is an Equal Opportunity Employer. The City of Boise is exempt from Federal and State taxes and will execute the required exemption certificates.



## INSTRUCTIONS AND INFORMATION:

- All applications must be mailed or hand-delivered to:  
Purchasing Department  
Boise City Hall  
150 N. Capitol Blvd.  
Boise, ID 83702
- It is the sole responsibility of the submitting Applicant to timely submit their proposal in a properly marked envelope by the scheduled deadline date and time:

**December 5th, 2018 at 1pm. Mountain Standard Time**

- Submitted packages must include one physical copy of your application (application form, image list, references, resume, letter of interest) and, if applicant is able to, one identical electronic copy as a single PDF file; the digital PDF file name shall be named RFQ 19-094 and Artist name (example: RFQ 19-094 Smith). The submitted application form must be **signed** (in both digital and hard copy forms). Images are submitted on the cd or thumb drive as separate jpeg files (applicants need not print hard copies of the images).
- The submission package or envelope must be **SEALED** and **plainly marked** with the following:

**Solicitation Number: RFQ 19-094**

**Project Name: Broad Street Festival Block Public Art**

**Deadline Date: December 5th, 2018 at 1pm. Mountain Standard Time**

- The Applicant's return address shall appear on the outside of the envelope or package.
- A submission made using "Express/Overnight" services must be shipped in a separate sealed inner envelope/package identified as stated above.
- Applications must be submitted in **writing**. No oral, telephone, facsimile, email, or late submissions will be considered. All applications must be received at the City Purchasing Office and time and date stamped prior to the closing date and time. It is the submitting Applicant's responsibility to timely submit their Application in a properly marked envelope, prior to the scheduled closing, for receipt in time to allow the submission to be time/date stamped.
- **ALL APPLICATIONS MUST BE SIGNED (digital and hard copies)**. Applications not signed will be disqualified and considered non-responsive.
- The applicant is responsible for all costs incurred in preparing/responding to this RFQ. All materials/documents submitted become the property of the City and won't be returned.

**QUESTIONS & CLARIFICATIONS:** Submit any questions or requests for clarifications by



or before November 30th at noon to: Tammi Leatham, [tleatham@cityofboise.org](mailto:tleatham@cityofboise.org).

## EVALUATION PROCESS:

Applications are to be submitted in a format that allows uniform review and easy access to information by the Evaluation Panel, which is made up of funding stakeholders, an Arts & History Commissioner, and artists. The Applications are to be clear and to the point. The Application package shall contain the following information:

1 – 5 items must be included in the package in hard copy, printed form. If applicant has the necessary technology, we request that they are also prepared as one PDF, on the CD or thumb drive:

1. **Application Form/Signature Page** (Pass/ Fail – *if submitted it, you pass, if you don't, you fail*)

Fill out / sign the Application Form/Signature Page and submit as your first document.

2. **Letter of Interest/Ability to Provide** (50 points)

Include a one-page letter addressing why you're interested in this opportunity and your related experience or qualifications. Describe how the applicant is able to provide responsive services for unique public artwork, meeting the needs of the City of Boise for this project.

3. **Resume/Prior Experience** (Pass/Fail)

Include a resume and/or brief summary of the Artist's qualifications and/or past experience

4. **2 References** (Pass/Fail)

Applicants must provide at least two (2) current references who are familiar with the quality of the artwork created by the applicant. References of potential finalists will be contacted.

5. **Image List:** (Pass/Fail)

Please use the provided form to list the information for the submitted images: title, type of work (painting, sculpture, installation), material(s), date and any comments.

Images noted in section 6 are saved as separate JPEG files on the same CD or thumb drive as the above PDF. You do not need to print out images of your art for the Application package.

6. **Images of Past Work** (200 pts. – *most important part of the application*)

Provide up to ten images of your current or past completed artwork as separate files in JPEG format on a CD or thumb drive; these works should demonstrate your ability to meet the defined scope of services. Images are to be in JPEG Format, 300 dpi, not larger than 10" on the longest side.



To score the applications, the Selection Panel will mark your application with Pass/Fail of noted items, referencing the information provided as needed, and use noted point formulas to rank the letter of interest, quality of your submitted images and the appropriateness of your type of work for this project. The Selection Panel will review and discuss these evaluations, combining scores for each Artist. Those Artists with low scores will be eliminated from consideration. Those remaining will be reviewed and Artists with the three highest scores will be considered for finalist interviews. We anticipate that a contract may be awarded to one artist after finalist interviews are considered.

The City will conduct reference checks by contacting references submitted by the Applicants. In addition, the City may contact references not listed by the Artist. Reference checks will not be scored separately, but will be used to validate information included in the Application submitted by Artist. The information obtained for the reference checks may impact the scores assigned by the Selection Panel.





