



ARTIST CALL FOR APPLICATIONS

Boise City Seeks Artists to Design Artwork for Linen District Fence

Contact: Tammi Leatham, Purchasing Specialist, tleatham@cityofboise.org

Deadline: March 6th, 2019 at 1 PM Local Time

Opportunity:

The City of Boise Department of Arts and History invites artists to apply for an opportunity to create artwork to be installed on the Linen District Fence. One artist may be selected and paid \$4,000 to create 4 works.

Project Information:

The selected artist will be provided the four, 2'x4', wooden panels to work upon and are welcome to choose their preferred medium. The site is located on the black fence, just west of the Linen Building, on Grove Street between 14th and 15th Streets. There are four 2' x 4' frameworks where the completed artworks will be installed. The artworks will be displayed in this location for one year, after which the artwork may be incorporated into the City of Boise's Interior Collection and may be framed and exhibited in other locations.



Biomes in Motion by Jay Rasgorshek

Approximate Timeline:

Description	Date
Call to Artist Released	January 2019
Application Workshop – <i>optional</i>	February 6 th , 2019 at 3:00 pm Local Time at Boise City Hall, 3 rd floor, 150 N. Capitol Blvd.
Questions / Clarifications due via email by	March 4 th , 2019 at noon Local Time
Application Deadline	March 6 th , 2019 at 1:00 pm Local Time
Artists Selected	April 2019
Artists Deliver Work	April – June 2019
Installation	August 2019

IRFP 19-197 Linen District Fence

Application Process:

An Optional Application Workshop will be held February 6, 2019 at 3:00 PM local time and in the Boise City Council Chambers located at 150 N Capitol Blvd, 3rd floor, Boise, Idaho 83702. At the Workshop staff will review the application process, discuss the process for fabrication and installation (for those artists selected), and answer any questions applicants may have. These are your **only opportunities** 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.

In determining the best qualified applications, City of Boise will consider all acceptable applications on a basis consistent with this Informal Request for Proposal (IRFP). 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 contract. 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 contract for services.

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.

Proposal Instructions and Information:

- The submission package or envelope **SHOULD BE SEALED** and **PLAINLY MARKED** with the following:

**Boise City Purchasing Department
150 N. Capitol Blvd.,
Boise, ID 83702
IRFP 19-197 Linen District Fence**

**Submit Bids/Proposals to the Boise City Purchasing Department 150 N. Capitol Blvd.,
Boise, Idaho, 83702**

OR

- **Via E-mail to tleatham@cityofboise.org** The subject line **MUST READ:**
IRFP 19-197 Linen District Fence
The Owner is the City of Boise.
ALL BIDS/PROPOSALS MUST BE SIGNED.

Questions must be submitted to Tammi Leatham, tleatham@cityofboise.org no later than **Monday, March 4th, 2019 at noon.**



IRFP 19-197 Linen District Fence

Evaluation Process:

Applications shall 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 other artists. The Applications are to be clear and concise. The Application package shall contain the following information:

1. Application Form (Pass/Fail)

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

2. Letter of Interest (Pass/Fail)

- 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 providing artwork for the Linen District Fence, meeting the needs of the City of Boise for this project.

3. Artist Resume (Pass/Fail)

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

4. JPEG Images of current and past work (100 pts.)

Images are to be in JPEG Format, 300 dpi, not larger than 10" on the longest side.

Provide up to ten images of your past work and/or current work as separate files in JPEG format as attachments in the application email or on a disc or thumb drive, which demonstrate your ability to meet the defined project opportunity.

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.

The City appreciates your interest in meeting the needs of the citizens of Boise.



IRFP 19-197 Linen District Fence

APPLICATION FORM:

Name: _____

Artistic Medium(s): _____

Address: _____

City, State, Zip: _____

Phone: _____

Email: _____ Website: _____

Signature: _____ Date: _____

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

The above signed acknowledges the rights reserved by the City to accept or reject any or all Proposals as may appear to be in the best interest of the City and to bind themselves, on the acceptance of this Proposal, to enter into and execute a contract, of which the scope of work, fee structure, and terms & conditions will be negotiated.

