



**REQUEST FOR PROPOSALS (“RFP”) NO. 22-07 PUBLIC ART  
MASTER PLAN**

**SUBMISSION DEADLINE:**

**5 P.M. ON JANUARY 7, 2022**

## INTRODUCTION

The City of Escondido (“City”) is soliciting proposals from qualified consultants with specific experience in public art master planning to develop a Public Art Master Plan for the City (“Master Plan”). The successful consultant (“Consultant”) will have experience and expertise in public arts planning, municipal coordination, community outreach, developing public art master plans. Additionally, the Consultant will have strong communication skills, the ability to gather and evaluate qualitative data, and strong technical writing abilities. The Consultant will work in conjunction with City staff and the Public Art Commission to gather and utilize public feedback in the creation of a Master Plan.

## PROJECT DESCRIPTION

Despite various programs designed to promote the arts in public places, the City currently does not have a comprehensive Public Art Master Plan. Since the City’s Public Art Program began in 1988, more than 22 public art projects have been initiated by the City and private developers. In recent months, private installations, gifts, and requests for public art have been emerging at an exponential rate. In order to facilitate the continued success of the Public Art Program, the City desires and believes it necessary to develop a comprehensive Public Art Master Plan that will provide guidance, articulate a vision and goals, and identify resources and processes for the commission, acceptance, and placement of public art within the City. The proposed Public Art Master Plan will also provide an opportunity to evaluate and refine the City’s existing Public Art Program and develop processes that will allow the Public Art Program to solicit and accept public art in a much more efficient and effective way.

The City envisions a Public Art Program that provides enrichment to the community by integrating a wide range of high-quality artistic works that enliven public spaces, enable artists to advance their art forms, help to revitalize neighborhoods, and encourage the preservation of cultural traditions. Public art improves our quality of life through its ability to enhance an environment, ignite the imagination, and encourage thought.

## PROPOSAL SUBMISSION REQUIREMENTS

Prospective consultants shall submit the following in one sealed envelope:

1. One signed original proposal;
2. Nine hard copies of the proposal; and
3. One PDF copy of the proposal on a USB drive.

The sealed envelope containing the above copies of the proposal shall be addressed as follows:

Danielle Lopez  
Assistant Director of Community Services  
201 N. Broadway  
Escondido CA, 92025  
Attn: RFP No. 22-07 - Public Art Master Plan – Sealed Proposal

The submitting consultant’s name and address must be clearly marked on the outside of the sealed envelope. All proposals in response to this RFP **must be received by 5 p.m. PST on January 7, 2022, to be considered timely** (“Submission Deadline”). Untimely proposals that are received after the Submission Deadline will be disregarded. Proposals may be mailed or hand delivered to the Community Services Counter of City Hall. Email or telephone proposals

will not be accepted or considered. Any information that is not submitted as part of the sealed packages will not be considered.

**Prospective consultants assume the risk that mailed proposals will not be promptly delivered to the City and time-stamped by the Submission Deadline.**

**Point of Contact**

All questions, comments, and requests for clarification relating to this RFP must be emailed directly to Danielle Lopez, Assistant Director of Community Services, at [dmlopez@escondido.org](mailto:dmlopez@escondido.org). Any questions, comments, and requests for clarification submitted by any other means will not be accepted or considered. Any communication regarding or relating to this RFP with any City employee or official other than Danielle Lopez is strictly prohibited.

## **GENERAL INSTRUCTIONS FOR CONSULTANT**

### **A. General**

All proposals must be made in accordance with the conditions of this RFP. Failure to address any of the requirements may be grounds for rejection of this proposal.

By submitting a proposal in response to this RFP, prospective consultants certify that they take no exceptions to the terms and requirements of this RFP and have investigated and understand the character, quality, and scope of the work to be performed.

All proposals submitted in response to this RFP become property of the City and will be kept confidential until a recommendation for award of a contract has been announced. Thereafter, submittals are subject to public inspection and disclosure under the California Public Records Act. If a prospective consultant believes that any portion of its submittal is exempt from public disclosure, it may mark that portion "confidential." The City will use reasonable means to ensure that such confidential information is safeguarded, but will not be held liable for inadvertent disclosure of the information. Proposals marked confidential in their entirety will not be honored and the City will not deny public disclosure of any portion of submittals so marked. By submitting a proposal with portions marked "confidential" a prospective consultant represents it has a good faith belief that such portions are exempt from disclosure under the California Public Records Act and agrees to reimburse the City for, and to indemnify, defend, and hold harmless the City, its officers, employees, and agents, from and against any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs, and expenses, including without limitation, attorneys' fees, expenses, and court costs of any nature whatsoever, arising from or relating to the City's non-disclosure of any such designated portions of a proposal.