# Call for Artists: Broad Street Festival Block Public Art APPLICATION FORM / SIGNATURE PAGE

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

Artistic Medium(s): \_\_\_\_\_

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

City/ State/ Postal

Code: \_\_\_\_\_

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

Email \_\_\_\_\_ Website: \_\_\_\_\_

Social Media: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*You must sign and date this form or you will be disqualified!*

## 1. INCLUDE/ATTACH LETTER OF INTEREST

## 2. INCLUDE/ATTACH RESUME

Please let us know how you found out about this opportunity \_\_\_\_\_

Would you like to receive direct email about other Call for Entries from the Boise City Department of Arts & History? \_\_\_\_\_

The above signed applicant proposes to provide services in accordance with the specifications for RFQ 19-094, Broad Street Festival Block, Boise Idaho and to bind themselves, on the acceptance of this application, to enter into and execute a contract, of which this application, terms and conditions, and specifications will be part. The undersigned further agrees, if awarded a contract, to execute and deliver the signed contract to the City within five (5) working days after receipt of an executed contract.



## REFERENCES

Applicants must provide at least two (2) current references who are familiar with the quality of the artwork created by the Applicant. References must be able to verify Applicant's ability to comply with the requirements of this application. Failure to provide references may be grounds for disqualification. Before a contract is awarded, the City will conduct reference check as is necessary to evaluate and determine the performance record and ability of the top ranked Applicant(s) to perform the size and type of work to be contracted, and to determine the quality of the service being offered. By submitting an application, you authorize the City to conduct reference interviews as needed.

### Reference One

**Name of Reference:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

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

**City/State/Zip:** \_\_\_\_\_

**Affiliation:** \_\_\_\_\_

**Years Known:** \_\_\_\_\_

### Reference Two

**Name of Reference:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

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

**City/State/Zip:** \_\_\_\_\_

**Affiliation:** \_\_\_\_\_

**Years Known:** \_\_\_\_\_



**3. IMAGE LIST FOR UP TO TEN IMAGES:**

Image #1	Title:
Type of work:	
Materials Used:	
Date Finished:	
Additional Information or Comments	

Image #2	Title:
Type of work:	
Materials Used:	
Date Finished:	
Additional Information or Comments	

Image #3	Title:
Type of work:	
Materials Used:	
Date Finished:	
Additional Information or Comments	



Image #4	Title:
Type of work:	
Materials Used:	
Date Finished:	
Additional Information or Comments	

Image #5	Title:
Type of work:	
Materials Used:	
Date Finished:	
Additional Information or Comments	

Image #6	Title:
Type of work:	
Materials Used:	
Date Finished:	
Additional Information or Comments	



Image #7	Title:
Type of work:	
Materials Used:	
Date Finished:	
Additional Information or Comments	

Image #8	Title:
Type of work:	
Materials Used:	
Date Finished:	
Additional Information or Comments	

Image #9	Title:
Type of work:	
Materials Used:	
Date Finished:	
Additional Information or Comments	



Image #10	Title:
Type of work:	
Materials Used:	
Date Finished:	
Additional Information or Comments	



## **APPLICATION CHECKLIST** *(return with application package)*

**Please provide following items:** (Items 1 – 5 as a single printed document and, if possible, as a digital PDF)

1. **Application Form/Signature Page** (Pass/ Fail) Yes\_\_No\_\_  
Please fill out the Application Form/Signature Page and submit it as your first document.
  2. **Letter of Interest/Ability to Provide** (50 points) Yes\_\_No\_\_  
Include a one-page letter addressing why you are interested in this opportunity and your related experience or qualifications. Describe how the applicant is able to provide responsive services for the needs of the City of Boise for this project.
  3. **Resume/Prior Experience** (Pass/ Fail) Yes\_\_No\_\_  
Include a resume and/or brief summary of the Artist's qualifications and/or past experience
  4. **Two References** (Pass/ Fail) Yes\_\_No\_\_  
Applicants must provide at least two (2) current references who are familiar with the quality of the artwork created by the applicant.
  5. **Image List** (Pass/ Fail) Yes\_\_No\_\_  
Please use the provided form to list the information for the submitted images
  6. **Up to 10 Images of Past Work** (200 pts.) Yes\_\_No\_\_  
Provide up to ten images of your current or past, completed artwork which apply to this project context, in separate files in JPEG format on a CD or thumb drive. Images should be in JPEG Format, 300 dpi, not larger than 10" on the longest side.
- 



## GENERAL CONDITIONS

These General Conditions are presented for clarification of the Terms and Conditions included with the Artist Agreement.

### 1.1 Intent of Application

It is the intent of this application to describe the services being sought in sufficient detail to secure qualified applicants, based on past work. Applications will be evaluated using a weighted scoring method. Applications not conforming to the requested format or not in compliance with the specifications will not receive full scoring.

### 1.2 Applicant's Costs

The applicant will be responsible for all costs (including site visits where needed) incurred in preparing or responding to this solicitation. All materials and documents submitted in response to the solicitation become the property of the City and will not be returned.

### 1.3 Reserved Rights

The City of Boise reserves the right to accept or reject applications. The City may select an artist on the basis of the written application and may request oral presentations.

