



AGENDA REPORT

Meeting Date: December 9, 2014
Item Number: D-9
To: Honorable Mayor & City Council
From: Nancy Hunt-Coffey, Assistant Director of Community Services
Subject: AGREEMENT BY AND AMONG THE CITY OF BEVERLY HILLS, MARION DIES AND MARIAN WESTALL, FOR THE CREATION, SALE AND ASSIGNMENT OF CERTAIN RIGHTS IN THE FOUR ARTISTIC WORKS ENTITLED, "ENCHANTED WOODS I", "ENCHANTED WOODS II", "FLIGHTS OF IMAGINATION" AND "DEPTHS OF IMAGINATION"; AND

APPROVAL OF A PURCHASE ORDER IN THE AMOUNT OF \$81,084 FOR THIS PURPOSE AND FOR INSTALLATION COSTS.

Attachments: 1. Agreement

RECOMMENDATION

Staff recommends that the City Council approve the agreement and purchase order in the amount of \$81,084 with Marion Dies and Marian Westall to create and install original murals for the Beverly Hills Children's Library

INTRODUCTION

After an extensive Request for Proposal process, the Friends of the Library and staff recommend engaging the services of artists Marion Dies and Marian Westall to provide original artwork for the Children's Library. The scope of the project will include the entryway to the Enchanted Woods Room as well as both walls of the transition passageway located in the center of the space.

The City Council was given an overview of the original Dies/Westall project as part of the September 23rd study session packet. This proposal included mural work for three walls in the Children's Library. Since that time the Friends of the Library asked the artist team to develop a concept for one additional wall. This design would provide for mural work on the second wall in the transition corridor. The artists developed a sea turtle concept for this fourth wall. The Friends of the Library and staff now recommend that the scope of the project be expanded to include this fourth wall.

DISCUSSION

The Friends of the Library expressed a desire to raise funds to provide for original artwork in the renovated Children's Library. With City Council's approval, the Friends raised more than \$93,000 toward this effort, including a generous donation by Mayor Lili Bosse and her husband Jon. These funds were donated to the City and are held in a separate account.

Staff and representatives of the Friends of the Library issued a public Request for Proposal (RFP) as a call to artists who were interested in competing for this project. Twenty seven artists responded to the RFP, and after an extensive vetting and review process, the Friends and staff unanimously recommend Marian Westall and Marion Dies as the artists to do this mural work. The Fine Art Commission has been made aware of this project and does not object to it.

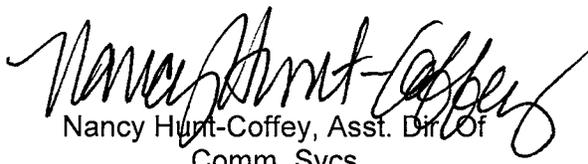
The entry to the Enchanted Woods Room would depict two children reading with animals, and the color palate would be in the blue range. The transition passageway from the area for the youngest readers to the area for school age children would depict Canada geese in flight with books. Please see the attachment for renderings of these proposed pieces.

The Friends requested an addendum to the artists' original proposal to include the second wall of the transition passageway. The artists provided this design and the Friends of the Library and staff recommend that it be included as part of the scope of the project. Even with the additional scope, the project is still well within the amount budgeted for it.

Staff and the Friends of the Library ask the City Council to approve the agreement and a purchase order with Westall and Dies.

FISCAL IMPACT

None. The Friends of the Library raised over \$93,000 for this project, which has been donated to the City and is held in a separate account. The cost of this project, including adding the additional mural to the transition passageway is \$81,084.


Nancy Hunt-Coffey, Asst. Dir. Of
Comm. Svcs

Approved By

Attachment 1

AGREEMENT BY AND AMONG THE CITY OF BEVERLY HILLS, MARION
DIES AND MARIAN WESTALL, FOR THE CREATION, SALE AND
ASSIGNMENT OF CERTAIN RIGHTS IN THE FOUR ARTISTIC WORKS
ENTITLED, "ENCHANTED WOODS I", "ENCHANTED WOODS II", "FLIGHTS
OF IMAGINATION" AND "DEPTHS OF IMAGINATION"

THIS AGREEMENT FOR CREATION AND SALE AND ASSIGNMENT OF CERTAIN
RIGHTS IN ARTISTIC WORKS (the "Agreement") is made by and among the City of Beverly
Hills, a municipal corporation ("City"), Marion Dies and Marian Westall (collectively "Artist").