The City reserves the right to:

1. Reject any or all proposals submitted in response to this RFP.
2. Request clarification of any submitted information.
3. Waive any informalities or irregularities in any qualification statement.
4. Cancel this RFP process at any time.
5. Amend this RFP and/or this RFP process at any time. The City specifically reserves the right to make corrections or amendments to this RFP due to clerical errors identified by prospective consultants.
6. Interview prospective consultants prior to awarding a contract. Unless requested by the City, prospective consultants may not submit new information or materials at a pre-award interview.

7. Negotiate all final terms and conditions of any agreements resulting from this RFP.
8. Not enter into any agreement relating to this RFP.
9. Issue similar RFPs in the future.
10. Maintain sole discretion and judgement in selecting the proposal which best meets the needs of the City. The lowest proposed cost is not the sole criterion for recommending contract award.

Prospective consultants shall be solely liable for all errors or omissions contained in their proposal submitted in response to this RFP. Prospective consultants will not be allowed to alter proposals after submission to the City. Any and all costs arising from participation in this RFP process, including but not limited to proposal preparation costs, shall be borne by prospective consultants without reimbursement by the City.

## **B. Tentative Schedule**

Description	Date
RFP Release Date	December 8, 2021
Deadline for Submission of Questions	No later than 5 p.m. (PST) on December 17, 2021
City Response to Questions	December 29, 2021
RFP Submission Deadline	No later than 5 p.m. (PST) on January 7, 2022
Interviews/Presentations	Completed by January 21, 2022
Selection of Consultant	No later than January 28, 2022
City Council Approval of Contract	February 2022
Notice to Proceed	February 2022

## **C. Proposal Evaluation and Award of Contract**

All proposals received by the Submission Deadline will be evaluated based on professional qualifications, related experience, the proposed project implementation, and community outreach plans, cost, and proposed schedule. The contract resulting from this RFP will be awarded to the most responsive and responsible consultant whose proposal conforms to the requirements of this RFP and is considered to be the most advantageous to the City. The City's selection team will review and rank the proposals according to the following criteria:

1. The Consultant Team's past experience and results with similar projects. (20% of overall proposal score)
2. The quality and experience of the Project Manager and key staff persons who will be working on the project. (20% of overall proposal score)
3. The Consultant Team's demonstrated understanding of the proposed project and the Escondido community. (20% of overall proposal score)
4. The Consultant Team's proposed scope of work and ability to deliver a high-quality Public Art Master Plan document with a competitive fee proposal and completion schedule. (20% of overall proposal score)

5. The Consultant Team's ability to meet the City's standard contract requirements through execution of the Consulting Agreement attached as Exhibit 1; written confirmation of this condition is required to be eligible to submit proposal. (20% of overall proposal score)

#### **D. Contract Incorporation**

The Consultant shall enter into a contract in substantially the same form as the City's form Consulting Agreement ("Agreement"), which is attached to this RFP as **Exhibit 1** and incorporated herein by this reference.

The Consultant shall enter into the Agreement within 30 days of the City's Notice of Award. If the Consultant does not execute a contract in substantially the same form as Exhibit 1 within 30 days after notification of award, the City may, in its sole discretion, (i) give notice to the Consultant of the City's intent to select from the remaining prospective consultants or (ii) issue a new RFP for the services.

By submitting a proposal in response to this RFP, prospective consultants certify that they take no exceptions to the terms and requirements of this RFP, including the terms of Exhibit 1. **Any proposed waiver or change to Exhibit 1 must be clearly identified in Contractor's proposal.** Failure to clearly identify exceptions to Exhibit 1 in the submitted proposal will be construed as acceptance of all terms and conditions contained therein. **Any terms of a submitted proposal that seek to alter or effect the indemnification, insurance, or licensing requirements of this RFP or the resulting Consulting Agreement (Exhibit 1) are not permitted.**

The Consultant's proposal submitted in response to this RFP will become part of the Agreement. All contracts, and any addenda thereto, shall be subject to the City's sole discretion and approval. The requirements and service standards of this RFP and the responses of the Consultant will be incorporated by reference into the resulting Agreement.