### 1.4 Public Records

The Idaho Public Records Law, Idaho Code Sections 9-337 through 9-348, allows the open inspection and copying of public records. Public records include any writing containing information relating to the conduct or administration of the public's business prepared, owned, used, or retained by a State or local agency regardless of the physical form or character. All, or most, of the information contained in your application will be a public record subject to disclosure under the Public Records Law and will be available for inspection and copying by any person. The Public Records Law contains certain exemptions. One exemption potentially applicable to part of your response may be for trade secrets. Trade secrets include a formula, pattern, compilation, program, computer program, device, method, technique or process that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons and is subject to the efforts that are reasonable under the circumstances to maintain its secrecy.

If you consider any element of your Application to be a trade secret, or otherwise protected from disclosure, you **must**:

- a. Indicate by marking **each page** of the pertinent document confidential; and,
- b. Include the specific basis for your position that it be treated as exempt from disclosure.

Prices quoted in your application are not a trade secret.





The following is not acceptable or in accordance with the Public Records Law and **will not be honored:**

- a. Marking your entire Application as exempt; or,
- b. Placing a statement or legend on one (1) page stating that all or substantially all of the response is exempt.

The City, to the extent allowed by law and in accordance with these Instructions, will honor a designation of nondisclosure. If you claim material to be exempt from disclosure under the Idaho Public Records Law, the Applicant will expressly agree to defend, indemnify and hold harmless the City from any claim or suit arising from the City's refusal to disclose any such material. Any questions regarding the applicability of the Public Records Law should be addressed to your own legal counsel – **Prior to submission.**

### **1.5 Taxes**

The City of Boise is exempt from Federal and State taxes and will execute the required exemption certificates for items purchased and used by the City. Items purchased by the City and used by an Artist are subject to Use Tax. All other taxes are the responsibility of the Artist.

### **1.6 Request for Clarification or Questions, Protest of Application Requirements or Process**

Any Artist who wishes to request clarifications, or protest the requirements, or processes outlined in this solicitation may submit a written notification to the Department of Finance & Administration, to be received no later than noon, November 30<sup>th</sup>, 2018. The notification will state the exact nature of the clarification, protest, describing the location of the protested portion or clause in the Application document and explaining why the provision should be struck, added, or altered, and contain suggested corrections. The Finance & Administration Department may deny the protest, require that the Application document be modified, modify the proposal, and/or reject all or part of the protest. Changes to these specifications will be made by written addendum. Verbal responses will not be binding on the City or the Applicant.

Written requests are to be directed to:

Tammi Leatham  
City of Boise Purchasing  
150 N. Capitol Blvd.  
Boise ID 83702  
Fax 208-384-3995  
[tleatham@cityofboise.org](mailto:tleatham@cityofboise.org)



### **1.7 Addenda to the RFQ**

If this specification is modified by the Purchasing Office, the modifications will be sent to each applicant in writing through a website attachment or by email. Verbal modifications are not binding on the City or the Artist. No oral changes will be considered or acknowledged. Artists are requested to acknowledge each addendum received in their Application.

### **1.8 Modification and Withdrawal of Proposal**

An application may be modified or withdrawn by the Artist prior to the set date and time for the opening of proposals.

### **1.9 Application Questions**

Questions and responses of any one Applicant, which the City of Boise deems may affect or cause an ambiguity in application responses, will be supplied to all prospective applicants by addendum.

The City of Boise may, by written notice to all applicants, cancel, postpone or amend the Request for Qualifications (RFQ) prior to the due date. If, in the opinion of the City of Boise, the revisions or amendments will require additional time for a response, the due date will be extended to all applicants. If revisions and amendments are not furnished to applicants prior to the due date, applications shall be considered withdrawn and the process shall be re-initiated without further discussion.

### **1.10 Award Criteria**

Criteria necessary to evaluate the applications in relation to the service being sought are included in the RFQ documents and will be established and weighted. At a minimum, criteria will include general qualifications, specific project experience, compliance to the specifications and requirements for the service.

### **1.11 Idaho's Reciprocal Preference Law**

Reciprocal preference applies to any purchase of materials, supplies, services or equipment that is competitively bid/proposal, regardless of the dollar amount, is subject to Idaho's Reciprocal Preference Law, Idaho Code §67-2349.

Reciprocal Preference Information:

[http://www.oregon.gov/DAS/EGS/PS/pages/reciprocal\\_detail.aspx](http://www.oregon.gov/DAS/EGS/PS/pages/reciprocal_detail.aspx)



## **1.12 Significant Local Economic Presence**

To qualify as an applicant with a significant local economic presence, a firm must maintain in the Metropolitan Impact Area a fully staffed office, or fully staffed sales offices, or fully staffed sales outlets, or manufacturing facilities, or warehouses, and, if required, be registered with the Secretary of State of Idaho to do business in Idaho at the time of the bid/proposal opening.

- **Metropolitan Impact Area:** Includes and is limited to the counties of Ada, Boise, Canyon, Elmore, Gem and Payette in the state of Idaho.