- 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? _____

IRFP 19-197 Linen District Fence

IMAGE LIST FOR UP TO TEN IMAGES:

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

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

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

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

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

IRFP 19-197 Linen District Fence

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

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

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

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

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

IRFP 19-197 Linen District Fence

APPLICATION CHECKLIST:

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 (Pass/Fail)

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. JPEG *Images of current and past work (100 Points)

Yes__No__

Provide up to ten images of your past work and/or current work as separate files in JPEG format as attachments in the application email or on a disc or thumb drive, which demonstrate your ability to meet the defined project opportunity.

***Images must not exceed 300 dpi and 10" on the longest side**

5. Image List (Pass/ Fail)

Yes__No__

Please use the provided form to list the information for the submitted images.

IRFP 19-197 Linen District Fence

DRAFT AGREEMENT FOR DESIGN, FABRICATION AND DELIVERY OF PUBLIC ART BETWEEN THE CITY OF BOISE CITY AND [ARTIST]

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] (“Artist”), collectively referred to as “the Parties,” for the purpose of defining the rights and responsibilities of the Parties regarding the design, fabrication, and Delivery of public art (the “Work”) for the Linen District Fence.

WHEREAS, the Artist is a recognized artist whose work and reputation make the Artist uniquely qualified to create the Artwork; and

WHEREAS, Arts and History desires to enter into a contract with the Artist to design, fabricate, and deliver 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 upon which the Work will be placed is more specifically defined as the fence between the Linen Building at 14th Street & Grove Street and Big City Coffee on Grove Street in Boise, Idaho. The Site Plan is attached hereto as Exhibit B and incorporated herein by reference. Artist understands and agrees that this Site is located on property not owned by City, and location of the Work on the Site is subject to the approval of the property owner, and that such approval is revocable at any time by that property owner. Additionally, Artist understands and agrees that placement of the Work on the Site is intended to be temporary in nature, and the Work may be removed from the Site at the discretion of the City.

IRFP 19-197 Linen District Fence

2. Scope of Services: (Design, Fabrication, and Delivery) The scope of services of this Agreement and description of the Work to be produced by the Artist is described and depicted by Exhibit A which is attached hereto and incorporated into this Agreement. Artist shall develop a design proposal to be delivered to the City on or before April 30, 2019. The design proposal must be approved Arts & History. Upon final approval, Artist shall fabricate and deliver the Work, and perform any and all other duties and obligations as set forth by this Agreement. The Work shall, at all times, be subject to the City's general review and approval.

3. Artist's Responsibilities.

- a. The Artist shall complete the fabrication of the Artwork in advance of the scheduled installation date as stated in this Agreement.
- b. The Artist shall perform all services and furnish all supplies, material and/or equipment as required for the design, fabrication, and installation of the Artwork at the Site in accordance with the schedule required by this Agreement. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- c. The Artist shall attend design and construction meetings in person or by phone with the City, general contractor, architect or other parties, as appropriate, to communicate about the artwork to ensure appropriate integration and/or installation of the of the Artwork.
- d. Until the Work is complete and has been accepted by the City, the Artist shall not post or share information or photos about the Work online in any form, including but not limited to email, websites, message boards, blogs, or social networking websites without prior permission from the City.

IRFP 19-197 Linen District Fence

- e. The Artist agrees to participate, at no additional cost to the City, in at least one public event, such as a “Meet the Artist” event, or the public dedication of the Work as staged or planned 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.
 - f. Artist shall provide required insurance in amounts and limits specified in Section 10.
 - g. Artist shall provide a Care and Conservation report, as provided by the City, with a description of all materials and products utilized in the Artwork and the required care and upkeep involved.
 - h. Artist agrees that the City and Arts and History shall have the right to review the final Work and request changes to ensure the Work meets the project goals. Artist agrees that any such requested changes will be made and that such changes will be made in consultation with the City or Department. Subtle design refinements or improvements shall be left to the discretion of the Artist.
 - i. The Artist shall not assign any of his or her obligations under this Agreement without the express 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.
2. **City’s Responsibilities.** The City agrees to timely furnish Artist all information, reports, data, statistics, drawings, and information in its possession related to 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.
- a. The Agency shall perform all obligations in strict compliance with all terms and conditions in this Agreement.