#### **PROPOSAL FORMAT AND SUBMISSION CONTENTS**

Include all items listed, in the order indicated below. The total numbers of pages in the proposal shall not exceed 25 pages. Font size should be no smaller than 11 point, with an easily readable font.

**A. Cover Page - Name of the Consultant and project title**

**B. Table of Contents**

**C. Executive Summary**

**D. Contact Information and Experience**

**1. Organizational Information –** Provide specific information regarding the organization including but not limited to the organization's full name, address, and identity of parent company if the organization is a subsidiary.

**2. Contact information**

i. Name, title, email address, and direct phone number of the person(s) authorized to negotiate and execute the contract resulting from this RFP.

- ii. Name, title, email address, and direct phone number of the person(s) who shall act as the main point of contact/project manager or person(s) responsible for responding to questions related to this proposal.

### **3. Qualifications and Experience**

- i. Provide specific information in this section regarding prospective consultant's experience in the services specified in this RFP. Relevant information includes, but is not limited to:
  - a. Total number of years in operation, general scope of services provided, and current principal area of expertise.
  - b. Number of years the firm has been providing master planning services.
  - c. Provide a resume and description of each team member's qualifications that will be assigned to this project.
  - d. Experience working with local government.
  - e. Outreach and public engagement experience.
- ii. List of at least three similar or comparable projects. Include project description, project budget, final budget if different, and duration of the project. Examples should include projects that required significant public engagement as part of their scope, with particular sensitivity to the inclusion of diverse communities. For each example, identify the type of project, the specific public engagement activities, the project size and budget, the company's role, client name and contact information, and indicate what role (if any) the proposed project manager and other team members had in the project. Submit examples of marketing and PR used to engage the public during planning, as well as outreach documentation and materials that were used to explain to and educate the public about the Public Art Master Plan and planning process.
- iii. List of at least three business references, include entity name, address, contact person's name and telephone number, and a brief description of the work performed for them.
- iv. Any and all judgments, pending, or expected litigation or other real or potential financial reversals that might materially affect the viability or stability of the proposing organization or warrant that no such conditions exist.

**E. Project Understanding and Approach** - The proposal should include the Consultant's understanding of the project as well as their approach and commitment to delivering a Public Art Master Plan that meets or exceeds the requirements outlined in this RFP. The proposal should include conceptual plans and/or diagrams, graphic representations, and narrative descriptions as necessary to enable the Public Art Commission and review committee to understand and evaluate the Respondent's understand of, and approach to, the Public Art Master Plan.

**F. Scope of Work** – This project will create a unified vision and a strategic plan that will support and operationalize the public art program and will include a well-defined vision and unifying brand for public art in Escondido, a menu of themes or project types that are a priority for stakeholders and residents, a general process by which artists are commissioned and selected, standards for maintenance and upkeep, a process for prioritizing an annual plan or work each year and guidelines for outside contributes (grants, donations, other non-government sources).

- 1. Project Implementation Plan and Timeline** - a detailed project implementation plan, including specific tasks, who performs those tasks (e.g. City, Vendor, etc.), and a timeline for project completion.
  - 2. Research** – Review of the City of Escondido’s existing legislation, plans, policies and procedures pertaining to public art.
  - 3. Community Outreach and Public Participation Plan and Timeline** – Coordinate community outreach that will be promoted to the entire City for broad-based engagement, to assess current and projected public art needs in Escondido, including but not limited to surveys, public meetings, stakeholder interviews, focus groups, and pop up events. All events will be promoted and supplemented by targeted, bilingual outreach to the community, collateral flyer development and distribution, and social media/web content. Please provide details in your proposal about the number of surveys, and public meetings you anticipate needing, and other specific and detailed information about the public input process. This process should also include work sessions with staff, the Public Art Commission, the City Council and other community stakeholders.
- 4. Deliverables:**
- i. Project Implementation Plan
  1. Phases of the Master Plan that may be reflected in the proposal timeline may include:
    - a. Consultant research and community outreach
    - b. Initial recommendation based on best practices
    - c. Community input summarization and presentation
    - d. Refined recommendations including new and amended policies, priorities, strategies, staffing, and timelines
    - e. Community review
    - f. Proposed changes resulting from community review
    - g. Final recommendations and long term strategies presented to the Public Art Commission for endorsement and the City Council for approval
  - ii. Community Outreach Plan
  - iii. Graphic and written information reflecting a unifying brand that communicates values, vision, and process (flyers, surveys, questionnaires, press releases, etc.) to support the public outreach efforts (English, Spanish and electronically).
  - iv. Presentations to Public Boards, Commissions and City Council as needed.
  - v. A minimum of three public meetings
    - a. Broad-based community
    - b. Business
    - c. Art Organizations
  - vi. Needs analysis/Surveys including the follow at minimum:
    - a. Broad-based community
    - b. Businesses
    - c. Art Organizations/Groups
  - vii. Master Plan delivered on Flash Drive in both PDF and other original format (such as Word) and 40 final bound copies (all copies must be in color and bound with spiral binding or Wire-O binding, plastic comb is not acceptable)