## **1.13 Disadvantaged Business Enterprises (D.B.E.)**

D.B.E. firms and business enterprises are encouraged to submit an application. Women owned and minority owned firms are encouraged to submit an application. The City actively encourages any applications by D.B.E. firms for goods and services for the City.

## **1.14 Rejection of Applications**

The City of Boise may, at its sole option, reject any and all applications, for any reason, and reserves the right to re-solicit applications in the event no response to the call is acceptable to the City of Boise. City of Boise is in no way obligated to any applicant for the work as set forth in the call.

**1.14.1** The City of Boise reserves the right to accept or reject applications on each item separately or the RFQ as a whole, without further discussion.

**1.14.2** Applications, which are incomplete, will be considered non-responsive to this opportunity and may be rejected without further consideration.

**1.14.3** If, in the opinion of the City of Boise, the opportunity does not result in reasonable qualifications and experience required by the City of Boise, then all applications shall be rejected. All participating applicants shall be notified of the rejection, the reasons for the rejection, and advised of the disposition of the requirement.

## **1.15 Protest of Artist Selection or Contract Award**

A participating Applicant may object to the contract award by responding in writing to the City's notice of intent to award the contract within seven (7) calendar days after transmittal of the Notice of Intent to Award letter. The responsive protest must set forth in specific terms the alleged reason the Applicant selection or contract award is erroneous. The judgment used in the scoring by individual evaluators is not grounds for a protest. The protest must be submitted in writing. Any protest addressed to the Mayor or City Council will be referred to the City Purchasing Agent.



- Only persons who submitted a proposal are allowed to protest the award.
- Protest must be in writing and received within seven (7) days of Intent to Award Letter posting.
- Purchasing will address the protest with input from Project Manager if necessary.
- After receipt of protest response proposer has three (3) working days (Monday – Friday) to protest to the City Council by submitting a protest of the decision to the City Clerk. City Clerk will then schedule the Consultant for Council.
- If Federal grant funds are involved and the protestor is not satisfied with the way that the City has resolved the protest, the protestor may have the option to appeal to the City Council and then the Federal Grant Provider.
- Award protests are only allowed on formal level Bid/RFQ's. There is no protest period for the semiformal or informal Bid/RFQ process.

Written protests are to be directed to:

Collin Millar
Fax 208.384.3995
<a href="mailto:purchasing@cityofboise.org">purchasing@cityofboise.org</a>



**AGREEMENT FOR DESIGN, FABRICATION AND  
COORDINATION OF INSTALLATION OF PUBLIC ART  
BETWEEN THE CITY OF BOISE CITY AND ARTIST  
SAMPLE DRAFT CONTRACT – DO NOT FILL OUT**

**THIS AGREEMENT** is made and entered into effective upon its mutual acceptance (“Effective Date”) by and between the City of Boise City, an Idaho municipal corporation (“the City”), by and through its Department of Arts & History (“Arts and History”), and ARTIST NAME HERE (“Artist”), collectively referred to as “the Parties,” for the purpose of defining the rights and responsibilities of the Parties regarding the design, fabrication, and coordination of the installation of public art (the “Work”) for the Broad Street Festival Block ( the “Site”).

**BACKGROUND**

- 1) Central Addition/Project Background
- 2) Arts and History is responsible for the administration of public art for the City.
- 3) An evaluation team selects the Artist through a competitive bid and proposal process.
- 4) Arts and History desires to enter into a contract with the Artist to design, fabricate and coordinate the installation of the Work, subject to the terms and conditions of this Agreement.

**NOW, THEREFORE,** the Parties agree as follows:

1. **The Site.** For purposes of this Agreement, the Site shall be the Broad Street Festival Block, as described in the proposal as Schematic Site Plan, attached hereto as Exhibit A.
2. **Scope of Services:** Design, Fabrication, Delivery of Art. The Artist shall design the Work, working with the City’s project team and Arts & History representatives upon signing this Agreement. The Artist will refine approved conceptual design, which will be provided to Arts and History for final approval. The fabrication of the Work shall not commence until final approval of the refined conceptual design is received from Arts and History. The Artist shall work with the project team and Arts and History to complete any design decisions. Artist shall be responsible for hiring any necessary sub-contractors to plan, implement and coordinate the fabrication and delivery of the Work. Artist shall communicate clearly with installers regarding foundation needs, equipment for installing, and technical issues regarding handling the artwork.



3. **Artist's Responsibilities.**

a) In addition to other responsibilities set forth in this Agreement, Artist shall attend meetings in person or by phone with representatives of the project team, the City and/or Arts and History to provide periodic progress reports.

b) Artist shall not assign any of his or her obligations under this Agreement without the written consent of the City. This provision shall not prevent the Artist from subcontracting for obligations that do not require his or her artistic talents, including, but not limited to, such obligations as engineering, structural engineering, drawing architectural renderings or plans for the preparation and submittal of operations and maintenance manual for all works, or fabrication.