Section 1. Description of Work.

Artist is a mural artist and is hereby commissioned by the City to design and oversee the
creation, transportation and installation in City of four original works of art entitled, "Enchanted
Woods I", "Enchanted Woods II", "Flights of Imagination", and "Depths of Imagination"
(collectively the "Work") as set forth in Exhibit A ("Scope of Services"), attached hereto and
incorporated herein. The Work shall be consistent with the approved renderings of the Work set
forth in Attachments 1 through 4 of Exhibit A and shall consist of original hand painted murals.

Section 2. Artist's Performance Schedule.

The Artist shall complete the Work in accordance with the performance schedule agreed upon
in writing by the City and Artist, which is estimated to be eight months from receipt by Artist of
the first payment, as specified in Exhibit B, Payment and Payment Schedule, attached hereto
and incorporated herein.

Section 3. Artist's Fee.

Artist agrees to sell, and City agrees to purchase the Work under the terms and conditions set
forth in this Agreement. The price for the Work shall be Eighty-One Thousand and Eighty-Four
Dollars (\$81,084.00) ("Artist's Fee"). Payments shall be made in accordance with the payment
schedule set forth in Exhibit B. City shall not withhold applicable federal or state payroll or any
other required taxes, or other authorized deduction from each payment made to Artist. Upon
payment, Artist will sign a written acknowledgement of receipt of said monies and such
document shall be incorporated into this Agreement.

Section 4. Personnel.

Artist shall be responsible for completing all services in the Scope of Services and providing the
personnel necessary for such services. Artist will be responsible for the satisfactory work
performance of any personnel engaged in performing services required by this Agreement.

Section 5. Term.

This Agreement is effective as of the date of execution of the Agreement written below
("Commencement Date").

Section 6. Right to Display.

Artist hereby grants to City the right to publicly display the Work at a location selected by City.

Section 7. Transfer of Rights of Reproduction.

Artist hereby grants City the right to reproduce the Work in a one or two dimensional representation in any manner whatsoever for commercial and non-commercial purposes without further payment to or approval of Artist.

Section 8. Waiver of Certain Moral Rights.

Artist acknowledges and agrees that City, in its sole and exclusive discretion, may abandon, dismantle or destroy the Work. City, shall however, provide notice to the Artist prior to any destruction of the Work and shall offer in writing to return the Work to Artist at Artist's sole expense. Artist shall have thirty (30) days from the date of such offer to notify City in writing of its desire to accept return of the Work, or City may destroy the Work. City may not permanently modify, alter, or change the Work except for conservation of the Work for structural or aesthetic purposes. Artist hereby waives his rights arising under the federal Visual Artist Rights Act, 17 U.S.C. sections 106A and 113 (d) ("VARA") and the California Art Preservation Act (Cal. Civil Code section 987 et seq.) ("CAPA") and any other state, federal or international law to the extent, and only to the extent that such laws conflict with the provisions of this section. Artist waives no other rights arising under VARA, CAPA and any other state, federal or international law relating to an artist's moral rights.

Section 9. Replication of the Work.

Artist acknowledges that the Work is unique and one of a kind, and Artist shall not reproduce the Work in identical form for commercial or non-commercial purposes.

Section 10. City's Sole and Exclusive Ownership Rights.

A. The Artist shall not retain ownership of or title to the Work. The parties agree that the title to the Work belongs to and is being sold and assigned to City for whatever use it desires, and that City does and shall at all times own, solely and exclusively, complete and unencumbered, all title in and to the Work.

B. City hereby authorizes Artist to make, and to authorize the making of photograph reproductions of the Work for self-promotional purposes. For purposes of this Agreement, the following are deemed to be photograph reproductions for self-promotional purposes: photograph reproduction for use in Artist's personal portfolio or an Artist's website; and reproduction for use in self-promotion mailers such as catalogues or postcards as long as such reproduction is provided to others at no cost. On any and all such reproductions, Artist shall place a copyright notice in the form and manner provided by City to protect the copyrights in the Work under the United States copyright law. In addition, all reproductions shall contain the following credit line unless otherwise requested to the contrary in writing by City: "Depths of Imagination", Commissioned by the City of Beverly Hills." Under no circumstances shall Artist use or make any photograph reproductions of the Work for commercial purposes and any photograph reproductions used or made by Artist shall not compete with any City endeavor to sell or promote reproductions of the Work. City has sole discretion to determine whether a photograph reproduction is utilized for self-promotional purposes or whether the reproduction

competes with City's endeavors to sell or promote its reproductions in the Work. If City determines that the photograph reproduction does not meet the terms of this section, City shall provide written notice to Artist and Artist shall immediately cease and desist the use of the reproduction.