viii. Cost Estimates for plan implementation

**G. Master Plan** – Develop a plan that articulates a public art vision and goals, identifies resources and proposes prioritized strategies and processes for the solicitation, acceptance, placement, and maintenance of public art in Escondido.

**1. The Master Plan should include but is not limited to the following elements:**

- i. Summary of research, observations and community outreach results;
- ii. Community Goals - Summary of the relevant, unique and cultural characteristics, elements, and aspirations of Escondido;
- iii. Suggestions and rationales for themes or aspects of the community's unique character to highlight or address through public art;
- iv. Suggestions, rationales, mapped locations, and prioritized recommendations for the placement of artwork at specific sites to support and enhance the community's goals;
- v. Suggestions, rationales, mapped locations, and prioritized recommendations for time-based/temporary art, or any other art-related activities that will support and enhance the community's goals;
- vi. Summary of funding models for public art projects, analysis of existing funding sources and recommendations for which model(s) this community should use;
- vii. Incorporate City policies related to public art and make recommendations not only for changes or amendments to accommodate long term priorities, but also for staffing and/or contracting to accomplish those priorities;
- viii. A clear implementation strategy that includes priorities for the short term (six months to two years), midterm (two to five years) and long term (five to 10 years), as well as estimated costs associated with each priority.

**H. Budget**

1. The total budget for the development of a Public Art Master Plan is not expected to exceed \$75,000.
2. The budget is intended to cover all expense of a Consultant or Consultant Team to conduct research, facilitate meetings, gather community input, and develop a plan that articulates goals, identifies resources and proposes prioritized strategies, timelines and cost estimates for the funding, placement, creation and maintenance of public art in Escondido. The total cost should also cover document reproduction, travel and expenses, and all other deliverables mentioned in the Scope of Work.
3. The proposal shall clearly state all of the costs associated with the project, broken down by category of products and services. Provide all fixed fees that are available. If some fees will be based on a time and materials-based payment model, include information listing the hourly rates by name and title for each key personnel. Provide sufficient information for City staff to determine the total contract price for all components that make up the total budget. The project costs should include all expenses that will be charged to the City. The cost for developing the proposal is the sole responsibility of the submitting prospective consultant, and shall not be chargeable to the City.

- I. Identification of Subcontractors** – Identify all subcontractors intended to be used for the proposed scope of work. For each subcontractor listed, indicate what products and/or services are to be supplied by that subcontractor and, what percentage of the overall scope of work that subcontractor will perform.
- J. Additional Information** – Include any other information you believe to be pertinent, but that is not required. Do not exceed the page limit listed above.

## **INSURANCE**

The selected consultant will be required to obtain insurance as described in Exhibit 1. Securing this insurance is a condition of award for this contract. Any and all costs arising from participation in this RFP process, including but not limited to the cost of procuring insurance as described in Exhibit 1, shall be borne solely by prospective consultants without reimbursement by the City.

## **ATTACHMENTS:**

Exhibit 1 – The City's form Consulting Agreement



**CITY OF ESCONDIDO  
CONSULTING AGREEMENT**

This Consulting Agreement ("Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021 ("Effective Date"),

Between: CITY OF ESCONDIDO  
a California municipal corporation  
201 N. Broadway  
Escondido, CA 92025  
Attn: [name of primary City staff contact]  
760-xxx-xxxx  
("CITY")

And: [Name]  
[Entity Type: e.g., "a California corporation"]  
[Street address]  
[City, state, zip code]  
Attn: [name of contact]  
[Telephone number]  
("CONSULTANT").