4. **Compensation.** The Artist's fee for the scope of work and services contained in this Agreement is not to exceed \$60,000. This amount shall constitute full payment for all services the Artist shall perform, including necessary materials and fees, related travel, permits for the artwork, and necessary costs as set forth in the Scope of Services and this Agreement. Payments shall be in multiple installments as follows:

a) **\$10,000** (Ten thousand dollars) no later than forty-five (45) days from the Effective Date to provide for the design process and related travel necessary to finalize the design.

b) **\$40,000** (Forty thousand dollars) in incremental amounts based on cash flow needs as verified with City's project manager, no later than forty-five (45) days from the time the City receives the Artist's invoices for fabrication milestones completed, materials ordered, other sub-contractor fees, project management fees, and delivery of the Work.

c) The balance of **\$10,000** (Ten thousand dollars) no later than forty-five (45) days from final review of installed Work and approval by the City, delivery of conservation report by the artist, and confirming that Artist has met all terms and conditions of the Scope of Services and this Agreement.

5. **City's Responsibilities.** The City agrees to timely furnish Artist all information, reports, data, statistics, drawings and information in its possession concerning matters covered by this Agreement, together with timely access to all facilities, personnel and data necessary to perform the Work unless such disclosure is prohibited by law.



6. **Time of Performance.** The Artist shall coordinate commencement of design upon signing this Agreement and/or by a date agreed upon between the Parties. The Artist shall complete the Scope of Services on or before September 30<sup>th</sup>, 2019 or on such other later date as may be agreed upon between the Parties in writing.

7. **Approvals.** Artist shall allow the architectural design team and the City to review the Work's progress as follows:

a) Initial review and approval of the designs and/or working drawings to determine that the Work is appropriate for the location. Reviews must be timely in their turn around or additional time must be provided to the Artist to complete.

b) Review and approval by the City representatives of design, fabrication, and/or installation methods prior to the commencement of fabrication/installation, as appropriate.

c) At the City's request, additional periodic reviews, via photographs, and approvals as the Work's design, fabrication and/or installation progresses.

d) The City shall approve or disapprove the Work within seven (7) days of final completion. If, during the approval reviews, the City concludes that the Work does not conform to the designs as previously approved, or as mutually agreed by the Parties in writing, the City shall provide the Artist with a notice in writing of specific non-conformity and request the Artist to address and cure the specific non-conformity within two weeks of the reviews. The Artist shall have thirty (30) days within which to address, cure, and correct any non-conformity. If, after resubmission, the Work still does not conform, this Agreement shall be subject to immediate termination for cause. Failure by the architectural design team or the City to disapprove in writing in a timely fashion shall be presumed to be approval of the Work.

8. **Public Education.** The Artist agrees to participate, at no additional cost to the City, in public events, a "Meet the Artist" event and/or a public dedication of the Work, as planned and negotiated by the Artist and Arts and History. Such events shall be timed to the extent possible to occur when the Artist is available in Boise.

9. **Project Close-Out.**

a) Upon installation of the Work and prior to final approval or disapproval, the Artist shall furnish the City a full release and lien waiver, together with such releases and waivers from



any subcontractor who furnished goods for or performed services for the Work in any way. The Artist shall comply with all applicable federal, state and local laws, statutes, rules, regulations and/or ordinances.

b) The Artist shall also submit a conservation/maintenance plan to the City including specific recommendations for on-going maintenance and repairs, as well as slides and/or photographs and written documentation of fabrication and installation of the Work, such as to assist in future maintenance, repair, and public education.

10. **Repairs, Maintenance, or Alterations.**

a) The Artist is responsible for all parts and workmanship of the Work for a period of one (1) year after acceptance of the Work, and shall replace any defective parts or rework any defective craftsmanship in a timely fashion at no cost to the City except as provided in Section 10(b) and 10(c) of this Agreement.

b) The Artist shall not be responsible for and shall not be held liable for any damage beyond the control of Artist to the Work, its surfaces, or environment caused by personnel of the City or its employees, visitors, or others.

c) The Artist shall not be responsible for and shall not be held liable for any damage to the Work by extremely adverse weather conditions, acts of nature, or vandalism.

d) The City may provide basic maintenance, restoration and repairs as it deems necessary. The City shall be responsible for and pay for repairs following expiration for the one-year warranty period.

e) In the City's sole discretion, the Artist may be given an opportunity to perform and/or act as consultant for the repair or restoration. If design work is necessary, the Artist shall receive compensation to be agreed upon by the Parties. In the event that the Work is damaged or destroyed, the City may, in its sole discretion, relocate, repair, or restore the Work subject to receipt of any insurance proceeds and availability of sufficient funds.

11. **City's Insurance.** The City shall obtain all necessary property and commercial general liability insurance as may be required in order to protect its insurable interests for its rights and obligations described within this Agreement. Upon final completion of the Work, and





acceptance of the Work, the City shall obtain property insurance for the Work which may be included in the City's self-insurance program.