Section 11. Transferability.

All rights granted by Artist to City pursuant to this Agreement are fully transferable to others, by license or otherwise without further payment or approval of Artist.

Section 12. Originality of the Work.

Artist represents and warrants that (i) the Work is and will be original; (ii) at the time of transfer hereunder, Artist is the sole owner of the Work and of all rights therein including copyright, trademark and other proprietary rights therein; (iii) Artist is and will be the sole creator of the Work; (iv) Artist has and will have full and sufficient right to assign all rights granted herein and to waive all rights relinquished herein; (v) Artist is not under any obligation to transfer or sell any of the Work to any third party; (vi) the Work has not been and will not be published under circumstances which have or will cause a loss of any copyright, trademark or other proprietary rights therein; and (vii) the Work does not and will not infringe any patent, copyright, trademark or other proprietary rights, privacy rights or other rights of any third party, nor has any claim (whether or not embodied in a legal action, past or present) of such infringement been threatened or asserted, nor is such a claim pending, against Artist (or, insofar as Artist is aware, against any entity from which Artist has obtained any rights).

Section 13. Risk of Loss.

Artist bears the sole risk of damage to or loss of the Work to be produced by Artist pursuant to this Agreement until the Work is delivered to and installed in City and City accepts such Work as satisfactorily completed pursuant to the terms of the Agreement.

Section 14. Artist's Commitment.

Artist agrees that Artist will not make reference to the Work produced under this Agreement in a way that reflects discredit on the City or the Work.

Section 15. Maintenance of the Work.

City shall maintain the Work in the same or similar condition as when the Work was installed.

Section 16. Addresses for Notices.

Any notice, bills, invoices, demand or document which any party is required or may desire to give or deliver to the other hereunder, shall be in writing and may be delivered personally or given by facsimile or overnight courier service, postage prepaid, addressed as follows:

To Artist:

Marion Dies
2451 Hidalgo Avenue
Los Angeles, CA 90039
Tel: 323-497-5639

Marian Westall
10255 Haines Canyon Avenue
Tujunga, CA 91042
Tel: 818-618-2914

To City:

City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210
Attention: City Manager
Fax: (310) 274-3267

with a copy to: City Attorney
City of Beverly Hills
455 North Rexford Drive, Room 230
Beverly Hills, California 90210
Fax (310) 285-1056

Either party shall have the right to designate a different address by written notice similarly given. Any notice, demand or documents shall be deemed received on: (a) the day of delivery if delivered by hand or overnight courier service during the party's regular business hours; or (b) the day of delivery if delivered by facsimile during the party's regular business hours. City assumes no responsibility to search for Artist if it cannot be reached at the address of record.

Section 17. Termination.

A. City shall have the right to terminate this Agreement, with cause, upon ten calendar days written notice to Artist. If terminated, Artist agrees to cease all work under this Agreement on or before the effective date of such notice. If such cause is a default by Artist and upon notice this default is not cured within 15 days, all completed and uncompleted portions of the Work up to the date of receipt of written notice of termination shall become the property of City.

B. In the event of termination of this Agreement by City, due to no fault or failure of performance by Artist, all monies paid to date shall be considered as earned and not refundable to City and the completed or uncompleted portions of the Work and all rights and title conveyed under this Agreement will be forfeited. In no event shall Artist be entitled to receive more than the amount that would be paid to Artist for the full performance of the services required by this Agreement.

Section 18. Insurance.

A. Artist shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of One Million Dollars (\$1,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by Artist.

(2) A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits as required by California law, covering any vehicle utilized by Artist in performing the Scope of Services required by this Agreement.

(3) Workers' Compensation Insurance as required by the State of California. If Artist represents that it is not required by law to maintain Workers' Compensation insurance coverage, Artist shall sign an affidavit to this effect on a form attached hereto and incorporated herein at Exhibit C.

B. Artist shall require each of its sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

C. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

D. Artist agrees that if it does not keep the aforesaid insurance in full force and effect City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Artist's expense, the premium thereon.