(The CITY and CONSULTANT each may be referred to herein as a "Party" and collectively as the "Parties.")

WHEREAS, the CITY has determined that it is in the CITY's best interest to retain the professional services of CONSULTANT to develop a Public Art Master Plan for the CITY;

WHEREAS, CONSULTANT is considered competent to perform the necessary professional services for the CITY; and

WHEREAS, the CITY and CONSULTANT desire to enter into this Agreement for the performance of the Services described herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, and conditions set forth herein, and the mutual benefits derived therefrom, the Parties hereby agree as follows:

1. Description of Services. CONSULTANT shall furnish all of the Services described in the Scope of Work, which is attached to this Agreement as Attachment "A" and incorporated herein by this reference ("Services").
2. Compensation. In exchange for CONSULTANT's completion of the Services, the CITY shall pay, and CONSULTANT shall accept in full, an amount not to exceed the sum of [\$Dollar Amount].

Exhibit 1

CONSULTANT shall be compensated only for performance of the Services described in this Agreement. No compensation shall be provided for any other work or services without the CITY's prior written consent.

3. **Performance.** CONSULTANT shall faithfully perform the Services in a proficient manner, to the satisfaction of the CITY, and in accord with the terms of this Agreement. CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other information furnished by CONSULTANT pursuant to this Agreement, except that CONSULTANT shall not be responsible for the accuracy of information supplied by the CITY.
4. **Personnel.** The performance of the Services by certain professionals is significant to the CITY. As such, CONSULTANT shall only assign the persons listed on Attachment "B", attached to this Agreement and incorporated herein by this reference ("Personnel List"), to perform the Services. CONSULTANT shall not add or remove persons from the Personnel List without the City's prior written consent. If CONSULTANT has not designated a person to perform a component of the Services, CONSULTANT shall not assign such component of the Services to a person without obtaining the City's prior written consent. CONSULTANT shall not subcontract any component of the Services without obtaining the City's prior written consent.
5. **Termination.** The Parties may mutually terminate this Agreement through a writing signed by both Parties. The CITY may terminate this Agreement for any reason upon providing CONSULTANT with 10 days' advance written notice. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of any notice of termination. If the CITY terminates this Agreement due to no fault or failure of performance by CONSULTANT, then CONSULTANT shall be compensated based on the work satisfactorily performed at the time of such termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the Services.
6. **City Property.** All original documents, drawings, electronic media, and other materials prepared by CONSULTANT pursuant to this Agreement immediately become the exclusive property of the CITY, and shall not be used by CONSULTANT for any other purpose without the CITY's prior written consent.
7. **Insurance Requirements.**
  - a. CONSULTANT shall procure and maintain, at its own cost, during the entire term of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services, and the results of such work, by CONSULTANT, its agents, representatives, employees, or subcontractors. Insurance coverage shall be at least as broad as the following:
    - (1) *Commercial General Liability.* Insurance Services Office ("ISO") Form CG 00 01 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 general aggregate.
    - (2) *Automobile Liability.* ISO Form CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage, unless waived by the CITY and approved in writing by the CITY's Risk and Safety Division.
    - (3) *Workers' Compensation.* Worker's Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

Exhibit 1

- (4) *Professional Liability (Errors and Omissions).* Professional Liability (Errors and Omissions) appropriate to CONSULTANT's profession, with limits no less than \$2,000,000 per occurrence or claim and \$2,000,000 aggregate.
  - (5) If CONSULTANT maintains broader coverage and/or higher limits than the minimums otherwise required by this Agreement, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by CONSULTANT.
- b. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:
- (1) *Acceptability of Insurers.* Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A-: FSC VII, or as approved by the CITY.
  - (2) *Additional Insured Status.* Both the Commercial General Liability and the Automobile Liability policies must name the CITY (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of *both* CG 20 10, CG 20 26, CG 20 33, or CG 20 38, *and* CG 20 37 if a later edition is used. The Automobile Liability endorsement shall be at least as broad as ISO Form CA 20 01.
  - (3) *Primary Coverage.* CONSULTANT's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the CITY, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, officers, agents, employees, or volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.
  - (4) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.
  - (5) *Subcontractors.* If applicable, CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated within this Agreement, and CONSULTANT shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.
  - (6) *Waiver of Subrogation.* CONSULTANT hereby grants to the CITY a waiver of any right to subrogation that any insurer of CONSULTANT may acquire against the CITY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this subsection shall apply regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Agreement shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONSULTANT, its agents, representatives, employees, and subcontractors.
  - (7) *Self-Insurance.* CONSULTANT may, with the CITY's prior written consent, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-insurance. CONSULTANT shall only be permitted to utilize such self-insurance if, in the opinion of the CITY, CONSULTANT's (i) net worth and (ii) reserves for payment of claims of liability against CONSULTANT are sufficient to adequately compensate for the lack of other insurance coverage required by this Agreement. CONSULTANT's utilization of self-insurance shall not in any way limit the liabilities assumed by CONSULTANT pursuant to this Agreement.