**12. Artist's Insurance.**

a) The Artist shall procure and maintain at her expense during the contract period the following insurance coverage from an insurance company or companies possessing a financial strength rating of at least A- and a financial size category of VII or higher from A.M. Best or an equivalent rating service:

i) Commercial General Liability Insurance: Limit will not be less than \$500,000.00 or the minimum amount as specified in the Idaho Tort Claims Act set forth in Title 6, Chapter 9 of the Idaho Code, whichever is higher. Coverage shall include, but not be limited to, bodily injury and property damage to third parties, contractual liability, products-completed operations, personal injury and advertising injury liability (\$500,000.00 limit).

ii) Workers Compensation and Employers Liability: Unless the Artist applies for and receives a waiver from the City, the Artist shall have and maintain during the life of this contract, statutory workers compensation, regardless of the number of employees (including him/herself) to be engaged in work on the project under this agreement in the statutory limits as required by law and employers liability with a limit of no less than \$500,000.00 for bodily injury by accident or disease. In case any such work is sublet, the Artist shall require the subcontractor to provide workers compensation insurance for her and any/all the subcontractor's employees engaged in such work. The Artist shall provide proof of insurance to the City prior to the start of work, unless a waiver is granted.

b) The Artist hereby grants to the City a waiver of any right to subrogation which any insurer of Artist may acquire against the City by virtue of the payment of any loss under such insurance. The Artist agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. All of the Artist's policies shall be primary and the Artist agrees that any insurance maintained by the City shall be non-contributing with respect to the Artist's insurance. The Artist shall advise the City of any cancellation, non-renewal, or material change in any policy within five business days of notification of such action.



c) By requiring the Artist to maintain insurance with the City named as an additional insured herein, the City does not agree that such coverage and limits will necessarily be adequate to protect the Artist or such coverage and limits are a limitation on the Artist's liability under the indemnities granted to the City in this Agreement. The Artist may use commercial umbrella/excess liability insurance so that the Artist has the flexibility to select the best combination of primary and excess limits to meet the total insurance limits required by this Agreement. If the Artist maintains higher limits than the minimum shown above, the City requires and shall be entitled to coverage for the higher limits maintained. Any deductibles or self-insured retentions must be declared to and approved by the City.

d) The failure of the City at any time to enforce the insurance provisions, to demand such certificate or other evidence of full compliance with the insurance requirements, or to identify a deficiency from evidence that is provided shall not constitute a waiver of those provisions nor in any respect reduce the obligations of the Artist to maintain such insurance or to defend and hold City harmless with respect to any items of injury or damage covered by this Agreement.

e) The Artist shall provide Arts and History and the City's Purchasing Division with a valid certificate of insurance and amendatory endorsements or copies of the applicable policy language affecting coverage, in advance of the performance of any work and as soon as possible after renewal, exhibiting coverage as required by the City's contract terms and conditions. Failure to obtain the required documents prior to the work beginning shall not waive the Artist's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. The Artist shall be responsible for ensuring that all subcontractors independently carry insurance appropriate to cover each subcontractors' exposures or that all such liabilities are covered under the Artist's policies. The Certificate of Insurance shall be provided on the industry standard form (ACORD 25) or other form acceptable to the City. Certificates of insurance shall be issued to:

City of Boise  
Department of Arts & History and  
Division of Purchasing  
Post Office Box 500  
Boise, Idaho 83701



13. **Indemnification.** The Artist shall indemnify, save and hold harmless the City, its elected officials, officers, employees, agents, and volunteers, from and for any and all liability, losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses, including reasonable attorney fees, arising from all acts or omissions to act of the Artist or his/her servants, officers, agents employees, guests, and business invitees in rendering services under this contract or otherwise caused or incurred by the Artist, his/her servants, officers, agents employees, guests, and business invitees, and not caused by or arising out of the tortious conduct of the City or its employees. The limits of insurance will not be deemed a limitation of the covenants to indemnify, save and hold harmless the City, its elected officials, officers, employees, agents, and volunteers. If the City becomes liable for an amount in excess of the Artist's insurance limits, Artist covenants and agrees to indemnify and save and hold harmless the City, its elected officials, officers, employees, agents, and volunteers, from and for any and all liability, losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses, including reasonable attorney fees, to the extent permitted by law.

The Artist represents and warrants that any and all materials or deliverables, including, but not limited to: the design, and the Works, provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. Artist agrees to indemnify and hold harmless the City, its elected officials, officers, employees, agents, contractors, licensees, successors or assigns from and against any injury, loss, liability, expense claim, law suits, and damages arising from the Artist's Artwork, including but not limited to copyright, trademark, patent or other intellectual property infringement or violations. If deliverables, materials or Work provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Artist to produce, at the Artist's own expense, a new non-infringing materials, deliverables, or Works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity.