E. At all times during the term of this Agreement, Artist shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit D, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. Artist shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general and auto liability insurance shall contain an endorsement naming the City as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

F. The insurance provided by Artist shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

G. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, Artist shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Artist shall procure a bond guaranteeing payment of losses and expenses.

Section 19. Indemnification.

Artist agrees to indemnify, hold harmless and defend City, City Council and each member thereof, and every officer, employee and agent of City, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Artist or any person employed by Artist in the performance of this Agreement.

Section 20. Attorneys' Fees.

In the event either party shall commence any action against the other party relating to this Agreement or for the breach of any obligation contained herein, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees, expenses, and court costs.

Section 21. Prohibition Against Assignment.

Artist shall not delegate, transfer, subcontract or assign his duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Artist.

Section 22. Successors and Assigns.

The terms of this Agreement shall be binding upon and inure to the benefit of the respective heirs, successors in interest and assigns of the parties hereto.

Section 23. Entire Agreement.

This Agreement represents the entire integrated agreement between City and Artist, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and Artist.

Section 24. Severability.

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

Section 25. Headings.

The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification only and shall not be deemed to limit, expand or define the contents of the respective sections or paragraphs.

Section 26. Governing Law; Jurisdiction.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of litigation between the parties, venue in State trial courts shall be exclusively in Los Angeles County. In the event of litigation in a United States District Court, exclusive venue shall lie in the Central District of California.

Section 27. Execution.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

EXECUTED the _____ day of _____, 2014, at Beverly Hills, California.

CITY OF BEVERLY HILLS,
a municipal corporation

THOMAS BOSSE
Mayor of the City of
Beverly Hills, California

ATTEST:

(SEAL)

BYRON POPE
City Clerk

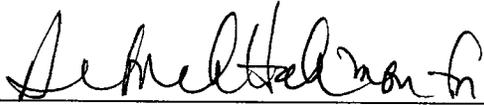
ARTIST:

Marion Dies
MARION DIES

Marian Elliott-Westall
MARIAN WESTALL
Marian Elliott-Westall

[Signatures Continue]