IRFP 19-197 Linen District Fence

- b. The Agency shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data, if any, which is needed by Artist in order to perform.
- c. The Agency shall be responsible for compliance with all applicable laws and regulations, including but not limited to zoning or environmental regulations, and shall explain any limitations imposed by such laws and/or regulations to the Artist.
- d. The Agency shall provide and install a sign on or near the Artwork containing a credit to the Artist and the dedication year.
- e. The Agency shall not permit any use of the Artist's name or misuse of the Artwork which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Artwork, should such use or misuse be within the Agency's control.
- f. The Agency shall be responsible for leading the Artist through the required review process. The Agency shall be responsible for organizing and scheduling meetings with review entities, such as City Council and the Arts Commission, and for providing the Artist written instructions for the materials required at such meetings.

3. **Term of Agreement.**

- a. **Time of Performance.** This Agreement shall be effective on the date that this contract has been signed by both parties, and, unless terminated earlier pursuant to such provisions in the Agreement, shall extend until final acceptance by the Agency under Section 5(d), or submission of final payment to the Artist by the Agency, whichever is later. The Artist shall coordinate commencement of design upon signing this Agreement and/or by a date agreed upon between the Parties. The Artist shall

IRFP 19-197 Linen District Fence

complete the Scope of Services on or before June 28th, 2019 or on such other later date as may be agreed upon between the Parties in writing.

- b. **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).

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

4. **Artist Fee, Payment Schedule, and Invoices.**

- a. **Artist Fee.** The Artist shall prepare a budget, which shall include all goods, services and materials, with such costs itemized. Calculation of the budget will take into

IRFP 19-197 Linen District Fence

consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date.

i. The Artist's fee for the work and services to be performed under this Agreement shall not to exceed Four Thousand Dollars (\$4,000.00). This amount shall constitute the full payment for all services the Artist shall perform, including necessary materials and fees, related travel, permits, and necessary costs as set forth in the Scope of Services and this Agreement.

1. **\$3,000** (Three thousand and dollars) shall be disbursed to Artist no later than forty-five (45) days from the Effective Date to provide for the design and fabrication process.

2. The remaining balance of **\$1,000** (One Thousand dollars) shall be disbursed to Artist no later than forty-five (45) days from final approval by the City confirming that Artist has met all terms and conditions of this Agreement.

b. **Payment Schedule.** Payment shall be made in accordance with the agreed upon schedule, each installment representing full and final payment for all services and materials provided prior to payment thereof

c. **Invoices.** The Artist shall be responsible for the preparation and submission of invoices for the initial design fee, throughout the duration of the project, and at the conclusion and acceptance of their work.

i. Arts and History shall be responsible for receipt and approval of invoices, and for disbursement of funds to the Artist.

5. **Approvals.** Artist shall allow the City to review the Artist's progress as follows:

IRFP 19-197 Linen District Fence

- a. The City may request periodic reviews or updates regarding the Work's design and fabrication progress. The City may choose to request a written statement and/or photographs.
- b. Before delivery and installation, the City may request to review and approve the Work prior to the commencement of fabrication or installation, as appropriate.
- c. The Artist shall notify the Agency in writing when all services as required of both Parties by this Agreement prior to this paragraph have been completed in substantial conformity with the Design.
- d. The Agency shall promptly notify the Artist of its final acceptance of the Artwork within 7 days after the Artist submitted written notice pursuant to paragraph (c) above. The effective date of final acceptance shall be the date the Agency submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that the City acknowledges completion of the Artwork in substantial conformity with the Design, and that the City confirms that all services as required of both Parties by this Agreement have been completed.
 - i. If, during the approval reviews, the City concludes that the Work does not conform to the approved design, or as otherwise mutually agreed upon by the Parties in writing, the City shall provide the Artist with notice in writing specifying the non-conformity and request that the Artist 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 City to reject the design in writing in a timely fashion shall be deemed to be approval of the Work.