14. **Warranty.** Upon final acceptance of the completed Work by the City, the Artist warrants that the Work shall be free from defects in materials and workmanship, including



inherent vice. The Artist, for a period of one (1) year after acceptance by Arts and History, shall correct any such defects at Artist's expense. "Inherent vice" refers to a quality within the material or materials which comprise the Work which, either alone or in combination with other materials used in the Work or reacting to the environment, results in the tendency of the Work to destroy itself. Upon written notification of a defect in materials or workmanship, the Artist shall have sixty (60) days to commence repairs and shall conclude the repairs within a reasonable time thereafter.

15. **Ownership.** Each Work shall be a limited edition of one. The Artist warrants that, unless otherwise stipulated, the Work is original, in that the Work owes its creation or origin to Artist, and is not the product of copying another's work in any manner. Furthermore, the Artist warrants and represents she has not previously published the Work which is transferred by, and the subject of, this Agreement and that the Artist is the sole owner of all rights therein. Upon final approval and acceptance of the Work, subject to delivery, installation and final payment, the City shall own the Work. Except as set forth in Paragraphs 16 and 17, herein, the Artist hereby expressly waives any ownership right, title or interest in the Work. The Artist understands that said waiver includes waivers of the exclusive rights of reproduction, adaptation, publication, performance and display.

16. **Ownership of Copyright.** The Artist shall retain all right, title and ownership of the copyright of the Work. The Artist hereby grants the City a royalty-free, irrevocable, perpetual, non-exclusive license to reproduce images of the Work for educational or promotional uses. Models or drawings shall not be identified or represented to be the finished artwork. The Artist shall be identified, whenever possible, on all printed material, signage, websites or other promotional material as the original creator of the design and the Work. The Artist shall retain the right to claim authorship of the design of the Work and may utilize such authorship in any of his/her printed material or other promotional material.

17. **Waivers and Relinquishments of Rights.** Except for copyright, as set forth in paragraph 16, above, the Artist agrees to relinquish all ownership rights, title, and interest to the Work created for the Project and hereby expressly waives the right of integrity, but not attribution, with respect to the Work as conferred by the federal Visual Rights Act of 1990, Title 17 U.S.C. Sections 101, et seq. If at any time following final approval, the City chooses to move or modify the Work, the City will make reasonable attempts to contact and to notify the Artist regarding the City's plans, provided that the Artist shall have no right to override



or veto the City's plans. The Artist hereby waives his/her right to file a claim or demand of any type against the City based upon any future decision regarding the placement or modification of the Work, including those granted pursuant to the Copyright Act of 1976 and the Visual Rights Act of 1990. To the extent that the provisions of this Agreement differ from the Copyright Act of 1976 and Visual Rights Act of 1990, the provisions of this Agreement shall govern and the Artist expressly waives any such differences.

18. **Artwork Changes.**

a) Material Changes After Acceptance/Completion:

i) If any material change occurs to the Work after final acceptance by the City (whether such change is an intentional act of a third party, an accident, or an act of nature), including but not limited to a change to the exterior surface of the Work or the interrelationship or relative locations of the parts of the Work, the City reserves the right to determine, after consultation with an independent, professional art conservator, if, when and how any repair and restoration to the Work can be made, and the nature, scope and anticipated cost of any such repair or restoration. The City reserves the right to contract with a conservator, rather than the Artist, to implement any such repairs or restoration.

ii) The City reserves the right to manage its buildings, facilities and public sites for public purposes, and in doing so, may determine that it is necessary to relocate or remove the Work and/or modify the site in/on which it is located. The City shall not relocate or remove the Work and/or substantially modify the site in/on which it is located without attempting to notify Artist of the proposed change; provided, however, that Artist shall have no right to object to any such relocation, removal or modification.

iii) In the event the City decides to de-accession the Work or any of its components, the Artist shall have the first right of refusal to purchase his Work, providing it is not integrated into a larger piece or a structure, and/or can be removed without destruction of the Work.

iv) If a modification of the Work occurs, the Artist may give written notice to the City requesting that her name and the Work be disassociated and the Work shall no longer be designated as the Artist's Work.

v) For purposes of this Agreement, no modification of the Work resulting from the passage of time or the inherent nature of the materials used in the Work shall constitute a modification. In addition, no modification of the Work resulting from conservation or public presentation (including but not limited to lighting and placement) shall constitute a



modification that is prejudicial to the Artist's honor or reputation or for which the Artist may claim relief or any remedy from the City.

vi) The action of the City in the exercise of its governmental powers (including but not limited to the issuing of any permit for the redevelopment of land or any structure thereon other than action by the City on the specific site of the Work) shall not constitute a modification of the Work for which the Artist may claim any form of relief from the City.

vii) By executing this Agreement, the Artist consents to the installation of the Work in or around the site specified in this Agreement. The Artist acknowledges that such installation may subject the Work to destruction, distortion, mutilation or other modification by reason of its removal from that location.

19. **Publicity-Rights of Reproduction.** In retaining the Artist's right of attribution as set forth in Section 17 above, the Artist also consents to the use of the Artist's full name and the Artist's own identifying photograph in any publicity or promotional materials produced for the Work, whether printed or electronic, in the discretion of the City. Such consent includes placement of these items on any Web site the City maintains.