Exhibit 1

- (8) *Self-Insured Retentions.* Self-insured retentions must be declared to and approved by the CITY.
- c. *Verification of Coverage.* At the time CONSULTANT executes this Agreement, CONSULTANT shall provide the CITY with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting the insurance coverage required by this Agreement), which shall meet all requirements under this Agreement. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Agreement, at any time.
- d. *Special Risks or Circumstances.* The CITY reserves the right, at any point during the term of this Agreement, to modify the insurance requirements in this Agreement, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- e. *No Limitation of Obligations.* The insurance requirements in this Agreement, including the types and limits of insurance coverage CONSULTANT must maintain, and any approval of such insurance by the CITY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant to this Agreement, including but not limited to any provisions in this Agreement concerning indemnification.
- f. Failure to comply with any of the insurance requirements in this Agreement, including, but not limited to, a lapse in any required insurance coverage during the term of this Agreement, shall be a material breach of this Agreement. In the event that CONSULTANT fails to comply with any such insurance requirements in this Agreement, in addition to any other remedies the CITY may have, the CITY may, at its sole option, (i) immediately terminate this Agreement; or (ii) order CONSULTANT to stop work under this Agreement and/or withhold any payment that becomes due to CONSULTANT until CONSULTANT demonstrates compliance with the insurance requirements in this Agreement.
8. Indemnification, Duty to Defend, and Hold Harmless.
- a. CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "Claims"), of every nature caused by, arising out of, or in connection with CONSULTANT's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY, and only to the extent such Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT. Further, in no event shall the cost to defend charged to the CONSULTANT exceed the CONSULTANT's proportionate percentage of fault.
- b. CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all Claims caused by, arising under, or resulting from any violation, or claim of violation, of the San Diego Municipal Storm Water Permit (Order No. R9-2013-0001, as amended) of the California Regional Water Quality Control Board, Region 9, San Diego, that the CITY might suffer, incur, or become subject to by reason of, or occurring as a result of, or allegedly caused by, any work performed pursuant to this Agreement.
- c. All terms and provisions within this Section 8 shall survive the termination of this Agreement.
9. Anti-Assignment Clause. Because the CITY has relied on the particular skills of CONSULTANT in entering into this Agreement, CONSULTANT shall not assign, delegate, subcontract, or otherwise

Exhibit 1

transfer any duty or right under this Agreement, including as to any portion of the Services, without the CITY's prior written consent. Any purported assignment, delegation, subcontract, or other transfer made without the CITY's consent shall be void and ineffective. Unless CONSULTANT assigns this entire Agreement, including all rights and duties herein, to a third party with the CITY's prior written consent, CONSULTANT shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.

10. Attorney's Fees and Costs. In any action to enforce the terms and conditions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs.
11. Independent Contractor. CONSULTANT is an independent contractor, and no agency or employment relationship is created by the execution of this Agreement.
12. Amendment. This Agreement shall not be amended except in a writing signed by the CITY and CONSULTANT.
13. Merger Clause. This Agreement, together with its attachments or other documents described or incorporated herein, if any, constitutes the entire agreement and understanding of the CITY and CONSULTANT concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. In the event of any conflict between the provisions of this Agreement and any of its attachments or related documents, if any, the provisions of this Agreement shall prevail.
14. Anti-Waiver Clause. None of the provisions of this Agreement shall be waived by the CITY because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived by the CITY, in whole or in part.
15. Severability. This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.
16. Governing Law. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Venue for any action arising from this Agreement shall be conducted only in the state or federal courts of San Diego County, California.
17. Counterparts. This Agreement may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement by electronic means, including an attachment to an email, shall be effective as delivery of an executed original. The Agreement on file with the City is the copy of the Agreement that shall take precedence if any differences exist between or among copies or counterparts of the Agreement.
18. Provisions Cumulative. The foregoing provisions are cumulative to, in addition to, and not in limitation of any other rights or remedies available to the CITY.
19. Notice. Any statements, communications, or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated herein, and the CITY and CONSULTANT shall promptly provide the other Party with notice of any changes to such contact information.
20. Business License. CONSULTANT shall obtain a City of Escondido Business License prior to execution of this Agreement and shall maintain such Business License throughout the term of this Agreement.