IRFP 19-197 Linen District Fence

6. Project Close-Out.

- a. Upon completion of the Work and prior to final approval or disapproval, the Artist shall furnish the City with a full release and lien waiver, together with any 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 ordinances.
- b. The Artist shall complete and submit the Conservation Report and the title and a written statement about the work.
- c. The Artist shall submit digital files of the approved artwork to Arts & History to assist with future maintenance, repair, and public education.

7. Warranties of Quality and Condition.

- a. The Artist represents and warrants that all work will be performed in accordance with professional “workmanlike” standards and free from defective or inferior materials and workmanship (including any defects consisting of “inherent vice,” or qualities that cause or accelerate deterioration of the Artwork) for one year after the date of final acceptance by the Agency under Section 5(d). “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.
- b. The Artist represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the Conservation Report submitted by the Artist pursuant to Section 6(b).
- c. The Artist is responsible for all parts and workmanship of the Work for a period of one (1) year after acceptance of the Work. During this period, Artist shall replace any

IRFP 19-197 Linen District Fence

defective parts or rework any defective craftsmanship in a timely fashion, satisfactorily and consistent with professional standards, at no cost to the City except as provided in Section 8(a), 8(b), and 8(c) of this Agreement.

- d. If within one year the Agency observes a breach of warranty described in this Section 7 that is not curable by the Artist, the Artist is responsible for reimbursing the Agency for damages, expenses and loss incurred by the Agency as a result of the breach. However, if the Artist disclosed the risk of this breach in the Proposal and the Agency accepted that it may occur, it shall not be deemed a breach for purposes of this Section 7 of this Agreement.
- e. 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.

8. Repairs, Maintenance, or Alterations.

- a. The City may provide basic maintenance, restoration, or repairs as it deems necessary. The City shall be responsible for and pay for repairs following expiration for the one-year warranty.
- b. The Artist shall not be responsible 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 third parties (excluding subcontractors engaged by Artist).
- c. The Artist shall not be responsible for any damage to the Work caused by acts of nature, or vandalism.
- d. In the City's sole discretion, the Artist may be given an opportunity to perform or act as a consultant for the repair or restoration of the Work. If design work is necessary, the Artist shall receive compensation to be agreed upon by the Parties by separate

IRFP 19-197 Linen District Fence

written agreement. If after one year the Agency observes any breach of warranty described in this Section 7 that is curable by the Artist, the Agency may contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist's lifetime. Should the Artist be unavailable or unwilling to accept reasonable compensation under the industry standard, the Agency may seek the services of a qualified restorative conservator or maintenance expert.

- e. 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.
 - f. All artworks owned by the City may be deaccessioned, following a careful and impartial evaluation of the artwork within the context of its designated lifespan as well as the collection as a whole. As a part of the deaccession process, the Department of Arts and History will make a reasonable effort to notify the artist and may choose to involve the artist in the disposition process. Artwork may only be approved for deaccession once the appropriate approvals and criteria for deaccession have been met.
9. **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 acceptance of the Work, the City shall obtain property insurance for the Work which may be included as part of the City's self-insurance program.
10. **Artist's Insurance.**
- a. Artist shall procure and maintain at their expense during the contract period the following insurance coverage from an insurance company or companies possessing a

IRFP 19-197 Linen District Fence

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 Artist applies for and receives a waiver from the City, 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, Artist shall require the subcontractor to provide workers compensation insurance for her and any/all the subcontractor's employees engaged in such work. Artist shall provide proof of insurance to the City prior to the start of work, unless a waiver is granted.
- b. 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. 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 Artist's policies shall be primary and Artist agrees that any insurance maintained by the City