20. **Nondiscrimination.**

a) In the performance of this Agreement, the Artist and any subcontractors agree not to discriminate in their employment practices against any employee, contractor, subcontractor or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, age, disability or sexual orientation and/or gender identity/expression.

b) The Artist also agrees to comply with all provisions of Idaho law relative to labor, and all other applicable federal, state, and/or local statutes, ordinances, and regulations relative to employment, wages, and hours of labor.

21. **Independent Artist.** The Parties intend that this Agreement create only an independent contractor relationship and that the Artist is not an employee, agent, joint venturer or partner of Arts and History or the City. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the Artist and the City or between the Artist and any official, agent or employee of the City. The Artist shall retain the right to perform services for others during the term of this Agreement.

22. **Attorney's Fees.** If either party brings any action or proceeding to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, in addition



to any other relief awarded, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction.

23. **Agreement Made in Idaho.** The laws of the State of Idaho shall govern the validity, interpretation, performance and enforcement of this Agreement. In the event of a dispute, venue shall be in the courts in Ada County, Idaho.

24. **Cumulative Rights and Remedies.** All rights and remedies here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

25. **Agreement Made in Writing.** This Agreement contains all of the agreements and conditions made between the Parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the Parties hereto or their respective successors in interest.

26. **Termination for Cause.** If either party willfully or negligently fails to fulfill its obligations under this Agreement, the other party shall have the right to terminate the agreement by giving written notice to the defaulting party of its intent to terminate and specify the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the defaulting party does not cure the default, this Agreement shall terminate. In the event of termination for non-performance by the City, it shall compensate the Artist for all phases of the Scope of Services the Artist has successfully completed and any additional services and materials performed or supplied prior to termination; provided however, that such payment shall be limited to the amount of compensation set forth herein. In the event of default by the Artist, except that caused by the death or incapacity of the Artist, all finished and unfinished drawings, photographs, and other Work products prepared and submitted or prepared for submission under this agreement shall, at the City's option, become its property. This shall not relieve the Artist of any liability for damages sustained by virtue of the Artist's breach or default of this Agreement and the City may reasonably withhold payments due until the exact amount of damages due Arts and History from the Artist is determined.

27. **Termination for Convenience of City.** The City may terminate this Agreement for any reason at any time by giving at least fifteen (15) days notice in writing to the Artist. If the Agreement is terminated by the City as provided herein, the City shall compensate the Artist



for all phases of the Scope of Services the Artist has completed up to the date of written notice of termination and any additional services and materials performed or supplied prior to termination, less payments of compensation the City has previously made, not to exceed the amount set forth in Section 4. If payments the City has previously made exceed the amount of compensation due hereunder, the Artist shall immediately refund the unearned balance to the City. If the City terminates this Agreement due to the fault of Artist, Section 26 hereof relative to termination shall apply.

28. **Force Majeure.** Neither the Artist nor the City shall be considered in default in the performance of its obligations hereunder to the extent that performance of such obligations are delayed, hindered, or prevented by force majeure. Force majeure shall be any cause beyond the control of the parties hereto which they could not reasonably have foreseen and guarded against. Force majeure shall include, without limitation, acts of God, strikes, lockouts, fires, riots, civil commotion or civil unrest, incendiarism, interference by civil or military authorities, compliance with the regulations or orders of any governmental authorities which were not in effect at the time of the execution of this Agreement, and acts of war (declared or undeclared).

29. **Severability.** If any provision of this Agreement or application thereof is held invalid, such invalidity will not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to that end, the provisions hereof are declared to be severable.

30. **Party Representatives.** For purposes of this Agreement the following persons or their designees shall act as party representatives:

**Arts and History:** Karl LeClair or his designee

**Artist:**

31. **Successors and Assigns.** All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon each party and their successors, assigns, legal representatives, heirs, executors and administrators.

32. **Method of Payment.** Arts and History shall be responsible for receipt and approval of invoices, and for disbursement of funds to the Artist.

33. **Effective Date.** The effective date of this Agreement shall be upon the Parties mutual acceptance of this Agreement.





34. **Notices.** Written notices to the Parties shall be given by registered or certified mail, postage prepaid, and addressed to said parties at the addresses below, unless otherwise designated by written notice to the other parties:

Boise City Department of Arts and History Artist

P.O. Box 500

Boise, Idaho 83701-0500

All such notices, except as otherwise provided, may either be delivered personally deposited in the United States mail, properly addressed with postage fully prepaid by certified or registered mail, return receipt requested, and shall be effective five (5) days after deposit in the mail.

[End of text; signatures on following page.]



**IN WITNESS HEREOF**, the undersigned have duly executed this Agreement effective the \_\_\_\_ day April, 2019.

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**City of Boise City** Karl LeClair, Arts & History

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**Artist** Name Here

**APPROVED AS TO FORM AND TO CONTENT:**

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**Purchasing Manager**

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**Legal Department**



## EXHIBIT A

Artist Approved Concept Proposal To Go Here