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY C. KOLIN
City Manager



STEVE ZOET
Director of Community Services



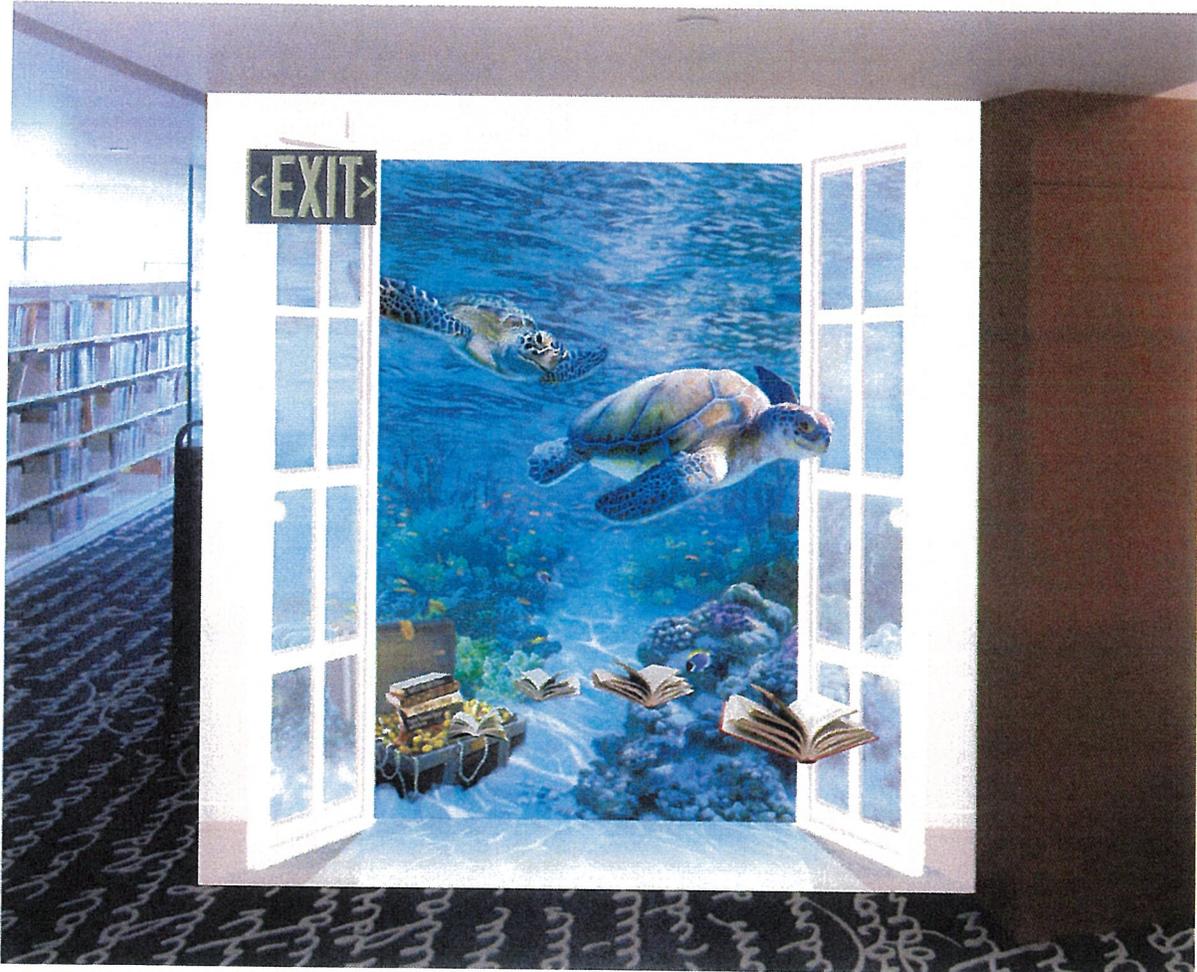
KARL KIRKMAN
Risk Manager

EXHIBIT A
SCOPE OF SERVICES

Artist has designed a mock up of the Work, a rendering of which is attached as Attachment 1 to this Exhibit A. The Work shall be fabricated by Artist in Artist's studio in Los Angeles, California. Artist shall be responsible for transportation of the Work from Artist's studio to City. Artist shall install the Work in the Beverly Hills Children's Library in a location selected by City's Director of Community Services or his designee.