Exhibit 1

21. Compliance with Laws, Permits, and Licenses. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements in effect during the term of this Agreement. CONSULTANT shall obtain any and all permits, licenses, and other authorizations necessary to perform the Services. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
22. Prevailing Wages. If applicable, pursuant to California Labor Code section 1770 et seq., CONSULTANT agrees that a prevailing rate and scale of wages, in accordance with applicable laws, shall be paid in performing this Agreement. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements pertaining to the payment of prevailing wages. The prevailing rate and scale to be paid shall be the same as the applicable "General Prevailing Wage Determination" approved by the Department of Industrial Relations as of the Effective Date of this Agreement, which are available online at <http://www.dir.ca.gov/oprl/dprevagedetermination.htm> and incorporated into this Agreement by this reference. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
23. Immigration Reform and Control Act of 1986. CONSULTANT shall keep itself informed of and shall comply with the Immigration Reform and Control Act of 1986 ("IRCA"). CONSULTANT represents and warrants that all of its employees and the employees of any subcontractor retained by CONSULTANT who perform any of the Services under this Agreement, are and will be authorized to perform the Services in full compliance with the IRCA. CONSULTANT affirms that as a licensed contractor and employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will perform the Services. CONSULTANT agrees to comply with the IRCA before commencing any Services, and continuously throughout the performance of the Services and the term of this Agreement.
24. Effective Date. Unless a different date is provided in this Agreement, the effective date of this Agreement shall be the latest date of execution set forth by the names of the signatories below.

(SIGNATURE PAGE FOLLOWS)

Exhibit 1

IN WITNESS WHEREOF, this Agreement is executed by the Parties or their duly authorized representatives as of the Effective Date:

CITY OF ESCONDIDO

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

[City Manager/Department Head/Designee Name/Title]

[CONSULTANT COMPANY NAME]

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

Signature

Name & Title (please print)

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY  
MICHAEL R. MCGUINNESS, CITY ATTORNEY

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

THE CITY OF ESCONDIDO DOES NOT DISCRIMINATE AGAINST QUALIFIED PERSONS WITH DISABILITIES.

## **ATTACHMENT “A”**

### Scope of Work

#### **A. General**

Company (“Consultant”) will provide the City of Escondido, a California municipal corporation (“City”) with consulting services to develop a Public Art Master Plan for the City.

#### **B. Location**

Consultant to provide services at various locations within the City at the City’s direction.

#### **C. Services**

[Description of services to be added.]

#### **D. Scheduling**

Consultant to schedule specific dates of work in advance by contacting Danielle Lopez, Assistant Director of Community Services, at [dmlopez@escondido.org](mailto:dmlopez@escondido.org). Further instructions will be provided upon scheduling.

#### **E. Contract Price and Payment Terms**

The contract price shall not exceed \$DollarAmount. The contract price includes all labor, materials, equipment, and transportation required to perform the work. Services will be billed as services are performed. Payment will be made after services have been performed and within 30 days of receipt of an invoice for those services.

#### **F. Term**

The term of this Agreement shall be from the Effective Date of the Agreement through [to be determined].

## **ATTACHMENT "B"**

### Personnel List

Pursuant to Section 4 of the Agreement, CONSULTANT shall only assign performance of Services to persons listed below. [Please indicate "N/A" if no person is designated (e.g., if CONSULTANT is a sole proprietor and will not use additional personnel).]

1. [Name, Title, Email Address, Company]; and
2. [Name, Title, Email Address, Company].

CONSULTANT shall not add or remove persons from this Personnel List without the City's prior written consent. If CONSULTANT has not designated a person to perform a component of the Services, CONSULTANT shall not assign such component of the Services to a person without obtaining the City's prior written consent. CONSULTANT shall not subcontract any component of the Services without obtaining the City's prior written consent.

Acknowledged by:

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

[CONSULTANT Name/Title]