IRFP 19-197 Linen District Fence

shall be non-contributing with respect to Artist's insurance. 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 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 Artist or such coverage and limits are a limitation on Artist's liability under the indemnities granted to the City in this Agreement. Artist may use commercial umbrella/excess liability insurance so that 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 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 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. 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

IRFP 19-197 Linen District Fence

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. 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 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

11. **Indemnification.** Artist shall indemnify, defend, save, release, 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, the Artist

IRFP 19-197 Linen District Fence

covenants and agrees to indemnify, save, defend, release, 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. The Artist agrees to indemnify, save, defend, release, 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/Work, including but not limited to copyright, trademark, patent or other intellectual property infringement or violations. If deliverables, materials or the Work provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, the City shall have the right, in its sole discretion, to require the 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.

12. **Ownership, Copyright, and Artists' Rights.**

- a. **Ownership.** The Artist warrants that, unless otherwise stipulated, the visual component of the Work is original, in that the visual component of the Work owes its creation or origin to the Artist and is not the product of copying another's work in any manner. Furthermore, the Artist warrants and represents he/she has not previously

IRFP 19-197 Linen District Fence

published the visual component of 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 Sections 12(b) and 12(c), herein, the Artist hereby expressly waives any ownership right, title or interest in the original file and the documentation of the Work. Artist understands that said waiver includes waivers of the exclusive rights of reproduction, adaptation, publication, performance and display.

- b. **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. The grant of this royalty-free, irrevocable, perpetual, non-exclusive license and any other rights under this section shall survive the expiration or early termination of this Agreement.
- c. **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

IRFP 19-197 Linen District Fence

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.

13. 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 or other professional, 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

IRFP 19-197 Linen District Fence

which it is located without attempting to notify the Artist of the proposed change; provided, however, the Artist shall have no right to object to any such relocation, removal or modification.

- iii. If a modification of the Work occurs, 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.
- iv. 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.
- v. 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.
- vi. 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.

14. Publicity and Reproduction Rights.

- a. In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate [three]-dimensional reproductions of the final

IRFP 19-197 Linen District Fence

Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the Agency. However, nothing shall prevent the Artist from creating future Artworks in the Artist's manner and style of artistic expression.

- b. The Artist grants to the Agency and its assigns an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publications provided that these rights are exercised in a tasteful and professional manner.
- c. In retaining the Artist's right of attribution as set forth in Section 12(c) above, all reproductions by the Agency shall contain a credit to the Artist.
- d. If the Agency wishes to make reproductions of the Artwork for commercial purposes, including, but not limited to, tee shirts, post cards and posters, the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.
- e. The Artist shall use the Artist's best efforts in any public showing or resume use of reproductions to give acknowledgment to the Agency in substantially the following form: "an original Artwork commissioned by and in the public art collection of the Agency."
- f. Third Party Infringement. The Agency is not responsible for any third-party infringement of Artist's copyright and not responsible for protecting the intellectual property rights of Artist.

15. 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,

IRFP 19-197 Linen District Fence

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.

16. **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 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.
17. **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.
18. **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.
19. **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.

IRFP 19-197 Linen District Fence

20. **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.
21. **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.
22. **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

IRFP 19-197 Linen District Fence

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(i). 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 21 hereof relative to termination shall apply.

23. **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.

24. **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: [artist]

25. **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.

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

27. **Renewal.** This agreement shall not be valid for more than one year from the date of approval by the Owner. This agreement is renewable upon mutual written agreement by both parties. Up to three renewals shall be allowed under this Agreement.

IRFP 19-197 Linen District Fence

28. **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	Address
Boise, Idaho 83701-0500	Address

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.]

IRFP 19-197 Linen District Fence

IN WITNESS HEREOF, the undersigned have duly executed this Agreement effective the _____ day _____, 2019.

City of Boise City

Karl LeClair, Arts & History

Artist

[artist]

APPROVED AS TO FORM AND TO CONTENT:

Legal Department



IRFP 19-197 Linen District Fence

EXHIBIT A