ATTACHMENT 1 TO EXHIBIT A

Artist's Mock Up of the Work



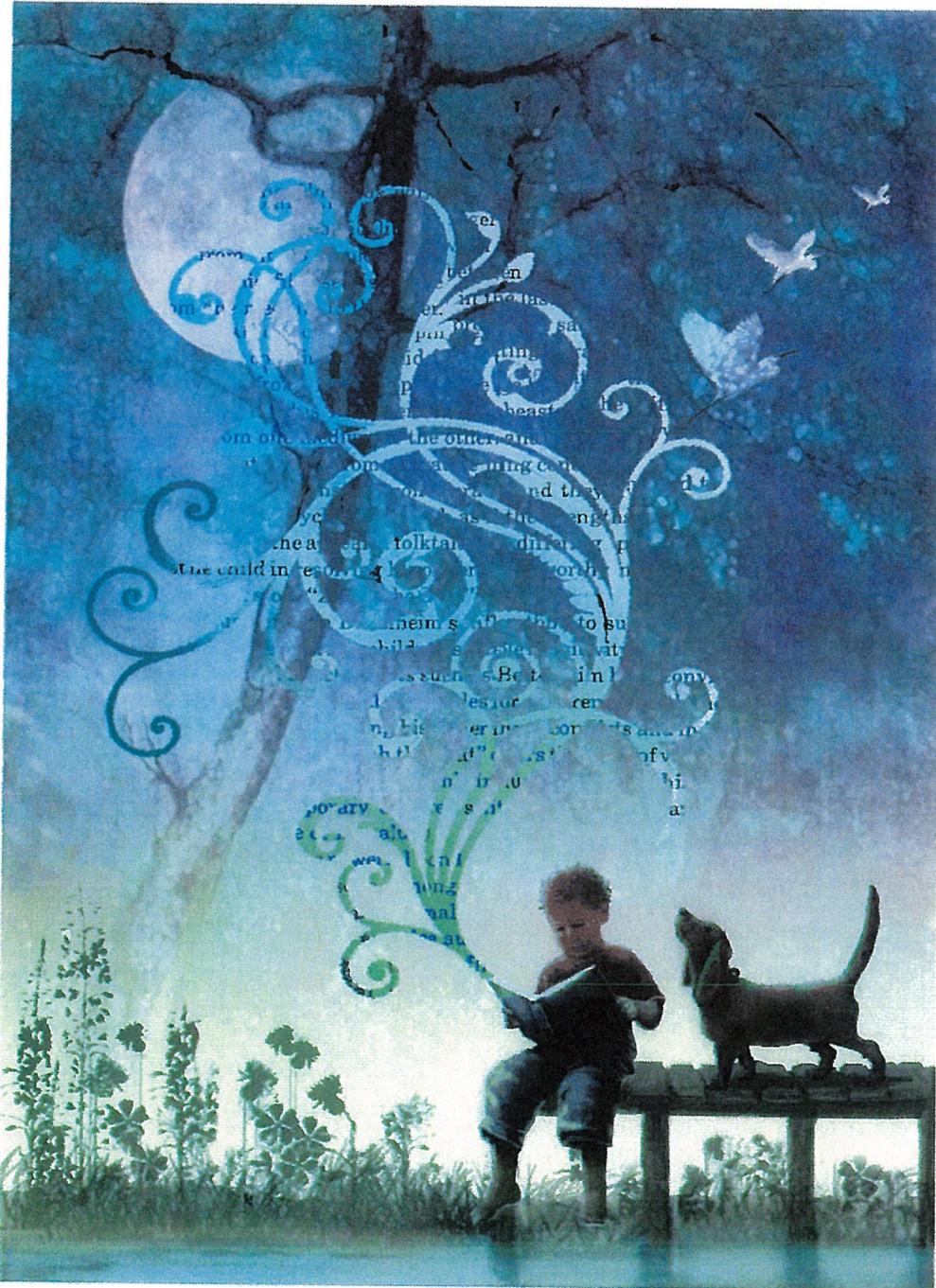
ATTACHMENT 2 TO EXHIBIT A

Artist's Mock Up of the Work



ATTACHMENT 3 TO EXHIBIT A

Artist's Mock Up of the Work



ATTACHMENT 4 TO EXHIBIT A

Artist's Mock Up of the Work



EXHIBIT B

PAYMENT AND PAYMENT SCHEDULE

City shall pay Artist \$81,084.00 for the creation, transportation and installation of the Work, pursuant to the terms and conditions of this Agreement.

Payment Schedule:

City shall pay Artist in accordance with the following payment schedule:

- A. Upon execution of this Agreement, City shall pay Artist Marion Dies \$13,514.00 and Marian Westall \$13,514.00 as a deposit to begin Artist's work.
- B. Upon completion of the Work at Artist's studio and prior to shipping, City shall pay Artist Marion Dies \$13,514.00 and Marian Westall \$13,514.00.
- C. Within thirty days of the delivery and acceptance of the Work by City, City shall pay the remaining balance of \$13,514.00 to Artist Marion Dies and \$13,514.00 to Artist Marian Westall.

EXHIBIT C

**CITY OF BEVERLY HILLS
WORKER'S COMPENSATION STATEMENT**

FISCAL YEAR 2014-2015
July 1, 2014 TO JUNE 30, 2015

(For Contractor not Subject to California Worker's Compensation Laws)

I, _____, certify that in the performance of my agreement with the City of Beverly Hills, shall not employ any person in any manner so as to become subject to the Worker's Compensation Laws of California.

I agree that should I become subject to the Worker's Compensation Laws of California during the term of the agreement, I will notify the City of Beverly Hills and I will comply with those laws immediately.

CONTRACTOR USE ONLY:

(COMPANY NAME)

(SIGNATORY'S PRINTED NAME)

(SIGNATURE)

(TELEPHONE NUMBER)

(DATE SIGNED)

REVIEWED/APPROVED BY:

Risk Management Division

Date Signed

EXHIBIT D

CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below :

NAMED INSURED

COMPANIES AFFORDING COVERAGE

ADDRESS

- A.
- B.
- C.

COMPANY (A.B.C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	B.I.	LIMITS P.D.	AGGREGATE
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKER'S COMPENSATION					

It is hereby understood and agreed that the City of Beverly Hills, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the City of Beverly Hills and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the City of Beverly Hills.

In the event of cancellation or material change in the above coverage, the company will give 30 days written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE : _____ BY : _____

 Authorized Insurance Representative

AGENCY : _____ TITLE : _____
 _____ Address : _____
